

HCN CO-OWNERS and HCN LESSEE ENTITIES

-and-

HEALTH CARE REIT, INC.

-and-

CHARTWELL SENIORS HOUSING REIT

-and-

CHARTWELL MASTER CARE LP and CHARTWELL M HOLDINGS LP

MASTER AGREEMENT

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SCHEDULE A

THIS MASTER AGREEMENT made as of the 1st day of May, 2012

AMONG:

HCN CANADIAN INVESTMENT-1 LP and HCN CANADIAN INVESTMENT-2 LP (each an “HCN Co-owner” and collectively, the “HCN Co-owners”) and HCN CANADIAN LEASING LTD., HCN ROSS LEASING LTD., HCN IMPERIAL LEASING LTD., HCN FOUNTAINS LEASING LTD. and HCN RENAISSANCE LEASING LTD. (each an “HCN Lessee Entity” and collectively, the “HCN Lessee Entities”)

(hereinafter collectively called “**HCN**”)

-and-

HEALTH CARE REIT, INC., a Delaware corporation

(hereinafter called “**HCN Parent**”)

-and-

CHARTWELL SENIORS HOUSING REIT

(hereinafter called “**Chartwell Parent**”)

-and-

CHARTWELL MASTER CARE LP, an Ontario limited partnership, by its general partner **GP M TRUST**, by its sole trustee **CHARTWELL MASTER CARE CORPORATION** (hereinafter called the “**Chartwell Co-owner**”) and **CHARTWELL M HOLDINGS LP**, an Ontario limited partnership, by its general partner **CHARTWELL M HOLDINGS GP INC.** (hereinafter called “**CMHLP**”)

(hereinafter collectively called “**Chartwell**”)

RECITALS:

- A. The HCN Co-owners and the Chartwell Co-owner are the beneficial freehold owners as tenants in common of each of the Properties as follows:
- (i) The HCN Co-owners own an undivided 50% interest therein; and
 - (ii) The Chartwell Co-owner owns an undivided 50% interest therein;
- Schedule A sets out the ownership interest of each Co-owner in each Property;

- B. The legal freehold interests in the Properties are held by nominee corporations (the “**Nominee Companies**”), the shares of each of which are owned equally by the applicable HCN Co-owner and the Chartwell Co-owner;
- C. The Co-owners, as landlord, have leased each of the Properties to one or more limited partnerships (collectively, the “**Tenant LP**”), as tenant, pursuant to one or more master operating leases dated as of the date hereof (collectively, the “**Master Lease**”);
- D. The shares of the general partner(s) of the Tenant LP and the limited partnership units of the Tenant LP are owned equally by the HCN Lessee Entities and CMHLP;
- E. HCN and Chartwell wish to enter into this Agreement to confirm their agreement with respect to the ownership of the Properties and the shares of the general partner(s) of the Tenant LP and the limited partnership units of the Tenant LP;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party) the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

In this Agreement unless there is something in the subject matter or context inconsistent therewith, the following words shall have the respective meanings set forth in this section 1.1:

“**Affiliate**” of a Participant means:

- (a) in respect of HCN means any corporation, trust or limited partnership of which: (A) HCN Parent owns, directly or indirectly, all of the issued and outstanding voting and non-voting securities, interests and units (including, without limitation, any warrants, options or other rights to purchase such securities, interests and units and securities or obligations convertible into or exchangeable for such securities, interests or units) of such corporation, trust or limited partnership; or (B) HCN Parent possesses or has the right to acquire at any time direct or indirect control in fact of such corporation, trust or limited partnership through ownership of or control over (whether by way of contract or otherwise), all of the issued and outstanding voting and non-voting securities, interests and units (including, without limitation, any warrants, options or other rights to purchase such securities, interests and units and securities or obligations convertible into or exchangeable for such securities, interests or units) of such corporation, trust or limited partnership;
- (b) in respect of Chartwell means any corporation, trust or limited partnership of which: (A) Chartwell Parent owns, directly or indirectly, all of the issued and outstanding voting and non-voting securities, interests and units (including, without limitation, any warrants, options or other rights to purchase such

securities, interests and units and securities or obligations convertible into or exchangeable for such securities, interests or units) of such corporation, trust or limited partnership; or (B) Chartwell Parent possesses or has the right to acquire at any time direct or indirect control in fact of such corporation, trust or limited partnership through ownership of or control over (whether by way of contract or otherwise), all of the issued and outstanding voting and non-voting securities, interests and units (including, without limitation, any warrants, options or other rights to purchase such securities, interests and units and securities or obligations convertible into or exchangeable for such securities, interests or units) of such corporation, trust or limited partnership (for the purposes of this subsection (b) all units of Chartwell Master Care LP exchangeable for units of Chartwell Parent shall be deemed to have been exchanged for such units).

“Agreement” means this Agreement, as amended, renewed, supplemented, extended and restated from time to time.

“Appraisal Notice” has the meaning set forth in subsection 8.1(h).

“Appraised Value” means the appraised value of a Defaulting Participant’s Co-owner’s Interest and Partnership Owner’s Interest, as determined in accordance with subsection 10.3(a).

“Approval” means an approval or consent or agreement to any action, Person, document or plan given or made in accordance with Article 5 and **“Approved”** has a corresponding meaning.

“Arbitration Notice” has the meaning set forth in subsection 8.2(c).

“Arbitrator” has the meaning set forth in subsection 8.2(c).

“arm’s length” and **“non-arm’s length”** shall have the meanings that they have for purposes of the *Income Tax Act* (Canada).

“Article”, **“section”** and **“subsection”** mean and refer to the specified Article, section or subsection of this Agreement, respectively.

“Auditor” means KPMG LLP or such other national firm of auditors comprising one of the “Big 4” as may be Approved by the Co-owners from time to time.

“Business Agreements” means the Participation Agreements and the Master Lease.

“Business Day” means a day on which banks are open for business in the City of Toronto, Ontario but does not include a Saturday or Sunday or a statutory, civic or legal holiday under the laws of the Province of Ontario or under the federal laws of Canada.

“Buy-Sell Negotiating Period” has the meaning set forth in subsection 8.1(b).

“CEO Negotiating Period” has the meaning set forth in subsection 8.1(c).

“Chartwell” means, collectively, the Chartwell Co-owner and CMHLP and their respective successors and permitted assigns.

“Chartwell Co-owner” means Chartwell Master Care LP, by its general partner GP M Trust, by its sole trustee Chartwell Master Care Corporation, and its successors and permitted assigns.

“Chartwell Corporate Parent” has the meaning set forth in the definition of “Chartwell Parent”.

“Chartwell Guaranteed Entities” has the meaning set forth in subsection 15.13(d).

“Chartwell Liabilities” has the meaning set forth in subsection 15.13(d).

“Chartwell Parent” means Chartwell Seniors Housing REIT and its successors and permitted assigns and, for greater certainty, following an Income Trust Conversion Transaction shall mean the corporate entity resulting from such transaction (the **“Chartwell Corporate Parent”**).

“Chartwell Purchaser” has the meaning set forth in subsection 8.1(h).

“Closing” has the meaning set forth in subsection 11.1(a).

“Closing Period” has the meaning set forth in subsection 8.1(f).

“CMHLP” means Chartwell M Holdings LP, a limited partnership established pursuant to the laws of Ontario and its successors and permitted assigns.

“Code” means the U.S. Internal Revenue Code.

“Committee” has the meaning set forth in subsection 5.2(a).

“Confidential Information” has the meaning set forth in subsection 15.19(a).

“Confidentiality Agreement” has the meaning set forth in subsection 15.19(b).

“Contributing Co-owner” has the meaning set forth in section 6.5.

“Control” means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint fifty percent (50%) or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interest or by contract, trust or otherwise, and **“Controlled by”** has a corresponding meaning.

“Co-owners” means the HCN Co-owners and the Chartwell Co-owner and any transferee of all or any part of a Co-owner’s Interest from time to time in accordance with this Agreement but does not include an HCN Co-owner or the Chartwell Co-owner or any such transferee after it has

transferred all of its Co-owner's Interest in accordance with this Agreement; and **"Co-owner"** means any one of the Co-owners.

"Co-owner's Charge" has the meaning set forth in subsection 7.6(a).

"Co-owner's Interest" means, with respect to a Co-owner, the undivided right, title, benefit and interest of such Co-owner from time to time in and to all of the Properties and in and to all shares in the capital of all of the Nominee Companies; and **"Co-owners' Interests"** means the Co-owner's Interest of all Co-owners collectively.

"Co-owner's Proportion" means, with respect to a Co-owner, the proportion which its Co-owner's Interest is of the aggregate of all Co-owners' Interests, expressed as a percentage. As at the date hereof, the Co-owner's Proportion of each of the HCN Co-owners, on the one hand, and the Chartwell Co-owner, on the other hand, is 50%.

"Co-ownership" has the meaning set forth in subsection 4.1(a).

"Deemed Default" means the early termination of the Management Agreement by the Tenant LP pursuant to section 11.1 or sections 11.3(a) or (b) of the Management Agreement.

"Deemed Disposition" means, with respect to HCN, any Person forming a part of HCN ceasing to be an Affiliate of HCN, and, with respect to Chartwell, any Person forming part of Chartwell ceasing to be an Affiliate of Chartwell.

"Default" means, with respect to a Participant:

- (a) the existence of an Event of Insolvency with respect to such Participant or, in the case of HCN, HCN Parent or, in the case of Chartwell, Chartwell Parent; or
- (b) the breach by such Participant in the performance of any of its material obligations under the Participation Agreements;
- (c) a Deemed Default (which shall be deemed to be a Default by Chartwell only);
- (d) a Deemed Disposition described in the last sentence of section 7.2; or
- (e) a Disposition described in clause (i) of subsection 7.5(b).

"Default Purchase Notice" has the meaning set forth in subsection 10.2(e).

"Defaulting Participant" has the meaning set forth in section 10.2.

"Defaulting Participant's Assumed Debt" has the meaning set forth in subsection 10.3(a).

"Disposition" means the sale, transfer, assignment, disposition or encumbrance, or agreement to sell, transfer, assign, dispose of or encumber, all or any portion of any Participant's Co-owner's Interest or Partnership Owner's Interest or this Agreement (or any interest herein), and includes a Deemed Disposition.

“**Dispute**” has the meaning set forth in subsection 8.2(a).

“**Dispute Notice**” has the meaning set forth in subsection 8.2(a).

“**Encumbrances**” means the encumbrances registered against the Properties as of the date hereof together with the Co-owner’s Charges, the registrations pursuant to section 4.2 of this Agreement and any other encumbrances Approved by the Co-owners.

“**Event of Insolvency**” shall be deemed to have occurred with respect to a Participant upon the occurrence, with respect to any Person forming a part of such Participant or, in the case of HCN, HCN Parent or, in the case of Chartwell, Chartwell Parent, of any one or more of the following events:

- (a) if such Person (or if a partnership, any partner thereof) other than in connection with a *bona fide* corporate reorganization which does not contravene section 7.1, shall:
 - (i) be wound-up, dissolved or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada) or any United States federal or state law or statute governing the wind-up, dissolution or liquidation of any type of corporate entity or partnership or any successor legislation thereto or have its existence terminated or have any resolution passed therefor;
 - (ii) make a general assignment for the benefit of its creditors or a proposal or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or file a voluntary petition or have an involuntary petition filed against it under the *United States Bankruptcy Code* (11 U.S.C. s. 101 et seq.) or any successor legislation thereto or be adjudged by a court of competent jurisdiction to be bankrupt or insolvent or acknowledge its insolvency in writing; or
 - (iii) apply for protection or propose a compromise or arrangement under the *Companies’ Creditors Arrangement Act* (Canada) or under any similar or equivalent United States federal or state law or statute or any successor legislation thereto or shall file any petition, application or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for debtors or for the benefit of creditors; or
- (b) if a court of competent jurisdiction enters an order, judgment or decree approving a petition or application filed against such Person (or if a partnership any partner of such Person) seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally and (i) such Person (or if a partnership such partner of such Person)

shall acquiesce in the entering of such order, judgment or decree, or (ii) if there is no such acquiescence, the order, judgement or decree remains unvacated or unstayed for an aggregate of 45 days (whether or not consecutive) from the date of entry thereof; or

- (c) if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for such Person (or if a partnership, a partner of such Person) or its Co-owner's Interest or Partnership Owner's Interest and (i) such Person (or if a partnership, such partner of such Person) shall consent to or acquiescence in such appointment or (ii) if there is no such acquiescence or consent, such appointment remains unvacated or unstayed for an aggregate of 45 days (whether or not consecutive) from the date of appointment.

"First Notice" has the meaning set forth in section 8.3.

"HCN" means, collectively, the HCN Co-owners and the HCN Lessee Entities and their respective successors and permitted assigns.

"HCN Co-owners" means HCN Canadian Investment-1 LP and HCN Canadian Investment-2 LP and their respective successors and permitted assigns.

"HCN Guaranteed Entities" has the meaning set forth in subsection 15.13(a).

"HCN Lessee Entities" means, collectively, HCN Canadian Leasing Ltd., HCN Ross Leasing Ltd., HCN Imperial Leasing Ltd., HCN Fountains Leasing Ltd. and HCN Renaissance Leasing Ltd. and their respective successors and permitted assigns.

"HCN Liabilities" has the meaning set forth in subsection 15.13(a).

"HCN Parent" means Health Care REIT, Inc. and its successors and permitted assigns.

"hereof", "herein", "herewith", "hereto" and similar expressions mean and refer to this Agreement and, where relevant, to any particular Article, section or subsection hereof.

"Improvements" means the seniors living facilities, buildings and other structures (including any ancillary commercial areas) and above or below grade parking and delivery facilities constructed on the Lands and all other buildings, structures and fixed improvements located from time to time on, in or under the Lands together with all below and above grade connections, if any, to adjacent buildings, constructed as appurtenances to such buildings.

"Income Trust Conversion Transaction" means a transaction in which Chartwell Parent converts from an income trust to a corporate structure and no Person or group of Persons acting jointly or in concert, following the completion of the conversion transaction, has voting control or direction of more than 66 2/3% of the votes attaching to the voting shares of the Chartwell Corporate Parent.

"Indemnified Co-owner" has the meaning set forth in section 6.4.

“Indemnifying Co-owner” has the meaning set forth in section 6.4.

“Initiating Notice” has the meaning set forth in subsection 8.1(a).

“Intention Notice” has the meaning set forth in subsection 8.1(b).

“Lands” means the lands relating to the Properties listed in Schedule A and any additional lands acquired by the Co-owners in the Co-ownership after the date hereof.

“Liabilities” has the meaning set forth in section 6.4.

“LPA” means the limited partnership agreements among the Partnership Owners as limited partners of the Tenant LP and the general partners of the Tenant LP governing the Tenant LP and dated on or about the date hereof.

“Major Decision” means the **“Material Decisions”** as defined in the USA and any decision with respect to:

- (a) consents pursuant to section 7.1;
- (b) the financing or re-financing of, and extensions or amendments to existing financing by both Co-owners of, all or part of the Properties;
- (c) demolition of all or any substantial portion of the Properties unless required by law;
- (d) acquisition of material additional lands or material real property interests;
- (e) capital budgets for the Properties;
- (f) incurring any capital expenditures with respect to the Properties in excess of the approved capital budgets by an amount greater than \$50,000, unless required by law;
- (g) renewing, amending or terminating the Master Lease other than in accordance with the express provisions of the Master Lease;
- (h) entering into any lease of any interest in the whole or any part of any of the Properties, other than the Master Lease;
- (i) entering into any transaction with a Person that is not at arm’s length to a Co-owner for the sale or purchase of goods or the provision of any service with respect to the Properties that has not been approved as part of an Approved capital budget;
- (j) making any tax elections or filing any tax returns that would bind the other Co-owner to pay an amount in excess of \$100,000;

- (k) take or omit any action that does not comply with the requirements of the *U.S. REIT Investment Diversification and Empowerment Act* and/or results in HCN Parent not recognizing qualifying REIT income from its indirect co-ownership interest in any of the Properties; or
- (l) repairing or replacing any capital portion of any of the Properties damaged by casualty loss in excess of \$500,000 above the amount covered by insurance, unless required by law.

“Management Agreement” means the management agreement for the operations of the Properties entered into concurrently with this Agreement between the Tenant LP, as leasehold owners and Chartwell Master Care LP, as manager or any substitute management agreement, as amended, renewed, supplemented, extended and restated from time to time.

“Manager” means the manager from time to time under the Management Agreement.

“Marks” has the meaning set for the in subsection 11.2.

“Master Lease” has the meaning set forth in Recital C.

“Negotiation Period” has the meaning set forth in subsection 7.1(b).

