

**CHANGE OF OWNERSHIP**

APPROVED  
MAY 30 2015  
STATE HEALTH PLANNING AND DEVELOPMENT AGENCY

**Part I: Purchasing Organization Information**

Name of Organization: STV One Nineteen Senior Living, LLC  
d/b/a Somerby at St. Vincent's One Nineteen

Facility Name:  
(ADPH Licensure name) STV One Nineteen Senior Living, LLC  
d/b/a Somerby at St. Vincent's One Nineteen

SHPDA ID Number: 117-S5905  
Address (PO Box #): 200 One Nineteen Blvd.

City, State, Zip, County: Birmingham, Alabama 35242, Shelby

Number/Type Licensed Beds: 24 SCALF Beds

Owner(s): STV One Nineteen Senior Living, LLC

Operator(s): Somerby Senior Living, LLC

**Part II: Selling Organization Information**

Name of Organization: FSQC-AL, LLC, d/b/a Ashton Gables

Address (PO Box #): 2184 Parkway Lake Drive

City, State, Zip, County: Birmingham, Alabama 35244, Shelby County

Number/Type Licensed Beds: 48 SCALF (no longer in service)

Owner(s): FSQC-AL, LLC, d/b/a Ashton Gables

Operator(s): FSQC-AL, LLC, d/b/a Ashton Gables

**Part III: Value of Consideration**

Monetary Value of Purchase: \$250,000.00 No./Type Beds: 24 SCALF Beds

Terms of Purchase: See Attached

**Part IV: List of Certificate of Need Authority**

Number of Beds: 24

Types of Institutional Health Services: SCALF

List Service Area by County for Home Health Agencies: N/A

**On an Attached Sheet Please Address the Following:**

- \*1.) The financial scope of the project to include the preliminary estimate of costs broken down by equipment, construction, and yearly operating costs.
- \*2.) The services to be offered by the proposal (the applicant will state whether he has previously offered the service and whether the service is an extension of a presently offered service, or whether the service is a new service).
- \*3.) Whether the proposal will include the addition of any new beds.
- \*4.) Whether the proposal will involve the conversion of beds.
- \*5.) Whether the assets and stock (if any) will be acquired.

**Part V: Certification of Information**

I certify that I agree to provide the information necessary (financial, utilization of services and beds, etc.) so the new owner can have the necessary information to complete reports as necessary for the entire fiscal year. The purchaser has agreed to these terms,

**Seller(s) Signature(s):**

Owner(s): See Attached Order  
 Operator(s): See Attached Order  
 Title/Date: See Attached Order \_

I certify that I will be responsible for retaining records as necessary to complete reports required for the entire fiscal year, and agree to these terms. I have enclosed a check in the amount of \$2,500 made payable to 'Alabama State Health Planning and Development Agency' to cover the cost of the change of ownership.

YES     NO    The above Purchaser and Seller have agreed to these purchase terms.

Purchaser Signature:  \_\_\_\_\_

Title/Date: Authorized Agent                      11-18-15

These Findings of Fact and Conclusions of Law by Administrative Law Judge Branch Kloess and Clark Fine became the final decision of the agency without further proceedings as no exceptions were filed pursuant to §41-22-15 *Code of Alabama* 1975. The proposed order of a contested case hearing shall become the final decision of the agency without further proceedings, unless there are exceptions filed or an appeal to the agency within the time period by rule.

Rule 410-1-8-.05 of the Alabama Certificate of Need Program Rules and Regulations provides that where the public hearing has been assigned to an conducted by an Administrative Law Judge, the Administrative Law Judge shall render proposed findings of fact and conclusions of law in accordance with the Alabama Administrative Procedure Act, within thirty (30) days after the conclusion of the public hearing. Exceptions to the Findings of Fact and Conclusions of Law shall be filed with the agency within seven days after the Findings of Fact and Conclusions of Law are rendered. No exceptions were filed by any party to the proposed Findings of Fact and Conclusions of Law. Therefore, the proposed Findings of Fact and Conclusions of Law became the final decision of the agency without Board action.

Alva M. Lambert  
Alva M. Lambert  
Executive Director

December 31, 2014  
Date

BEFORE THE STATE HEALTH  
PLANNING AND DEVELOPMENT AGENCY

DEC 18 2014

STATE HEALTH PLANNING  
AND DEVELOPMENT AGENCY

|                                       |   |                    |
|---------------------------------------|---|--------------------|
| IN RE:                                | ) |                    |
|                                       | ) |                    |
| STV ONE NINETEEN SENIOR LIVING        | ) | Project AL2010-190 |
| LLC d/b/a SOMERBY AT ST. VINCENT'S    | ) |                    |
| ONE NINETEEN                          | ) |                    |
|                                       | ) |                    |
| NOLAND HEALTH SERVICES, INC.          | ) | Project AL2010-192 |
|                                       | ) |                    |
| FSQC - AL, LLC, d/b/a                 | ) | Project AL2010-193 |
| ASHTON GABLES AT RIVERCHASE           | ) |                    |
|                                       | ) |                    |
| DANIEL SENIOR LIVING OF               | ) | Project AL2010-195 |
| INVERNESS I, LLC d/b/a DANBERRY       | ) |                    |
| AT INVERNESS                          | ) |                    |
|                                       | ) |                    |
| FSQC-AL, LLC                          | ) | Project AL2014-032 |
|                                       | ) |                    |
| Certificate of Need Applications      | ) |                    |
| to Operate Specialty Care Assisted    | ) |                    |
| Living Beds in Shelby County, Alabama | ) |                    |

