

**Modification #2 to the Lease and
Management Agreement (#14198) for Winchester House**

This second contract modification (“Modification #2”) is between the County of Lake, Illinois, an Illinois body politic and corporate (“Landlord”), and Transitional Care of Lake County, LLC, an Illinois Limited Liability Corporation (“Tenant”), and relates to the parties’ *Lease and Management Agreement* (“Lease”), under which Tenant leases and manages the County-owned skilled nursing facility known as Winchester House (the “Facility”).

RECITALS

Whereas:

- a. On May 12, 2015, the Parties entered into an *Operations Transfer Agreement* (“OTA”) and a *Lease and Management Agreement* (“L&M Agreement”) for the County’s skilled nursing facility known as Winchester House.
- b. Under the terms of those agreements, Tenant began managing the Facility as of August 1, 2015.
- c. Under its initial terms, the L&M Agreement anticipated that a new Winchester House would be constructed within a three year period delineated by milestones in three phases, which were part of exhibits to the L&M Agreement.
- d. On January 20, 2017, the Parties entered into a *Modification to the Lease and Management Agreement* (#14198) (“**Initial Modification**”). Exhibit E to the Initial Modification revised the Phase III Milestones that were contained in the L&M Agreement, extending the start date for construction of the new facility to as late as June 22, 2018, and envisioning a project completion date in the second half of 2019.
- e. Various circumstances arising since the Initial Modification have given rise to this second modification, so that the Parties’ mutual goal of closing the existing Winchester House and establishing a new facility to care for Winchester House residents can be completed.

In light of the foregoing, the parties now agree as follows:

1. **Incorporation of Recitals; Capitalized Terms.** The recitals above are incorporated into the body of this Agreement, as if set forth here in their entirety. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the *Lease and Management Agreement*.
2. **New Exhibit E.** For the purpose of extending the “Outside Date” that was contained in the attachment to the Parties’ initial Modification to the Lease that was titled “Exhibit E—Revised,” the Parties now further revise that exhibit by replacing it with the “Exhibit E, Revised July 2018,” which is attached to this Modification #2.

3. **Additional Financial Support.**

a. *Summary of certain provisions in the Initial Modification.*

This Modification #2 alters certain terms that the Parties agreed to in the Initial Modification, which are referenced in this subsection (a) for context.

Under § 5 of the Initial Modification, Landlord agreed to continue Progress Payments in the amount of \$32,000 per month through the revised Initial Term, which ends in January 2019. Landlord also agreed to pay all utilities and forgo rental payments during the revised Initial Term, which extended the Parties' agreement to January 2019, and to forgo rent and utilities past that date if certain conditions existed. Finally, under "New § 6.3.3" of the Initial Modification, Landlord agreed to forgive the Remaining Start-Up Capital on a schedule tied to construction milestones.

b. *New terms related to Landlord's continued final support of Winchester House operations.*

The following provisions supersede those of Modification #1:

- i. Due to financing contingencies and tax considerations that have arisen since Modification #1, Tenant requests and Landlord hereby agrees to the immediate forgiveness of the Remaining Start-Up Capital.
- ii. Subject to the extended Outside Date contained in Exhibit E being met, Landlord agrees to the following additional financial support.

First, Landlord agrees to continue forgoing payments for rent and utilities during any period for which construction on the Replacement Facility has begun and is ongoing, meaning that weekly progress is being made to complete the Replacement Facility.

Second, after the \$32,000 Progress Payments end, Landlord agrees to additional financial support not to exceed \$734,000 (the "**Operational Support Fund**"), subject to the following:

1. No payments from the Operational Support Fund shall be made unless construction on the Replacement Facility has begun and is ongoing, and the current facility's operations are operating at a loss.

2. On February 1, 2019 (subject to the extended Outside Date contained in Exhibit E being met), Landlord shall make an initial payment of \$200,000 based on anticipated operational losses that Tenant has forecasted in the revised pro forma attached to this Modification #2 as “Exhibit B – Revised 07-2018.”

At the next Winchester House Advisory Board (“WHAB”) meeting scheduled after February 1, 2019 (which will likely occur in April), Tenant shall supply Landlord with financial summaries that document the facility’s actual performance as compared to the pro forma attached as Exhibit B. Any net losses after February 1, 2019, shall be reconciled against the \$200,000 payment from February 1, 2019.

After the initial \$200,000 support payment has been exhausted due to operational losses, additional payments from the Operational Support Fund shall be made if Tenant documents those losses. Landlord may front additional \$200,000 payments if Tenant’s financial summaries to the WHAB reasonably suggest that ongoing monthly losses will occur, subject to the same reconciliation procedure that applies to the payment from February 1, 2019.

