

**STATE OF TENNESSEE
BEFORE THE HEALTH FACILITIES COMMISSION**

In The Matter of:)	
)	
The Pointe at Kirby Gate)	
Assisted Care Living Facility)	
License No. 131,)	Case No. 2024031471, 2024036161
)	
Respondent.)	
)	
Memphis, Tennessee)	

CONTINGENT CHANGE OF OWNERSHIP ORDER

This matter came to be heard before the Health Facilities Commission (“Commission”), by and through the Office of Legal Services, and The Pointe at Kirby Gate (“Respondent”) that the Commission adopt this Contingent Change of Ownership Order, the terms of which have been agreed upon by the parties, as signified by their signatures below.

Respondent, by signature to this Contingent Change of Ownership Order, waives the right to a contested case hearing and any and all rights to judicial review of this matter.

Respondent agrees that presentation to and consideration of this Contingent Change of Ownership Order by the Commission for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Commission or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should the Contingent Change of Ownership Order not be ratified. Likewise, all matters, admissions, and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

I. JURISDICTION

1. The Commission is empowered to license and regulate hospitals, recuperation centers, nursing homes, homes for the aged, residential HIV supportive living facilities, assisted-care living facilities, home care organizations, residential hospices, birthing centers, prescribed childcare centers, renal dialysis clinics, ambulatory surgical treatment centers, outpatient diagnostic centers, adult care homes, and traumatic brain injury residential homes. T.C.A. § 68-11-202(a)(1).
2. The Commission has the authority to conduct reviews of all facilities licensed under this part in order to determine compliance with fire and life safety code rules as promulgated by the Commission. T.C.A. § 68-11-202(b)(1)(A).
3. “Assisted-care living facility” (“ACLF”) means a facility, building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services. T.C.A. § 68-11-201(4)(A) and Tenn. Comp. R. & Regs. 0720-26-.02(7).
4. “Primarily aged” means that a minimum of fifty-one percent (51%) of the population of the facility is at least sixty-two (62) years of age. Tenn. Comp. R. & Regs. 0720-26-.02(34).
5. An assisted-care living facility shall provide on site to its residents room and board and non-medical living assistance services appropriate to each resident’s needs, such as assistance with bathing, dressing, grooming, preparation of meals and other activities of daily living. T.C.A. § 68-11-201(4)(B) and Tenn. Comp. R. & Regs. 0720-26-.02(2).
6. Any person, partnership, association, corporation, any state, county or local governmental unit, or any division, department, board or agency of the governmental unit, in order to lawfully establish, conduct, operate or maintain a hospital, recuperation center, nursing home, home for the aged, residential HIV supportive living facility, assisted-care living

facility, home care organization, residential hospice, birthing center, prescribed child care center, renal dialysis clinic, outpatient diagnostic center, ambulatory surgical treatment center, adult care home or traumatic brain injury residential homes in this state, shall obtain a license from the commission, upon the approval and recommendation of the commission in the following manner:

(1) The applicant shall submit an application on a form to be prepared by the commission with the approval of the commission, showing that the applicant is of **reputable and responsible character and able to comply with the minimum standards** for a facility and with rules and regulations lawfully promulgated under this part. The application shall contain the following additional information:

(A) The name or names of the applicant or applicants;

(B) The type of institution to be operated;

(C) The location of the institution;

(D) The name of the person or persons to be in charge of the institution or, for adult care home applicants, the name of the resident manager, if applicable;

(E) A certification that the applicant has implemented a policy of informing its employees of their obligations under § 71-6-103 to report incidents of abuse or neglect;

(F) If an application for a nursing home license, a list of all nursing homes that the applicant, or any person or entity holding a majority legal or equitable interest in the applicant, owns or operates and, if the applicant has not operated a nursing home in this state for a continuous period of twenty-four (24) months preceding the application, the information specified in § 68-11-804(c)(1) for each such nursing home located outside this state; and

(G) Such other information as the commission, with the approval of the commission, may require.

