

**Exhibit 2**

**AMENDED AND RESTATED**  
**ASSET PURCHASE AGREEMENT**

This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT, dated as of September 14, 2012 (this "Agreement"), is by and between Carmel Funding, LLC, a Delaware limited liability company ("Buyer"), and TWG Capital, Inc., a Delaware corporation ("Seller"), as debtor-in-possession under Chapter 11 of the United States Bankruptcy Code, pursuant to Case No. 12-11019 (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division (the "Bankruptcy Court"), and amends and restates in its entirety that certain previous Asset Purchase Agreement, also dated as of September 14, 2012, between Buyer and Seller.

**RECITALS**

A. Seller is a specialized finance company that serves the insurance industry, engaging generally in the business of (i) providing liquidity to insurance agents and agencies by acquiring contractual rights to such entities' insurance commission receivables, and (ii) providing services and related products and programs leveraging Seller's expertise in evaluating insurance commission receivables, including outsourced commission processing, commission fronting programs and surplus relief arrangements (collectively, the "Business"), and Seller owns or leases substantially all of the assets used in connection with the Business.

B. Buyer is an affiliate of Seller within the meaning of Section 101(2) of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and is providing debtor-in-possession financing to Seller under that certain Debtor in Possession Loan Agreement, dated as of the date hereof (the "DIP Financing").

C. Seller desires to sell, transfer and assign the Assets (as hereinafter defined) to Buyer, and Buyer desires to purchase the Assets from Seller, upon the terms and subject to the conditions set forth in this Agreement, subject to higher and better offers and the approval by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the premises and the respective representations, warranties, covenants and agreements contained herein, the parties hereto hereby agree as follows:

**ARTICLE I**  
**SALE AND PURCHASE OF ASSETS;**  
**ASSUMPTION OF CERTAIN LIABILITIES**

**1.1 Sale and Purchase of Assets.** Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date (as hereinafter defined) Seller agrees to sell, transfer, convey, assign and deliver to Buyer, and Buyer agrees to purchase, acquire and accept from Seller, all of Seller's right, title and interest in and to the following assets of Seller (the assets to be purchased hereunder being called the "Assets"):

(a) Current Assets. All insurance commission receivables ("ICRs"), investments, accounts receivable ("Accounts Receivable"), prepaid insurance, prepaid expenses related to the Assets, deposits and refunds;

(b) Ownership Interests: All membership interests or other ownership interests ("Ownership Interests") held by Seller in those subsidiaries (the "Subsidiaries") identified on Schedule 1.1(b); for the purposes of this Agreement, the term "Ownership Interest" shall include the entire ownership or membership interest of Seller in a Subsidiary identified on Schedule 1.1(b), including, without limitation, Seller's right to vote as an owner or member of the Subsidiary, its capital account, its share or units, its right to receive profits, losses, distributions and any other economic benefits from the Subsidiary, and all of its rights and obligations under the Articles and Bylaws or Operating Agreement of the Subsidiary, as applicable;

(c) Fixed Assets and Equipment. All fixed assets and tangible personal property owned by Seller at ~~the Properties~~7434 Shadeland Station Way, Indianapolis, Indiana 46256 or any other location; where Seller conducts business (collectively, the "Properties"), including, without limitation, all furniture, fixtures, leasehold improvements, signage, security equipment, telephone systems, computers, computer equipment and computer systems, hardware and software, office equipment, vehicles, and other items of equipment of any nature whatsoever (collectively, the "Equipment"). Except for property owned by vendors or other third parties, all tangible personal property located on or at ~~the Properties (defined below)~~7434 Shadeland Station Way, Indianapolis, Indiana 46256, will be presumed to be Equipment;

(d) ~~Leased Properties. All of Seller's rights and interests under the office lease of real property and improvements leased by Seller at 7434 Shadeland Station Way, Indianapolis, Indiana 46256 (the "Assumed Lease"), including without limitation all security deposits associated with such Assumed Lease (collectively, the "Properties");(Intentionally Omitted).~~

(e) Contracts. All of Seller's rights and interests under those employment agreements, servicing contracts, equipment leases, subleases, and other Contracts (as hereinafter defined) of Seller listed on Schedule 1.1(e) annexed hereto (collectively, the "Assumed Contracts"), which shall in all events include, but not be limited to, that certain Subservicing Agreement, dated as of September 13, 2012, by and between BuyerInservico, Inc. and Seller (the "Subservicing Agreement"), unless terminated in accordance with its terms;

(f) Permits. All assignable licenses, permits and other authorizations from Governmental Entities (as hereinafter defined) owned or held by Seller in connection with the Business (collectively, the "Permits"), and all rights related thereto;

(g) Books, Records and Data. All data and information, no matter how or where held, or in what format; all customer lists and records, mailing lists, marketing, sales and promotional materials and records, manuals, training materials, and similar items, and all books, records, files, computer software, data or databases,

correspondence, memoranda, notes and other documents or papers and other evidence thereof relating to the Business, other than the organizational records, minute books and tax returns of Seller (collectively, the "Books and Records"). Buyer shall give Seller access to such Books and Records as set forth in Section 5.7 below;