**RECOMMENDED ORDER FOR CONTESTED CASE PROCEEDINGS**

THESE CASES having come on for hearing under the "contested case" provisions of the Alabama Administrative Procedure Act, §§ 41-22-1, *et. seq.*, Code of Alabama, 1975, as amended (the "AAPA"), and the Alabama State Health Planning and Development Agency's ("SHPDA") Certificate of Need Program Rules and Regulations, §§ 410-1-1-.01, *et. seq.*, Alabama Administrative Code (the "CON Rules"), and the undersigned duly appointed Hearing Officers having received and carefully considered the Certificate of Need ("CON") applications in the above-referenced projects, other filings in the record, all of the relevant testimony, and the admitted evidence from the parties, along with arguments of their counsel, and being of the

opinion that a recommended order should be issued to the Certificate of Need Review Board (the "Board") of SHPDA, it is, accordingly, the recommendation of the undersigned Hearing Officers that the Board consider and adopt as the Final Order in these contested cases the following Findings of Fact and Conclusions of Law. Toward that end, this proposed order shall be served forthwith upon all counsel of record, along with SHPDA.

### **I. Relevant Procedural History**

On March 25, 2010, the Statewide Health Coordinating Council approved the request of STV One Nineteen Senior Living LLC d/b/a Somerby at St. Vincent's One Nineteen ("Somerby") for an adjustment to the Alabama State Health Plan that added thirty-six (36) beds to the Specialty Care Assisted Living Facility ("SCALF") bed inventory for Shelby County, Alabama. On May 28, 2010, Somerby submitted a CON application to convert twenty-four (24) Assisted Living beds into twenty-four (24) SCALF beds in Shelby County (Project AL-2010-190), Noland Health Services, Inc. ("Noland") submitted a CON application to construct and operate a thirty-six (36) SCALF bed facility in Shelby County (Project AL-2010-192), and FSQC-AL, LLC ("FSQC") submitted a CON application to add twelve (12) SCALF beds to its existing forty-eight (48) bed facility in Shelby County known as Ashton Gables in Riverchase (Project AL-2010-193). Additionally, on May 28, 2010, Somerby filed for an Emergency CON application to convert twenty-four (24) Assisted Living beds into twenty-four (24) SCALF beds in Shelby County (Project AL-2010-189E). On June 1, 2010, Daniel Senior Living on Inverness I, LLC ("Danberry") submitted a CON application to convert twenty-four (24) Assisted Living beds to twenty-four (24) SCALF beds in Shelby County. The competing applications were batched by

SHPDA for review and the contested cases regarding the batched proceedings were assigned to Administrative Law Judge ("ALJ") Michael Cole.

On September 23, 2010, before the batched proceedings before ALJ Cole could begin, SHPDA issued a final order granting Somerby's Emergency CON application. The final order of SHPDA was appealed by Danberry, and the batched contested case before ALJ Cole was stayed pending the appeal. On August 29, 2014, the Alabama Supreme Court issued its final ruling holding that Somerby's 2010 Emergency CON was improperly granted by SHPDA. Following the Supreme Court's ruling, the stay of the batched contested case was lifted, and on October 5, 2014, ALJ Branch Kloess was assigned to hear the batched contested case over the batched CON applications.

On July 15, 2014, FSQC submitted a CON application to relocate forty-eight (48) SCALF beds from its facility formerly known as Ashton Gables at Riverchase to its facility known as Lake View Estates, each of which is in Shelby County (Project AL-2014-032). Both Somerby and Danberry filed notices of opposition and requests for a contested case hearing to FSQC's project. On September 25, 2014, ALJ Clark Fine was assigned to hear the contested case.

By agreement of the parties, the contested case hearings for the batched CON applications and the relocation CON application were scheduled for and took place on December 18, 2014 (the "Contested Case Hearings"). During the Contested Case Hearings, each of the applicants presented a single witness. All exhibits introduced by the applicants were admitted into evidence.

## **II. Findings of Fact**

1. The contested cases concern: (1) four separate batched CON applications to add SCALF beds to either new or existing facilities in Shelby County; and (2) one CON application to relocate SCALF beds to an existing facility in Shelby County.

2. Each of the CON applications were deemed complete by SHPDA. A review schedule was established pursuant to SHPDA Rule § 410-1-7-.08, and the review schedule was properly adhered to, for each CON application.