“Nominee Companies” has the meaning set forth in Recital B.

“Non-advancing Co-owner” has the meaning set forth in section 6.5.

“Non-Competition Agreement” means the non-competition and right of first opportunity agreement between the HCN Co-owners, HCN Parent, Chartwell Parent and the Chartwell Co-owner and dated on or about the date hereof.

“Notice” has the meaning set forth in section 12.1.

“Offer Period” has the meaning set forth in subsection 8.1(d).

“Offeree” has the meaning set forth in subsection 8.1(a).

“Offeror” has the meaning set forth in subsection 8.1(a).

“Parent” means, with respect to the Chartwell Co-owner, Chartwell Parent, and with respect to the HCN Co-owners, HCN Parent.

“Participant” means each of HCN and Chartwell.

“Participation Agreements” means this Agreement, the LPA, the USA and the Non-Competition Agreement.

“parties” means HCN and Chartwell and **“party”** means any one of the parties.

“Partnership Owners” means the HCN Lessee Entities and CMHLP and any transferee of all or any part of a Partnership Owner’s Interest from time to time in accordance with this Agreement but does not include an HCN Lessee Entity and CMHLP or any such transferee after it has transferred all of its Partnership Owner’s Interest in accordance with this Agreement; and **“Partnership Owner”** means any one of the Partnership Owners.

“Partnership Owner’s Charge” has the meaning set forth in subsection 7.6(b).

“Partnership Owner’s Interest” means, with respect to a Partnership Owner, the right, title, benefit and interest of such Partnership Owner from time to time in the Tenant LP and in shares of the general partner(s) of the Tenant LP and **“Partnership Owners’ Interests”** means the Partnership Owner’s Interest of all Partnership Owners collectively.

“Partnership Owner’s Proportion” means, with respect to a Partnership Owner, the proportion which its Partnership Owner’s Interest is of the aggregate of all Partnership Owners’ Interests, expressed as a percentage. As of the date hereof, the Partnership Owner’s Proportion of each of the HCN Lessee Entities, on the one hand, and CMHLP, on the other hand, is 50%.

“Person” means and includes individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, consortiums, companies, trusts, banks, trust companies, governments, regulatory authorities, governmental departments, agencies, commissions, boards, tribunals or courts, or other entities.

“Pledge” has the meaning set forth in subsection 7.5(b).

“Prime Rate” means the rate of interest per annum established and published as its prime lending rate from time to time by TD Canada Trust or its successors as the reference rate of interest for Canadian dollar loans made by it in Canada and adjusted automatically upon any change in such rate of interest.

“Properties” means the Lands and the Improvements and all other property or improvements whether real or personal, now owned or hereafter acquired by the Co-owners in their capacity as co-owners of the Lands.

“Property Sale Notice” has the meaning set forth in subsection 10.2(g).

“Purchase Notice” has the meaning set forth in subsection 7.11(d).

“Purchase Offer” has the meaning set forth in subsection 8.1(a).

“Purchase Offer Interest” has the meaning set forth in subsection 8.1(a).

“Purchaser” has the meaning set forth in section 8.4.

“RBC” has the meaning set forth in subsection 7.5(b).

“Related Agreements” means this Agreement and the Non-Competition Agreement, the LPA, the USA, the Management Agreement and the Master Lease.

“ROFR Interest” has the meaning set forth in subsection 7.11(c).

“ROFR Notice” has the meaning set forth in subsection 7.11(c).

“ROFR Offeree” has the meaning set forth in subsection 7.11(c).

“ROFR Offeror” has the meaning set forth in subsection 7.11(c).

“ROFR Period” has the meaning set forth in subsection 7.11(c).

“ROFR Requirement” has the meaning set forth in subsection 7.11(a).

“Rules” has the meaning set forth in subsection 8.2(c).

“Sale Offer” has the meaning set forth in subsection 8.1(a).

“Sale Offer Interest” has the meaning set forth in subsection 8.1(a).

“Seller” has the meaning set forth in section 8.4.

“Structure” has the meaning set forth in subsection 4.1(b).

“Tag-Along Interest” has the meaning set forth in subsection 7.11(d);

“Tag-Along Notice” has the meaning set forth in subsection 7.11(d).

“Tenant LP” has the meaning as set forth in Recital C.

“Third Party” has the meaning set forth in subsection 7.11(c).

“Third Party Engagement Notice” has the meaning set forth in subsection 7.11(b).

“Third Party Offer” has the meaning set forth in subsection 7.11(c).

“Transfer Documents” has the meaning set forth in subsection 11.1(a).

“Transferee” has the meaning set forth in section 7.8.

“Transferor” has the meaning set forth in section 7.8.

“USA” means the unanimous shareholder agreement among the Partnership Owners as shareholders of the general partner(s) of the Tenant LP and such general partner(s) governing the affairs of such general partner(s) and dated on or about the date hereof.

“Western Properties” has the meaning set forth in subsection 8.1(h).

“Western Properties Assets” means, collectively, the Western Properties, the shares in the capital of the Nominee Companies relating to the Western Properties and the Western Properties Operating Assets.

“**Western Properties Operating Assets**” has the meaning set forth in subsection 8.1(h).

“**Western Purchase Notice**” has the meaning set forth in subsection 8.1(h).

ARTICLE 2 TERM

2.1 Term

This Agreement shall come into force and effect as of the date hereof and shall continue in force until the earlier of:

- (a) the date on which all Co-owners’ Interests are held by one Co-owner;
- (b) the date this Agreement is terminated by written agreement of all of the Co-owners and the Partnership Owners; and
- (c) the date on which all of the Properties are sold by both Co-owners and all matters among the Co-owners and the Partnership Owners under this Agreement have been completed, including the full distribution of the proceeds of such sale and the winding up, dissolution or Disposition of the Partnership Owners’ Interests.

ARTICLE 3 RELATIONSHIP BETWEEN PARTIES

3.1 Ownership of Properties and Tenant LP Interest

- (a) The Properties shall be held by the Co-owners as tenants in common and not as joint tenants, the Co-owners having the following respective undivided Co-owner’s Interest in the Properties:

<u>Name of Co-owner</u>	<u>Co-owner’s Interest</u>
HCN Co-owners	50%
Chartwell Co-owner	50%
	100%

- (b) The shares in the capital of each of the Nominee Companies shall be owned by the Co-owners as follows:

<u>Name of Co-owner</u>	<u>Co-owner’s Share Ownership Interest</u>
HCN Co-owners	50%

Name of Co-owner	Co-owner's Share Ownership Interest
Chartwell Co-owner	50%
	100%

- (c) The Tenant LP shall be owned by the Partnership Owners as follows:

Name of Partnership Owner	Partnership Owner's Interest in the Tenant LP
HCN Lessee Entities	49.995%
CMHLP	49.995%
	99.99%

The parties confirm and agree that a 0.01% percentage interest in the Tenant LP shall be owned by the general partner(s) of the Tenant LP.

3.2 Disclaimer of Partnership re: Co-owners

Notwithstanding the relationship of the Partnership Owners, each Co-owner expressly disclaims any intention to create a partnership or joint venture or to constitute the other Co-owner as its agent (except as expressly provided in this Agreement). Each Co-owner covenants with each other Co-owner that it will not, at any time, allege or claim that a relationship of partnership, joint venture or (except as expressly provided in this Agreement) agency was or is created between or among Co-owners as Co-owners. Nothing in this Agreement shall constitute the Co-owners partners or joint venturers or (except as expressly provided in this Agreement) constitute one Co-owner the agent of the other Co-owner. Each Co-owner expressly declares its intention to rely upon:

- (a) the provisions of the *Partnership Act* (Ontario) as amended or re-enacted from time to time, to the effect, *inter alia*, that tenancy in common, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof; and
- (b) the statutory and common law as it applies to tenants in common save only to the extent that the same is, by the express provisions of this Agreement, amended or varied.

Except as specifically provided otherwise in this Agreement, no Co-owner shall have any authority to act or assume any obligations or responsibilities for or on behalf of any other Co-owner.

3.3 **Limited Recourse and Several Liability**

- (a) Unless otherwise provided in this Agreement or Approved by the Co-owners and the Partnership Owners, every instrument creating obligations of the Co-owners or the Partnership Owners to third parties or to each other in respect of the Properties and the Tenant LP shall contain a provision to the effect that:
 - (i) only each Co-owner's Interest and only each Partnership Owner's Interest, as applicable, shall be bound thereby, the obligations thereunder are not otherwise personally binding upon any of the Co-owners or the Partnership Owners and no resort or recourse shall be had, judgement issued or execution or other process levied against, any Co-owner or Partnership Owner, or against any other property, assets or revenue of any of the Co-owners or the Partnership Owner;
 - (ii) the rights and obligations of each Co-owner and each Partnership Owner thereunder shall be several and not be either joint or joint and several and shall be limited to such Co-owner's Proportion of the aggregate liability in respect thereof or to such Partnership Owner's Partnership Owner's Proportion of the aggregate liability in respect thereof.
- (b) Each Co-owner and each Partnership Owner hereby agrees that in the event that, notwithstanding the provisions of this section, by agreement or otherwise, the Co-owners and each of them and the Partnership Owners and each of them are jointly or jointly and severally liable for any obligations which have been Approved by the Co-owners and the Partnership Owners or for which the Co-owners and the Partnership Owners are deemed or held to be jointly or jointly and severally liable, whether such obligation arises by law, statute or by a court or otherwise (including, for greater certainty and without limitation, any third party financing described in section 6.3 and section 7.4), the respective liability of each of the Co-owners and each of the Partnership Owners, as between themselves, shall be several and not joint or joint and several and each shall indemnify and hold the other harmless in respect of any part of such several obligations of such Co-owner or Partnership Owner borne by such others.

3.4 **Actions of Co-owners**

Subject to subsection 5.1(b)(ii), each Co-owner agrees to act reasonably, promptly, honestly and in good faith and to exercise the degree of care, diligence and skill that a reasonably prudent Person would exercise as a Co-owner in comparable circumstances.

3.5 **Standstill**

So long as a Participant's Co-owner's Proportion and Partnership Owner's Proportion is, in each case, more than nominal, and for twelve (12) months thereafter (such Participant together with their Affiliates are hereinafter collectively the "**Benefitting Party**"), the other Participant and their respective Affiliates (collectively, the "**Burdened Party**") shall not directly or indirectly or jointly or in concert with any other Person, without the Benefitting Party's written consent:

- (a) purchase, or offer or agree to purchase, any securities (direct or indirect) or rights or options to acquire securities (direct or indirect) or assets of the Benefitting Party other than through ordinary course trading of securities that do not exceed, in the aggregate, 1% of the outstanding equity securities of any Person comprised within the Benefitting Party;
- (b) enter into, offer or agree to enter into or engage in any discussions or negotiations with respect to any acquisition or other business combination transaction relating to any Person comprised within the Benefitting Party, or any acquisition transaction relating to all or part of the assets of any Person comprised within the Benefitting Party or propose any of the foregoing;
- (c) solicit proxies from the securityholders of any Person comprised within the Benefitting Party or otherwise attempt to influence the conduct of such securityholders or the voting of any of their voting securities;
- (d) seek any modification to or waiver of the agreements or obligations under this section 3.5;
- (e) seek, propose or otherwise act alone or in concert with others, to influence or control the management, board of directors (or similar governing body) or policies of any Person comprised within the Benefitting Party;
- (f) form, join or in any way participate in any group acting jointly or in concert with respect to any of the foregoing;
- (g) make any public announcement, or take any action which could require the making of any public announcement with respect to any of the foregoing;
- (h) advise, assist, encourage or act as a financing source for or otherwise invest in any other Person in connection with any of the foregoing; or
- (i) disclose any intention, plan or arrangement to take any action inconsistent with any of the foregoing.

Notwithstanding the foregoing provisions of this section 3.5, the restrictions set forth in this section 3.5 shall terminate and be of no further force and effect with respect to a Person comprised within a Benefitting Party the voting securities of which are publicly traded if such Person enters into a definitive agreement with respect to, or publicly announces that it plans to enter into, a transaction involving all or a controlling portion of its equity securities or all or substantially all of its assets (whether by merger, consolidation, business combination, tender or exchange offer, recapitalization, restructuring, sale, equity issuance or otherwise) other than an Income Trust Conversion Transaction.

3.6 Non-Solicitation

Each Participant agrees that, for so long as each Participant has a Co-owner's Proportion and Partnership Owner's Proportion, that is more than nominal and for a period of 12 months

thereafter, neither it nor any Person that is non-arm's length to such Participant will solicit for hire, or hire, any of the officers or other employees of the other Participant; provided, however, that the foregoing does not prohibit: (a) soliciting (either directly or through a recruiting firm or similar organization) or hiring employees through general job advertisements or similar notices that are not targeted specifically at the employees of the other party; (b) soliciting or hiring employees whose employment has been terminated by the other party; and (c) hiring employees who seek employment with such party on their own initiative and not in response to a prohibited solicitation by such party.

3.7 Participant Obligations

Obligations expressed herein to be the obligations of a Participant shall be the joint and several obligations of all Persons comprising such Participant.

ARTICLE 4 THE PROPERTIES AND THE TENANT LP

4.1 Intention of Parties

- (a) The Co-owners and the Partnership Owners acknowledge that they have entered into this Agreement solely for the purpose of governing their ownership and holding of the Properties, including their interests in the Nominee Companies, (the **"Co-ownership"**) and their interests in the Tenant LP and the general partner(s) thereof as a long-term investment.
- (b) The business purpose of the Co-ownership is limited to the acquisition, ownership, leasing and sale of the Properties. The parties acknowledge that the Co-ownership is intended to be largely passive. The Co-owners will collect rent under the Master Lease and certain commercial leases and pay debt service and normal administration expenses out of such rent and each Co-owner will retain the net proceeds as a return on its investment in proportion to its Co-ownership Proportion, all of which activities shall be carried out by all of the Co-owners as determined by the Committee. The Tenant LP, subject to the direction and control of the Manager pursuant to the Management Agreement, shall operate the business being conducted from the Properties and it shall be governed by and conduct its business in accordance with the Management Agreement, the USA and the LPA. The Participants acknowledge and agree that it is intended that the ownership structure of the Properties and the Tenant LP (collectively, the **"Structure"**), the leasing of the Properties by the Co-owners to the Tenant LP pursuant to the Master Lease and the operation of the Properties by the Tenant LP and the Manager pursuant to the Management Agreement comply with the requirements of the *U.S. REIT Investment Diversification and Empowerment Act* (as more particularly described in section 856(d)(8)(B) of the Code) and result in HCN Parent recognizing qualifying REIT income from its indirect co-ownership interest in the Properties and that Chartwell has relied and is relying upon HCN regarding the compliance of such ownership structure, leasing and operation with such requirements. If, at any time, (i) a Property is determined by HCN not to

qualify as a “qualified health care property” as such term is defined in the Code, (ii) the Manager fails to qualify as “Eligible Independent Contractor” as such term is defined in the Code and/or (iii) the income earned by HCN Parent from its indirect co-ownership interest in a Property otherwise ceases to be qualifying REIT income, the Participants agree to negotiate in good faith to amend this Agreement and reorganize the Structure and other arrangements hereunder so that HCN is able to recognize qualifying REIT income from all of the Properties, provided that none of Chartwell and its Affiliates would be adversely affected economically by such restructuring (for greater certainty, to the extent that HCN Parent or its Affiliates compensate Chartwell and its Affiliates for any such adverse economic effects, Chartwell and its Affiliates will be deemed not to be so adversely affected economically).

- (c) The Co-owners agree that it is their intention to treat all of the Properties as one indivisible portfolio of properties such that either Co-owner may withhold its Approval for any reason or for no reason to any Disposition of a Property or Properties that comprises less than all of the Properties.

4.2 Title Registrations

- (a) Each of the Co-owners agrees that this Agreement shall not be registered on title to the Lands.
- (b) Each of the Co-owners agrees to execute and register on title to the Lands located in the Province of Quebec a short form, notice, caveat or similar document in respect of this Agreement. Each of the Co-owners agrees to give its consent pursuant to any such registration to any transfer or charge which is in accordance with the provisions of this Agreement.
- (c) Each of the Co-owners is hereby authorized to register or cause to be registered against the title to the Co-owner’s Interest of the other Co-owner the Co-owner’s Charge held by such other Co-owner.
- (d) For greater certainty, those Co-owner’s Charges registered on title to the Lands on or about the date of this Agreement granted by each Nominee Company in favour of either the applicable HCN Co-owner’s general partner or the Chartwell Co-owner’s general partner are hereby granted by each Nominee Company on behalf of the other Co-owner and shall only bind the other Co-owner’s Interest with respect to such Lands and shall be in favour of the applicable HCN Co-owner or the Chartwell Co-owner, as the case may be, as if the applicable HCN Co-owner or the Chartwell Co-owner granted the Co-owner’s Charge directly to the applicable Chartwell Co-owner or the applicable HCN Co-owner, as the case may be.
- (e) In the event of any conflict between the provisions of this Agreement and the provisions of any document which is registered on title pursuant to this section 4.2, the provisions of this Agreement shall prevail.