(h) Intellectual Property. All computer programs, software, manuals and related rights; all registrations of trademarks and of other marks, registrations of trade names, Seller's URL, internet address, domain name, labels or other trade rights, and applications for any such registrations; all Seller's phone numbers; all copyrights, copyright registrations and applications therefor; all trademarks and other marks, trade names, trade dress, labels and other trade rights, whether or not registered; all know-how, trade secrets, improvements, formulae, other general intangibles and similar assets; all prepaid licenses in favor of Seller, and all licenses under which Seller is licensee, and royalties or other agreements relating to any of the foregoing; all claims and causes of action relating to any of the foregoing, including claims and causes of action for past infringement; and all other intellectual property rights of any character or description (collectively, the "Intellectual Property");

(i) General Intangibles. All other general intangibles; and

(j) Goodwill. Seller's goodwill.

**1.2 Excluded Assets.** Buyer shall not purchase, and Seller shall retain all assets of Seller not specifically included in the Assets listed above, including, without limitation, the following (collectively, the "Excluded Assets");

(a) All cash or cash equivalents;

(b) All insurance policies with Seller as named insured, insurance proceeds, claims and causes of action with respect to or arising in connection with any event, action or circumstance existing prior to the Closing or any property or other assets of Seller not acquired by Buyer at the Closing.

(c) All claims and causes of action of Seller or Seller's bankruptcy estate including, without limitation, all preference or avoidance claims and actions of Seller, including any such claims and actions arising under Chapter 5 of the United States Bankruptcy Code (the "Bankruptcy Code");

(d) All rights or obligations under all Contracts (as hereinafter defined) of Seller other than the Assumed ~~Lease and Assumed~~ Contracts, including, without limitation, [the lease for 7434 Shadeland Station Way, Indianapolis, Indiana 46256](#), any other servicing contracts, any other employment agreements, employee benefit plans or other employment related Contracts or arrangements;

(e) Any monies due to Seller with respect to any retirement plans or 401(k) plans;

(f) The Ownership Interests of Seller in any entity not identified on Exhibit B; and

(g) Seller's corporate records, tax returns, tax refunds and tax attributes

### **1.3 Assumption of Certain Liabilities.**

(a) Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Buyer agrees to assume only those liabilities and obligations arising out of or based upon Buyer's ownership of and obligations under the Assumed ~~Lease, the Assumed~~ Contracts, or the Permits, first arising or accruing after the Closing Date; provided, that Seller shall, effective as of the Closing, have assumed all of the Assumed ~~Lease and Assumed~~ Contracts with the approval of the Bankruptcy Court and Buyer shall pay all cure and compensation amounts required under Section 365 of the Bankruptcy Code with respect to the Assumed ~~Lease and Assumed~~ Contracts prior to and as a condition of the assignment of the ~~Assumed Lease and~~ Assumed Contracts to Buyer and Buyer's assumption thereof (collectively, the "Assumed Liabilities").

(b) Buyer shall assume only the Assumed Liabilities described above. All other obligations, debts, taxes, fines, penalties, operating expenses, rent, utilities and other liabilities of Seller of any kind, character or description, whether accrued, absolute, contingent or otherwise, shall not be assumed by Buyer and shall be retained by Seller; provided that Seller shall have no liability or obligation arising under or related to Buyer's ownership of and operation of the Assets from and after the Closing.

## **ARTICLE II PURCHASE PRICE; CLOSING**

**2.1 Purchase Price.** The aggregate purchase price for the sale and purchase of the Assets (the "Purchase Price") shall be the sum of Two Hundred Thousand Dollars (\$200,000.00). The Purchase Price shall be payable in whole or in part, as determined by the Buyer in its sole discretion, in the form of a credit bid of the DIP Financing.

**2.2 Allocation of Purchase Price.** On or prior to the Closing Date, Seller and Buyer shall mutually agree in writing upon an allocation of the Purchase Price among the Assets in proportion to their fair market values. Each party hereto agrees that it shall report for federal, state, local and all other tax purposes in a manner consistent with such allocation, and that it shall not take any position inconsistent with such allocation in connection with any examination, claim, action or other proceeding by or against any taxing authority or for any other purpose.

**2.3 Closing.** Upon the terms and subject to the conditions set forth in this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall take place (i) at the offices of Faegre Baker Daniels LLP, 600 E. 96<sup>th</sup> Street, Suite 600, Indianapolis, Indiana, at 9:00 A.M., Indianapolis time, not later than the first Saturday following the day on which the Sale Order (as defined below) becomes a final and non-appealable order under applicable law (but in no event later than December 1, 2012), or (ii) at such other place and time and/or on such other date as the parties hereto may mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date".