3. The 2004-2007 Alabama State Health Plan, as updated on April 1, 2010 and August 12, 2014, is the latest adopted revision and update of the State Health Plan in effect at the time each of the five CON applications was filed with SHPDA. According to § 410-2-4-.10 of the 2004-2007 Alabama State Health Plan, the county is the appropriate geographic planning area for SCALF beds, and after the March 2010 adjustment to the State Health Plan, there were a total of thirty-six (36) additional SCALF beds available in Shelby County. At the Contested Case Hearings, all parties agreed that there was a need for thirty-six (36) additional SCALF beds in Shelby County, and the finding is hereby made that there is a need for thirty-six (36) additional SCALF beds in Shelby County.

4. The forty-eight (48) SCALF beds FSQC seeks to relocate pursuant to its 2014 CON application are recognized as existing beds under the latest approved revision of the Alabama State Health Plan effective at the time the application for the project was filed. Accordingly, the approval of FSQC's 2014 CON application to relocate these 48 SCALF beds will not result in the addition of any SCALF beds in Shelby County.

5. Each of the applicants in this case recognized, in a sense of compromise, that a settlement of all contested cases surrounding SCALF beds in Shelby County would offer the best possible outcome for the applicants and the residents of Shelby County in need of SCALF care. As such, prior to the contested case hearings each of the applicants entered into a Settlement Agreement with each other pursuant to which each of the applicants agreed to support the approval of four CON applications, amended as set forth below:

- FSQC agreed to withdraw its 2010 CON application (Project AL-2010-193) for twelve (12) additional SCALF beds at Ashton Gables;
- FSQC agreed to amend its 2014 CON application (Project AL 2014-032) to request additional CON authority to (i) relocate up to twenty-four (24) of the SCALF beds to Somerby's Somerby at St. Vincent's One Nineteen facility, and (ii) relocate up to twelve (12) of the SCALF beds to Danberry's Daniel Senior Living at Inverness facility.
- Somerby agreed to amend its 2010 CON application (Project AL-2010-190) to request approval of the relocation of twenty-four (24) SCALF beds from FSQC's facility formerly known as Ashton Gables to its Somerby at St. Vincent's One Nineteen facility;
- Danberry agreed to amend its 2010 CON application (Project AL-2010-195) to request approval for the relocation of twelve (12) SCALF beds from FSQC's facility formerly known as Ashton Gables to its Daniel Senior Living at Inverness facility and for approval to convert twelve (12) of its existing Assisted Living beds at its Daniel Senior Living at Inverness facility into twelve (12) SCALF beds.
- Noland agreed to amend its 2010 CON application (Project AL-2010-192) to request approval for only twenty-four (24) SCALF beds at its new proposed facility in Shelby County;



6. Each of Project AL-2010-190, Project AL-2010-192, Project AL-2010-195 and Project AL-2014-132, as amended (collectively, the "Amended Projects"), is consistent with the long-range development plans of the applicants.

7. The availability of less costly, more efficient, more appropriate, or more effective alternatives to each of the Amended Projects have been considered, and each of the Amended Projects is clearly the least costly, most efficient, and most appropriate alternative.

8. Each of the Amended Projects is financially feasible.

9. There is a substantial unmet public need for each of the Amended Projects.

10. Each of the Amended Projects demonstrated that it will comply with all applicable laws and regulations affecting it, including local zoning ordinances and building codes, statutes and regulations for the protection of the environment, and licensure rules, regulations, and standards.

11. There is specific data that is relevant, reasonable, and appropriate that supports the need for each of the Amended Projects.

12. Each of the Amended Projects is consistent with the community's overall health care and health related plans.

13. The location of each of the Amended Projects is appropriate.

14. Each of the Amended Projects has a more than reasonable potential to meet licensure standards.

15. None of the Amended Projects will have an adverse effect on existing facilities providing similar services.

16. Each of the Amended Projects is complimentary to and supportive of the existing health care system.
17. Community reaction to each of the Amended Projects has been considered and is overwhelmingly positive.
18. Each of the Amended Projects will contribute to meeting the health related needs of the traditionally medically underserved population.
19. Each of the applicants is an appropriate applicant.
20. Each of the applicants has the professional and managerial capability, and adequate manpower, to implement and operate their respective Amended Project.
21. Less costly, more efficient and more appropriate alternatives to each of the Amended Projects are not available, and the development of such alternatives has been studied and found not practicable.
22. Existing in-patient facilities providing in-patient services similar to those proposed are being used in an appropriate and efficient manner consistent with community demands for such services.
23. Patients will experience serious problems in obtaining inpatient care of the type proposed in the absence of each of the Amended Projects.
24. To the extent the Amended Projects involve new construction, alternatives to new construction (e.g. modernization and sharing arrangement) have been considered and have been implemented to the maximum extent practicable.

