
LEASE AND MANAGEMENT AGREEMENT

between

COUNTY OF LAKE
an Illinois municipal corporation

Landlord

and

a

Tenant

_____, 2015

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LEASE AND MANAGEMENT AGREEMENT

This Lease and Management Agreement (“**Agreement**”) is made and entered into as of the ____ day of _____, 2015 (the “**Signing Date**”), between the **COUNTY OF LAKE**, an Illinois unit of local government (“**Landlord**”), and _____, a _____ (“**Tenant**”).

RECITALS:

WHEREAS, Landlord is the owner of that certain tract of land, improved with a 224 licensed bed skilled nursing facility commonly known as Winchester House and located at 1125 North Milwaukee Avenue, Libertyville, Illinois 60048, as more particularly described in **Exhibit A** attached hereto and made a part hereof (the “**Premises**”);

WHEREAS, Landlord is the licensed operator and owner of the Premises, including all of the furnishings, furniture, equipment, supplies and fixtures used in or about, and required for the use of the Premises as a 224 licensed bed skilled nursing facility (the “**Facility**”);

WHEREAS, the County Board of the County of Lake (the “**County Board**”) established the Winchester House Advisory Board (the “**WHAB**”) to, among other things, recommend the best option for constructing a new skilled nursing facility;

WHEREAS, the WHAB recommended the Landlord issue a Request for Proposal (attached as **Exhibit J**) to solicit proposals from qualified entities in the private sector to lease the Facility, to become the licensee, and to provide for a replacement facility (the “**Replacement Facility**”) by the end of the term of the lease;

WHEREAS, part of the Illinois Counties Code, 55 Ill. Comp. Stat. § 5/5-21001, authorizes Landlord to establish and maintain a county nursing home, as well as to sell, dispose of or lease for any term, any part of the home properties in such manner and upon such terms as it deems best for the interest of Lake County;

WHEREAS, Tenant submitted a proposal to lease the Facility and to construct a Replacement Facility suitable to house the existing residents in a fully operational skilled nursing facility at the conclusion of the Term of this Agreement;

WHEREAS, Landlord desires to lease the Facility to Tenant, to relinquish its IDPH Facility license in favor of Tenant, and to have Tenant lease, manage and operate the Facility;

WHEREAS, Tenant desires to lease, manage and operate the Facility;

WHEREAS, Tenant desires to construct a Replacement Facility suitable to house the existing residents in a fully operational skilled nursing facility at the conclusion of the Term;

WHEREAS, the parties hereto have agreed to the terms and conditions of this Agreement;

WHEREAS, contemporaneously with entering into this Agreement, the parties are entering into an operations transfer agreement (the “**Operations Transfer Agreement**”) to facilitate the orderly transition of the operations of the Facility to Tenant;

WHEREAS, this Agreement and the transactions contemplated herein were authorized by the County Board at its regular meeting on May [REDACTED], 2015; and

NOW THEREFORE, in consideration of the promises and mutual agreements contained herein and for consideration received by the parties, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree that the use and occupancy of the Facility and construction of the Replacement Facility shall be subject to and in accordance with the terms, conditions and provisions of this Agreement as follows:

ARTICLE 1 PREAMBLES AND INTRODUCTION

1.1 **Incorporation of Recitals.** The preceding recitals are hereby made a part of the contractual provisions of this Agreement to the same extent as if specifically set forth in full in this Article 1.

1.2 **Three Phases.** By way of introduction, the parties agree that this Agreement shall be comprised of three essential phases, each having a distinct operating schedule and requirements for the Tenant. The actions to occur during each of the three phases are summarized below, and are further described throughout this Agreement. Collectively, the actions contemplated by this Agreement to occur during each of the three phases are referred to in this Agreement as the “**Transaction.**”

Phase I: Interim Operation & Management Under Landlord’s License:

Phase I shall commence as of the Effective Date (as defined in Article 2). During Phase I, Tenant shall take all commercially reasonable actions necessary to secure all Healthcare Licenses and Approvals needed to operate the Facility. During the pendency of Tenant’s receipt of the Healthcare Licenses and Approvals, Tenant shall assist Landlord (or Landlord’s agent) by becoming the interim manager of the Facility. Tenant shall manage the provision of services at the Facility for the health, safety, nursing care, and welfare of all Facility residents in accordance with the Lake County Mission (as defined in Article 2), utilizing Landlord’s existing nursing facility license issued by IDPH.