**2.4 Closing Matters.** Upon the terms and subject to the conditions set forth in this Agreement, at the Closing:

(a) Buyer shall deliver to Seller any portion of the Purchase Price that is payable in cash by wire transfer of immediately available funds to an account to be designated in writing by Seller at least two (2) business days prior to the Closing Date to be held in escrow subject to Closing.

(b) Seller shall deliver to Buyer such bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance reasonably satisfactory to Buyer, as shall be effective to vest in Buyer good and marketable title in and to the Assets, free and clear of all Liens (as hereinafter defined) except Permitted Liens (as hereinafter defined), and, simultaneously therewith, will take such steps as may be necessary to place Buyer in actual possession and operating control of the Assets, effective as of 12:01 A.M. on the Closing Date. Delivery of the Assets shall be made at the premises of Seller.

(c) Buyer shall deliver to Seller such written undertakings, in form and substance reasonably satisfactory to Seller, whereby Buyer shall assume and agree to pay, perform and discharge the Assumed Liabilities.

(d) Seller deliver to Buyer: (i) a certificate of good standing issued by the secretary of state of its jurisdiction of incorporation, (ii) certified copies of its articles of incorporation and by-laws, (iii) a certified copy of the Sale Order; (iv) a certified copy of the resolution of its board of directors authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby, subject to the entry of the Sale Order; (v) the officer's certificate described in Section 6.1(c) hereof, and (v) such other documents, certificates, instruments and writings required to be delivered pursuant to Article VI of this Agreement or otherwise required pursuant to this Agreement.

(e) Buyer shall deliver to Seller: (i) a certificate of good standing issued by the secretary of state of its jurisdiction of incorporation or organization, (ii) certified copies of its articles or certificates of incorporation and by-laws and resolutions of its boards of directors authorizing and approving the execution, delivery and performance of this Agreement and the transactions contemplated hereby, (iii) the officer's certificate described in Section 6.2(c) hereof, and (iv) such other documents, certificates, instruments and writings required to be delivered pursuant to Article VI of this Agreement or otherwise required pursuant to this Agreement.

(f) Both parties shall deliver to the other party all other documents reasonably requested by such other party to consummate the transactions contemplated in this Agreement.

**2.5 Liens and Encumbrances.** Seller shall convey all of the Assets to Buyer free and clear of all Liens (as defined below) other than the Permitted Liens.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as follows:

**3.1 Organization and Qualification.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to own, lease and operate the Assets and to carry on the Business as now being conducted. Seller is duly qualified to do business and in good standing in each jurisdiction in which the nature of the Business or the ownership, lease or operation of the Assets makes such qualification necessary.

**3.2 Authority.** Subject to the entry of the Procedure Order and the Sale Order, Seller has all requisite power and authority to execute and deliver this Agreement and each other agreement, instrument or document to be executed and delivered by Seller pursuant hereto (collectively, the "Seller Related Agreements"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Seller Related Agreements by Seller, the performance of this Agreement and the Seller Related Agreements by Seller, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Seller and, except for the entry of the Procedure Order and the Sale Order, no other proceeding on the part of Seller is necessary to authorize this Agreement or the Seller Related Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Seller and, subject to the entry of the Procedure Order and the Sale Order, constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms. Upon its execution and delivery by Seller and subject to the entry of the Procedure Order and the Sale Order, each Seller Related Agreement will constitute the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

**3.3 No Conflicts; Required Consents.** Subject to entry of the Procedure Order and the Sale Order, the execution and delivery of this Agreement and the Seller Related Agreements by Seller do not, and the performance of this Agreement and the Seller Related Agreements by Seller and the consummation of the transactions contemplated hereby and thereby will not, (a) conflict with or violate the articles of incorporation or bylaws, in each case as amended or restated, of Seller; (b) conflict with or violate any United States federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Seller or by or to which any of its properties or assets is bound or subject; (c) result in any breach of, or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, any agreement, lease, license, contract, note, guaranty, mortgage, indenture, arrangement or other obligation (collectively, "Contracts") to which Seller is a party or by which any of the Assets or the Business is bound; or (d) require Seller to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any court, administrative agency or commission or other governmental entity, authority or instrumentality, whether foreign or domestic (a "Governmental Entity"), or any third party, except, in the case of subsection (d) for (i) the Sale Order, (ii) any required consents or approvals to the transfer of any Permits and (iii) those of which the failure to make or obtain, alone or in the aggregate,



reasonably would be expected to have a material adverse effect on the Assets or the Business (a "Material Adverse Effect").

**3.4 No Litigation.** Other than matters pending in the Bankruptcy Case or disclosed on Schedule 3.4, there is no claim, action or proceeding, at law or in equity, by or before any Governmental Entity pending or, to the knowledge of Seller, threatened against Seller, that challenges or seeks to prevent, enjoin or materially delay the consummation of the transactions contemplated by this Agreement.

**3.5 Licenses and Permits.** Seller possesses all Permits and other authorizations from Governmental Entities required by applicable provisions of law, ordinances, rules and regulations necessary for the operation of the Business as it exists on the date hereof and through the Closing Date.