### III. Conclusions of Law

Based on the foregoing findings of fact, and the application of those facts to the controlling legal principles found in the CON statute, the CON Rules, precedents in contested cases, and court decisions, the Board reaches the following conclusions of law:

1. This proceeding has been lawfully conducted pursuant to Alabama Code §§ 41-22-12 through 15, and CON Rules §§ 410-1-08-.01 to .05.
2. All parties and intervenors were properly notified and appeared in person and through counsel.
3. Each of the Amended Projects is consistent with the latest approved revision of the Alabama State Health Plan effective at the time the application for each project was filed.
4. Each of the Amended Projects complies with all applicable review criteria set forth in CON Rules §§ 410-1-6-.01 through 410-1-6-.18 and Alabama Code § 22-21-264.
5. Each of the findings required by Alabama Code § 22-21-266 is hereby made with respect to each of the Amended Projects.
6. Pursuant to CON Rule § 410-1-8-.02(3), each of the parties shall each be taxed with one-fourth of the costs of the contested case hearing, including, but not limited to, the fees of the Hearing Officers.

**WHEREFORE, PREMISES CONSIDERED**, the undersigned Hearing Officers hereby find as follows:

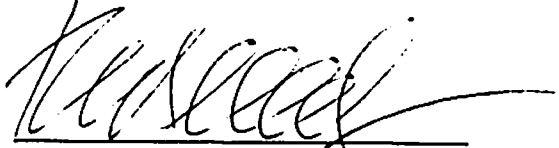
- The application of Noland Health Services, Inc, Project No. AL-2010-192, as amended to request a total of twenty-four (24) SCALF beds at its proposed SCALF facility, is due to be, and is, **APPROVED** by the Certificate of Need Review Board of the State Health

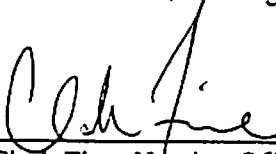
Planning and Development Agency; and

- The application of FSQC-AL, LLC, Project No. AL-2014-032, as amended to relocate forty-eight (48) SCALF beds from its facility formerly known as Ashton Gables to its facility known as Lake View Estates, and giving FSQC-AL, LLC the further authority to (i) relocate up to twenty-four (24) of the SCALF beds to Somerby's Somerby at St. Vincent's One Nineteen facility, and (ii) relocate up to twelve (12) of the SCALF beds to Danberry's Daniel Senior Living at Inverness facility, is due to be, and is, **APPROVED** by the Certificate of Need Review Board of the State Health Planning and Development Agency; and
- The application of STV One Nineteen Senior Living LLC d/b/a Somerby at St. Vincent's One Nineteen, Project AL-2010-190, as amended to request the relocation of a total of twenty-four (24) beds from FSQC's former Ashton Gables facility to its Somerby at St. Vincent's One Nineteen facility is due to be, and is, **APPROVED** by the Certificate of Need Review Board of the State Health Planning and Development Agency; and
- The application of Daniel Senior Living of Inverness, I, LLC, Project No. AL-2010-195, as amended to request the relocation of a total of twelve (12) beds from FSQC's Ashton Gables facility to its Daniel Senior Living at Inverness facility and for the conversion of a total of twelve (12) additional SCALF beds at its Daniel Senior Living at Inverness facility, is due to be, and is, **APPROVED** by the Certificate of Need Review Board of the State Health Planning and Development Agency.
- This Recommended Order becomes the Final Order of SHPDA at the time each of the

four (4) Certificates of Need, as approved above, are issued by SHPDA. If, for any reason, this Recommend Order does not become the Final Order of SHPDA, then this Recommended Order is null and void and the Amended Projects will revert back to their pre-amendment status for purposes of any further CON proceedings.

DATED, this the 18 day of December, 2014.

  
\_\_\_\_\_  
Branch Kloess, Hearing Officer

  
\_\_\_\_\_  
Clark Fine, Hearing Officer

**ADOPTED**

Certificate of Need Review Board

\_\_\_\_\_  
Neal Morrison  
Chairperson

DONE this \_\_\_\_\_ day of December, 2014.

**ALABAMA  
STATE HEALTH PLANNING & DEVELOPMENT AGENCY  
CERTIFICATE OF NEED  
FOR HEALTH CARE SERVICES**

**I. IDENTIFICATION**

|                                      |   |   |
|--------------------------------------|---|---|
| 1. Certificate of Need<br>2690-SCALF | 2. Date Issued:<br>December 31, 2014  | 3. Termination Date:<br>December 30, 2015 |
| 4. Project Number:<br>AL2010-190     | 5. Name of Facility:<br>Sommerby at St. Vincent's One Nineteen                |   |
| 6. Service Area:<br>Shelby County    | 7. Location of Facility:<br>200 One Nineteen Boulevard, Hoover, Alabama 35242 |   |
| 8. Type of Facility:<br>SCALF        | 9. Number of Beds:<br>24  | 10. Estimated Cost:<br>\$159,500.00       |

11. Services to be Provided: The applicant proposes to relocate twenty-four (24) Specialty Care Assisted Living Facility beds from FSQC's facility formerly known as Ashton Gables to its Sommerby at St. Vincent's One Nineteen facility.