During Phase I, Tenant shall work cooperatively with Landlord to assure a smooth transition to Phase II. Such transition shall include, but not be limited to, installation of systems and procedures by Tenant needed to operate and sustain operations, performing inventory of existing movable equipment and supplies, establishing cut-off procedures for accounts receivable and accounts payable, assembling a workforce, transferring applicable contractual obligations to Tenant and such other practices necessary for the transition of the Facility operation to Tenant. In addition,

during Phase I, Tenant shall use its best efforts to meet the milestones set forth and established in the Phase I Milestones, attached hereto and incorporated herein as **Exhibit C**.

Phase I shall terminate upon Tenant's receipt of both: (a) the CHOW CON Approval (as defined in Section 1.3); and (b) the Healthcare Licenses and Approvals (as defined in Article 2) to become the new licensee of Facility. Should Tenant not obtain the CHOW CON and Healthcare Licenses & Approvals for any reason, the parties shall proceed as set forth in Section 1.3 of this Agreement.

Phase II: Operation & Management under Tenant's New License:

Phase II shall commence upon Tenant's receipt of the Healthcare Licenses and Approvals to become the new Licensee of Facility. During Phase II, Tenant shall continue to provide for the health, safety, nursing care and welfare of all Facility residents, and shall be the sole operator of the Facility pursuant to the terms of this Agreement and pursuant to any and all applicable Legal Requirements. In addition, during Phase II, Tenant shall diligently prepare and submit an application to obtain the Replacement Facility CON (as defined in Article 2). In addition, during Phase II, Tenant shall use its best efforts to meet the milestones set forth and established in the Phase II Milestones, attached hereto and incorporated herein as **Exhibit D**.

Phase II shall terminate upon Tenant's receipt of both: (a) the Replacement Facility CON Approval (as defined in Section 1.4); and (b) the Healthcare Licenses and Approvals. Should Tenant not obtain the Replacement Facility CON for any reason, the parties shall proceed as set forth in Section 1.4 of this Agreement.

Phase III: Transfer to Replacement Facility:

Phase III shall commence upon Tenant's receipt of both: (a) the Replacement Facility CON Approval; and (b) the Healthcare Licenses and Approvals. During Phase III, Tenant shall continue to provide for the health, safety, nursing care and welfare of all Facility residents. Promptly following Tenant's receipt of the Replacement Facility CON Approval, Tenant shall diligently pursue construction of the Replacement Facility in accordance with the terms of the Replacement Facility CON Approval, followed by relocation of the residents. In addition, during Phase III, Tenant shall use its best efforts to meet the milestones set forth and established in the Phase III Milestones, attached hereto and incorporated herein as **Exhibit E**.

Phase III shall terminate upon transfer of the last then current resident to the Replacement Facility, or to such other suitable location within Lake

County, in accordance with the laws, rules and regulations of the State of Illinois regarding the transfer of residents.

1.3 Healthcare Licenses and Approvals. Notwithstanding anything to the contrary contained in this Agreement, it shall in all events and circumstances of any and every nature whatsoever be an express condition precedent to the commencement of Phase II that Tenant shall have received the Healthcare Licenses and Approvals, including, without limitation that the Illinois Health Facilities and Services Review Board or its successor regulatory agency (“**IHFSRB**”) grant its permission, approval and/or consent to the implementation of Phase II of the Transaction, and/or issue an exemption from the requirement of obtaining a Certificate of Need with respect to Phase II, or that it grant and/or issue said Certificate of Need pursuant to 77 Ill. Admin. Code Sections 1130.110 *et seq* (collectively, the “**CHOW CON Approval**”).

In the event that Tenant fails to obtain the Healthcare Licenses and Approvals, including if IHFSRB fails or refuses to grant the CHOW CON Approval, any actions taken by the parties hereto with respect to Phase II of this Agreement shall immediately and forthwith be unwound/undone, and thereafter, this Agreement shall remain in effect with the parties continuing Phase I, and the parties shall cooperate to determine an appropriate course of action for moving forward. Landlord and Tenant shall cooperate with one another in good faith with respect to the preparation and filing of the application(s) necessary to obtain the CHOW CON Approval, and the parties shall diligently pursue the approval of such application.