4.3 Nominee Companies

- (a) Registered title to each Property shall be held by a Nominee Company, whose shares are proportionately owned by each Co-owner in accordance with its Co-owner's Proportion, on behalf of the Co-owners.
- (b) The parties acknowledge that the sole purpose of the Nominee Companies is to be the bare nominee and trustee for the Co-owners with respect to all ownership interests in the Properties. The activities of each Nominee Company shall be restricted to acting as such a bare nominee and trustee, except that each Nominee Company may maintain one or more bank accounts into which it may receive Rent (as that term is defined in the Master Lease) pursuant to the applicable Master Lease from which it may distribute such Rent to the applicable HCN Co-owner and the Chartwell Co-owner in accordance with their respective Co-owner's Proportion (and for greater certainty, any Rent so received shall be held by such Nominee Company on behalf of such Co-owners and not on its own behalf).
- (c) The parties intend that this Agreement operate as a unanimous shareholders agreement (as such term is defined for purposes of the *Ontario Business Corporations Act*) and to have precedence over the articles and by-laws of each of the Nominee Companies, and the powers of the board of directors of each of the Nominee Companies to manage or supervise the management of the business and affairs of such Nominee Company is hereby restricted in accordance with the terms of this Agreement. Reference to this Agreement shall be endorsed on all certificates representing shares in the capital of the Nominee Companies. The board of directors of each Nominee Company shall be composed of an equal number of directors appointed by each of the applicable HCN Co-owner and the Chartwell Co-owner.
- (d) The parties shall vote the shares in the capital of the Nominee Companies and otherwise exercise all of their rights as shareholders of the Nominee Companies in accordance with the terms of this Agreement and to carry out such terms.
- (e) All agreements, instruments and other documents requiring execution on behalf of a Nominee Company shall be executed on behalf of such Nominee Company by one director or officer of such Nominee Company appointed on the nomination of the applicable HCN Co-owner and by one such director or officer appointed on the nomination of the Chartwell Co-owner.

ARTICLE 5 APPROVALS

5.1 Approval of Co-owners

- (a) Except as otherwise provided in this Agreement, no action shall be taken, sum expended, decision made or obligation incurred by any Co-owner in respect of the Properties or the Nominee Companies unless such action, expenditure, decision or

obligation is expressly permitted hereunder or shall have been first Approved by all of the Co-owners. For greater certainty, any Major Decision shall require Approval by the Co-owners. The Co-owners acknowledge that the Chartwell Co-owner is also the Manager; for greater certainty, the roles of the Chartwell Co-owner as Co-owner and as Manager are separate and distinct, and the provisions of this Agreement relating to the Chartwell Co-owner as a Co-owner are not intended to and shall not limit or affect the powers of the Manager pursuant to the Management Agreement.

- (b) Wherever the provisions of this Agreement provide for an Approval by a Co-owner, this Agreement shall (unless the text thereof expressly states that such Approval may be unreasonably or arbitrarily withheld, or unless the text hereof expressly states that the time periods are to be otherwise, in which latter event this section shall apply but the time periods shall be adjusted accordingly) be deemed to provide that:
 - (i) such Approval shall be in writing;
 - (ii) such Approval shall be decided upon acting in good faith and shall not be arbitrarily or unreasonably withheld or delayed provided that a Co-owner shall be deemed to be acting in good faith and reasonably if its decision to grant or deny Approval is based upon a good faith and reasonable determination of what is in the interests of such Co-owner, the direct or indirect owners of its equity securities or other entities Controlled by or under common Control with such Co-owner; and
 - (iii) the Co-owner whose Approval is requested shall, as soon as reasonably possible after the receipt of a notice requesting Approval, give Notice to the Co-owner requesting the Approval either that it is giving its Approval or that it withholds its Approval and in which case it shall set forth, in reasonable detail, its reasons for withholding its Approval.
- (c) Notwithstanding anything herein to the contrary, if for any reason any capital budget with respect to the Properties for any period is not Approved, pending such Approval the most recently Approved capital budget, increased by 3% per annum, will be deemed to be the Approved capital budget for such period.
- (d) The execution of any document by a Co-owner constitutes Approval by that Co-owner of that document and all of its provisions.
- (e) The Approval or deemed Approval of any decision shall constitute and be deemed to constitute the Approval or deemed Approval of any actions or steps reasonably necessary to implement, perform or carry out such decision, and each Co-owner shall do such things and execute any and all such instruments and documents reasonably required to implement, perform or carry out such decision, including, without limitation, the making of additional contributions in accordance with the provisions of Article 6.

- (f) If a Major Decision cannot be agreed upon by the Co-owners, such disagreement (provided that each such Co-owner has complied with subsection 5.1(b)) shall be considered a business disagreement only and not a Dispute and shall not be subject to any judicial or other legal review including a review by the Arbitrator and neither Co-owner shall bring any such action, whether through litigation, arbitration or otherwise to resolve such a disagreement over a Major Decision; provided that for greater certainty a disagreement or dispute as to whether a Co-owner has complied with subsection 5.1(b) shall be considered a Dispute and subject to section 8.2.

5.2 **Co-owners Committee**

- (a) Approval of the Co-owners, if not given in writing and signed by or on behalf of all Co-owners, shall be given by a Committee (the “**Committee**”) consisting of four members, each of whom shall be a natural person. Two members shall be appointed by HCN. Two members shall be appointed by the Chartwell Co-owner. The members appointed by a Co-owner shall have full authority to act on behalf of and to bind the Co-owner which appointed him/her or them. All decisions and determinations made by the Committee shall be binding upon each of the Co-owners. Other than as herein expressly provided, there are no limitations on the authority of the Committee with regard to decisions made pursuant to this Agreement. Each Co-owner may at any time and from time to time by notice to the other Co-owner remove from office and replace any one or more of the members of the Committee appointed by it and any members so replaced shall cease to be members of the Committee upon the giving of such notice. Copies of such notice shall be given to the other Co-owner, the Person so appointed a member of the Committee and the member of the Committee so replaced. Each Co-owner may from time to time by notice to the other Co-owner appoint an alternate for its member(s) of the Committee and any such alternate shall have all powers, rights and obligations hereunder of such member(s), provided that only the member or his alternate shall be entitled to attend meetings of the Committee and act as a member thereof and, if both the member and the alternate shall attend any such meeting, the alternate shall have no authority to act as a member of the Committee.
- (b) The office of a member of the Committee shall be vacated upon the occurrence of any of the following events:
 - (i) if a receiving order is made against such member or if he/she makes an assignment under the *Bankruptcy and Insolvency Act* (Canada);
 - (ii) if an order is made declaring such member to be a mentally incompetent Person or incapable of managing his/her affairs;
 - (iii) if such member shall be removed from office by a written notice from the Co-owner that appointed him/her as provided in subsection 5.2(a);

- (iv) if, by notice in writing to the Co-owner that appointed such member, he/she resigns his/her office and such resignation, if not effective immediately, becomes effective in accordance with its terms; or
 - (v) if the Co-owner that appointed such member ceases to be a Co-owner.
- (c) Any vacancy in the Committee shall be filled by the Co-owner that appointed the former member of the Committee whose loss of office created the vacancy (or if the vacancy is pursuant to section 5.2(b)(v), then by the successor of such former Co-owner) within ten days of the creation of the vacancy. Such Co-owner shall fill the vacancy by Notice stating the name and address of the Person who it appoints to the Committee to fill the vacancy. Copies of such Notice shall be given to the other Co-owner and the Person so appointed a member of the Committee.
- (d) Subject to the provisions of subsection 5.2(f) relating to the absence of a member from a meeting of the Committee, the powers of the Committee may only be exercised either by resolution at a meeting at which at least one member of the Committee appointed by each Co-owner is present or by resolution in writing consented to by the signatures of all members of the Committee. Copies of all notices of meetings of the Committee and of all minutes of the Committee and of all resolutions passed by it in accordance with the terms hereof shall be provided to each Co-owner. Any resolution to be passed or action to be taken by the Committee at a meeting must have the unanimous support of each Co-owner as evidenced in the case of each Co-owner either by the affirmative vote, or the prior Approval in writing, of each member of the Committee appointed by each Co-owner. If one Co-owner is represented at a meeting by one member of the Committee and the other Co-owner is represented at such meeting by two members, the former Co-owner's member shall be deemed to have two votes at such meeting.
- (e) Meetings of the Committee will be held no less frequently than semi-annually at the offices of Chartwell Parent in the City of Mississauga, Ontario or such other location as the Co-owners may agree. Notwithstanding the foregoing, meetings of the Committee may be held by, or any member of the Committee may participate in a meeting of the Committee by means of, telephone or other communication facilities which permit all individuals participating in the meeting to hear and speak to each other. Meetings of the Committee may also be called at any time upon the request of a Co-owner in the manner prescribed by subsection 5.2(f).
- (f) The chair of the Committee shall send reminder notices of the time and place of every meeting of the Committee (including an agenda and relevant background materials) to each member, and to each alternate so designated from time to time, not less than ten days before the time when the meeting is to be held. In the case of an emergency or in the case of a meeting (other than a semi-annual meeting) called pursuant to subsection 5.2(e), any member of the Committee may give

notice of a meeting of the Committee in the manner provided herein to each other member of the Committee, and to each alternate so designated from time to time, not less than seventy-two hours (including Saturdays, Sundays and other statutory holidays) before the time of such meeting. Each notice of meeting shall be accompanied by all materials and documents which may be reasonably necessary to permit the members of the Committee to consider properly the matters on the agenda; provided that no notice of a meeting shall be necessary if all members of the Committee are present and consent to the transaction of the specific item or items of business on the agenda for such meeting, or if those absent waive notice of the meeting and signify their consent to the transaction of the business on the agenda for such meeting. Notices to members of the Committee may be given to them at the address in each case of the Co-owner whose nominee he/she is.

- (g) A chair and a secretary of the Committee shall be elected by the Committee from amongst its members for a term of one year. The chair shall chair the meetings of the Committee at which he/she is present. In the absence of the chair, the members of the Committee shall choose one of their members to be chair. The secretary shall ensure the minutes of the meetings are distributed to all members of the Committee as soon as practicable after each meeting and that the required reminder notices and other notices are sent to the members of the Committee. In the absence of the secretary, the members of the committee shall choose one of their members to be secretary.
- (h) The Committee shall act in accordance with and as limited by this Agreement. As soon as practicable, the Committee shall address the following matters:
 - (i) selecting a depository bank;
 - (ii) determining who will have cheque writing authority;
 - (iii) the mechanism for agreeing upon capital improvements; and
 - (iv) determining who reviews and places insurance coverage.
- (i) No fees, salaries, commissions or other compensation shall be paid by the Co-owners to the members of the Committee in respect of their work on the Committee and all expenses incurred by a member of the Committee shall be borne by the Co-owner that appointed such member.
- (j) Each of the Co-owners hereby releases and forever discharges each member of the Committee from any and all actions, proceedings, suits, liabilities, claims, damages, costs, expenses and demands which such Co-owner may at any time hereafter have against any such member in respect of anything done by him/her in the performance of his/her duties, and agrees to indemnify, defend and save harmless each member of the Committee appointed by it from any and all actions, proceedings, suits, liabilities, claims, damages, costs, expenses, and demands brought, commenced or had against such member in respect of anything done by him/her in the performance of his/her duties, with the intent that any claim a Co-

owner would have had against a member of the Committee but for the provisions of this section shall be satisfied by the Co-owner for whom such member acted and such latter Co-owner shall, in accordance with the provisions hereof, indemnify, defend and save harmless the other Co-owner accordingly; provided that the Co-owners do not release and discharge their respective members of the Committee from, nor shall a Co-owner be obliged to indemnify, defend and save harmless the members of the Committee appointed by it against, the wilful misconduct or gross negligence of such members. The provisions of this section shall survive the termination of this Agreement and may be relied upon by anyone who, from time to time, acts as a member of the Committee. Any Co-owner may enforce the provisions of this section on behalf of a member of the Committee.

- (k) For greater certainty, with respect to HCN Co-owners, the Person or Persons appointed by the HCN Co-owners to the Committee shall have the authority to represent all of the HCN Co-owners with respect to this Agreement.

ARTICLE 6 FINANCIAL MATTERS

6.1 Net Revenues

Subject to:

- (a) the payment of expenses and the provision of funds contemplated by section 6.2;
- (b) the retention of any reserves Approved by the Co-owners from time to time;
- (c) the payment of amounts owing by one Co-owner to the other Co-owner pursuant to the Co-owner's Charge; and
- (d) the payment of principal, interest and related costs in connection with the financing of the Properties,

each Co-owner shall be entitled to receive its Co-owner's Proportion of all revenues and capital receipts, including joint financing proceeds, arising from or accruing out of the Properties. Such distributions arising from or accruing out of the Properties shall be made monthly to the Co-owners and reconciled quarterly.

6.2 Funds Required for the Properties

Each Co-owner shall be directly responsible for paying its Co-owner's Proportion of all capital expenses attributable to the Properties or other charges of a like nature imposed, charged or levied upon the Properties, provided that no capital expenses respecting the Properties will be authorized except those that have been Approved by the Co-owners (including, without limitation, as part of any Approved budget) or which arise or are required pursuant to law or statute. Each Co-owner shall arrange and provide its Co-owner's Proportion of the funds required from time to time for the purposes of the Properties and the Nominee Companies,

including, without limitation, in respect of any reserve Approved by the Co-owners as and when Approved by the Co-owners.

6.3 Financing

Each Co-owner agrees to comply, at all times, with all of its obligations under any financing with respect to the Properties. Each Co-owner may, if it wishes, obtain the funds for which it is responsible by way of equity contribution from its shareholders or unitholders or may issue unsecured subordinated debt instruments in favour of its direct or indirect shareholders or unitholders. It is the intention of the Co-owners that:

- (a) the amount of mortgage or other debt financing to be carried by the Co-owners in respect of the Properties in the aggregate as of the date of this Agreement (but subject to clause (b) below) shall be as near as possible to 55% of the actual aggregate purchase price of the Properties owned as of the date of this Agreement; and
- (b) any replacement mortgage, extension of any existing mortgage or other debt financing to be Approved following the date of this Agreement shall be in an amount such that the aggregate amount of debt carried by the Co-owners in respect of the Properties following such replacement, extension or other financing shall be equal to the greater of:
 - (i) 50% of the actual aggregate purchase price of the Properties then owned by the Co-owners; and
 - (ii) the aggregate outstanding amount of such mortgage or other debt financing in respect of the Properties then owned by the Co-owners prior to such replacement, extension or other financing.

If the leverage target in clause (a) above is not achieved immediately following the date of this Agreement because the aggregate amount of mortgage or other debt in respect of the Properties then owned by the Co-owners is less than the percentage specified in such clause (a), the Co-owners shall use commercially reasonable efforts to Approve additional debt with a view to achieving such leverage target as soon as possible having reasonable regard to the declining aggregate amount of mortgage or other debt due to scheduled principal amortization and also having reasonable regard to reasonably foreseeable future replacement mortgages, extensions of existing mortgages or other future debt financing. For greater certainty, the leverage targets in clauses (a) and (b) above will be measured with respect to all Properties then owned by the Co-owners in the aggregate, such that the amount of such debt carried in respect of any Property may be more or less than such leverage targets provided that such leverage targets are achieved in the aggregate with respect to all Properties. All replacement, extension and other new debt shall be fixed rate long term debt.

6.4 Indemnities

- (a) Each Co-owner (the “**Indemnifying Co-owner**”) agrees with each other Co-owner (the “**Indemnified Co-owner**”) and the Parent of such Indemnified Co-

owner to be responsible for the Indemnifying Co-owner's Proportion of the debts, liabilities, obligations, duties, agreements and expenses arising from or incurred in connection with the Properties and the Nominee Companies, whether present or future, that have been Approved by the Co-owners or incurred other than in breach of this Agreement (collectively, the "**Liabilities**").