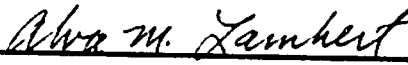
**II. CERTIFICATE OF NEED**

In accordance with Section 22-21-260 through 22-21-279, Code of Alabama, 1975, the Certificate of Need Review Board finds as follows:

1. There is a need for the project.
2. There are in force in the State of Alabama reasonable minimum standards of licensure and methods of operation for hospitals and health facilities.
3. The prescribed standards of licensure and operation will be applied and enforced with respect to the applicant, hospital or other health facility.

**III. ISSUANCE OF CERTIFICATE OF NEED**

This Certificate of Need is issued to **STV One Nineteen Senior Living, LLC d/b/a Sommerby at St. Vincent's One Nineteen** only, for a period not to exceed 12 months from the date of issuance. This Certificate of Need is not transferable and any action on the part of the Applicant to transfer this Certificate of Need will render the Certificate of Need null and void.

  
\_\_\_\_\_  
Alva M. Lambert  
Executive Director

**ORIGINAL**

## SETTLEMENT AGREEMENT

18th THIS SETTLEMENT AGREEMENT (this "Agreement"), is made and entered into this day of December, 2014, by and between **STV ONE NINETEEN SENIOR LIVING, LLC**, a Delaware limited liability company ("Somerby"), **FSQC-AL, LLC**, a Maryland limited liability company ("FSQC"), **NOLAND HEALTH SERVICES, INC.**, a Delaware non-profit corporation ("Noland"), and **DANIEL SENIOR LIVING OF INVERNESS I, LLC**, an Alabama limited liability company ("Danberry"). Collectively Somerby, FSQC, Noland, and Danberry, as well as any affiliates are referred to as the "Parties." The Parties intend for this Agreement to be binding on any affiliates or successors of the Parties.

WHEREAS, on March 25, 2010, the Statewide Health Coordinating Council approved Somerby's request for an adjustment to the Alabama State Health Plan that added thirty-six (36) beds to the Specialty Care Assisted Living Facility ("SCALF") bed inventory for Shelby County, Alabama. Shortly thereafter, Somerby (AL-2010-190), Noland (AL-2010-192), FSQC (AL-2010-193), and Danberry (AL-2010-195), filed CON applications for either all or some portion of the newly available SCALF beds in Shelby County. Those applications were batched together for review and the contested case regarding the batched proceedings was assigned to Administrative Law Judge ("ALJ") Michael Cole. The four batched CON applications filed in 2010 referenced above will be referred to hereinafter as the "2010 CON Projects" and the contested cases regarding the 2010 CON Projects will be referred to hereinafter as the "Batched Contested Cases."

WHEREAS, on May 28, 2010, Somerby filed an Emergency CON application to convert twenty-four (24) of its Assisted Living beds in Shelby County into twenty-four (24) SCALF beds. Danberry and Noland opposed Somerby's Emergency CON request; however, on September 23, 2010, SHPDA issued its final order granting Somerby's Emergency CON application. The final order of SHPDA was appealed by Danberry, and the Batched Contested Cases were stayed pending the appeal.

WHEREAS, on July 15, 2014, FSQC submitted a CON application to relocate forty-eight (48) SCALF beds from its facility formerly known as Ashton Gables to its facility known as Lake View Estates, all of which are in Shelby County (Project No. AL 2014-032). Both Somerby and Danberry filed notices of opposition and requests for a contested case hearing. On September 25, 2014, ALJ Clark Fine was assigned to hear the contested case. FSQC's CON application proposing to relocate forty-eight (48) SCALF beds in the above-referenced project will be referred to hereinafter as the "Relocation CON Project." The Parties have agreed, and ALJ Fine has ordered, that the hearing on the Relocation CON Project will occur December 18, 2014.

WHEREAS, on August 29, 2014, the Alabama Supreme Court issued its final ruling holding that Somerby's 2010 Emergency CON was improperly granted by SHPDA. Following the Supreme Court's ruling, the stay of the Batched Contested Cases was lifted, and on October 5, 2014, ALJ Branch Kloess was assigned to hear the Batched Contested Cases. The Parties have agreed, and ALJ Kloess has ordered, that the hearing on the Batched Contested Cases will occur December 18, 2014.