**3.6 Warranty of Title.** Seller owns all right, title and interest in and to all of the Assets, free and clear of all claims, charges, security interests, liens and other encumbrances of any kind whatsoever (collectively "Liens"), except for (a) Liens of carriers, warehousemen, mechanics, laborers and materialmen and other similar Liens incurred in the ordinary course of business for sums not yet due or being contested in good faith, but only to the extent such Liens are (i) valid, enforceable and properly perfected and (ii) afforded priority over all other Liens under applicable law; (b) the Lien claimed by the U.S. Small Business Administration, as Receiver for Cardinal Growth, L.P. (the "Receiver") against Debtor (the "Receiver's Lien"), which purports to secure an obligation of the Debtor to the Receiver under a certain Credit Enhancement and Security Agreement dated as of June 30, 2009 (the "Receiver's Claim"), if the Receiver's Claim is ultimately determined to be valid and enforceable, and the Receiver's Lien is determined to be valid, enforceable and perfected; (c) Liens incurred in the ordinary course of business after the Petition Date in connection with worker's compensation, unemployment insurance or similar legislation; (d) Liens for taxes and assessments not yet due or delinquent, as may be applicable, (e) and interests of lessors, contracting parties or other third parties, all as set forth on Schedule 3.6, and (d) Liens securing the DIP Financing (collectively, "Permitted Liens").

**3.7 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of Seller.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

**4.1 Organization and Authority.** Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and has all requisite power and authority to execute and deliver this Agreement and each other agreement, instrument or document to be executed and delivered by Buyer pursuant hereto (collectively, the "Buyer



Related Agreements"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each Buyer Related Agreement by Buyer, the performance of this Agreement and each Buyer Related Agreement by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Buyer and no other proceeding on the part of Buyer is necessary to authorize this Agreement or the Buyer Related Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon its execution and delivery by Buyer, each Buyer Related Agreement will constitute the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

#### **4.2 No Conflicts; Required Consents.**

(a) The execution and delivery of this Agreement and each Buyer Related Agreement by Buyer do not, and the performance of this Agreement and each Buyer Related Agreement by Buyer and the consummation of the transactions contemplated hereby and thereby will not, (i) conflict with or violate the articles or certificate of incorporation, by-laws or other constituent documents of Buyer, (ii) conflict with or violate any United States federal, state, local or foreign law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Buyer or by or to which any of its properties or assets is bound or subject or (iii) result in any breach of, or constitute a default (or an event that with notice or lapse of time or both would constitute a default) under, any Contracts to which Buyer is a party or by which any of its properties or assets is bound.

(b) The execution and delivery of this Agreement and the Buyer Related Agreements by Buyer do not, and the performance by Buyer of this Agreement and the Buyer Related Agreements and the consummation of the transactions contemplated hereby and thereby will not, require Buyer to obtain any consent, approval, authorization or permit of, or to make any filing with or notification to, any court, administrative agency or commission or other Governmental Entity, or any third party.

**4.3 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

### **ARTICLE V COVENANTS**

**5.1 Conduct of Business.** From and after the date hereof and pending the Closing, unless Buyer shall otherwise consent in writing, Seller shall use its commercially reasonable efforts in these circumstances to (a) maintain and operate the Assets and the Business only in the ordinary and usual course of business consistent with past practice; (b) maintain all existing policies of insurance (or comparable policies) of or relating to the Business in full force and effect; and (c) preserve Seller's existing relationships with agents, agents of record,

customers, clients, vendors and others having material business relations with Seller such that the Business will not be materially impaired.

## 5.2 Access; Confidentiality.

(a) Upon execution of this Agreement and reasonable notice to Seller's employees, accountants, consultants, legal counsel, agents and other authorized representatives, Seller shall provide Buyer and its employees, accountants, consultants, legal counsel, agents and other authorized representatives reasonable access during regular business hours to the Seller's employees, including, without limitation, officers of Seller (collectively, "Seller's Employees"), Assets, Properties, Assumed ~~Lease, Assumed~~ Contracts and Books and Records for the purpose of making such investigations of the Assets and assessments concerning Seller's Employees regarding any decision of Buyer to hire such Seller's Employees as provided for in Section 5.8, and Seller shall furnish Buyer such information as Buyer may from time to time reasonably require with respect to the Assets and Seller's Employees. Seller shall cause Seller's Employees to assist Buyer in making any such investigation and assessment and shall cause the counsel, accountants, consultants and other non-employee representatives of Seller to be reasonably available to Buyer for such purposes.