- (b) Each Indemnifying Co-owner shall at all times indemnify and save harmless each Indemnified Co-owner and the Parent of such Indemnified Co-owner from any and all Liabilities to the extent of that portion of all Liabilities which it has incurred and which is in excess of the Indemnified Co-owner's Proportion of the Liabilities and which has been paid or incurred by the Indemnified Co-owner or the Parent of such Indemnified Co-owner. Each Indemnifying Co-owner shall reimburse, forthwith on demand, each Indemnified Co-owner and the Parent of such Indemnified Co-owner with respect to such portion.
- (c) Each Indemnifying Co-owner shall at all times indemnify and save harmless each Indemnified Co-owner and the Parent of such Indemnified Co-owner from any and all actions, proceedings, causes, claims, demands, costs, liability, damages and expenses of every nature or kind whatsoever arising out of the Indemnifying Co-owner's separate debts, liabilities, obligations, duties and agreements, whether present or future, in each case not related to the Properties.

6.5 Shortfall Loans

- (a) If a Co-owner does not pay any amount required to be paid by it pursuant to any provision of this Agreement (a "**Non-advancing Co-owner**"), another Co-owner (the "**Contributing Co-owner**") may, but need not, advance the amount so payable by the Non-advancing Co-owner for the purpose for which it is required.
- (b) If a Contributing Co-owner advances an amount pursuant to subsection 6.5(a) on behalf of a Non-advancing Co-owner, such Contributing Co-owner, in addition to any other right or remedy (including, without limitation, the rights and remedies under Article 10) it may have pursuant to this Agreement, shall be entitled to give Notice of the advance of such amount, whereupon such amount shall be deemed to be a demand loan made by the Contributing Co-owner to the Non-advancing Co-owner which the Contributing Co-owner has been irrevocably directed to advance for and on behalf of the Non-advancing Co-owner and which the Non-advancing Co-owner covenants to repay with interest immediately upon demand, and the Contributing Co-owner shall have a charge on the Co-owner's Interest of the Non-advancing Co-owner as security for such loan. The unpaid balance of such loan shall bear interest at the Prime Rate plus eight percent (8%) per annum calculated daily and compounded monthly from the date of delivery of the Notice to the date of repayment in full.
- (c) If the amount paid by a Contributing Co-owner is for payment of an amount which is secured upon the Properties, then in addition to any other right of the Contributing Co-owner, the Contributing Co-owner shall be subrogated, to the

extent not prohibited by the terms of any other financing agreements applicable in respect of the Properties and to the extent of the amount of such loan and interest on it, to any security to which the payee of such amount may be entitled upon the Co-owner's Interest of the Non-advancing Co-owner or any other security to which such payee is entitled.

- (d) If a loan made pursuant to subsection 6.5(a) is not repaid by the Non-advancing Co-owner with interest at the rate specified in subsection 6.5(b) above within 15 days after notice of demand therefor and the Contributing Co-owner is not then in Default, the Contributing Co-owner shall be entitled, at any time while such loan remains outstanding, to cause such loan (with such interest) to be satisfied in whole or in part from the Non-advancing Co-owner's Proportion of revenues from the Properties by notice to the Non-advancing Co-owner.

6.6 Access to Records

Each Co-owner shall furnish to each other Co-owner such information respecting the Properties and the Nominee Companies as may be reasonably required by such other Co-owner. Each Co-owner shall have the right at all reasonable times at its expense and during usual business hours to audit, examine and make copies of or extracts from the books and records of each other Co-owner which pertain to the Properties and the Nominee Companies. Such right may be exercised through any agent or employee of such Co-owner designated by it or by an outside independent firm of chartered accountants designated by such Co-owner. Each Co-owner shall bear all expenses incurred by it of any audit, examination or copying made for its account.

6.7 Insurance

The Co-owners agree to insure and keep insured the Properties to the extent required under the Master Lease.

ARTICLE 7 TRANSFERS OF CO-OWNER'S INTEREST, PARTNERSHIP OWNERS' INTERESTS AND CHARGES

7.1 General

- (a) No Disposition shall be made except, in each case, with the prior written consent of the other Participant, which consent may be arbitrarily or unreasonably withheld, or except pursuant to and in accordance with another specific term or provision of this Agreement (including, without limitation, sections 7.6, 7.10, 7.11, 8.1, 8.4 and subsections 6.5(b) and 10.2(e) and any Disposition effected otherwise shall be void as between the parties to such Disposition as well as between the parties.
- (b) No Disposition with respect to the Co-owners' Interests of a Participant shall be made without a simultaneous Disposition of such Participant's Partnership Owners' Interests as part of the same transaction and no Disposition with respect to the Partnership Owners' Interests of a Participant shall be made without a

simultaneous Disposition of the Co-owners' Interests of such Participant, except in each case pursuant to section 7.10.

7.2 Prohibition Against Disposition

No Disposition otherwise permitted to be made hereunder may be made pursuant to this Agreement, other than a Disposition pursuant to section 8.4 or subsection 10.2(e), a Disposition by one Participant to the other Participant or a Disposition made with the prior written consent of the other Participant pursuant to section 7.1(a):

- (a) if, as a result thereof, the remaining Participant would become subject to any more onerous governmental controls or regulations affecting the Properties or the Tenant LP to which the other Participant was not previously subject by reason solely of the nationality or residence of the recipient of such Disposition;
- (b) if, by reason of such Disposition, the remaining Participant would become subject to any taxation (other than increased realty taxation as a result of a revaluation of the Properties) to which it was not previously subject;
- (c) if the Disposition would be prohibited or rendered nugatory by law (such as the *Investment Canada Act* (Canada)) or any term of any agreement or other document entered into by both of the Co-owners jointly in respect of the Properties or the Nominee Companies or both the Partnership Owners in respect of the Tenant LP or the general partner(s) thereof unless any required approval has been obtained and is in effect;
- (d) if, by reason of such Disposition, a Co-owner's Interest or a Partnership Owner's Interest is held by a Person that is a non-resident of Canada or is a partnership other than a "Canadian partnership", in each case for purposes of the *Income Tax Act* (Canada);
- (e) if less than all of the Participant's Co-owner's Interest and Partnership Owner's Interest is the subject of the Disposition, except a Disposition pursuant to section 7.10;
- (f) unless the transferor obtains any necessary third party consents to the transfer;
- (g) if, as a result thereof, the Properties or the Nominee Companies become subject to an encumbrance other than an Encumbrance or any Co-owner's Interest or Partnership Owner's Interest becomes subject to any encumbrance not otherwise permitted herein; or
- (h) so long as any HCN Co-owner is a Co-owner, if, as a result thereof, the use of the Properties is deemed to no longer comply with section 4.1(b) hereof.

On any Disposition by a Participant other than to the other Participant, the transferring Participant shall pay the reasonable out-of-pocket costs of the other Participant relating to the documentation involving the other Participant with respect to such Disposition. In addition, a

Participant that effects any Disposition shall provide a corporate certificate to the remaining Participant that the Disposition has taken place in accordance with the relevant provisions of this Article 7.

If there is a Deemed Disposition in respect of a Participant which results in the application of any of subsections 7.2(a) to (h), such Deemed Disposition shall be deemed to be a Default by such Participant.

7.3 Covenant of Prospective Participant

Notwithstanding anything else contained in this Agreement, no Disposition may be made to a Person that is not a party to this Agreement unless such Person enters into an agreement with the remaining Participant (in a form satisfactory to its counsel, acting reasonably) whereby such Person shall be bound by and entitled to the benefit of the Participation Agreements to the extent of the Co-owner's Proportion and Partnership Owner's Proportion acquired by such Person.

7.4 Mortgage of Co-owners' Interests and Partnership Owners' Interests

Both of the Participants may together mortgage and/or charge the Co-owners' Interests and the Partnership Owners' Interests provided that the terms thereof are Approved by the Participants. If the Participants obtain or assume such financing, such financing shall, to the extent possible, be stated to be several and limited to each Participant's Co-owner's Proportion and Partnership Owner's Proportion of the aggregate liability in respect thereof unless otherwise Approved by the Participants.

7.5 No Separate Charging

Each Participant is hereby prohibited from separately charging part or all of its Co-owner's Interest or Partnership Owner's Interest other than:

- (a) for the limited purposes of section 7.6; and
- (b) the pledge (the "**Pledge**") by Chartwell of its Co-owner's Interest and Partnership Owner's Interest to Royal Bank of Canada ("**RBC**") as security for the obligations of Chartwell in respect of indebtedness incurred, directly or indirectly, by Chartwell to RBC, acting on its own behalf and on behalf of other lenders, pursuant to a bridge credit facility (whether documented pursuant to a credit agreement or otherwise) provided by RBC, acting on its own behalf and on behalf of other lenders, to Chartwell in connection with the acquisition by Chartwell of its Co-owner's Interest and Partnership Owner's Interest, provided that RBC, HCN and Chartwell shall acknowledge and agree in a form of agreement reasonably satisfactory to HCN, as follows (and if the Pledge is not inconsistent with the forgoing and the following it shall be deemed to be Approved by the Participants):
 - (i) any Disposition of Chartwell's Co-owner's Interest and/or Partnership Owner's Interest to or by RBC in connection with any enforcement

proceedings with respect to the Pledge will constitute a Default under the Participation Agreements;

- (ii) if RBC commences any enforcement proceedings in respect of the Pledge, then HCN shall have the right to maintain the Management Agreement in full force and effect or terminate it (in each case at the sole option of HCN) pending completion of any acquisition by HCN of Chartwell's Co-owner's Interest and/or Partnership Owner's Interest;
- (iii) the Pledge shall be subject to the receipt of any necessary consents from existing lenders to the Properties, and any costs in connection with obtaining any such consents (including, without limitation, legal costs) shall be for the account of Chartwell (including any prepayment penalties, yield maintenance obligations and other related costs should any lender refuse consent because of the Pledge);
- (iv) the Pledge shall be subordinated to HCN's interest under the Participation Agreements, including the Co-owner's Charge of HCN against Chartwell's Co-Owner's Interest and/or Partnership Owner's Interest;
- (v) RBC shall provide HCN with prior written notice of any enforcement proceedings in respect of the Pledge;
- (vi) HCN shall have the right but not the obligation for 40 days following the giving of notice pursuant to clause (v) above to cure any default by Chartwell under the indebtedness secured by the Pledge (during which 40-day period RBC shall not be permitted to take any enforcement proceedings in respect of the Pledge), and be subrogated to the rights of RBC under such indebtedness and the Pledge to the extent that HCN exercises such right to cure, provided that such subrogation shall be subordinate to RBC's rights under the Pledge to the extent that any amounts remain owing to RBC under the Pledge;
- (vii) the term of the loan secured by the Pledge shall mature no later than December 13, 2012, provided that, for greater certainty, until RBC is paid in full under the terms of the Pledge, the Pledge shall not be discharged from Chartwell's Co-owner's Interest and Partnership Owner's Interest;
- (viii) HCN shall have no obligation to provide any notice to RBC in connection with the Participation Agreements, except for notice, if any, pursuant to clause (vi) above of HCN's intention to cure a default within the time period set out therein;
- (ix) for greater certainty, any enforcement by RBC with respect to the Co-owner's Interest or the Partnership Owner's Interest shall be subject to HCN's prior right to exercise its remedies under Article 10 (in this regard, RBC shall cooperate, acting reasonably, in connection with any remedy taken under Article 10 including a sale of Chartwell's Co-owner's Interest

and Partnership Owner's Interest as pledged to RBC; it being acknowledged and agreed that it is the intention of HCN and RBC that neither RBC nor any Person that may be selected by RBC in connection with an enforcement proceeding shall become a Co-owner or Partnership Owner without HCN first being given a reasonable opportunity to exercise its remedies under Article 10; and

- (x) subject to clauses (i) to (ix) above, HCN hereby consents to the Pledge.

7.6 Cross Charges

- (a) With respect to each Co-owner:
 - (i) Each Co-owner hereby grants and assigns (and shall compel its title nominee, if any, to grant and assign) to the other Co-owner a mortgage, pledge, assignment, security interest, hypothec and charge of its Co-owner's Interest in favour of the other Co-owner, as security to the other Co-owner for the observance and performance by the granting Co-owner of its liabilities and obligations hereunder including, without limitation, the liabilities and obligations pursuant to sections 6.2, 6.4 and 6.5 from time to time (together with the mortgage, pledge, assignment, security interest and charge referred to in subsection 7.6(a)(ii), a "**Co-owner's Charge**").
 - (ii) In addition, each Co-owner agrees to grant and assign (or to compel its title nominee, if any, to grant and assign) to the other Co-owner, a fixed and specific mortgage, pledge, assignment, security interest, hypothec and charge in and to its Co-owner's Interest in the principal amount of \$35,000,000 with respect to the Co-owner's Interests in all Properties other than in the Province of Alberta and \$10,000,000 with respect to the Co-owner's Interests in all Properties in the Province of Alberta, which mortgage, pledge, assignment, security interest and charge shall and does hereby constitute security to the other Co-owner for the observance and performance by the granting Co-owner of its liabilities and obligations hereunder including, without limitation, the liabilities and obligations pursuant to sections 6.2, 6.4 and 6.5 from time to time of the Co-owner granting the mortgage, pledge, assignment, security interest and charge.
 - (iii) Each Co-owner's Charge shall be subject and subordinate to all Encumbrances registered against any portion of the Co-owners' Interests and any financing arranged from time to time and at any time pursuant to and in accordance with section 7.4 and the security therefor and all liabilities and obligations outstanding thereunder from time to time regardless of the time when such liabilities and obligations arise.
 - (iv) Each Co-owner shall execute, deliver and register in the appropriate offices of public record, by way of specific mortgages, charges, hypothecs

and assignments by way of security in the appropriate registrable form and registered against the title to each of the Properties, supplemental mortgages, pledges, charges and assignments appropriate to subject the Properties to the security created by this section and for the due protection of such security against claims by all subsequent transferees or encumbrancers.

- (v) Upon a transfer of a Co-owner's Interest in accordance with the terms of this Agreement, the transferring Co-owner shall execute, deliver and register such releases, discharges, re-hypothecations and similar instruments as are necessary to release its Co-owner's Charge against the Co-owner's Interest of the other Co-owner.
- (vi) It is acknowledged and agreed that if registered title to the Co-owner's Interest of a Co-owner is held by a nominee (the "**Nominee**") for such Co-owner (the "**Applicable Co-owner**"), then:
 - (A) any reference to the "Chargor" in the registered charge of such Co-owner's Interest granted by the Nominee, shall be deemed to include the Applicable Co-owner; and
 - (B) any reference to the "Chargee" in the registered charge granted in favour of the Nominee, shall be deemed to include the Applicable Co-owner.
- (b) With respect to each Partnership Owner:
 - (i) Each Partnership Owner hereby grants and assigns to the other Partnership Owner a pledge, assignment, security interest, hypothec and charge of its Partnership Owner's Interest in favour of the other Partnership Owner, as security to the other Partnership Owner for the observance and performance by the granting Partnership Owner of its liabilities and obligations hereunder and under the other Participation Agreements from time to time (a "**Partnership Owner's Charge**").
 - (ii) Each Partnership Owner's Charge shall be subject and subordinate to all personal property security registered against any portion of the Partnership Owners' Interests and any financing arranged from time to time and at any time pursuant to and in accordance with section 7.4 and the security therefor and all liabilities and obligations outstanding thereunder from time to time regardless of the time when such liabilities and obligations arise.
 - (iii) Upon request, each Partnership Owner shall execute, deliver and register in the appropriate offices of public record, by way of security in the appropriate registrable form against the Partnership Owners' Interests appropriate to subject the Partnership Owners' Interests to the security

created by this section and for the due protection of such security against claims by all subsequent transferees or encumbrancers.

- (iv) Upon a transfer of a Partnership Owner's Interest in accordance with the terms of this Agreement, the transferring Partnership Owner shall execute, deliver and register such releases, discharges, re-hypothecations and similar instruments as are necessary to release its Partnership Owner's Charge against the Partnership Owner's Interest of the other Partnership Owner.

7.7 Release of Transferring Participant

A Participant that transfers all of its Co-owner's Interest and Partnership Owner's Interest in accordance with the terms and provisions of this Agreement, except a transfer of its Co-owner's Interest and Partnership Owner's Interest pursuant to section 7.10, shall thereupon have no further liabilities or obligations hereunder or the other Participation Agreements provided that such transferring Participant shall remain responsible for any and all of its liabilities and obligations as a Co-owner, limited partner or shareholder, as the case may be, which accrued, were due or which should have been performed or complied with prior to such transfer. Concurrent with and following the transfer of a Co-owner's Interest and Partnership Owner's Interest, the then remaining Participant or Participants, as the case may be, shall take all reasonable steps and actions, at the sole cost of the transferring Participant, as may be requested by the transferring Participant and are necessary or required to obtain a release and discharge of any guarantee, indemnity or other obligation of any Person in respect of those obligations and liabilities of the Participant that has transferred all of its Co-owner's Interest and Partnership Owner's Interest for which it is no longer responsible pursuant to the terms and provisions of this section 7.7.