T.C.A. § 68-11-206(a)(1).

7. The Commission shall conduct on-site inspections and investigations as may be necessary to safeguard, and ensure at all times, the public's health, safety, and welfare. T.C.A. § 68-11-210(c).
8. Upon a finding by the Commission that an ACLF has violated any provision of Tenn. Code Ann. §§ 68-11-201, et seq., or the rules promulgated pursuant thereto, action may be taken, upon proper notice to the licensee, to impose a civil penalty, deny, suspend, or revoke its license. T.C.A. § 68-11-207.

II. STIPULATIONS OF FACT

9. At all times pertinent hereto, Respondent, The Pointe at Kirby Gate, 6480 Quince Road Memphis, Tennessee 38119, was licensed by the Commission as an ACLF, having been granted license number 131 on July 1, 1999, which currently has an expiration date of January 12, 2025.
10. On or about September 3, 2024, Commission surveyors conducted a Life Safety survey at Respondent's facility.
11. On or about September 3, 2024, Respondent failed to prohibit portable space heaters in the facility. A portable space heater set on "High" was observed in the Administrator's office.
12. On or about September 3, 2024, Respondent's Administrator confirmed the presence of the space heater.
13. Respondent's fire drill records verified that the facility failed to conduct quarterly fire drills for each shift (1st, 2nd, and 3rd) for the 2nd and 4th quarters of 2024.
14. On or about September 3, 2024, Respondent's Maintenance Director and Director of Nursing admitted the fire drills were not conducted as required.

15. On or about October 4, 2024, Commission surveyors conducted a licensure and complaint survey at Respondent's facility.
16. Medication administration records for Resident #1 confirmed that Respondent's staff failed to administer the prescribed medications for the resident on January 13, 2024, in accordance with the physician's orders dated January 5, 2024.
17. Medication administration records for Resident #6 confirmed that Respondent's staff failed to administer the prescribed medications for the resident on January 13, 2024, in accordance with the physician's orders dated January 5, 2024.
18. Respondent failed to have licensed nursing staff available to administer medications to residents as required by their Plan of Care on multiple days in February of 2024.
19. On or about October 2, 2024, Respondent's Caregiver #3 confirmed that she worked during the month of February, 2024, at Respondent's facility and that no licensed nurse was present to administer medications, that she saw Staff Member #1 and Caregiver #4 administer medications to residents, and that she was asked by Respondent's administrative staff to administer medications to residents, but that she refused.
20. On or about October 4, 2024, Respondent's Director of Nursing (DON) admitted that medications were to only be administered by a licensed nurse, that residents in the memory care unit could not self-administer, and that medication administration should be documented as ordered.
21. Respondent failed to take measures to keep residents safe between June of 2023, and October of 2024, resulting in unlocked windows in the secure unit, and multiple falls and injuries for multiple residents (#2, #3, #4, #5, #6, #7, #8, #10, #13, and #14).

22. Respondent failed to conduct Fall Risk Assessments, perform root-cause analysis on falls, and update the residents' Plan of Care/Service Plan June of 2023, and October of 2024 to address falls and injuries thereby endangering the safety of the residents.
23. Respondent failed to follow its policies on food safety, labeling, and storage resulting in the observation of food that was past the expiration date, unlabeled and visually deteriorated, and food prepared in dispensing containers with no date.
24. Respondent was unable to provide temperature logs for the reach-in cooler for June and July of 2024.
25. On or about September 16, 2024, Respondent's Dietary Manager (DM) admitted that expired foods should be discarded, foods should be properly covered, labeled and dated, and that open food should be kept no longer than seven (7) days.
26. Respondent's DM also confirmed that the reach-in cooler was broken and that the food in the Emergency Food Supply was all expired when she cleaned it out a month prior.
27. Respondent failed to maintain a clean and sanitary kitchen from September 16, 2024, through September 18, 2024.
28. Respondent's kitchen was observed on these days to be dirty with dried food and grease on various fixtures. Staff were observed to not use proper sanitation when handling food and touching food surfaces, including using the wrong sink to wash dishes, handling dirty dishes and dish water without gloves, and subsequently placing clean pans on shelves.
29. On or about September 17, 2024, Respondent's Dietary Manager (DM) was unable to provide the kitchen policy manual. The DM admitted that the three-compartment sink was inoperative and that the two-compartment sink which had been used for washing dishes should be used for food prep only.