WHEREAS, the Parties desire to resolve their dispute without incurring further litigation expenses.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements contained herein, and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. **Relocation CON Project.**

- a. The presentation of evidence in support of the Relocation CON Project shall occur before ALJ Fine on December 18, 2014. Prior to or at the commencement of the presentation of evidence to ALJ Fine, FSQC will amend its CON application to request additional CON authority to (1) relocate up to twenty-four (24) of the SCALF beds to Somerby's Somerby at St. Vincent's One Nineteen facility, and (2) relocate up to twelve of the SCALF beds to Danberry's Daniel Senior Living at Inverness facility.
- b. FSQC shall present evidence in support of its CON application at the hearing, and FSQC, Somerby, and Danberry will represent to ALJ Fine that (i) there is a genuine need for the approval of the Relocation CON Project, (ii) that it has no objection to approval of the Relocation CON Project, and (iii) that the Relocation CON Project satisfies and is consistent with the requirements of the Alabama State Health Plan, the Certificate of Need Program Rules and Regulations, and all other applicable statutes and regulations.
- c. All Parties have cooperated in the joint preparation of a proposed order recommending the approval of the Relocation CON Project (the "Proposed Order" a copy of which is attached as **Exhibit A**) that will allow relocation of the beds formerly located at Ashton Gables to (i) FSQC's Lake View Estates facility; (ii) Somerby's St. Vincent's One Nineteen facility; and (iii) Danberry's Daniel Senior Living of Inverness facility. At the contested case hearing on the Relocation CON Project, the Parties shall jointly request that the ALJ enter the Proposed Order. No Party shall submit exceptions to the recommended order entered by the ALJ unless (i) the ALJ recommends the denial of the Relocation CON, in whole or in part, or (ii) either Somerby or Danberry fail to tender the purchase price for the relocated beds into escrow within two (2) business days of the December 18, 2014, hearing, in which case FSQC shall be permitted to file exceptions to the ALJ's recommended order during the exceptions period.
- d. No Party shall take any action to appeal or oppose in any way the approval of the Relocation CON Project.
- e. Upon entry of the Proposed Order, FSQC shall sell (i) twenty-four (24) of the forty-eight (48) SCALF beds to Somerby, and (ii) twelve (12) of the forty-eight (48) SCALF beds to Danberry. FSQC's sale of beds to Somerby and



Danberry (the "Purchasers") shall be contingent on (i) the execution by the Purchasers of a Purchase Agreement in substantially the same form as the draft agreement attached as **Exhibit B**; (ii) payment by Somerby to FSQC of a total purchase price of Two Hundred Fifty Thousand Dollars (\$250,000) for the twenty-four (24) SCALF beds being purchased within seven (7) days of the entry of the Proposed Order; and (iii) payment by Danberry to FSQC of a total purchase price of One Hundred Thousand (\$100,000) for the twelve (12) SCALF beds being purchased within seven (7) days of the entry of the Proposed Order. No Party shall oppose in any way a Purchaser's efforts to obtain licensure from the Alabama Department of Public Health of the SCALF beds purchased from FSQC pursuant to this Agreement.

f. This Settlement Agreement is rendered null and void should the ALJs fail to sign the Proposed Order or should SHPDA fail to adopt the Proposed Order as the Final Order of SHPDA. In the event that the Proposed Order does not become the Final Order of SHPDA, then any amendment to a Party's CON application will be reversed and all CON applications will return to their pre-amendment status for any further CON proceedings.

2. **2010 CON Projects.**

- a. The presentation of evidence in support of the 2010 CON Projects shall occur before ALJ Kloess on December 18, 2014. Prior to the hearing, the Parties will amend their CON applications as set forth below:
  - i. Prior to or at the commencement of the presentation of evidence to ALJ Kloess, Somerby will amend its CON application in Project No. AL 2010-190 to request approval of the relocation of twenty-four (24) SCALF beds from FSQC's facility formerly known as Ashton Gables to its Somerby at St. Vincent's One Nineteen facility;
  - ii. Prior to or at the commencement of the presentation of evidence to ALJ Kloess, Danberry will amend its CON application in Project No. AL 2010-195 to request approval for the relocation of twelve (12) SCALF beds from FSQC's facility formerly known as Ashton Gables to its Daniel Senior Living at Inverness facility, and for approval to convert twelve (12) of its existing Assisted Living beds at its Daniel Senior Living at Inverness facility into twelve (12) new SCALF beds;
  - iii. Prior to or at the commencement of the presentation of evidence to ALJ Kloess, Noland will amend its CON application in Project AL-20100-192 to request approval for only twenty-four (24) new SCALF beds at its proposed facility in Shelby County; and
  - iv. FSQC will withdraw its CON application in Project No. AL 2010-193.
- b. Danberry, Somerby, and Noland will present evidence in support of their respective CON applications, as amended, at the hearing. Danberry,

Somerby, and Noland will each represent to ALJ Kloess that (i) there is a genuine need for the approval of modified Project AL-2010-190, modified Project AL-2010-192, and modified Project AL-2010-195, (ii) that it has no objection to approval of modified Project AL-2010-190, modified Project AL-2010-192, and modified Project AL-2010-195, and (iii) that modified Project AL-2010-190, modified Project AL-2010-192, and modified Project AL-2010-195 satisfy and are consistent with the requirements of the Alabama State Health Plan, the Certificate of Need Program Rules and Regulations, and all other applicable statutes and regulations. FSQC will represent to ALJ Kloess that it has no objection to approval of modified Project AL-2010-190, modified Project AL-2010-192, and modified Project AL-2010-195.