7.8 One Voice Rule on Partial Transfers

In the event of a Disposition by a Person that is one of the Persons constituting a Participant (the "**Transferor**") of a part but not all of the Transferor's Co-owner's Interest and Partnership Owner's Interest to an Affiliate (the "**Transferee**") pursuant to section 7.10:

- (a) in all matters in which the Transferor, by the terms of the Participation Agreements, has a right, such right will be exercised by the Transferor on behalf of itself and the Transferee and the other Participant will be entitled to rely on the actions of the Transferor in that regard as binding on the Transferee;
- (b) in all matters in which a Transferor, by the terms of the Participation Agreements, is subject to an obligation, prohibition or restriction, such obligation, prohibition or restriction will be binding on the Transferee to the same extent as the Transferor; and, as well, the Transferor shall remain responsible to the other Participant for the fulfilment of any such liability or obligation including, without limitation, the liabilities and obligations in section 6.2 and Article 8;
- (c) the other Participant, notwithstanding such transfer, shall be entitled to treat the Transferor as the party which is solely entitled to the benefit of all rights and

responsible for all liabilities and obligations of the Transferor and all Transferees of the applicable Co-owner's Interest and Partnership Owner's Interest, for all purposes of the Participation Agreements, as applicable; and

- (d) any Notices required to be given under the Participation Agreements to the Transferee need only be given to the Transferor.

7.9 Estoppel Certificates

Either Participant shall have the right to request in writing, from time to time, a certificate from the other Participant, which certificate shall be in writing and shall certify to the Participant requesting the certificate and to any mortgagee, encumbrancee or trustee under any deed of trust for which the certificate is requested, that either the Participant requesting it is not in Default under the terms and provisions of the Participation Agreements, or as to the Default or Defaults of such Participant, and as to whether any of the Dispositions described in Article 8 have been initiated by either Participant or, to its knowledge, have occurred including whether any Deemed Disposition in respect of such Participant has, to its knowledge, occurred and any other information as to compliance with this Agreement as may reasonably be requested. In the event a Participant does not provide the certificate requested in the manner provided herein within 15 days from its request, such Participant shall be deemed to have delivered a certificate certifying that the Participant requesting it is not in Default under the terms and provisions of this Agreement. The requesting Participant shall pay the other Participant's reasonable expenses (including reasonable legal fees) incurred in giving any such certificate.

7.10 Transfer to Affiliate

Either Participant may transfer any part or all of its Co-owner's Interest and Partnership Owner's Interest, without the consent of the other Participant, at any time or times to an Affiliate other than a transfer of such Partnership Owner's Interest to the Manager, provided that, at the time of such transfer:

- (a) the agreement referred to in section 7.3 shall also include a covenant by each of the transferring Participant and the transferee that the transferee shall remain an Affiliate of the transferor Participant, failing which it shall forthwith retransfer the portion of the Co-owner's Interest or Partnership Owner's Interest which was transferred to it back to such transferor, or shall transfer such portion of the Co-owner's Interest or Partnership Owner's Interest to another Affiliate of the transferor pursuant to the provisions hereof;
- (b) on a complete or partial transfer, the transferor shall remain jointly and severally liable with the transferee for the transferor's covenants and obligations contained in the Participation Agreements whether existing prior to, on or after the date of such transfer; and
- (c) the transferor and transferee shall deliver to the remaining Participant such other documents, opinions and certificates as may be reasonably required.

7.11 Right of First Consultation, Right of First Refusal and Tag-Along

- (a) The provisions of this section 7.11 shall be deemed to be at an end and of no further force or effect upon the Eighth Amended and Restated Declaration of Trust of Chartwell Parent dated May 19, 2011 and the Eighth Amended and Restated Limited Partnership Agreement of the Chartwell Co-owner dated May 19, 2011 being amended to delete the provisions of section 4.1(d) of such Declaration of Trust and section 4.5(d) of such Limited Partnership Agreement requiring the insertion of this section 7.11 (the “**ROFR Requirement**”), or upon the close of the completion of the Income Trust Conversion Transaction if the ROFR Requirement or similar provision is not included in the constating documents of the Chartwell Corporate Parent or those of any of its Affiliates, or upon the ROFR Requirement and any similar provisions being deleted from the constating documents of Chartwell Parent and its Affiliates. Chartwell shall notify HCN in writing within five (5) Business Days of the occurrence of any of the foregoing.
- (b) If a Participant that is not a Defaulting Participant elects to solicit a Third Party Offer, it shall first notify the other Participant of such intention (the “**Third Party Engagement Notice**”). During the ninety (90) day period after the Third Party Engagement Notice is received by the other Participant (the “**Negotiation Period**”), the Participants shall negotiate, each acting in good faith, a mutually satisfactory Disposition of the entire Co-owner’s Interest and Partnership Owner’s Interest of either or both of the Participants. If a definitive agreement with respect to such mutually satisfactory Disposition is not executed and delivered by the Participants on or prior to the expiration of the Negotiation Period, a Participant shall be permitted to solicit and receive a Third Party Offer. If a Third Party Offer is not received and conditionally accepted by the ROFR Offeror in accordance with subsection (c) below within ninety (90) days following the Negotiating Period, a Participant shall not solicit or receive a Third Party Offer again without first complying with the provisions of this subsection (b).
- (c) If a Participant (the “**ROFR Offeror**”) receives from a third party (the “**Third Party**”) that is acting as principal and dealing at arm’s length with the ROFR Offeror, a *bona fide* written offer (the “**Third Party Offer**”) to purchase for cash all, and not less than all, of the Co-owner’s Interest and Partnership Owner’s Interest of the ROFR Offeror (the “**ROFR Interest**”), the ROFR Offeror shall only accept such Third Party Offer subject to compliance with the provisions of this section 7.11. Upon such conditional acceptance, the Offeror shall deliver a notice in writing (the “**ROFR Notice**”) to the other Participant (the “**ROFR Offeree**”) irrevocably offering to sell to the ROFR Offeree the ROFR Interest at the same price less a discount of three percent (3%) and in all other respects on substantially the same terms and conditions as provided in the Third Party Offer (except that the ROFR Notice shall be deemed to contain the provisions of section 11.1). The ROFR Offeror shall deliver, with the ROFR Notice, a true copy of the Third Party Offer and, if the Third Party is other than an individual, the names of the principal shareholders or holders of interests in such Third Party

(if available), officers and directors (or the equivalent) of the Third Party and any other information with respect to the financial capacity of the Third Party in the possession of the ROFR Offeror. The offer contained in the ROFR Notice shall be irrevocable except with the consent of the ROFR Offeree and shall be open for acceptance for a period of thirty (30) days after the date upon which the ROFR Notice is received by the ROFR Offeree (the “**ROFR Period**”).

- (d) Upon the ROFR Notice being given, the ROFR Offeree shall have the right to elect, by Notice delivered to the ROFR Offeror within the ROFR Period to:
 - (i) purchase all, but not less than all, of the ROFR Interest on the terms set out in the ROFR Notice (the “**Purchase Notice**”); or
 - (ii) require that the ROFR Offeror not sell the ROFR Interest unless the Third Party simultaneously purchases all of the ROFR Offeree’s Co-owner’s Interest and Partnership Owner’s Interest (the “**Tag-Along Interest**”) on the same terms and conditions as the ROFR Interest is to be purchased pursuant to the Third Party Offer (a “**Tag-Along Notice**”).
- (e) If the ROFR Offeree gives a Purchase Notice, the sale of the ROFR Interest to the ROFR Offeree shall be completed within 20 Business Days of the expiry of the ROFR Period.
- (f) If the ROFR Offeree gives a Tag-Along Notice and the Third Party agrees to purchase the Tag-Along Interest on the same terms and conditions, on which it has agreed to purchase the ROFR Interest pursuant to the Third Party Offer, the ROFR Offeree and the ROFR Offeror shall simultaneously sell the Tag-Along Interest and the ROFR Interest respectively to the Third Party on the terms and conditions of the Third Party Offer. If the Third party does not purchase the Tag-Along Interest as aforesaid, the ROFR Offeror may not sell the ROFR Interest pursuant to the Third Party Offer.
- (g) If the ROFR Offeror does not receive a Purchase Notice or Tag-Along Notice from the ROFR Offeree within the ROFR Period, the ROFR Offeror may sell the ROFR Interest to the Third Party at the price and upon the terms and conditions specified in the Third Party Offer.
- (h) Any transfer to the Third Party pursuant to this section 7.11 must be completed within 120 days following the expiry of the ROFR Period, failing which the provisions of this section 7.11 shall again apply to any proposed Disposition, and so on from time to time. Notwithstanding the foregoing, before recording a Disposition to a Third Party pursuant to the provisions of this section 7.11, the Committee shall be entitled to require proof that such Disposition was completed at the price and upon the other terms and conditions contained in the Third Party Offer.

7.12 Publicly Traded Shares or Units

Notwithstanding anything herein to the contrary, no transfer of any shares or units of a Co-owner or Affiliate of either Participant listed on a recognized stock exchange in North America shall constitute or give rise to a Disposition (including, without limitation, a Deemed Disposition).

ARTICLE 8 BUY-SELL OPTIONS AND DISPUTE RESOLUTION

8.1 Shotgun Provision

- (a) A Participant (the “**Offeror**”) that is not a Defaulting Participant shall have the right:
 - (i) between the fifth (5th) anniversary of the date hereof and the tenth (10th) anniversary of the date hereof following a disagreement in connection with a Major Decision, subject to compliance with subsection 8.1(b);
 - (ii) after the tenth (10th) anniversary of the date hereof for any reason or for no reason; or
 - (iii) at any time after a Deemed Default provided the non-defaulting Participant has not taken any remedies available to it under section 10.2;to deliver a Notice (the “**Initiating Notice**”) to the other Participant (the “**Offeree**”) containing an offer (the “**Purchase Offer**”) to purchase all, and not less than all, of the Co-owner’s Interest and Partnership Owner’s Interest of the Offeree and its Affiliates excluding the Western Properties Assets (the “**Purchase Offer Interest**”). The Initiating Notice shall also contain an offer (the “**Sale Offer**”) to sell all, and not less than all, of the Co-owner’s Interest and Partnership Owner’s Interest of the Offeror and its Affiliates excluding the Western Properties Assets (the “**Sale Offer Interest**”) to the Offeree for the same price and upon the same terms as are contained in the Purchase Offer.
- (b) If the Offeror wishes to deliver an Initiating Notice following a disagreement referred to in clause (i) of subsection 8.1(a), it shall first deliver a notice of an intent to deliver the Initiating Notice to the Offeree (the “**Intention Notice**”) after which the chief executive officers of HCN Parent and Chartwell Parent shall meet in an attempt to resolve such disagreement, acting in good faith, for a period of thirty (30) days (the “**Buy-Sell Negotiating Period**”) after which the Offeror shall have the right to deliver the Initiating Notice to the Offeree, provided that if the Initiating Notice is not delivered within thirty (30) days following the expiration of the Buy-Sell Negotiating Period, an Initiating Notice shall not be delivered without again first complying with the provisions of this subsection (b) including delivery of the Intention Notice.
- (c) The Purchase Offer and the Sale Offer shall each be on the same terms and conditions and for the same price, which shall be payable in cash other than with

respect to then existing financing on the Co-owners' Interests and Partnership Owners' Interests which shall be assumed by the purchaser.

- (d) The Offeree may respond to the Initiating Notice within the 30 day period after its receipt, subject to extension pursuant to subsection 8.1(g) (the "**Offer Period**"), by Notice to the Offeror either accepting the Sale Offer or the Purchase Offer.
- (e) If the Offeree accepts the Sale Offer within the Offer Period, all of the Sale Offer Interest shall be purchased by the Offeree. If the Offeree does not accept the Sale Offer within the Offer Period, the Offeree shall be deemed to have accepted the Purchase Offer and the Offeror shall purchase all of the Purchase Offer Interest.
- (f) The closing of the transaction pursuant to the Purchase Offer or the Sale Offer shall take place on the first Business Day following the 90th day after the earlier of any response pursuant to subsection 8.1(d) and the expiry of the Offer Period (the "**Closing Period**").
- (g) The Offer Period and the Closing Period may each be extended by either the Offeree or the Offeror, acting reasonably, one (1) time each upon Notice to the other party so as to accommodate the need to find a capital joint venture party, raise capital internally, find a replacement manager or managers and/or obtain license transfers, other regulatory approvals and similar matters, provided that each such extension shall be for no more than 120 days.
- (h) Provided that Chartwell is not a Defaulting Participant, upon the issuance of an Initiating Notice, an Affiliate of the Chartwell Co-owner (other than the Manager) (the "**Chartwell Purchaser**") shall have the right to purchase all, but not less than all, of the portion of the Co-owner's Interest of HCN and its Affiliates pertaining to the Properties located west of Ontario identified in Schedule A (for the avoidance of doubt, including without limitation the shares in the capital of the Nominee Companies relating to such Properties) on the date hereof but not, for greater certainty, any Property located west of Ontario which has been added to Schedule A after the date hereof (the "**Western Properties**") and any assets of the Tenant LP relating to the operation of the Western Properties (the "**Western Properties Operating Assets**"), for an amount equal to the Appraised Value of the Western Properties Assets determined using the same mechanism as set out in subsection 10.3(a), by issuing a Notice (the "**Western Purchase Notice**") within the Offer Period. If the Western Purchase Notice is delivered prior to the expiration of the Offer Period:
 - (i) the Participants shall determine the Appraised Value of the Western Properties Assets in accordance with subsection 10.3(a);
 - (ii) following such determination, the Chartwell Purchaser shall have the right to elect, by Notice to HCN given within ten (10) Business Days of such determination (the "**Appraisal Notice**") to proceed or not to proceed with the purchaser of the Western Properties Assets;

- (iii) if the Chartwell Purchaser provides an Appraisal Notice in accordance with clause (ii) above electing to proceed with such purchase, the Closing of such purchase shall take place on the first Business Day following the 90th day after the date of the Appraisal Notice, and at the Closing of such purchase and with effect from and after such Closing:
 - (A) the Chartwell Purchaser shall offer employment to those employees of the Tenant LP employed at the Western Properties on the same terms and conditions on which they were employed immediately prior to such Closing; and
 - (B) to the extent the Related Agreements relate to the Western Properties Assets, such Related Agreements shall be deemed to be amended by terminating and declaring of no further force or effect those provisions relating to the Western Properties Assets (subject to customary post-closing indemnities and adjustments in respect of such indemnities and other customary post-closing adjustments);
- (iv) if the Chartwell Purchaser provides an Appraisal Notice in accordance with clause (ii) above electing not to proceed with such purchase, or fails to provide an Appraisal Notice within the time period required by clause (ii) above, the right of the Chartwell Purchaser to purchase the Western Properties Assets at the Appraised Value determined in accordance with this subsection 8.1(h) shall cease, and thereafter either Participant shall have the right to initiate the purchase or sale of the Western Properties Assets in accordance with the process applicable to the Purchase Offer Interest and the Sale Offer Interest pursuant to subsections 8.1(a) through (g), *mutatis mutandis*; until such time as such process has been completed, the relationship of the Participants with respect to the Western Properties Assets shall continue to be governed by the Related Agreements, *mutatis mutandis*.
- (i) Notwithstanding any other provision of this section 8.1, any purchase by Chartwell pursuant to this section 8.1 shall be effected by an Affiliate of Chartwell (other than the Manager).

8.2 Alternative Dispute Resolution

- (a) Subject to any specific dispute resolution mechanisms set out elsewhere in the Business Agreements, if the Participants are unable to resolve any dispute, controversy or claim arising out of or relating to any of the Business Agreements, the Properties or the Nominee Companies, including without limitation any question regarding the existence, interpretation, validity, breach or termination of any of the Business Agreements or the business relationship created by them, other than any Major Decision, (a “**Dispute**”), then any Participant may, by

delivering a Notice to the other Participants, require that such Dispute be resolved in accordance with this section 8.2 (a **"Dispute Notice"**).