(b) Pending the Closing, Buyer shall keep all Seller Confidential Information (as hereinafter defined) strictly confidential, and will use the Confidential Information solely in connection with the transactions contemplated by this Agreement. If the Closing does not occur for any reason whatsoever, Buyer shall, promptly upon request, return all Seller Confidential Information to Seller and either destroy any writings prepared by or on behalf of Seller based on the Seller Confidential Information or deliver such writings to Seller. For purposes of this Agreement, the term "Seller Confidential Information" means all information and documents obtained by Buyer and its representatives pursuant to this Agreement, except information that (i) is or becomes generally available to the public other than as a result of disclosure in violation of this subsection; (ii) is or becomes available to Buyer on a non-confidential basis from a source other than Seller or its representatives, provided that such source is not known to Buyer to be bound by a confidentiality agreement or other obligation of secrecy with Seller in respect thereof; or (iii) is required, in the opinion of legal counsel, to be disclosed by law, in which case the parties will discuss the terms of such disclosure prior to its release. Buyer may disclose Seller Confidential Information to any of its directors, officers, employees, affiliates, representatives, legal counsel, accountants, consultants, lenders, and potential lenders who need to know such information for the purposes of the transactions contemplated hereby, but such persons will be informed by Buyer of the confidential nature of such information and will be directed to treat such information confidentially and, in any event, Buyer shall remain responsible for any violation of the terms of this subsection by any of them.

(c) Pending the Closing, Seller shall keep all Buyer Confidential Information (as hereinafter defined) strictly confidential, and will use the Buyer Confidential Information solely in connection with the transactions contemplated by this Agreement. If the Closing does not occur for any reason whatsoever, Seller shall,

promptly upon request, return all Buyer Confidential Information to Buyer and either destroy any writings prepared by or on behalf of Buyer based on the Buyer Confidential Information or deliver such writings to Buyer. For purposes of this Agreement, the term "Buyer Confidential Information" means all information and documents obtained by Seller and its representatives pursuant to this Agreement, except information that (i) is or becomes generally available to the public other than as a result of disclosure in violation of this subsection; (ii) is or becomes available to Buyer on a non-confidential basis from a source other than Seller or its representatives, provided that such source is not known to Buyer to be bound by a confidentiality agreement or other obligation of secrecy with Seller in respect thereof; or (iii) is required, in the opinion of legal counsel, to be disclosed by law, in which case the parties will discuss the terms of such disclosure prior to its release. Seller may disclose Buyer Confidential Information to any of directors, officers, employees, affiliates, representatives, legal counsel, accountants, consultants, lenders, and potential lenders who need to know such information for the purposes of the transactions contemplated hereby, but such persons will be informed by Seller of the confidential nature of such information and will be directed to treat such information confidentially and, in any event, Seller shall remain responsible for any violation of the terms of this subsection by any of them.

### 5.3 Chapter 11 Procedure

(a) Within three (3) business days of the date hereof (the "Petition Date"), Seller shall file in the Bankruptcy Court a voluntary petition under Chapter 11 of the Bankruptcy Code.

(b) On the Petition Date, Seller shall file a motion (the "Procedure and Sale Motion") with the Bankruptcy Court requesting, with notice in compliance with the Bankruptcy Code and local rules of the Bankruptcy Court, seeking (i) entry of an order in the form annexed hereto as Exhibit 5.3(a) (or otherwise acceptable to Buyer in its sole discretion) establishing bidding and auction procedures for the Assets (the "Procedure Order") and (ii) entry of an order in the form annexed hereto as Exhibit 5.3(b) (or otherwise acceptable to Buyer in its sole discretion) approving this Agreement and the transactions contemplated hereby (the "Sale Order").

**5.4 Appropriate Action; Consents; Filings.** From and after the date hereof, each of the parties hereto shall use all commercially reasonable efforts to (a) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable law or otherwise to satisfy the conditions to the Closing to be satisfied by it and to consummate and make effective the transactions contemplated by this Agreement, (b) obtain from any Governmental Entities or third parties any consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by any party hereto in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, without any change in the terms and provisions of any underlying Permit or Contract, and (c) make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under any applicable United States federal, state, local or foreign law; provided, that the parties hereto shall cooperate with each other in connection with the making of all such filings, including

providing copies of all such documents to the non-filing parties and their respective advisors prior to filing and, if requested, to accept all reasonable additions, deletions or changes suggested in connection therewith.

**5.5 Further Assurances.** At any time and from time to time after the Closing, Seller shall, at the reasonable request of Buyer and at Seller's expense and without further consideration, execute and deliver any further deeds, bills of sale, endorsements, assignments and other instruments of conveyance and transfer, and take such other actions as Buyer may reasonably request in order more effectively to transfer, convey, assign and deliver to Buyer, and to place Buyer in actual possession and operating control of, and to vest, perfect or confirm, of record or otherwise, in Buyer all right, title and interest in, to and under the Assets.

**5.6 Books and Records; Facilities.** On the Closing Date, Seller shall deliver to Buyer all of the Books and Records. However, if at any time after the Closing Date, Seller or Buyer discover any other Books and Records that have not been delivered to Buyer, Seller shall promptly deliver them to Buyer. Seller may retain copies of such tax, finance and legal records as Seller may deem reasonably necessary. For a period of three (3) years after the Closing Date (or such longer period as may be required to comply with any applicable legal requirements), Buyer shall retain all material Books and Records in existence on the Closing Date and make the same available for inspection and copying by Seller or its bankruptcy estate (or their respective authorized representatives) at Seller's expense, upon reasonable request and upon reasonable notice; provided, however, that Buyer may destroy any of such records to the extent that Buyer shall have given Seller not less than thirty (30) days' advance written notice, with reasonable specificity, of such destruction and an opportunity to obtain possession thereof.