1.4 Replacement Facility CON Approval. Notwithstanding anything to the contrary contained in this Agreement, it shall in all events and circumstances of any and every nature whatsoever be an express condition precedent to the commencement of Phase III that the IHFSRB grant its permission, approval and/or consent to the implementation of Phase III of the Transaction, and/or issue an exemption from the requirement of obtaining a Certificate of Need, or that it grant and/or issue said Certificate of Need pursuant to 77 Ill. Admin. Code Sections 1130.110 *et seq.* in conjunction with an approval of the discontinuation of the Facility pursuant to a Certificate of Need for Discontinuation (collectively, the “**Replacement Facility CON Approval**”).

In the event that IHFSRB fails or refuses to grant the Replacement Facility CON Approval, any actions taken by the parties hereto with respect to Phase III of this Agreement shall immediately and forthwith be unwound/undone, and thereafter, this Agreement shall remain in effect with the parties continuing Phase I or Phase II (as applicable), and the parties shall cooperate to determine an appropriate course of action for moving forward. Landlord and Tenant shall cooperate with one another in good faith with respect to the preparation and filing of the application(s) necessary to obtain the Replacement Facility CON Approval, and the parties shall diligently pursue the approval of such application.

1.5 Operations Transfer Agreement. Notwithstanding anything to the contrary contained herein, it shall in all events be a condition precedent to the effectiveness and enforceability of this Agreement that the parties shall have entered into and executed the Operations Transfer Agreement, on terms acceptable to each of the parties hereto.

ARTICLE 2 DEFINITIONS

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (a) the capitalized terms used in this Agreement have the meanings assigned to them herein and include the plural as well as the singular, (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with Generally Accepted Accounting Principles (“**GAAP**”) applicable at the time, (c) all references in this Agreement to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement, and (d) the words “herein,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Articles, Section or other subdivisions.

2.1 **Business Day.** Business Day means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which national banks in the City of New York, New York, are authorized, or obligated by law or executive order to close.

2.2 **CHOW CON.** The Change of Ownership (“Change of Ownership”) Certificate of Need (“CON”) permit or the CHOW Certificate of Exemption (“COE”) from the requirement of obtaining a CON that is required under the Illinois Health Facilities Planning Act, 20 Ill. Comp. Stat. § 3960/1 *et seq.*, and the IHFSRB rules, 77 Ill. Admin. Code Sections 1130.110 *et seq.*

2.3 **Contingency Amount.** The amount set forth on the Pro Forma to allow for items, conditions or events for which the occurrence or effect of is uncertain and will result in additional costs.

2.4 **Effective Date.** The date upon which Phase I commences, which shall occur contemporaneously with satisfaction of each of the following: (a) the Agreement is approved by the County Board; and (b) the termination of the management agreement between Landlord and the exiting operator; and (c) Tenant has commenced its management of the Facility.

2.5 **Facility Operating Costs.** All costs of operating the Facility identified as set forth on the Pro Forma, including, without limitation: (i) Taxes and Assessments; (ii) Rent; (iii) Start-Up Capital; (iv) insurance; (v) all employee and employee related costs, including payroll, payroll taxes, and employee benefits, (vi) the Contingency Amount, and (vii) all other costs needed to operate and/or maintain the Facility in accordance with the terms of this Agreement and applicable Legal Requirements. Notwithstanding the foregoing, the Facility Operating Costs shall not include any costs/expenses associated with services provided by the Lake County Facilities Operations Staff at the Facility.

2.6 **Healthcare Licenses & Approvals.** All licenses, approvals, certifications, demonstration certifications or approvals, permits, exemptions or other regulatory approvals necessary or desirable to operate the Facility, including but not limited to: (i) those approvals required under the Nursing Home Care Act, 210 Ill. Comp. Stat. 45/1-101 *et seq.* and all associated regulations and rules, including without limitation the Skilled Nursing and Intermediate Care Facilities Code, 77 Ill. Admin Code Part 300, governing the Illinois Department of Public Health (“**IDPH**”) oversight of skilled nursing facilities; (ii) the supportive

living facilities program under the Public Aid Code, 305 Ill. Comp Stat. 5/5-5.01a, governing the Illinois Department of Healthcare and Family Services (“**IDHFS**”) oversight of the program of supportive living facilities (“**SLFs**”), and all associated regulations and rules, including without limitation the Supportive Living Facilities Code, 89 Ill. Admin Code Sections 146.200, *et seq.*; (iii) the Illinois Health Facilities Planning Act, 20 Ill. Comp. Stat. 3960, and the rules promulgated by the IHFSRB, 77 Ill. Admin. Code Parts 1100, 1120, 1125, 1130, 1140, 1180, 1190, and 1250, including, without limitation, receipt of the CON CHOW Approval; (iv) requirements of the Centers for Medicare and Medicaid Services (“**CMS**”) Rules, 42 C.F.R. Part 483, governing certification of skilled nursing facilities under Title XVIII of the Social Security Act and the Medicare Program, including without limitation, Tenant’s receipt of a Medicare provider agreement and Medicare provider number; and (v) requirements of the IDHFS under the Medicaid Long Term Care Program in Illinois for certification as a Medicaid provider under Title XIX of the Social Security Act, including without limitation, Tenant’s receipt of a Medicaid provider agreement and Medicaid provider number.