- (b) Upon the delivery of a Dispute Notice, the chief executive officers of each of HCN Parent and Chartwell Parent shall meet, in person in Toledo, Ohio or by video conference facilities to attempt to resolve the Dispute that is the subject of such Dispute Notice.
- (c) If such Dispute is not so resolved within thirty (30) days of the delivery of such Dispute Notice (the **"CEO Negotiating Period"**), either Participant may on ten (10) Business Days written notice to the other Participant of its intention to do so (the **"Arbitration Notice"**), submit such Dispute to arbitration under the *Arbitration Act, 1991* (Ontario) before a single arbitrator (the **"Arbitrator"**) under the ADR Chambers Arbitration Rules of ADR Chambers of Toronto, Canada (the **"Rules"**). For the purposes of this subsection (c), the parties acknowledge that the parties other than HCN Parent are deemed to all have a place of business in Ontario, and that the subject matter of the Properties and the Business Agreements is wholly within Canada. The place of the arbitration shall be Toronto, Canada and the language of the arbitration shall be English. The parties to the Dispute shall attempt in good faith to agree upon the appointment of a single Arbitrator, failing which the Arbitrator shall be selected pursuant to Section 5.2 of the Rules. The Arbitrator shall be an individual experienced in arbitrating the type of issues in question in the Dispute. At the request of either Participant, and consistent with the expedited nature of the arbitration, the Arbitrator may direct the production of documents and other information, the identification of any witness to be called and, within five (5) days of the hearing, the exchange of copies of the exhibits to be used at the hearing.
- (d) If an Arbitration Notice is not delivered within thirty (30) days following the expiration of the CEO Negotiating Period with respect to a Dispute, an Arbitration Notice shall not be delivered in respect of such Dispute without again first complying with the provisions of subsections 8.2(a), (b) and (c) including the delivery of the Dispute Notice.
- (e) The Arbitrator shall structure the arbitration so that the award is issued no later than six (6) months after the appointment of the Arbitrator.
- (f) The Arbitrator's award shall be binding and conclusive upon the Participants and the Participants shall comply with the award in good faith. In rendering an award, the Arbitrator shall have no jurisdiction to consider evidence with respect to, or render any award or judgment for, punitive or exemplary damages, or any other amount awarded for purposes of imposing a penalty. The Participants specifically waive any claims for punitive or exemplary damages, or any other amount awarded for purposes of imposing a penalty that arise out of or relate to the Business Agreements or the conduct of the Participants in connection with the Business Agreements.

- (g) The fees of the Arbitrator and the costs of transcripts for the arbitration shall be shared equally by each Participant. Each Participant shall pay the costs and fees of its own lawyers, advisors and experts retained, and all other costs incurred in connection with the arbitration.
- (h) Except as may be required by law, neither Participant nor the Arbitrator may disclose the existence, contents, or results of anything related to the arbitration, including but not limited to pleadings, motions, briefs, discovery, depositions, hearings, or award to any Person other than the parties and their advisors and experts engaged with respect to the Dispute without the prior written Approval of both Co-owners. In this regard, it is the intention of the Participants that Disputes shall, to the fullest extent permitted under the Rules, not be resolved through any public process including courts of law.
- (i) Notwithstanding the foregoing, if any Participant reasonably requires an expedited decision, order, action, ruling, decree, resolution or other relief pursuant to Article 10 or pursuant to any of the Business Agreements where a breach of such Business Agreement could cause irreparable harm to the non-defaulting Participant, the non-defaulting Participant may immediately deliver an Arbitration Notice without the requirement of the delivery of the Meeting Notice and request the appointment of an Arbitrator on twenty-four (24) hours' notice. For greater certainty, the Arbitrator shall have the ability to make any awards permitted by applicable law and to grant other remedies set out in section 10.2.

8.3 Priority of Notices

At any time after an Initiating Notice or Default Purchase Notice pursuant to section 8.1 or subsection 10.2(e), has been given (the first such notice given called a “**First Notice**”) and until the aggregate period of time specified for the completion of the transaction in respect of which such First Notice was given has expired or the interest related to such First Notice has been disposed of, whichever shall first occur, no other such Notice may be given under any provision of this Agreement or other proceedings taken hereunder, in each case with respect to the purchase or sale of a Co-owner's Interest and Partnership Owner's Interest.

8.4 Failure to Purchase

If a Participant (the “**Purchaser**”) who is purchasing the Co-owner's Interest and Partnership Owner's Interest of the other Participant (the “**Seller**”), other than pursuant to subsection 10.2(e), defaults, the Seller, in addition to any other right or remedy which it may have under this Agreement or at law or in equity, shall have the option, exercisable upon written notice to the Purchaser at the Closing or within 15 days thereafter, to purchase the Co-owner's Interest and Partnership Owner's Interest of the Purchaser upon the terms of the offer *mutatis mutandis* except that the price shall be 95% of the price specified in the offer and the closing of such transaction shall take place within 45 days after the date such written notice is given by the Seller or such longer period as is reasonably required to arrange financing, to retain the services of a replacement manager, find a capital joint venture party, raise capital internally, and/or obtain licence transfers, other regulatory approvals and similar matters.

ARTICLE 9

PARTITION, SALE AND ADVERSE CLAIMS

9.1 Waiver of Partition and Sale

Each Co-owner waives the benefit of all provisions of law, now in effect or hereinafter enacted, relating to actions for a partition or sale in lieu of partition and/or administration of real and personal property including, without limitation, the *Partition Act* (Ontario) and similar legislation in the Province in which the Properties are located. Each Co-owner agrees that it will not resort to any action at law or in equity for partition or sale in lieu of partition of any of the Properties or seek administration in respect thereof, except in each case as herein provided.

9.2 Notice of Adverse Claims

If any Co-owner receives any notice, claim or document respecting any of the Properties which would adversely affect the Co-owner's Interest of the other Co-owner, it shall forthwith deliver a copy of such notice, claim or document to the other Co-owner.

ARTICLE 10

DEFAULT

10.1 Default

Any Participant that is not a Defaulting Participant shall have the right to deliver to a Participant who has committed or suffered a Default a Notice specifying such Default.

10.2 Rights Upon Default

If the Participant that received the Notice in section 10.1 has committed or suffered a Default as stated in subsection (a), (c) or (d) of the definition of "Default" or has committed or suffered a Default as stated in subsection (b) of the definition of "Default" and has not cured such Default within fifteen (15) days of the delivery of such Notice or, if such Default is capable of being cured but not within such fifteen (15) day period, has not commenced to diligently and in good faith pursue curing such Default or, despite such efforts, has not cured the Default within such longer period of time as is reasonable given the nature of the Default, such Participant shall be considered a "**Defaulting Participant**" and the other Participant shall have any and all of the following rights:

- (a) to bring any proceedings before the Arbitrator in the nature of specific performance, injunction or other equitable remedy to compel the cure of such Default, it being acknowledged by the Participants that damages at law may be an inadequate remedy for a Default;
- (b) remedy such Default and any other Default of the Defaulting Participant and shall be entitled upon demand to be reimbursed by the Defaulting Participant for any monies expended to remedy any such Default and any other expenses incurred by the non-Defaulting Participant, together with interest at eight percent (8%) per annum in excess of the Prime Rate; and in addition the Defaulting Participant

hereby directs that all amounts payable to it pursuant to the provisions of section 6.1 shall be paid to the non-Defaulting Participant to the extent necessary to reimburse the non-Defaulting Participant for such monies with interest as aforesaid (for greater certainty, all repayments made hereunder shall be considered as a repayment of a loan);

- (c) for breaches of sections 7.1 or 9.1, to obtain a decree or order from the Arbitrator restraining and enjoining such Disposition, application, petition, action or proceeding and the Participant in breach shall not plead in defence thereto that there would be an adequate remedy at law, it being recognized and agreed that the injury and damage resulting from such breach would be impossible to measure monetarily;
- (d) subject to section 8.2, to bring any action at law or in equity before the Arbitrator as may be permitted in order to recover damages;
- (e) except as otherwise provided in this Agreement (including, without limitation, pursuant to subsection 15.19(d)), to give a Notice to the Defaulting Participant to commence proceedings pursuant to section 10.3(a) for a determination of the Appraised Value of the Co-owner's Interest and Partnership Owner's Interest of the Defaulting Participant and, within 15 days after such determination, to give a Notice (the "**Default Purchase Notice**") to the Defaulting Participant that it elects to purchase the Co-owner's Interest and Partnership Owner's Interest of the Defaulting Participant and its Affiliates at a price equal to the Appraised Value thereof; provided, however, that upon determination of the Appraised Value of the Defaulting Participant's Co-owner's Interest and Partnership Owner's Interest, the other Participant shall have the right to elect not to purchase the Co-owner's Interest and Partnership Owner's Interest of the Defaulting Participant, but such other Participant shall not by such election waive any of its rights to exercise any other rights or remedies available to it, whether pursuant to this section 10.2 or otherwise. Any such purchase is intended as a purchase and not by way of security and does not constitute foreclosure or give rise to any equitable rights of redemption;
- (f) to exercise any of its remedies under the Co-owner's Charge and the Partnership Owner's Charge granted to it;
- (g) to give a Notice (the "**Property Sale Notice**") to the Defaulting Participant that it desires to arrange for the sale of the Co-owner's Interest and Partnership Owner's Interest of both Participants, in which case the non-Defaulting Participant shall be entitled, through a reputable licensed real estate brokerage and/or investment banking or similar firm with experience in selling large portfolios of seniors living facilities similar to the Properties, to solicit offers for such interests from arm's length purchasers. Such listing for sale or other offering document may contain a reserve price established by the non-Defaulting Participant provided such reserve price is communicated to all potential offerors. If an offer to purchase is received containing terms and conditions acceptable to the non-Defaulting Participant,

acting reasonably and in good faith, within 180 days after delivery of the Property Sale Notice, the non-defaulting Participant shall be entitled to accept it and to require the Defaulting Participant to do the same, and each Participant shall complete the sale of its respective Co-owner's Interest and Partnership Owner's Interest in accordance with such offer; provided, however, in no event may any Co-owner's Interest in any of the Properties be sold pursuant to this section 10.2(g) or section 10.2(e) without such Co-owner's written consent within two (2) years of the acquisition of that Co-owner's Interest except in connection with a Default caused by an Event of Insolvency or the realization of the security contemplated by clause (b) of section 7.5. Upon closing of any such sale, each Participant shall receive its respective Co-owner's Proportion and Partnership Owner's Proportion of 100% of the gross sale proceeds provided that there shall be deducted from the Co-owner's Proportion and Partnership Owner's Proportion of sale proceeds and paid to the non-Defaulting Participant the following:

- (i) the Defaulting Participant's Co-owner's Proportion of all costs of the sale, including appraisals, real estate commission and vendor's legal fees and disbursements, that were incurred by such non-Defaulting Participant; and
- (ii) all other amounts then payable by the Defaulting Participant to the non-defaulting Participant pursuant to this Agreement.

For greater certainty, once the non-Defaulting Participant has executed a letter of intent for the sale of the Co-owners' Interests and Partnership Owners' Interests with an arm's length purchaser and delivered Notice thereof to the Defaulting Participant, the Defaulting Participant will lose any right to remedy its Default. Each Participant shall pay only up to its respective Co-owner's Proportion and Partnership Owner's Proportion of any indemnification or other obligations (including in respect of expenses) that the non-Defaulting Participant agrees to provide both by itself and by the Defaulting Participant in connection with such sale; provided that neither Participant shall be liable under any indemnity or other obligations in excess of the net cash proceeds paid to such Participant in connection with such sale.

In connection with any such sale, each Participant shall only be obligated to make representations or warranties as to: (A) its title and ownership of its Co-owner's Interest and Partnership Owner's Interest being sold by it and not of those of the other Participant; (B) its authorization, execution and delivery of documents to be signed by it and not as power of attorney for the other Participant; and (C) the enforceability of relevant documents against it and not against the other Participant;

- (h) to act as the attorney for the Defaulting Participant for all purposes of Article 10 including, without limitation, if so ordered by an Arbitrator pursuant to section 8.2 having regard to the nature of the Dispute giving rise to such order, replacing the Defaulting Participant's Committee members with the other members chosen by the non-defaulting Participant, and the Defaulting Participant

hereby appoints the non-defaulting Participant, as its attorney-in-fact and agent for the purposes of this subsection (h). Such appointment and power of attorney, being coupled with an interest, shall not be revoked by the dissolution, winding-up, bankruptcy or insolvency of the Defaulting Participant and the Defaulting Participant hereby ratifies and confirms and agrees to ratify and confirm all that the non-Defaulting Participant may lawfully do or cause to be done by virtue of the provisions hereof; and

- (i) notwithstanding any other provision of this Article 10, any acquisition by Chartwell pursuant to this Article 10 shall be effected by an Affiliate of Chartwell (other than the Manager) and not by Chartwell itself.

10.3 Determination of Appraised Value

- (a) For purposes of this Agreement, Appraised Value of a Defaulting Participant's Co-owner's Interest and Partnership Owner's Interest (or the Appraised Value of any other interest to be determined pursuant to this section 10.3) shall be determined by determining the fair market value of the Co-owners' Interests and Partnership Owners' Interests at the time of the Default Sale Notice as an entirety, being the gross cash price which a ready, willing and able sophisticated purchaser would pay to purchase the Co-owners' Interests and Partnership Owners' Interests as an entirety. Such evaluation of the then current fair market value is to be made on the assumption that the Properties are owned and operated by a single Person, that a market rate management fee will be in effect and that the assets forming the Properties will continue in their current use, but taking into account that the Properties may be subject to any licences and agreements including, without limitation, government funding agreements, leases and services agreements then in effect. After the then current fair market value of the Co-owners' Interests and Partnership Owners' Interests is determined, the Appraised Value of the Defaulting Participant's Co-owner's Interest and Partnership Owner's Interest shall be the Defaulting Participant's Co-owner's Proportion and Partnership Owner's Proportion of the then current fair market value of the Co-owners' Interests and Partnership Owners' Interests as so determined. A sophisticated purchaser shall be one who would take into account the nature, extent, maturity date and other terms of the liabilities of the Properties, whether fixed or contingent, including the favourable or unfavourable nature of any financing then encumbering the Defaulting Participant's Co-owner's Interest and Partnership Owner's Interest that is to be assumed (the "**Defaulting Participant's Assumed Debt**") (but, for greater certainty, financing that is not to be assumed shall not be taken into account), or other assets of the Properties and the prospects that the income from the Properties would be sufficient to satisfy such liabilities when due.
- (b) The Participants shall attempt to agree upon the Appraised Value within 30 days after the Defaulting Participant receives the Default Purchase Notice.

- (c) If the Participants cannot agree upon the Appraised Value within the period specified in subsection 10.3(b) or any longer period that may be agreed to by each Participant, each of the Participants shall appoint an appraiser within the period of seven days following the expiry of such period. Each such appraiser shall be at arm's length from the Participant appointing the appraiser and shall generally be recognized as a Person experienced in appraising and qualified to appraise a large portfolio of seniors living facilities such as the Properties and with at least ten years experience. If any Participant fails to appoint an appraiser within the seven-day period, the decision of the remaining appraiser shall be binding on the Participants.
- (d) Each appraiser shall have access to all books of account, records, vouchers, cheques, papers, and documents of each of the Participants which may relate to the Co-owners' Interests and Partnership Owners' Interests and the Properties. Each Participant shall co-operate with each appraiser for such purpose and provide all information and documents requested by such appraiser. In the determination of Appraised Value, each appraiser shall have regard to all relevant considerations including historic and potential performance and shall make all proper and necessary allowances for contingent or other liabilities. Each appraiser shall have the right to retain such experts as such appraiser may deem necessary to assist such appraiser in making such valuation. Each appraiser shall provide its appraisal within 30 days of the appraiser's appointment.
- (e) The average of the Appraised Values determined by the two appraisers shall be deemed to be the Appraisal Value of the Co-owners' Interests and Partnership Owners' Interests unless they differ by more than five percent (5%), in which case the two appraisers shall select a third appraiser within ten (10) days following the issuance of the two appraisals and the third appraiser shall provide its appraisal in accordance with subsection 10.3(d) and the appraisal which varies from the other two appraisals by the greatest amount shall be discarded and the average of the two remaining appraisals shall be deemed to be the Appraised Value of the Co-owners' Interests and Partnership Owners' Interests.
- (f) Each appraiser shall be deemed to be acting as an expert and not as an arbitrator, and the fees and expenses of the appraisers shall be paid:
 - (i) subject to clause (ii), by the Participant nominating the appraiser; and
 - (ii) by each Participant in proportion to its Co-owner's Proportion and Partnership Owner's Proportion with respect to any third appraiser.

ARTICLE 11 CLOSING

11.1 Closing

In the event of a sale to the other Participant pursuant to section 7.11, 8.1 or 10.2(e), the following shall apply, to the extent not otherwise provided in the agreement of purchase and sale applicable to such sale:

- (a) The closing (“**Closing**”) of any sale of a Co-owner’s Interest and Partnership Owner’s Interest to another Participant pursuant to this Agreement shall be held at the address of the purchasing Participant provided for herein at 10:00 a.m. (local time) on the date stipulated herein therefor or, if no date is stipulated, on the first Business Day following the later of the 30th day after a Participant becomes entitled to purchase the Co-owner’s Interest and Partnership Owner’s Interest of another Participant herein and the date upon which the Appraised Value is finally determined, or such earlier or later date as may be mutually agreed upon by the parties to the transaction.