**5.7 Seller's Employees.**

(d) As of the Closing Date, Seller shall terminate the employment of all Seller's Employees. Effective as of the Closing Date, Buyer may offer employment to one or more of Seller's Employees selected by Buyer upon such terms and conditions as Buyer shall determine in its discretion, except that such terms and conditions shall include an agreement or policy that establishes severance for the Hired Employees (as defined below) entitling such Hired Employees to three (3) months severance if they or any one of them is terminated without cause earlier than one year after accepting offers of employment from Buyer. Buyer and Seller agree to cooperate in jointly notifying Seller's Employees of the termination of their employment by Seller and the offer of employment by Buyer. The former Seller's Employees who accept Buyer's offer of employment are herein called the "Hired Employees".

(e) Nothing in this Section shall confer upon any of the Hired Employees or any other current or former employees of Seller any rights or remedies, including any right to employment, or continued employment for any specified period, of any nature whatsoever under or by reason of this Agreement.

**5.8 Public Announcements.** No party hereto shall issue any public announcement, report, statement or press release or otherwise make any public statement regarding this Agreement or the transactions contemplated hereby without the prior written

consent of the other parties hereto, except as otherwise required by law or the Bankruptcy Court and except that nothing herein shall prevent the Seller from publicly filing this Agreement and all related documents with the Bankruptcy Court or discussing them before the Bankruptcy Court or with appointed committees.

## ARTICLE VI CONDITIONS

**6.1 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated hereby are subject to the satisfaction at or prior to the Closing Date of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law, in a written instrument executed and delivered by Buyer:

(a) Representations and Warranties. Each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though made on and as of the Closing Date.

(b) Agreements and Covenants. Seller shall have performed or complied with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing Date.

(c) Certificate. At the Closing, Buyer shall have received a certificate or certificates signed by a duly authorized senior executive officer of Seller, to the effect set forth in Sections 6.1(a) and (b).

(d) Procedure Order. The Bankruptcy Court shall have entered the Procedure Order, and such Order shall not have been amended, modified, appealed, supplemented, vacated or stayed.

(e) Sale Order. The Bankruptcy Court shall have entered the Sale Order, and the Sale Order shall not have been amended, modified, appealed, supplemented, vacated or stayed as of the Closing Date and shall have become final and non-appealable under applicable law.

(f) Approval of DIP Financing. The Bankruptcy Court shall have entered interim and final orders in form and substance acceptable to Buyer in its sole discretion, approving the DIP Financing, and such orders shall not have been amended, modified, appealed, supplemented, vacated or stayed as of the Closing Date and shall have become final and non-appealable under applicable law.

(g) Transfer Free of Liens. The Assets shall be transferred to the Buyer free and clear of all Liens except for Permitted Liens.

(h) Other Governmental Approvals. All filings required to be made prior to the Closing by Seller with, and all consents, approvals and authorizations required to be obtained by Seller from, any Governmental Entities in connection with the transactions contemplated hereby shall have been made or obtained.

(i) Employment Agreements. Buyer shall have entered into an amended and restated Employment Agreement with each of Melanie Otto and Mark Nondorf, each in form and substance satisfactory to Buyer and Otto and Nondorf, respectively.

(j) Assumption of Seller's Agreements with M. Otto and M. Nondorf. Buyer shall have designated on Schedule 1.1(e) the Employment Agreements between Seller and each of Melanie Otto and Mark Nondorf (collectively, the "Seller Otto/Nondorf Agreements") as Assumed Contracts and each of the Seller Otto/Nondorf Agreements shall be assumed and assigned to Buyer pursuant to the Sale Order.

(k) No Order. On the Closing Date, no litigation or other proceeding by or before any Governmental Entity shall have been instituted, and no Governmental Entity, including any federal or state court of competent jurisdiction, shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, judgment, decree, injunction or other order (whether temporary, preliminary or permanent), which, in either case, is in effect and which has the effect of making the transactions contemplated by this Agreement illegal, or otherwise restrains consummation of the transactions contemplated hereby (collectively, an "Order").

(l) Affidavits of Service. Seller shall provide affidavits of service or other evidence reasonably satisfactory to Buyer demonstrating that Seller provided valid notice to all creditors, claimants, Lien holders and other appropriate parties-in-interest, of the sale of the Assets and assignment of the Assumed ~~Lease and the Assumed~~ Contracts, in each case free and clear of claims (as defined in the Bankruptcy Code) and other Liens.

If one or more of the foregoing conditions is not timely satisfied according to its terms or waived in writing by Buyer, Seller shall not be in breach under this Agreement, but Buyer, in its sole discretion, may refuse to close on the purchase of the Assets in their entirety and may terminate this Agreement.