2.7 Lake County Facilities Operations Staff. Individuals who are employed directly by the Landlord, but not by the operator of the Facility or any other party, including Tenant.

2.8 Lake County Mission. To provide needed health care services in long term care. This mission includes providing skilled nursing facility services, intermediate care services, and activities for the physical, mental, social and recreational needs for the wellbeing of the elderly citizens of Lake County in a setting that is compassionate, loving and a place to call home.

2.9 Lake County Marketplace. The geographic boundaries of Lake County, Illinois, as shown on the map attached as **Exhibit H**.¹

2.10 Landlord’s Designated Representative. Landlord’s County Administrator or his designee, or such other individual or individuals as will be designated by Landlord.

2.11 Legal Requirements. All federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting either the Facility or the use thereof, including but not limited to Healthcare Licenses & Approvals, whether now or hereafter enacted and in force.

2.12 Pro Forma. Tenant’s estimated budget with respect to the costs of operating the Facility during the Term, as set forth on **Exhibit B** attached hereto and made part hereof.

2.13 Progress Payment(s). Funds payable to Tenant pursuant to Article 6 of this Agreement, in the amounts set forth on lines G45 of the Pro Forma.

2.14 Replacement Facility CON. The CON permit necessary for Tenant to begin construction on a Replacement Facility that is required under the Illinois Health Facilities Planning Act, 20 Ill. Comp. Stat. § 3960/1 *et seq.*, and the IHFSRB rules, 77 Ill. Admin. Code Sections 1130.110 *et seq.*

¹ NTD: Please provide the referenced Exhibit.

2.15 Start-up Capital. The amount set forth on lines G46 of the Pro Forma set forth in **Exhibit B** to be made available to Tenant for Tenant's start-up and initial management costs for the day-to-day operations of the Facility in accordance with the terms of this Agreement, to provide Tenant necessary capital to take over the facility at the beginning of Phase I, to account for payment delays from the State, and to provide other important start-up costs to help maintain continuity of care for the health, safety and well-being of the residents. The Start-Up Capital shall be subject to repayment by Tenant as set forth in Section 6.3.

2.16 State. The State of Illinois.

2.17 Tenant's Designated Representative. Mike Filippo or his designee, or such other individual or individuals as may be designated by Tenant.

2.18 Term. The period set forth in Article 4.

ARTICLE 3 DEMISED PREMISES AND FACILITY

3.1 Demised Premises. Landlord, for and in consideration of the rents, and covenants and agreements hereinafter reserved, mentioned and contained on the part of Tenant, its successors and assigns, to be paid, kept and performed, does hereby lease unto Tenant the Facility for the Term, for use and operation as a 224 licensed bed skilled nursing facility. The lease under this Agreement shall not include the nurse's house or any other ancillary part of the Premises on which the Facility sits.

ARTICLE 4 LEASE

4.1 Term. The term of this Agreement shall commence upon the Effective Date, and shall continue for an initial term of three years (the "**Initial Term**"). If the three Phases of this Agreement have not been completed upon the expiration of the Initial Term, then Tenant shall request Landlord in writing for an extension of the Term of this Lease for additional month-to-month periods ("Month-to-Month Tenancy"), provided that Tenant's request sets forth with specificity a revised timeline for the completion of the Milestones set forth in the three Phases, and provided further that Landlord approves of said Milestone revisions (any such periods, together with the Initial Term, are collectively referred to as the "**Term**"). Landlord staff will diligently work with Tenant and the Landlord to obtain Landlord approvals for reasonably requested modifications to the Term of this Agreement. Landlord approval of modifications to the Term shall not be unreasonably withheld. Prior to and during the possible Month-to-Month tenancy, the parties shall work together for the purpose of negotiating a new agreement in good faith, if necessary.

