

## **AGREEMENT**

This Agreement is entered into this 16<sup>th</sup> day of March, 2023 by and between the City of Litchfield Park (the “City”) and Sun Health Services (“Sun Health”). The City and Sun Health are referred to individually as “Party” and collectively as the “Parties.”

### **Recitals**

A. Sun Health is the owner and developer of a senior living project in Litchfield Park, Arizona known as The Orchard (the “Project”).

B. The City is the Authority Having Jurisdiction over the Project and is responsible for issuing, when appropriate, Certificates of Occupancy (“C of O’s”) for the Project.

C. The Project was intended to be completed in one phase, all facilities completed at the same time, however, there are certain facilities that are ready and available for the issuance of C of O’s, and Sun Health desires to complete the remainder of the Project in phases, which the City is agreeable to upon the terms of this Agreement.

D. Before the City will issue all remaining C of O’s for the Project, Sun Health is responsible for completing certain deferred construction items, which are listed on Exhibit A, attached hereto.

E. In lieu of securing a performance bond, the City and Sun Health desire to complete the Project pursuant to the terms of this Agreement.

F. Now, therefore, in consideration of the above Recitals and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **AGREEMENT**

1. **Cashier’s Check.** Within ten (10) days after full execution of this Agreement, Sun Health will deliver to the City a cashier’s check payable to the City in the amount of One Hundred Fifty Thousand Dollars (\$150,000) for the completion of deferred construction items as identified herein. The City will deposit and hold the funds until the final C of O is issued and then will return the funds to Sun Health within twenty (20) days of such completion.

2. **Completion of Deferred Construction Items.** Sun Health agrees to complete the deferred construction items on Exhibit A on or before 120 days after full execution of this Agreement. If Sun Health meets this obligation, the City will return the funds or letter of credit to Sun Health and will issue all remaining C of O’s for the Project.

3. **Default by Sun Health.** If Sun Health fails to timely complete the deferred construction items on Exhibit A, the Parties agree that the City may use the funds or draw upon the letter of credit to complete any remaining deferred construction items on Exhibit A and then issue all remaining C of O's in the normal course. The Parties further agree that the City and its contractors will be authorized to enter the Project to complete the deferred construction items and is hereby granted such an irrevocable access license for such purposes. Prior to completing this work, the City will prepare and submit to Sun Health a schedule for the remaining deferred construction items and will notify Sun Health of the City's intended work at least fourteen (14) calendar days before the City begins its work to complete the deferred construction items. To the extent the City uses less than all of the funds from the cashier's check or letter of credit to complete the deferred construction items on Exhibit A, the City will refund the balance of those funds to Sun Health within twenty (20) days after completion of the deferred construction items.

4. **Entire Agreement.** This Agreement embodies the entire agreement of the Parties related to the phasing of the Project and the deferred construction items. There are no promises, terms, conditions, or obligations other than those contained or incorporated into this Agreement. This Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties related to the deferred construction items on Exhibit A.

5. **Governing Law.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Arizona.

6. **Jointly Drafted Agreement.** The Parties agree that they jointly have agreed to the terms and language used herein and that no ambiguity will be construed against any party for having drafted this Agreement or its exhibits.

7. **Voluntary Agreement.** This Agreement is freely and voluntarily executed by the undersigned without any duress or coercion, after each party has carefully and completely read all of the terms and provisions of the Agreement and had the opportunity to consult with their own counsel in connection herewith.

8. **Authority to Execute.** The Parties represent, warrant and state that all legal action necessary for the effectuation and execution of this Agreement has been validly taken, and that the individuals whose signatures appear below are duly authorized to execute this Agreement.

9. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts, including by facsimile copy or by electronic transmission, and such counterparts shall constitute one binding agreement on the Parties.

IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

**SUN HEALTH SERVICES**



By: Joseph E. La Rue, President & CEO

Date: March 16, 2023

**CITY OF LITCHFIELD PARK**

Matthew C. Williams

Matthew C. Williams (Mar 16, 2023 15:12 PDT)

By:

Date: **Mar 16, 2023**

# EXHIBIT A



## La Loma - Independent Living

### Certificate of Occupancy/Final Completion List (Engineering)

Rev 1-19-2023

#	ISSUE/CORRECTION	COMPLETION DATE	NOTES/COMMENTS
<i>DEFERRABLE OUTSTANDING ITEMS</i> (To be Completed Prior to issuing CO for Building #15, or any subsequent Building CO when work is adjacent to that Building)			
1	Landscape irrigation pump screening (metal sheeting/framing) is temporary. Final, approved equipment screening wall must be installed		
2	Building #1, #11, #12, #13, and #15 Air Conditioning screening walls not installed.		
3	Fine grading between Building #11 & Building #15. (Rough grading must be completed prior to CO issuance).		
4	Completion of landscaping and irrigation for the immediate areas adjacent to Building #1, #13, #12, #11, #15.		
5	Drywell ring and cover in basin #RB-2A is exposed and not mounted to drywell. No collar has been installed. Backfill against drywell must be completed.		
6	Soil stabilization for Building #2 through Building #10 to be completed		
7	Soil Stabilization for Building #14 - Min. 2 inches thick decomposed granite (DG).		
8	Soil Stabilization, hydroseed installation at x2 earthwork stockpile locations west of this new construction.		
9	Hydroseed stabilization installation at retention basins along fire / construction road.		