30. On or about October 4, 2024, Respondent's Executive Director admitted that pots and pans should be cleaned in the three-compartment sink, that floor mats should not be hanging from the sink and that food should not be left out uncovered overnight.
31. On or about October 3, 2024, Respondent's Progress Notes confirmed that Respondent failed to document the date, time, and disposition of Resident #4 when they were sent to Hospital #2.
32. On or about October 4, 2024, Respondent's Director of Nursing (DON) admitted that a change in Resident #4's conditions should have been documented at discharge.
33. Respondent's medical records for the residents confirmed that Respondent failed to update the Plan of Care between June of 2023, and October of 2024, for Residents #2, #3, #4, #6, #7, #8, #10, #13, and #14 to account for changes in residents' needs related to falls, accidents, and aggressive behavior.
34. On or about September 19, 2024, Respondent's DON admitted that Resident's Plan of Care/Service Plans should be reviewed and revised with appropriate interventions after changes in a resident's condition.
35. By operation of law pursuant to Tenn. Comp. R. and Regs. 0720-26-.03(8) a change in ownership and control occurred upon the transfer of legal interest between LSREF GOLDEN OPS 26 (TN), LLC, and TARANTINO SENIOR LIVING COMMUNITIES, LLC on November 1, 2024, by execution of an ASSIGNMENT AND RELINQUISHMENT OF LICENSE agreement between the parties, attached and incorporated hereinto as **Attachment 1**.

III. GROUNDS FOR CONDITIONS

The facts in Section II, *supra*, are sufficient to establish that grounds exist for the discipline of Respondent's ACLF license. Specifically, Respondent has violated the following statutes and/or rules, for which disciplinary action by the Commission is authorized.

36. The facts in paragraphs eleven (11) and twelve (12) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(h) [Life Safety], the relevant portion of which reads as follows:

(2) An ACLF shall ensure fire protection for residents by doing at least the following:

(h) Prohibit open flame and portable space heaters

37. The facts in paragraphs thirteen (13) and fourteen (14) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(h) [Life Safety], the relevant portion of which reads as follows:

(3) An ACLF shall conduct fire drills in accordance with the following:

(a) Fire drills shall be held for each ACLF work shift in each separate ACLF building at least quarterly.

38. The facts in paragraphs sixteen (16) through twenty (20) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.07(5)(b) [Services Provided], the relevant portion of which reads as follows:

(5) Resident medication. An ACLF shall:

- (b) Ensure that all drugs and biologicals shall be administered by a licensed or certified health care professional operating within the scope of the professional license or certification and according to the resident's plan of care.

39. The facts in paragraphs twenty-one (21) and twenty-two (22) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.07 (7)(a)(2) [Services Provided], the relevant portion of which reads as follows:

(7) An ACLF shall provide personal services as follows:

- (a) Each ACLF shall provide each resident with at least the following personal services:

- 2. Safety when in the ACLF

40. The facts in paragraphs twenty-three (23) through twenty-six (26) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.07 (7)(c)(4)(i) [Services Provided], the relevant portion of which reads as follows:

(7) An ACLF shall provide personal services as follows:

- (c) Dietary services.

- 4. An ACLF shall:

- (i) Provide at least three (3) meals constituting an acceptable and/or prescribed diet per day. There shall be no more than fourteen (14) hours between the evening and morning meals. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140°F. or above) or cold (41°F. or less) as appropriate. The food must be adapted to the habits, preferences and physical abilities of the residents.