Tenant agrees to work with Landlord’s finance department to manage the reporting process.

3. Losses shall be reimbursed from the Operational Support Fund until that fund is exhausted. To verify operational losses, Landlord shall have the right to audit Tenant’s books twice annually at Landlord’s expense, and Tenant shall cooperate with Landlord’s auditors upon reasonable notice that they will conduct such an audit.

4. **Terms of the First Modification.** All terms contained in the Parties’ Initial Modification shall continue to have effect unless superseded by the terms of this Modification #2.

5. **Default; Time of the Essence.** The Parties agree that if construction on a new facility does not begin by the “Outside Date” contained in Exhibit E, then such failure shall constitute an event of default by Tenant under § 4.22 of the *Lease*, which will require the Tenant to Vacate the Facility according to the terms of Lease § 4.23.

The current Winchester House building contains mechanical systems that are beyond their useful life and thus subject to costly repair or even possibly necessary

replacement if they fail, all at great cost. This risk continues to be borne by Landlord and increases with time. For this reason, the Parties acknowledge that time is of the essence for Tenant to either complete the Replacement Facility and move the current Winchester House residents to that new facility, or to Vacate the Facility.

6. **Counterparts.** The parties may sign this Modification #2 in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.

7. **Effective Date.** This Agreement will become effective when all of the parties have signed it, and the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party’s signature) will be deemed the “Effective Date” of this Agreement. If a party signs but fails to date a signature, the date that the other party receives the signing party’s signature will be deemed to be the date that the signing party signed this agreement, and the other party may inscribe that date as the date associated with the signing party’s signature.

Signed:

LANDLORD:

TENANT:

COUNTY OF LAKE

TRANSITIONAL CARE OF LAKE COUNTY, LLC, an Illinois limited liability company

By: IHOP JV OPCO, LLC, a Delaware Limited liability company, its managing member

By: Innovative Health, LLC, an Illinois limited liability company, its Manager

By: _____
Name: Aaron Lawlor
Its: County Board Chairman

By: _____
Name: Bradley S. Haber
Title: Manager

Date: _____

Date: _____

Exhibit B – Revised 07-2018

Pro Forma

Exhibit E—Revised July 2018

Revised Phase III Milestones

A. Tenant to begin construction of Replacement Facility project on or before July 1, 2017; provided, however that Tenant, in its sole but reasonable business judgment may elect to extend such date by providing one or more notices to Landlord which in any event shall not extend beyond the Outside Date, and which extension(s) shall be binding on the parties absent bad faith by Tenant. Notwithstanding the foregoing, such commencement date for construction shall not extend beyond ~~November-December 30, 2018~~ (“Outside Date”) without the consent of Landlord. If construction does not begin by the Outside Date, and Landlord does not consent to an extension of the Outside Date, then Tenant shall not be entitled to forgiveness of the **Remaining Start-Up Capital**, as described in § 6.3.3 of the Parties’ previous Modification, which was signed by Aaron Lawlor for the County on Feb. 1, 2017.

B. In accordance with Board rules, the parties will obtain all necessary approvals from all governmental agencies, including but not limited to CMS, IDPH, and IHFSRB, for the discontinuation of Winchester House.

C. Tenant shall use all reasonable efforts to complete construction and file its Final Cost Report with the IHFSRB by ~~February-May 30²⁸, 2020~~. Notwithstanding the foregoing, Tenant in its sole but reasonable business judgment may elect to extend such date by providing one or more notices to Landlord which extension(s) the parties anticipate will not extend beyond ~~April-June 30, 2020~~ and which shall be binding on the parties absent bad faith by Tenant. If Tenant requires a further extension beyond ~~April-June 30, 2020~~, Landlord and Tenant shall reasonably cooperate on the terms of such extension, but Tenant will obtain all necessary approvals from all governmental agencies, including but not limited to CMS, IDPH, and IHFSRB, for any required extensions.

D. The Notice of Closure and Closure Plan shall be filed with CMS, IDPH and the IHFSRB at least 30 days before any residents are transferred to the new facility, and at least 90 days before the last resident is transferred and the facility closed. Tenant will present such closure plan to Landlord prior to submission to the various governmental entities.

E. The application for Licensure (“Licensure Application”) as a Skilled Nursing Facility shall be filed with the Illinois Department of Public Health (“IDPH”) at least 60 days prior to project completion in accordance with IDPH regulations.

F. Tenant to provide to Landlord a draft transition and communication plan for families and residents regarding transfer of residents into Replacement Facility at least 30 days before the Notice required under Paragraph (D) above.