- c. All Parties have cooperated in the joint preparation of a Proposed Order recommending the approval of modified Project AL-2010-190, modified Project AL-2010-192, and modified Project AL-2010-195). At the contested case hearing on the modified 2010 CON Projects, the Parties shall jointly request that the ALJ enter the Proposed Order. No Party shall submit exceptions to the recommended order entered by the ALJ unless the ALJ's recommended order is materially different from the Proposed Order, in which case any Party that receives approval for fewer new or relocated SCALF beds than proposed in the Proposed Order shall be permitted to file exceptions to the ALJ's recommended order.
- d. No Party shall take any action to appeal or oppose in any way the approval of modified Project AL-2010-190, modified Project AL-2010-192, and modified Project AL-2010-195.
- e. This Settlement Agreement is rendered null and void should the ALJs fail to sign the Proposed Order or should SHPDA fail to adopt the Proposed Order as the Final Order of SHPDA. In the event that the Proposed Order does not become the Final Order of SHPDA, then any amendment to a Party's CON application will be reversed and all CON applications will return to their pre-amendment status for any further CON proceedings.

3. **Separate and Independent Rights and Obligations.** The rights and obligations of the Parties under Section 1 of this Agreement are separate and independent of, and the loss or elimination of any such rights shall have no effect on, the rights and obligations of the Parties under Section 2 of this Agreement. Likewise, the rights and obligations of the Parties under Section 2 of this Agreement are separate and independent of, and the loss or elimination of any such rights shall have no effect on, the rights and obligations of the Parties under Section 1 of this Agreement. Notwithstanding the foregoing, were a Party to breach its obligations under Section 2 of this Agreement, said Party would forfeit its rights under Section 1 of this Agreement, and were a Party to breach its obligations under Section 1 of this Agreement, said Party would forfeit its rights under Section 2 of this Agreement.

4. **Additional SCALF Beds.** None of the Parties shall take any action to intervene in or oppose in any way any of the other Parties' efforts to obtain additional SCALF beds in

Shelby County pursuant to Alabama State Health Plan 2004–2007, § 410-2-4-.04(2)(d)6(ii), for a period of four (4) years from the latest date of a Party's receipt of licensure approval from the Alabama Department of Public Health for their respective SCALF beds addressed in Section 1 and Section 2 of this Agreement; provided that the Party seeking additional SCALF beds complies with the occupancy rate requirement under said § 410-2-4-.04(2)(d)6(ii).

5. **Release of Somerby.** With the exception of those obligations imposed by this Agreement, which obligations are not released hereunder, FSQC, Danberry, and Noland do hereby, for themselves and their affiliates, successors and assigns completely, unconditionally, irrevocably and forever release, remise, acquit and discharge Somerby, its members, managers, parents, subsidiaries and affiliated companies and each of their respective past, present and future officers, directors, agents, employees, attorneys, sureties, successors, heirs, agents and assigns, jointly and severally, of and from each and every claim, demand, right, action, cause of action, suit and liability of every kind, character and description, direct and consequential, legal, equitable and otherwise, known and unknown, that FSQC, Danberry, and Noland may now have or may have had from the beginning of time until the date of this Agreement arising out of or related to the Relocation CON Project and/or the 2010 CON Projects.

6. **Release of Danberry.** With the exception of those obligations imposed by this Agreement, which obligations are not released hereunder, FSQC, Somerby, and Noland do hereby, for themselves and their affiliates, successors and assigns completely, unconditionally, irrevocably and forever release, remise, acquit and discharge Danberry, its members, managers, parents, subsidiaries and affiliated companies and each of their respective past, present and future officers, directors, agents, employees, attorneys, sureties, successors, heirs, agents and assigns, jointly and severally, of and from each and every claim, demand, right, action, cause of action, suit and liability of every kind, character and description, direct and consequential, legal, equitable and otherwise, known and unknown, that FSQC, Somerby, and Noland may now have or may have had from the beginning of time until the date of this Agreement arising out of or related to the Relocation CON Project and/or the 2010 CON Projects.

7. **Release of Noland.** With the exception of those obligations imposed by this Agreement, which obligations are not released hereunder, FSQC, Danberry, and Somerby do hereby, for themselves and their affiliates, successors and assigns completely, unconditionally, irrevocably and forever release, remise, acquit and discharge Noland, its subsidiaries and affiliated companies and each of their respective past, present and future officers, directors, agents, employees, attorneys, sureties, successors, heirs, agents and assigns, jointly and severally, of and from each and every claim, demand, right, action, cause of action, suit and liability of every kind, character and description, direct and consequential, legal, equitable and otherwise, known and unknown, that FSQC, Danberry, and Somerby may now have or may have had from the beginning of time until the date of this Agreement arising out of or related to the Relocation CON Project and/or the 2010 CON Projects.