**6.2 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated hereby are subject to the satisfaction at or prior to the Closing Date of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable law, in a written instrument executed and delivered by Seller:

(a) Representations and Warranties. Each of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, as though made on and as of the Closing Date.

(b) Agreements and Covenants. Buyer shall have performed or complied with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Officer's Certificate. At the Closing, Seller shall have received a certificate signed by a duly authorized senior executive officer of Buyer to the effect set forth in Sections 6.2(a) and (b).



(d) Procedure Order. The Bankruptcy Court shall have entered the Procedure Order, and such Order shall not have been amended, modified, appealed, supplemented, vacated or stayed.

(e) Assumption of Seller's Agreements with M. Otto and M. Nondorf. Buyer shall have designated on Exhibit 1.1(e) the Seller Otto/Nondorf Agreements as Assumed Contracts and each of the Seller Otto/Nondorf Agreements shall be assumed and assigned to Buyer pursuant to the Sale Order.

(f) Sale Order. The Bankruptcy Court shall have entered the Procedure Order and the Sale Order, and the Sale Order shall not have been amended, modified, appealed, supplemented, vacated or stayed as of the Closing Date and shall have become final and non-appealable under applicable law.

(g) Other Governmental Approvals. All filings required to be made prior to the Closing by Buyer with, and all consents, approvals and authorizations required to be obtained by Buyer from, any Governmental Entities in connection with the transactions contemplated hereby shall have been made or obtained (as the case may be).

(h) No Order. There shall be no Order.

## **ARTICLE VII TERMINATION**

**7.1 Termination.** This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing or such earlier date as set forth below:

(a) by mutual written consent of Seller and Buyer; or

(b) by Seller or Buyer if the Closing shall not have occurred on or within 30 days immediately following the day on which the Sale Order becomes final and non-appealable (but in no event later than December 1, 2012), for any reason other than a breach of this Agreement by the terminating party; or

(c) this Agreement shall terminate automatically and without any action on the part of either party hereto if either (i) the Bankruptcy Court does not enter the Procedure Order within ten (10) business days after the Petition Date or (ii) Buyer is not determined at the Sale Hearing, or any other final hearing, to be the successful bidder; or

(d) by Seller, if Buyer fails to pay the Purchase Price as herein provided when due or if there shall have been any breach by Buyer of any of its representations, warranties, covenants and agreements set forth herein which breach has not been remedied within fifteen (15) days after Seller delivers written notice of such breach to Buyer (any such written notice to refer specifically to this Section 7.1(d) and to describe such breach in reasonable detail); or



(e) by Buyer, if there shall have been any breach by Seller of any of its representations, warranties, covenants and agreements set forth herein which breach has not been remedied within fifteen (15) days after Buyer delivers written notice of such breach to Seller (any such written notice to refer specifically to this Section 7.1(e) and to describe such breach in reasonable detail).

## **7.2 Procedure and Effect of Termination.**

(a) Subject to the provisions of the Procedures Order and Sale Order, in the event of termination of this Agreement pursuant to Section 7.1, the terminating party shall forthwith give written notice thereof to the other party or parties and this Agreement shall terminate, and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto.

(b) If this Agreement is terminated as provided herein, no party hereto shall have any liability or further obligation hereunder to any other party to this Agreement, except as provided in Section 8.1 and except that nothing herein shall relieve any party from liability for any breach of this Agreement which occurred prior to such termination.

## **ARTICLE VIII MISCELLANEOUS AND GENERAL**

**8.1 Survival.** Except for this Article VIII and the covenants and agreements of the parties to be performed after the Closing Date, none of the respective representations, warranties, covenants, and agreements of the parties contained in this Agreement shall survive the Closing. Except for the agreements of the parties contained in Sections 5.2(b) and (c), 7.2 and this Article VIII, none of the representations, warranties, covenants and agreements of the parties shall survive any termination of this Agreement pursuant to Article VII hereof.

**8.2 Entire Agreement; Assignment; Etc.** This Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement, and supersedes all other agreements, understandings, representations and warranties, both written and oral, among the parties with respect to the subject matter hereof, and shall not be assignable by operation of law or otherwise and is not intended to create any obligations to, or rights in respect of, any persons (including, without limitation, any employees, customers or creditors of Seller or any other third party) other than Seller and Buyer; provided, however, that, at any time prior to the Closing Date, Buyer may assign all or any part of its rights and obligations hereunder and, in the event of any such assignment, Buyer shall nevertheless remain fully responsible to Seller for all obligations of Buyer hereunder and thereunder.

**8.3 Captions.** The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

**8.4 Severability.** If any term or other provision of this Agreement, or any portion thereof, is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms and provisions of this Agreement, or remaining portion thereof, shall

nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any such term or other provision, or any portion thereof, is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are consummated to the fullest extent possible.

**8.5 Modification or Amendment.** The parties hereto may modify or amend this Agreement at any time, only by a written instrument duly executed and delivered by each party hereto.