Additional nourishment and/or snacks shall be provided to residents with special dietary needs or upon request.

41. The facts in paragraphs twenty-seven (27) through thirty (30) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-. 07(7)(c)(5) [Services Provided], the relevant portion of which reads as follows:

(7) An ACLF shall provide personal services as follows:

(c) Dietary services.

5. An ACLF shall maintain a clean and sanitary kitchen.

42. The facts in paragraphs thirty-one (31) and thirty-two (32) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.12 (3)(i) [Resident Records], the relevant portion of which reads as follows:

(3) Medical record. An ACLF shall ensure that its employees develop and maintain a medical record for each resident who requires health care services at the ACLF regardless of whether such services are rendered by the ACLF or by arrangement with an outside source, which shall include at a minimum:

(i) Time and circumstances of discharge or transfer, including condition at discharge or transfer, or death.

43. The facts in paragraphs thirty-three (33) and thirty-four (34) are sufficient to constitute a violation of Tenn. Comp. R. and Regs. 0720-26-.12 (5)(a) [Resident Records], the relevant portion of which reads as follows:

(5) Plan of care.

- (a) An ACLF shall develop a plan of care for each resident admitted to the ACLF with input and participation from the resident or the resident's legal representative, treating physician, or other licensed health care professionals or entity delivering patient services within five (5) days of admission. The plan of care shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually by the above-appropriate individuals.

IV. REPRESENTATIONS OF RESPONDENT

44. Respondent understands and admits the allegations, charges, and stipulations in this Order.
45. Respondent understands the rights found in the Code, Rules, and the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101 thru 4-5-404, including the right to a hearing, the right to appear personally and by legal counsel, the right to confront and to cross-examine witnesses who would testify against Respondent, the right to testify and to present evidence on Respondent's own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, as well as the right to appeal for judicial review. Respondent voluntarily waives these rights in order to avoid further administrative action.
46. Respondent agrees that presentation of this Order to the Commission and the Commission's consideration of it and all matters divulged during that process shall not constitute unfair disclosure such that the Commission or any of its members become prejudiced requiring their disqualification from hearing this matter should this Order not be ratified. All matters, admissions, and statements disclosed during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.
47. Respondent agrees that facsimile/PDF copies of this Order, including facsimile/PDF signatures thereto, shall have the same force and effect as originals.

48. Respondent also agrees that the Commission may issue this Order without further process. If the Commission rejects this Order for any reason, it will be of no force or effect for either party.
49. Respondent agrees that the facility has not received any threats or promises of any kind by the State or any agent or representative thereof, except such as is detailed herein.

V. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following terms:

50. The Change of Ownership Application for license number 131 to operate as an Assisted Care Living Facility in the State of Tennessee is hereby **GRANTED** subject to the following contingencies:
- a. Respondent is hereby assessed and shall pay a Civil Monetary Penalty (CMP) in the amount of **one thousand dollars (\$1,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(h) [Life Safety] for failure to prevent space heaters.
 - b. Respondent is hereby assessed and shall pay a CMP in the amount of **three thousand dollars (\$3,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-.10 (2)(h) [Life Safety] – failure to conduct fire drills for each shift each quarter.
 - c. Respondent is hereby assessed and shall pay a CMP in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-.07(5)(b) [Services Provided] for failure to ensure that all drugs and biologicals shall be administered in accordance with the Resident’s Plan of Care.