4.2 Rent. Commencing upon the Effective Date, Tenant shall pay to Landlord, or as Landlord shall direct, the amount of \$40,000 as fixed monthly rental (the "**Rent**") for each month during the Term. After the expiration of the Initial Term, the Rent shall increase by 3% on a quarterly basis, such that rent in months 1-3 after the initial three-year Term would be \$41,200 per month, months 4-6 would be \$42,436 per month, etc.

In the event the Effective Date shall be other than the first day of the month, Tenant shall pay to Landlord a pro rata portion of the Rent for such month. Unless otherwise notified in writing by Landlord, all checks shall be made payable to Landlord and shall be sent as directed by Landlord.

4.3 Net Lease. This Agreement is and shall be deemed and construed to be a net-net-net lease and the Rent specified herein shall be net to Landlord in each year during the Term.

TAXES AND ASSESSMENTS

4.4 Taxes and Assessments. Tenant shall pay all real estate taxes and assessments (“**Taxes and Assessments**”) that arise during the term of this Agreement. All such Taxes and Assessments shall be a Facility Operating Cost. Nothing herein contained shall require Tenant to pay income taxes assessed against Landlord, or capital levy, franchise, estate, succession, inheritance or transfer taxes of Landlord. Tenant shall have the right to contest the amount or validity, in whole or in part, of any Taxes and Assessments by appropriate proceedings diligently conducted in good faith, but only after payment of such Taxes and Assessments, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, Tenant may postpone or defer such payment only if neither the Facility nor any part thereof would by reason of such postponement or deferment be in danger of being forfeited or lost. Upon the termination of any such proceedings, Tenant shall pay the amount of such Taxes and Assessments or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees, interest, penalties or other liabilities in connection therewith, and such payment, at Tenant’s request, shall be made by Landlord out of the amount deposited with respect to such Taxes and Assessments. In the event such amount is insufficient, the balance due shall be paid by Tenant.

4.4.1 Landlord shall not be required to join in any proceedings referred to in Section 4.4 of this Agreement, unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord in which event Landlord shall join in such proceedings or permit the same to be brought in its name. Landlord shall not ultimately be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant will indemnify and save harmless Landlord from any such costs and expenses.

4.4.2 If any income, profits or revenue tax shall be levied, assessed or imposed upon the income, profits or revenue arising from rents payable hereunder, partially or totally in lieu of or as a substitute for real estate taxes imposed upon the Facility, then Tenant shall be responsible for the payment of such tax.

UTILITIES, MAINTENANCE AND REPAIRS

4.5 Landlord Responsibilities.

4.5.1 Landlord will be responsible for repairing and/or maintaining all major “Fixed Assets and Equipment.” For purposes of this Agreement, “**Fixed Assets and Equipment**” shall be defined as building infrastructure, systems, and/or equipment which is

built-in or permanently affixed to the Facility. Examples of Fixed Assets and Equipment, include, without limitation: the HVAC system, the fire suppression system, the fire alarm system, the emergency generator, boilers, elevators, security system/door locks, roofing, Facility walls/foundation, electrical/lighting systems replacement, and all building infrastructure or systems maintenance/repairs necessary to ensure compliance with applicable Life Safety Code requirements of the IDPH and CMS.

4.5.2 Tenant shall promptly notify Landlord of the need to make any maintenance/repairs that are the responsibility of Landlord under Section 4.5.1 of this Agreement. In the event that Landlord fails to commence such maintenance/repairs identified as an emergency, as mutually agreed by the parties, and that are the responsibility of Landlord within ten (10) Business Days (or such lesser period of time as may be required in the event such repairs must be made more quickly in order to ensure compliance with Legal Requirements) and/or Landlord fails to diligently pursue completion of the same, Tenant shall be entitled to make, at Landlord's cost and expense, all such maintenance and repairs upon first receiving approval from Landlord, and Landlord shall compensate Tenant for the actual cost of such repairs/maintenance, plus an administrative fee of 10%, or a lesser percentage if otherwise agreed to by the parties, for Tenant's overhead costs with respect to such repairs/maintenance within ten (10) Business Days of Landlord's receipt of an invoice from Tenant for the cost of such repairs/maintenance.

4.5.3 Landlord shall assign a member or members of its Lake County Facilities Operations Staff to the Facility, at Landlord's sole cost and expense. The assigned Lake County Facilities Operations Staff member or members shall be responsible for performing and/or contracting the repair and maintenance responsibilities of Landlord under this Section 4.5.

4.5.4 Notwithstanding anything to the contrary that may be contained in this Agreement, under no circumstances shall any payment from Landlord for utilities, maintenance or repairs, or any payment tied to the Pro Forma (other than the management fee set forth in line ____ of the Pro Forma), be used by Tenant or paid to Tenant for the Replacement Facility or for predevelopment costs for the Replacement Facility.