**8.6 Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, on the fifth business day after being mailed by registered or certified mail (postage prepaid, return receipt requested), in each case, to the parties at the following addresses, or on the date sent and confirmed by electronic transmission to the telecopier number specified below (or at such other address or telecopier number for a party as shall be specified by notice given in accordance with this Section):

(a) If to Seller, to: TWG Capital, Inc.

7434 Shadeland Station Way  
Indianapolis, Indiana 46256  
Attention: Mark Nondorf  
Telecopier No.: 317.813.1701

with a copy to:

Faegre Baker Daniels LLP  
600 E. 96<sup>th</sup> Street, Ste 600  
Indianapolis, IN 46240  
Attention: Jay Jaffe  
Telecopier No.: 317.569.4800

(b) If to Buyer, to: Carmel Funding, LLC

221 N. LaSalle St. Suite 900  
Chicago, IL 60601  
Attention: David Valentine  
Telecopier No.: 312.269.3060

with a copy to:

Hunton & Williams LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Peter S. Partee, Sr.  
Telecopier No.: 212.309.1100

No provision of this Agreement, including this Section, shall be deemed to

constitute consent to the manner and address for service of process in connection with any legal proceeding (including such arising out of or in connection with this Agreement), which service shall be effected as required by applicable law.

**8.7 Failure or Delay Not Waiver; Remedies Cumulative.** No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**8.8 Governing Law.** To the extent not governed by the Bankruptcy Code, this Agreement shall be governed by and construed in accordance with the law of the State of Indiana, without regard to the conflicts of laws principles thereof.

**8.9 Counterparts.** This Agreement may be executed in the original or by telecopy in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

**8.10 Bankruptcy Court Jurisdiction.** Buyer and Seller agree that the Bankruptcy Court shall have exclusive jurisdiction over all disputes and other matters relating to the interpretation and enforcement of this Agreement and each other agreement, instrument or document executed in connection with the transactions contemplated hereby, and Buyer expressly consents to and agrees not to contest such exclusive jurisdiction, and accordingly waives its rights to a jury trial.

**8.11 Offer.** This offer may be revoked by Buyer at any time prior to its acceptance.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

| IN WITNESS WHEREOF, this Amended and Restated Asset Purchase Agreement has been duly executed and delivered by the duly authorized officers of each of the parties hereto as of the date first written above.

"Seller"  
TWG CAPITAL, INC.

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

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

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

"Buyer"  
CARMEL FUNDING, LLC

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

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

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

**Schedule 1.1(b)  
Ownership Interests**

<a href="#"><u>IR Finance 1, LLC</u></a>		<a href="#"><u>100%</u></a>
<a href="#"><u>Insurance Receivables 1, LLC</u></a>		<a href="#"><u>Minority Interest ( 80 of the 100 units of Class B member interests)</u></a>

**Schedule 1.1(e)  
Assumed Contracts**

1. Subservicing Agreement, dated as of September 13, 2012, between Inservico, Inc. and Seller
2. Management Services Agreement, dated July 25, 2008, between Seller and IR Finance 1, LLC
3. D&O Insurance Policy with Continental Casualty Company, MJ Insurance, Policy No. 169788614, through 7/24/2013;
4. Employment Agreement between the Seller and Mark Nondorf, dated August 6, 2007; and
5. Employment Agreement between the Seller and Melanie Otto, dated August 6, 2007, as amended, September 13, 2012.

**Schedule 3.4  
Pending Litigation**

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<u>CAPTION OF SUIT AND CASE NUMBER</u>	<u>International Real Estate Holding Company, LLC vs TWG Capital, Inc.</u>  <u>Cause No. 49D13-1204-MF-017400</u>
<u>NATURE OF PROCEEDING</u>	<u>Litigation brought by former landlord seeking repayment of holdover rent surcharge and common area maintenance costs</u>
<u>COURT OR AGENCY AND LOCATION</u>	<u>Marion County Superior Court 13 State of Indiana</u>
<u>STATUS OR DISPOSITION</u>	<u>Pending</u>

<u>CAPTION OF SUIT AND CASE NUMBER</u>	<u>Bradle et al. vs TWG Capital, Inc.</u>  <u>Case No. 01-cv-2011-094511.00</u>
<u>NATURE OF PROCEEDING</u>	<u>Litigation brought by former agents of Long Term Preferred Care</u>
<u>COURT OR AGENCY AND LOCATION</u>	<u>U.S. District Court Northern District of Alabama</u>
<u>STATUS OR DISPOSITION</u>	<u>Pending</u>

~~Exhibit 5.3(a)~~  
~~Procedures Order~~

|

~~Exhibit 5.3(b)~~  
~~Sale Order~~

**Schedule 3.6**  
**Permitted Liens (not otherwise identified in Section 3.6)**

- Leaf Funding, Inc., filed for informational purposes only per a lease agreement for copier system serial number 8090070

Exhibit 5.3(a)  
Procedures Order

Exhibit 5.3(b)  
Sale Order