- d. Respondent is hereby assessed and shall pay a CMP in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-. 07 (7)(a)(2) [Services Provided] for failure to provide safety while in the ACLF.
- e. Respondent is hereby assessed and shall pay a CMP in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-. 07 (7)(c)(4)(i) [Services Provided] for failure to provide quality food that has been kept at proper temperatures and appropriately logged and labeled for safety.
- f. Respondent is hereby assessed and shall pay a CMP in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-. 07(7)(c)(5) [Services Provided] for failure to maintain a clean and sanitary kitchen.
- g. Respondent is hereby assessed and shall pay a CMP in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-. 12 (3)(i) [Resident Records] for failure to maintain a record of resident discharges and transfers.
- h. Respondent is hereby assessed and shall pay a CMP in the amount of **two thousand dollars (\$2,000.00)**. This CMP is issued for a violation of Tenn. Comp. R. and Regs. 0720-26-.12 (5)(a) [Resident Records] for failure to review and/or revise the Plan of Care/Service Plan as changes in resident needs occur.

51. The total amount of all Civil Monetary Penalties imposed is **sixteen thousand dollars (\$16,000.00)**.

52. If not paid prior to ratification of this Order, Respondent must pay any outstanding Civil Monetary Penalties and State Monitoring Fees within **ten (10) business days** of ratification of this Order. Payment shall be submitted to the following address:

Tennessee Health Facilities Commission
Attention: Licensure and Regulation
665 Mainstream Drive, Second Floor
Nashville, Tennessee 37243

53. Failure to comply with each contingency listed in Section V within **ten (10) business days** will result in **DENIAL** of the facility's Change of Ownership (CHOW) application.
54. The **effective date** of the CHOW shall be **November 1, 2024**.
55. Respondent shall be placed on **probation** and shall appear at all Commission meetings for a period not to exceed **six (6) months** from the effective date of this Order.
- a. At each appearance, the Respondent shall demonstrate and explain to the Commission how the facility is implementing the actions identified in its plan of correction.
 - b. Pursuant to T.C.A. § 68-11-207(e)(6), the Commission is authorized at any time during the probation to remove the probational status of the facility's license, based on information presented to it showing that the conditions identified by the Commission have been corrected and are reasonably likely to remain corrected.
 - c. The facility shall request an Order of Compliance from Commission staff at the end of its probationary period. If the facility is in compliance at that time, the Order of Compliance will be prepared by Commission staff and presented at the next regularly scheduled Commission meeting. The Commission shall make the final determination of whether to terminate the facility's probation.

d. The Respondent shall submit QAPI reports, proof of retraining of staff to address the deficiencies listed *supra*, and proof of staffing level ratio improvement.

56. Each condition of this Order is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

APPROVED FOR ENTRY:

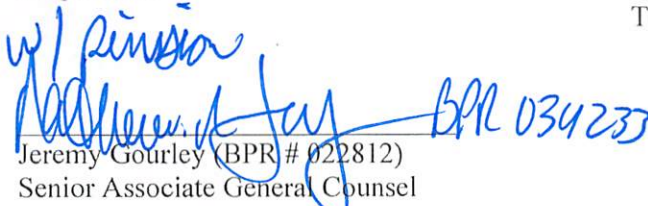


Signature of Authorized Representative

The Pointe at Kirby Gate
License No. 131
Respondent

Nastasya Shannon
Printed Name of Authorized Representative

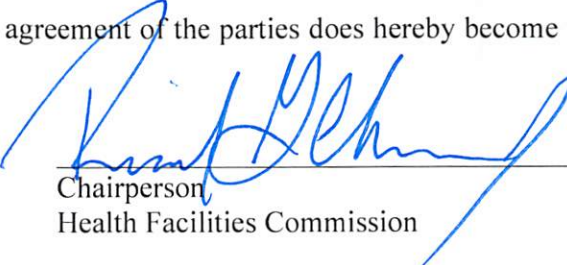
Director of Senior Living
Title of Authorized Representative

w/ permission

Jeremy Gourley (BPR # 022812) BPR 034233
Senior Associate General Counsel
Health Facilities Commission
Office of Legal Services
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243
Office: (615) 741-2364
Fax: (615) 741-9884
Email: Jeremy.J.Gourley@tn.gov

Approval by the Commission

Upon the agreement of the parties and the record as a whole, this **CONSENT ORDER** was approved as a **FINAL ORDER** by a majority of a quorum of the Health Facilities Commission at a public meeting of the Commission and signed this 22nd day of January, 2025.