At the Closing, a transfer from Seller to the Purchaser of the selling Seller’s Co-owner’s Interest and Partnership Owner’s Interest, together with such instruments and documents (to be reasonably satisfactory to counsel for the parties to the transaction) as may be necessary or desirable to give effect to the sale and transfer of such Co-owner’s Interest and Partnership Owner’s Interest, including certificates representing the Seller’s shares in the related Nominee Company(ies), units in the Tenant LP and shares in general partner(s) thereof, duly endorsed in blank for transfer (the “**Transfer Documents**”) shall be delivered to the Purchaser. At the Closing, the purchase price and any other amounts owing by the Purchaser to the Seller (subject to a right of set-off as hereinafter provided) shall be paid to the Seller and the Seller shall discharge any security then outstanding on the Seller’s Co-owner’s Interest and Partnership Owner’s Interest, other than charges of the whole of the Co-owners’ Interests and Partnership Owners’ Interests, upon request of the purchasing Participant.

- (b) The Transfer Documents shall be legally sufficient to convey the Co-owner’s Interest and Partnership Owner’s Interest of the Seller to the Purchaser. At the Closing, the Purchaser shall assume, from and after the Closing, all obligations of the Seller in connection with the Co-owner’s Interest and Partnership Owner’s Interest being acquired pursuant to the Participation Agreements, that relate to the period after the Closing and shall indemnify the Seller in connection therewith. At the Closing, all amounts due by the Seller to the Purchaser (including any amount referred to in section 6.4 and any amount necessary to reimburse the Purchaser for remedying any Default of the Seller) shall be settled and set-off or paid in full.

- (c) Where the liabilities affecting the Seller's Co-owner's Interest and Partnership Owner's Interest exceed the purchase price, subject to adjustment thereof as of the Closing date as provided for in this section, such excess shall be paid by the Seller to the Purchaser in cash at the closing.
- (d) All amounts owing by one Participant to the other shall be set off and paid on Closing; provided that any amounts in dispute shall be placed in escrow with a third party escrow agent that is a reputable trust company or similar reputable institution and held until settlement of the dispute.
- (e) The payments to be made at Closing shall be subject to the usual adjustments for transactions of a similar nature with respect to the Properties and the ownership and operation thereof including, for greater certainty, the other assets, liabilities and account balances of the Tenant LP and of the Co-owners with respect to the Co-owner's Interests to the extent applicable having regard to the nature of the transaction. Any adjustments that cannot be determined on Closing shall be determined by the Auditor at the end of the fiscal year of the Tenant LP, which determination shall be final and binding. Upon such a determination being made, the Auditor shall provide copies thereof to the Seller and the Purchaser and appropriate adjustments made between them shall be paid forthwith, with interest from the Closing at the Prime Rate.
- (f) Except as otherwise provided in this Agreement, each of the Seller and the Purchaser shall bear its own expenses in connection with the preparation, execution, delivery and registration of all documents in connection with the Closing.
- (g) The Seller shall either provide the Purchaser with evidence reasonably satisfactory to the Purchaser that it is not then a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) or provide the Purchaser with a certificate pursuant to subsection 116(2) of the *Income Tax Act* (Canada), with a certificate limit in an amount not less than the purchase price in question; provided that, if such evidence or certificate is not forthcoming, the Purchaser shall be entitled to make the payment of tax required under Section 116 of the *Income Tax Act* (Canada) or the comparable provisions of such Act, as then constituted, and to deduct such payment from the purchase price in question.
- (h) The Purchaser shall either provide evidence satisfactory to the Seller, acting reasonably, that the Purchaser is registered under the provisions of the *Excise Tax Act* (Canada) relating to the goods and services tax and that the Seller has no obligation under the *Excise Tax Act* (Canada) to collect the goods and services tax in connection with the purchase and sale or the Purchaser shall pay any applicable goods and services tax or harmonized sales tax to the selling Participant.

- (i) To the extent not otherwise provided in this Agreement, the exercise by the Purchaser of the right to purchase the Co-owner's Interest and Partnership Owner's Interest of the Seller or the determination to purchase the Co-owner's Interest and Partnership Owner's Interest of a Defaulting Participant pursuant to the provisions hereof may be made conditional upon the Purchaser obtaining all approvals which it may be required to obtain, or the lapsing of any mandatory waiting periods which may apply without the making of any order or application or a request for information by any governmental authority, under any law, statute or regulation then in force under the laws of Canada or any Province thereof (including those that relate to the licensing of Facilities), provided that the Purchaser uses its reasonable best efforts to obtain any required approval or to commence promptly the running of any applicable mandatory waiting period. The completion date for any such transaction shall be extended, if necessary, to accommodate any such condition, by a maximum of sixty (60) days. The Seller agrees to render such assistance as may reasonably be requested by the Purchaser in connection with the obtaining of such approvals or the commencement of such waiting periods. If such purchase is not completed as a result of such condition, the Purchaser shall reimburse the Seller for its reasonable out-of-pocket expenses associated with such purchase.
- (j) If the offices of public record in which title to the Properties is recorded is not open for business on the Closing date specified herein, the Closing date shall be deemed to be on the next day on which they are all open for business.
- (k) If the Seller is not represented at the Closing or is represented but fails for any reason whatsoever to produce and deliver the Transfer Documents to the Purchaser, and provided the Purchaser produces and delivers all of the documents it is required to so produce and deliver, then the purchase price (or estimate thereof as the case may be) may be deposited by the Purchaser in a special account at a branch of the bank used by the Purchaser in respect of the Properties in the name of the Seller. Such deposit shall constitute valid and effective payment of the purchase price to the Seller even though the Seller has, in breach of this Agreement, voluntarily encumbered or disposed of any of its Co-owner's Interest or Partnership Owner's Interest and notwithstanding the fact that a conveyance or conveyances or assignment or assignments for any of such Co-owner's Interest or Partnership Owner's Interest may have been delivered in breach of this Agreement to any alleged pledgee, transferee or other Person. If the purchase price (or estimate thereof) is deposited as aforesaid then, from and after the date of such deposit, and even though the Transfer Documents have not been delivered to the Purchaser, and provided the Purchaser has produced and delivered to Seller all documents so required, the purchase of the Co-owner's Interest and Partnership Owner's Interest being sold shall be deemed to have been fully completed and all right, title, benefit and interest, both at law and in equity, in and to such Co-owner's Interest and Partnership Owner's Interest shall be conclusively deemed to have been transferred and assigned to and become vested in the Purchaser and all right, title, benefit and interest, both in law and in equity, of the Seller, or of any transferee, assignee or any other Person having any

interest, legal or equitable, therein or thereto, shall cease and determine, provided, however, that the Seller shall be entitled to receive the purchase price so deposited, without interest, upon delivery to the Purchaser of the Transfer Documents.

- (l) If the Seller does not produce all necessary documentation at the Closing, the Seller hereby irrevocably constitutes and appoints the Purchaser as its true and lawful attorney-in-fact and agent in the name of and on behalf of the Seller to execute and deliver in the name of the Seller all such assignments, transfers, deeds or instruments as may be necessary to effectively transfer and assign the Co-owner's Interest and Partnership Owner's Interest being sold to the Purchaser. Such appointment and power of attorney, being coupled with an interest, shall not be revoked by the dissolution, winding-up, bankruptcy or insolvency of the Seller and the Seller hereby ratifies and confirms and agrees to ratify and confirm all that the Purchaser may lawfully do or cause to be done by virtue of the provisions hereof. The Seller hereby irrevocably consents to the transfer of its Co-owner's Interest and Partnership Owner's Interest or any part thereof made pursuant to the provisions of this section.
- (m) A Purchaser will be entitled to direct the Seller to convey title to the Co-owner's Interest and Partnership Owner's Interest being conveyed to an Affiliate of the Purchaser.
- (n) The officers and directors of the related Nominee Companies and the general partner(s) of the Tenant LP who are nominees of the Seller shall resign at Closing.

11.2 Trademarks

- (a) If HCN sells its Co-owner's Interest and Partnership Owner's Interest to Chartwell or to any other Person, it shall, contemporaneously with such sale, transfer all of its right, title and interest in and to all trademarks, tradenames, logos and other identification marks related to the Properties (collectively, the "**Marks**") to the purchaser other than such names as include the words "Health Care REIT").
- (b) If Chartwell sells its Co-owner's Interest and Partnership Owner's Interest to HCN or to any other Person, it shall contemporaneously with such sale, transfer all of its right, title and interest in or to all the Marks to the purchaser (other than names as include the words "Chartwell").

11.3 Pre-Closing Events

If, following the issuance hereunder of a Purchase Notice, a Tag-Along Notice, an Initiating Notice, a Western Purchase Notice, a Default Purchase Notice, a Property Sale Notice or a ROFR Notice or the issuance of a ROFR Notice or a Participation Notice under the Non-Competition Agreement or any similar Notices under the other Participation Agreements, a material portion of the subject matter of the transaction contemplated by such Notice is damaged or destroyed or an event occurs beyond the reasonable expectation of the Persons that issued or

received such Notice (including an unexpected expropriation by a governmental authority), the Persons so affected shall act reasonably and in good faith to resolve any issues relating to such damage, destruction or event, make any appropriate adjustments and address any related issues including, without limitation, distributions, required capital expenditures, refinancing/loan payouts and other significant course of business occurrences during the period between exercising the rights under such Notice and the closing date of such contemplated transaction, in each case as are reasonably required as a result of such unexpected events and to the mutual satisfaction of such Persons.

ARTICLE 12

NOTICES

12.1 Notices

Any notice, demand, approval, consent, information, agreement, offer, payment, request or other communication (a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, telecopier or email addressed or sent as set out below or to such other address, telecopier number or email address as may from time to time be communicated to the other parties by Notice:

(a) HCN and HCN Parent:

c/o Health Care REIT, Inc.
4500 Dorr Street
Toledo, Ohio 43615
United States of America

Attention: General Counsel
Email: jmiller@hcreit.com
Fax: (419) 247-2826

with a copy to:

Shumaker, Loop & Kendrick, LLP
1000 Jackson Street
Toledo, Ohio 43604-5573
United States of America

Attention: Mary Ellen Pisanelli
Email: mpisanelli@slk-law.com
Fax: (419) 241-6894

(b) Chartwell and Chartwell Parent:

c/o Chartwell Master Care LP
100 Milverton Drive

Suite 700
Mississauga, Ontario L5R 4H1
Canada

Attention: Brent Binions and Jonathan Boulakia
Email: bbinions@chartwellreit.ca and
jboulakia@chartwellreit.ca
Fax: (905) 501-0813

with a copy to:

Osler, Hoskin & Harcourt LLP
P.O. Box 50
1 First Canadian Place
Toronto, Ontario M5X 1B8

Attention: Rod Davidge and Chris Murray
Email: rdavidge@osler.com and
cmurray@osler.com
Fax: (416) 862-6666

Any Notice shall be deemed to have been validly and effectively given on the date of delivery or transmission, as applicable, provided it is delivered or sent to the other parties on a Business Day prior to 6:00 p.m. (Toronto time) and otherwise to have been validly and effectively given on the next Business Day.

ARTICLE 13 PLANNING ACT

13.1 Compliance with Planning Act

If the provisions of Section 50 of the *Planning Act* (Ontario) (or similar legislation in the other Provinces in which the Properties are located) apply to any Disposition under this Agreement, the Disposition is effective to create an interest in the Properties only if section 50 of such Act (or similar section in the similar legislation of the other Provinces in which the Properties are located) is complied with and shall be conditional upon such compliance and upon any final consent of the applicable Committee of Adjustment or Land Division Committee (or other similar adjudicative body) being subject to conditions acceptable to the Purchaser and all periods having expired and no appeals from the consent having been taken prior to the date of closing of the Disposition. A Seller shall apply at its expense for any required consent under such legislation to any Disposition by it and shall diligently pursue its application.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

Each of the parties represents and warrants to each of the other parties as stated below and acknowledges that each of the other parties is relying on the accuracy of each such representation and warranty in entering into the Participation Agreements and investing in the Properties. The

representations and warranties made in respect of any party forming part of HCN are made only by the parties forming part of HCN and the representations and warranties made in respect of any party forming part of Chartwell are made only by the parties forming part of Chartwell. Each of such representations and warranties shall be a continuing representation and warranty, and shall be true and correct at all times during the term of the Participation Agreements.

14.1 Status and Capacity

Each party has been duly incorporated or otherwise formed and organized, is a subsisting corporation or other entity under the laws of its jurisdiction of incorporation or formation, and has the corporate or other power and capacity and is duly qualified to own or lease its property and to carry on its business as now conducted in each jurisdiction in which it owns or leases property or carries on business.

14.2 Authorization of Agreement

The execution and delivery of the Participation Agreements has been duly and validly authorized by each of the parties thereto.

14.3 Enforceability

The Participation Agreements have been duly and validly executed and delivered by each of the parties thereto and is a valid and legally binding obligation of each of such parties enforceable against each of them in accordance with its terms subject, as to enforcement, to bankruptcy, insolvency and other laws affecting creditors' rights generally and to general principles of equity.

14.4 Residence of HCN Parties

Each HCN Co-owner and each HCN Lessee Entity is either a resident of Canada or a "Canadian partnership" for purposes of the *Income Tax Act* (Canada).

14.5 Residence of Chartwell Parties

Each of the Chartwell Co-owner and CMHLP is either a resident of Canada or a "Canadian partnership" for purposes of the *Income Tax Act* (Canada).

14.6 Special Representation and Warranty

Chartwell Parent hereby represents and warrants to HCN that the equity interests in all Seniors Living Facilities (as that term is defined in the Non-Competition Agreement) owned by Chartwell Parent and entities Controlled by Chartwell Parent are owned by the Chartwell Co-owner or entities that are Controlled by the Chartwell Co-Owner.

ARTICLE 15 GENERAL

15.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

15.2 Captions, Table of Contents and Legislation

The captions and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation. Any reference in this Agreement to any act or statute or any section thereof shall be deemed to be a reference to such act or statute or section as amended, re-enacted or replaced from time to time.

15.3 Obligations as Covenants:

Each obligation of a party in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

15.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

15.5 Invalidity

If any covenant, obligation or agreement or part thereof or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any Person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

15.6 Amendment of Agreement

No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby.

15.7 Successors and Assigns

All of the provisions of this Agreement shall be binding upon the parties and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties and the successors and assigns of any party only to the extent that they are successors and permitted assigns pursuant to this Agreement.

15.8 Accounting Principles

Except as specifically provided otherwise in this Agreement, all calculations referred to herein shall be made in accordance with generally accepted accounting principles and practices applicable to the public real estate development industry in Canada and applied on a consistent basis.

15.9 Schedule

Schedule A attached hereto forms part of this Agreement.

15.10 Time

Except as specifically provided otherwise in this Agreement, time shall be of the essence of this Agreement. When any period of time provided for herein expires on a day other than a Business Day, such period of time shall automatically be extended to the next following Business Day and, when any action or requirement provided for herein is to occur on a day other than a Business Day, the time for such action or requirement shall automatically be extended to the next following Business Day.

15.11 Non-Waiver

No consent to or waiver of any breach or default by any party in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of the other party or to declare the other party in breach or default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

15.12 Rights of Parties Independent

The rights available to each party under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a party from time to time and no such exercise shall exhaust the rights or preclude such party from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

15.13 Guarantee by HCN Parent and Guarantee by Chartwell Corporate Parent

- (a) HCN Parent hereby unconditionally, absolutely, continuingly and irrevocably guarantees to Chartwell the timely payment, if any, and performance by each HCN Co-owner (the “**HCN Guaranteed Entities**”) of all of their obligations and liabilities arising under or pursuant to the Related Agreements to the extent such parties are a party thereto, whether such obligations and liabilities are direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due (collectively, the “**HCN Liabilities**”).