8. **Release of FSQC.** With the exception of those obligations imposed by this Agreement, which obligations are not released hereunder, Somerby, Danberry, and Noland do hereby, for themselves and their affiliates, successors and assigns completely, unconditionally, irrevocably and forever release, remise, acquit and discharge FSQC, its members, managers, parents, subsidiaries and affiliated companies and each of their respective past, present and

future officers, directors, agents, employees, attorneys, sureties, successors, heirs, agents and assigns, jointly and severally, of and from each and every claim, demand, right, action, cause of action, suit and liability of every kind, character and description, direct and consequential, legal, equitable and otherwise, known and unknown, that Somerby, Danberry, and Noland may now have or may have had from the beginning of time until the date of this Agreement arising out of or related to the Relocation CON Project and/or the 2010 CON Projects.

9. **No Admission.** The Parties represent and warrant to each other, that the Parties specifically understand and agree that this Agreement is a settlement and compromise of disputed claims and that the existence of this Agreement or any payment made hereunder shall not be construed as an admission of liability or of the truth of the allegations, claims or contentions of any party, and that there are no covenants, promises, undertakings or understandings between the Parties outside of this Agreement except as specifically set forth herein.

10. **Confidentiality.** The Parties agree that the existence of this Agreement and the terms of this Agreement shall be forever treated as confidential and shall not be disclosed or released to any persons except properly interested parties, including the parties' attorneys, accountants, tax preparers or as may be required by law.

11. **Representations and Voluntary Action.** FSQC, Danberry, Noland, and Somerby represent, warrant and agree that each has had the opportunity to be represented by their own counsel, that they have thoroughly read and understood the terms of this Agreement, and have voluntarily entered into this Agreement.

12. **Severability.** In the event any provision of this Agreement is deemed invalid or unenforceable, the validity or enforceability of the remaining provisions shall not be affected thereby, and the Parties shall restate the affected provisions in a manner that most closely accords with the language and intent of such provision.

13. **Counterparts.** The Agreement may be executed in counterparts, each of which shall be deemed the one and same instrument.

14. **Construction.** This Agreement shall not be construed more strictly against one party than against the other by virtue of the fact that the Agreement may have been drafted or prepared by counsel for one of the parties, it being recognized that all parties to this Agreement have contributed substantially and materially to the negotiation and preparation of this Agreement.

15. **Headings.** The headings of this Agreement are for convenience only and shall not affect the interpretation thereof.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama, without giving effect to any conflicts of law principles requiring application of the laws of another jurisdiction

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

**STV ONE NINETEEN SENIOR LIVING, LLC**  
a Delaware limited liability company

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

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

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

**NOLAND HEALTH SERVICES, INC.**  
a Delaware non-profit corporation

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

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

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

**FSQC-AL, LLC**  
a Maryland limited liability company

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

Printed Name: Bruce J. Mackey Jr.

Title: President & CEO

**DANIEL SENIOR LIVING OF INVERNESS I, LLC**  
an Alabama limited liability company

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

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

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

**STV ONE NINETEEN SENIOR  
LIVING, LLC**  
a Delaware limited liability company

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

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

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

**NOLAND HEALTH SERVICES, INC.**  
a Delaware non-profit corporation

By: *Gary A. Glasscock*

Printed Name: GARY A. GLASSCOCK

Title: PRESIDENT

**FSQC-AL, LLC**  
a Maryland limited liability company

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

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

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

**DANIEL SENIOR LIVING OF  
INVERNESS I, LLC**  
an Alabama limited liability company

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

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

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

**STV ONE NINETEEN SENIOR LIVING, LLC**  
a Delaware limited liability company

By: [Signature]

Printed Name: Brian D. Peltier

Title: Interim Agent

**NOLAND HEALTH SERVICES, INC.**  
a Delaware non-profit corporation

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

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

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

**FSQC-AL, LLC**  
a Maryland limited liability company

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

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

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

**DANIEL SENIOR LIVING OF INVERNESS I, LLC**  
an Alabama limited liability company

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

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

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

**STV ONE NINETEEN SENIOR LIVING, LLC**  
a Delaware limited liability company

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

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

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

**NOLAND HEALTH SERVICES, INC.**  
a Delaware non-profit corporation

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

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

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

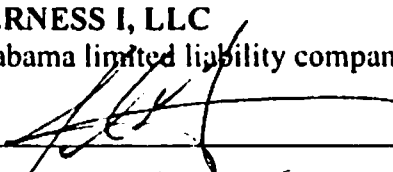
**FSQC-AL, LLC**  
a Maryland limited liability company

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

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

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

**DANIEL SENIOR LIVING OF INVERNESS I, LLC**  
an Alabama limited liability company

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

Printed Name: JOHN GUNDESON

Title: President - David Compton