ACCORDINGLY, IT IS ORDERED that the agreement of the parties does hereby become the Final Order of the Commission.



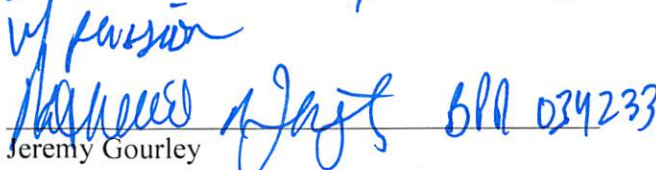
Chairperson
Health Facilities Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the Respondent, The Pointe at Kirby Gate, c/o Administrator, Jessica Thomas, 6480 Quince Road Memphis, Tennessee 38119, and The Pointe at Kirby Gate, c/o Registered Agent, Capitol Corporate Services, 992 Davidson Drive, Suite B, Nashville, Tennessee 37205-1051 by delivering same in the United States regular mail and United States certified mail, numbers **7020 0640 0001 4807 5729** and **7020 0640 0001 4807 5736**, return receipts requested, with sufficient postage thereon to reach its destination. A copy was sent via electronic mail to:

WRogers@LeedyandRogers.com and jdelaguila@tarantino.com.

This 22nd day of January, 2025.



Jeremy Gourley
Senior Associate General Counsel

ATTACHMENT 1

ASSIGNMENT AND RELINQUISHMENT OF LICENSE

THIS ASSIGNMENT AND RELINQUISHMENT OF LICENSE (this "Assignment") is executed on November 1, 2024 (the "Effective Date"), by and between LSREF GOLDEN OPS 26 (TN), LLC, a Delaware limited liability company ("Assignor"), and TARANTINO SENIOR LIVING COMMUNITIES LLC, a Texas limited liability company ("Assignee"), in consideration of and upon the terms and conditions set forth herein.

RECITALS:

A. Assignor holds that certain Assisted Living Community License issued by the State of Tennessee Department of Health and Environmental Control as License #ACL0000000131 (the "License") in connection with the operation of The Pointe at Kirby Gate located at 6480 Quince road, Memphis, Tennessee.

B. Assignor desires to assign and relinquish, and Assignee desires to accept an assignment and relinquishment of, the License and any and all rights and interest relating thereto.

AGREEMENT:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Assignment. Assignor and Assignee hereby acknowledge and confirm that each of the foregoing Recitals is true and correct.

2. Assignment of License. Assignor hereby transfers, assigns and relinquishes to Assignee any and all of Assignor's right, title and interest in and to, relating to, or arising under or in connection with the License (collectively, the "Assigned Rights").

3. Miscellaneous. This Assignment may be signed in any number of counterparts. Counterpart signatures are attached. Facsimile and PDF signatures will be deemed acceptable as original signatures. This Assignment may not be modified, waived, or changed in whole or in part, except by an agreement in writing signed by both of the parties hereto. This Assignment constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings and representations pertaining to the subject matter hereof, whether oral or written. Failure or delay on the part of Assignee to exercise any right, power or privilege hereunder shall not operate as a waiver thereof. If any provisions of this Assignment shall be found invalid or unenforceable, in whole or in part, then such provisions shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Assignment, as the case may require, and this Assignment shall be construed and enforced to the maximum extent by law, as if such provisions had not been originally incorporated herein.

[Signatures appear on next page.]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Assignment and Relinquishment of License to be effective as of the Effective Date.


ASSIGNOR:

LSREF GOLDEN OPS 26 (TN),
LLC, a Delaware limited liability
company

By: 
Name: Cory Bennett
Title: Authorized Signatory

ASSIGNEE:

TARANTINO SENIOR LIVING COMMUNITIES,
LLC, a Texas limited liability company

By: 
Name: Anthony Tarantino
Title: President