- (b) Chartwell shall not be required to prosecute collection or seek to enforce or resort to any remedies against any HCN Guaranteed Entity or any other Person liable to Chartwell on account of the HCN Liabilities or any guaranty thereof. HCN Parent's liabilities shall in no way be impaired, affected, reduced or released by reason of (i) the failure or delay by Chartwell to do or take any of the actions or things described in this Agreement, (ii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of any or all of the assets of the HCN Guaranteed Entities or the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings or any other inability to pay or perform affecting, the HCN Guaranteed Entities or any of their respective assets, or (iii) any allegation concerning, or contest of the legality or validity of, the indemnification obligations under this Agreement.
- (c) HCN Parent hereby expressly waives the right to interpose all substantive and procedural defences of the law of guaranty, indemnification and suretyship, except the defences of prior payment or prior performance.
- (d) Chartwell shall immediately cause Chartwell Corporate Parent (if and when it exists) to unconditionally, absolutely, continuingly and irrevocably guarantee to HCN the timely payment, if any, and performance by each Chartwell Co-owner (the "**Chartwell Guaranteed Entities**") of all of their obligations and liabilities arising under or pursuant to the Related Agreements to the extent such parties are a party thereto, whether such obligations and liabilities are direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due (collectively, the "**Chartwell Liabilities**").
- (e) HCN shall not be required to prosecute collection or seek to enforce or resort to any remedies against any Chartwell Guaranteed Entity or any other Person liable to HCN on account of the Chartwell Liabilities or any guaranty thereof. Chartwell Corporate Parent's liabilities shall in no way be impaired, affected, reduced or released by reason of (i) the failure or delay by HCN to do or take any of the actions or things described in this Agreement, (ii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of any or all of the assets of the Chartwell Guaranteed Entities or the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings or any other inability to pay or perform affecting, the Chartwell Guaranteed Entities or any of their respective assets, or (iii) any allegation concerning, or contest of the legality or validity of, the indemnification obligations under this Agreement.
- (f) Chartwell shall cause Chartwell Corporate Parent (if and when it exists) to expressly waive the right to interpose all substantive and procedural defences of the law of guaranty, indemnification and suretyship, except the defences of prior payment or prior performance.

15.14 Covenants to Run with Lands

The Co-owners acknowledge that all covenants that are contained in this Agreement pertaining to the Co-owner's Interest are intended by them to run with the title to the Lands and to be binding upon their successors in title.

15.15 Further Assurances

Each party shall, from time to time and upon every reasonable written request of any other party so to do, give, execute and deliver all such further assurances as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement including, without limitation, entering into individual co-owners agreements dealing with individual Properties and related agreements and documents, in each case reasonably required by a party which will incorporate by reference the material provisions of this Agreement.

15.16 Entire Agreement

The Related Agreements constitute the entire agreement of the parties with respect to the subject matter of the Related Agreements and supersede all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether oral or written, of the parties with respect to that subject matter.

15.17 Paramountcy

In the event of any conflict, inconsistency or ambiguity between the terms of this Agreement and the terms of any other Participation Agreement, the terms of this Agreement shall govern.

15.18 Language

The parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, shall be drawn up in the English language only. *Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*

15.19 Confidentiality

- (a) All information referable to the private internal affairs of the parties and the Properties (including, without limitation, tenant specific information) ("**Confidential Information**") received by or on behalf of the parties, or any one of their respective officers, directors, servants, agents, shareholders or partners, shall be considered to have been received on an absolutely confidential basis, and save as hereinafter provided, shall not be disclosed or made accessible to any other Persons whatsoever, or used for its own benefit (other than in connection with the matters contemplated by the Related Agreements) or, to the extent that it is within the power of each party to control, disclosed or used by or for the benefit of its officers, directors, servants, agents, shareholders or partners (other than in connection with the matters contemplated by the Related Agreements) and, in

each case, to the intended, actual or probable detriment of the other party either while this Agreement is in force or at any time thereafter.

- (b) Nothing in this section shall preclude disclosure by a party of Confidential Information:
 - (i) to its officers, directors, employees, servants, agents, shareholders, lenders or prospective lenders and purchasers or prospective purchasers, but only to the extent necessary and provided that any such lenders, prospective lenders, purchasers or prospective purchasers shall have entered into an agreement with the disclosing party committing them to maintain the confidentiality of the Confidential Information on terms similar to those of this section 15.19 (a “**Confidentiality Agreement**”);
 - (ii) necessary or desirable to assist in a Disposition made or proposed to be made in accordance with this Agreement, provided that each Person to whom such Confidential Information is to be disclosed has first entered into a Confidentiality Agreement;
 - (iii) subject to reasonable notice to the other parties, in pleadings or in evidence in the course of any legal or administrative proceedings under circumstances whereby such party is obliged to disclose such information or in connection with any Dispute;
 - (iv) as may be required by law or by any governmental authority having jurisdiction over such party and being entitled in law to receive such information;
 - (v) consisting of financial data extracted from such information and necessary to reporting on the status of such party’s investment in the Properties or the Tenant LP, as the case may be, to its shareholders, unitholders, lenders, professional advisors and such other Persons as a prudent co-owner of real estate would determine acting reasonably;
 - (vi) that is or becomes generally available to the public (other than by disclosure by such party or its officers, directors, employees, servants, agents or shareholders contrary to this section 15.19);
 - (vii) that is required to be disclosed by the applicable regulations or policies of any regulatory agency or stock exchange having jurisdiction over such party; or
 - (viii) otherwise with the consent of the other parties.
- (c) Notwithstanding subsection 15.19(a), the parties acknowledge and agree that:
 - (i) HCN and Chartwell may refer to the other of them and their respective Affiliates on its respective website as one of its private market investment

partners, including a brief description of such entity and the inclusion of its logos which will permit the reader to link to the home page of the other entity.

- (ii) Each of HCN and Chartwell will provide an electronic version of its logo or their respective Affiliates' logos to the other upon the reasonable requirement of the other.
 - (iii) Each of HCN and its respective Affiliates and Chartwell and its respective Affiliates may post on its respective website reference to the Properties and information regarding performance of the portfolio and include such items as equity invested, equity committed, leveraged utilized, total purchase price, gross asset values and net asset values and performance-related data on a portfolio basis.
 - (iv) Each of HCN and its respective Affiliates and Chartwell and its respective Affiliates may also post on its website non-financial information respecting the Properties on a portfolio basis.
- (d) Notwithstanding anything herein to the contrary, a breach of this section, although constituting a Default, will not give rise to a right on the part of the non-Defaulting Participant to purchase the Defaulting Participant's Co-owner's Interest or Partnership Owner's Interest pursuant to this Agreement.

15.20 Perpetuities

On receipt of written notice from a party to the other party making reasonable request therefor from time to time in order to protect its rights from expiry due to the rule against perpetuity provisions, the parties will enter into a new agreement superseding this Agreement which is the same as this Agreement in all respects except that it shall be dated as of its execution date and shall reflect the then parties and their respective Co-owners' Interests and Partnership Owner's Interests. In particular such new agreement shall contain an identical provision to this section.

15.21 Joint Liability of HCN Co-owners

Each of the HCN Co-owners shall be jointly and severally liable for the observance, performance and fulfilment of each and every covenant, proviso, obligation, term and condition of any of the HCN Co-owners or by which any HCN Co-owner is bound under this Agreement.

15.22 Undertakings to Investment Canada

Subject to the terms and conditions of the letter agreement to The Minister Responsible for the *Investment Canada Act* (Canada) dated April 16, 2012 (the "**Letter**"), including, without limitation, the "Guidelines - Administrative Procedures, Monitoring of Investments" issued by Industry Canada in connection with the *Investment Canada Act* (Canada), each of HCN and Chartwell covenant to satisfy all undertakings made by such party, either jointly or separately as the case may be, to Her Majesty the Queen in right of Canada in the Letter for the purpose of

demonstrating that the acquisition and ownership of the Properties by the Co-Owners is likely to be of net benefit to Canada pursuant to Part IV of the *Investment Canada Act* (Canada).

15.23 HCN One Voice

Each of the HCN Co-owners acknowledges and agrees that in all matters in which any HCN Co-owner, by the terms of this Agreement, has a right, such right may be exercised by any HCN Co-owner on behalf of itself and all other HCN Co-owners, as applicable, and the Chartwell Co-owner shall be entitled to rely on the actions of any HCN Co-owner in that regard as binding upon each of the HCN Co-owners.

15.24 Counterparts/Facsimile

This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, including, without limitation, by facsimile transmission or by electronic delivery in portable document format (“**.pdf**”) or tagged image file format (“**.tiff**”), shall be equally effective as delivery of a manually executed counterpart thereof.

The balance of this page is intentionally left blank.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date hereof.

**HCN INVESTMENT GP-1 LTD. in its capacity
as the general partner of HCN CANADIAN
INVESTMENT-1 LP**

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the partnership

**HCN INVESTMENT GP-2 LTD. in its capacity
as the general partner of HCN CANADIAN
INVESTMENT-2 LP**

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the partnership

HCN CANADIAN LEASING LTD.

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the corporation

HCN ROSS LEASING LTD.

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the corporation

HCN IMPERIAL LEASING LTD.

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the corporation

HCN FOUNTAINS LEASING LTD.

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the corporation

HCN RENAISSANCE LEASING LTD.

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the corporation

HEALTH CARE REIT, INC.

Per: "Michael A. Crabtree"
Name: Michael A. Crabtree
Title: Senior Vice President and Treasurer

I/We have the authority to bind the corporation

CHARTWELL SENIORS HOUSING REIT

Per: "Vlad Volodarski"

Name: Vlad Volodarski

Title: Chief Financial Officer

I/We have the authority to bind the Trustees of the REIT

**CHARTWELL MASTER CARE
CORPORATION, as the sole trustee of GP M
TRUST in its capacity as the General Partner
of CHARTWELL MASTER CARE LP**

Per: "Vlad Volodarski"

Name: Vlad Volodarski

Title: Chief Financial Officer

I/We have the authority to bind the partnership

**CHARTWELL M HOLDINGS GP INC. in
its capacity as the General Partner of
CHARTWELL M HOLDINGS LP**

Per: "Vlad Volodarski"

Name: Vlad Volodarski

Title: Chief Financial Officer

I/We have the authority to bind the partnership

SCHEDULE A

Partnership Name	General Partner	HCN Limited Partner	Beneficial Freehold Co-Owners ¹	Property	Nominee
<u>Bucket B</u>					
CSH-HCN Lessee (Alexander) LP	CSH-HCN Lessee (Alexander) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Alexander Muir	CSH-HCN (Alexander) Inc.
CSH-HCN Lessee (Livingston) LP	CSH-HCN Lessee (Livingston) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Livingston Lodge	CSH-HCN (Livingston) Inc.
CSH-HCN Lessee (Lansing) LP	CSH-HCN Lessee (Lansing) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Lansing Retirement Residence	CSH-HCN (Lansing) Inc.
CSH-HCN Lessee (l'Ermitage) LP	CSH-HCN Lessee (l'Ermitage) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Residence l'Ermitage	Residence l'Ermitage Inc.
CSH-HCN Lessee (Écores) LP	CSH-HCN Lessee (Écores) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Residence des Écores	9131-6844 Québec Inc.
CSH-HCN Lessee (Boulogne) LP	CSH-HCN Lessee (Boulogne) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Manoir Bois-de-Boulogne	Manoir Bois de Boulogne Inc.
CSH-HCN Lessee (Pointe-aux-Trembles) LP	CSH-HCN Lessee (Pointe-aux-Trembles) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Manoir Pointe-aux-Trembles	Manoir Pointe-aux-Trembles Inc.
CSH-HCN Lessee (Laviolette) LP	CSH-HCN Lessee (Laviolette) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Les Jardins Laviolette	Les Jardins Laviolette Inc.
CSH-HCN Lessee (Notre-Dame) LP	CSH-HCN Lessee (Notre-Dame) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-2 LP	Residence Notre-Dame	Residence Notre-Dame (Victoriaville) Inc.
<u>Bucket C</u>					
CSH-HCN Lessee (Kingsville) LP	CSH-HCN Lessee (Kingsville) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Kingsville Court	CSH-HCN (Kingsville) Inc.
CSH-HCN Lessee (Leamington) LP	CSH-HCN Lessee (Leamington) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Leamington Court	CSH-HCN (Leamington) Inc.

¹ Where two beneficial freehold co-owners are shown in this column, each such co-owner owns an undivided 50% beneficial freehold interest in the Property

CSH-HCN Lessee (McConnell) LP	CSH-HCN Lessee (McConnell) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	McConnell Manor	CSH-HCN (McConnell) Inc.
CSH-HCN Lessee (Rideau) LP	CSH-HCN Lessee (Rideau) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Rideau Gardens	CSH-HCN (Rideau) Inc.
CSH-HCN Lessee (Marquis) LP	CSH-HCN Lessee (Marquis) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Royal Marquis	CSH-HCN (Marquis) Inc.
CSH-HCN Lessee (Pines) LP	CSH-HCN Lessee (Pines) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Whispering Pines	CSH-HCN (Pines) Inc.
CSH-HCN Lessee (Avondale) LP	CSH-HCN Lessee (Avondale) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Avondale Residence	CSH-HCN (Avondale) Inc.
CSH-HCN Lessee (Gordon) LP	CSH-HCN Lessee (Gordon) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	The Royal on Gordon	CSH-HCN (Gordon) Inc.
CSH-HCN Lessee (Scarlett) LP	CSH-HCN Lessee (Scarlett) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Scarlett Heights	CSH-HCN (Scarlett) Inc.
CSH-HCN Lessee (Royalcliffe) LP	CSH-HCN Lessee (Royalcliffe) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	The Royalcliffe Residence	CSH-HCN (Royalcliffe) Inc.
CSH-HCN Lessee (Tranquility) LP	CSH-HCN Lessee (Tranquility) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Tranquility Place	CSH-HCN (Tranquility) Inc.
CSH-HCN Lessee (Christopher) LP	CSH-HCN Lessee (Christopher) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Christopher Terrace	CSH-HCN (Christopher) Inc.
CSH-HCN Lessee (Belcourt) LP	CSH-HCN Lessee (Belcourt) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Manoir Belcourt	CSH-HCN (Belcourt) Inc.
CSH-HCN Lessee (Héritage) LP	CSH-HCN Lessee (Héritage) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Manoir Héritage	CSH-HCN (Héritage) Inc.
CSH-HCN Lessee (Harmonie) LP	CSH-HCN Lessee (Harmonie) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Residence Harmonie	Les Residences-Hôtellerie Harmonie Inc.
CSH-HCN Lessee (Chicoutimi) LP	CSH-HCN Lessee (Chicoutimi) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Villa Chicoutimi	Villa Chicoutimi Inc.
CSH-HCN Lessee (Saguenay) LP	CSH-HCN Lessee (Saguenay) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Villa Saguenay	Villa du Saguenay Inc.

CSH-HCN Lessee (Trembles) LP	CSH-HCN Lessee (Trembles) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Domaine des Trembles	Habitation Domaine des Trembles Inc.
CSH-HCN Lessee (Jonquière) LP	CSH-HCN Lessee (Jonquière) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Villa Jonquière	Villa Jonquière Inc.
CSH-HCN Lessee (Lachine) LP	CSH-HCN Lessee (Lachine) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Belvederes de Lachine	Les Belvédères de Lachine Inc.
CSH-HCN Lessee (Rive-Sud) LP	CSH-HCN Lessee (Rive-Sud) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Villa Rive-Sud	Villa Rive-Sud Inc.
CSH-HCN Lessee (Wellesley) LP	CSH-HCN Lessee (Wellesley) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Le Wellesley	Le Wellesley Inc.
CSH-HCN Lessee (Giffard) LP	CSH-HCN Lessee (Giffard) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Faubourg Giffard	Habitation Faubourg Giffard Inc.
CSH-HCN Lessee (l'Atrium) LP	CSH-HCN Lessee (l'Atrium) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Manoir & Cours de l'Atrium	Manoir et Cours de l'Atrium Inc.
CSH-HCN Lessee (Archer) LP	CSH-HCN Lessee (Archer) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Manoir Archer	Manoir Archer Inc.
CSH-HCN Lessee (Saint-Jérôme) LP	CSH-HCN Lessee (Saint-Jérôme) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Manoir Saint-Jérôme	Manoir St-Jérôme Inc.
CSH-HCN Lessee (l'Estrie) LP	CSH-HCN Lessee (L'Estrie) GP Inc.	HCN Canadian Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Villa de l'Estrie	Villa De L'Estrie Inc.
Bucket D (the Western Properties)²					
CSH-HCN Lessee (Fountains) LP	CSH-HCN Lessee (Fountains) GP Inc.	HCN Fountains Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Fountains of Mission	CSH-HCN (Fountains) Inc.
CSH-HCN Lessee (Renaissance) LP	CSH-HCN Lessee (Renaissance) GP Inc.	HCN Imperial Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	The Renaissance	Complexe de Résidence Renaissance Inc. / The Renaissance Resort Retirement Living Inc.
CSH-HCN Lessee (Imperial) LP	CSH-HCN Lessee (Imperial) GP Inc.	HCN Renaissance Leasing Ltd.	Chartwell Master Care LP HCN Canadian Investment-1 LP	Imperial Place	Résidence Place Imperiale Inc. / Imperial Place Residence Inc.

² The following three Properties are the Western Properties referred to in Section 8.1(h).