4.6 Tenant Responsibilities.

4.6.1 Maintenance and repair of items other than those specified in Section 4.5 shall be the Tenant's responsibility, including, without limitation, maintenance of all "Movable Equipment" as defined below. For purposes of this Section 4.6, "**Movable Equipment**" shall be defined as equipment which can be moved and is not permanently attached/affixed to the Facility. Examples of Movable Equipment includes, without limitation, computers, ovens, freezers, stoves, beds, lifts, furniture, wheelchairs, light bulbs, and chairs. In addition, to the extent that any Movable Equipment is purchased by Tenant during the Term, Tenant shall be entitled to remove such Movable Equipment from the Facility upon expiration of the Term.

4.6.2 Tenant will also arrange for payment of Facility natural gas, electric, water, waste, medical waste, cable/satellite TV, internet, and telephone service costs, all of which shall be a Facility Operating Cost. Throughout the Term of this Agreement, Tenant, at its sole cost and expense, will keep and maintain, or cause to be kept and maintained, the Facility

(including the grounds, sidewalks and curbs abutting the same) in good order and condition without waste and in a suitable state of repair at least comparable to that which existed immediately prior to the Effective Date (ordinary wear and tear excepted), and will make or cause to be made, subject to this Section 4.6, as and when the same shall become necessary, nonstructural, exterior and interior, replacing, repairing and restoring necessary to that end. All replacing, repairing and restoring required of Tenant shall be in compliance with Legal Requirements.

4.6.3 Tenant will also provide space at the Facility for the maintenance shop which contains tools and other equipment which shall remain the sole property of the Landlord. The maintenance shop shall be maintained by Landlord.

4.7 Casualty. Beginning at the commencement of Phase II, when Tenant obtains its license to operate the Facility, in the event that any part of the Facility shall be damaged or destroyed by fire or other casualty (any such event being called a “**Casualty**”), Landlord shall have the option to either: (a) cause Tenant to promptly replace, repair and restore the same as nearly as possible to the condition it was in immediately prior to such Casualty, but only to the extent of Tenant’s available insurance proceeds (or, if insurance is unavailable, to the coverage limit identified in the insurance that the Tenant was to have maintained under Exhibit G); or (b) cause Tenant to remit to Landlord the insurance proceeds payable to Tenant as a result of Tenant’s available insurance proceeds for such Casualty (or, if insurance is unavailable, up to the amount identified in Exhibit G), provided, however, that such action is permissible under applicable Legal Requirements. After either such event, Tenant shall have the option to terminate this Agreement. Notwithstanding anything to the contrary in this Agreement, pursuant to the Lake County Surplus Policy, Tenant shall not have the right, at any time, to remove and dispose of any personal property on the Facility which may have become obsolete or unfit for use, or which is no longer useful in the operation of the Facility.

4.8 Use of Premises. Tenant shall use the Premises for the following purpose and no other: operation of a skilled nursing facility operating under the name Winchester House. Tenant shall not use the name “Lake County,” “County Facility,” or “County of Lake” in referencing and marketing the Facility. Tenant shall utilize the same telephone number which shall remain the property of the Landlord.

4.9 Tenant Covenants. Tenant hereby covenants as follows:

(1) Tenant shall keep in good standing and in full force and effect all necessary Healthcare Licenses and Approvals;

(2) During the Term of this Agreement, Tenant will deliver to Landlord within three (3) Business Days following receipt thereof, copies of any and all notices of termination, revocation, suspension, receivership or mentorship from IDPH alleging a violation with a substandard quality of care determination, as defined by federal regulations (*i.e.*, deficiencies under 483.13 or 483.25, form 2567; or any notice from IDHFS or CMS threatening disqualification of the Facility from participation in the Medicare or Medicaid programs). Tenant will deliver to Landlord within ten (10) Business Days after written request from Landlord, copies of all other notices, exit interviews, inspection reports and surveys and notices

of administrative hearing and/or court action from all state, federal and local governmental bodies regarding the Facility.

INSURANCE

4.10 Insurance. Tenant will obtain the insurance described in **Exhibit G**. On or before the Effective Date and annually thereafter, Tenant will provide Landlord with a Certificate of Insurance for such policies. Upon Landlord's reasonable request, Tenant will provide a full copy of each such insurance policy to Landlord. The costs of all insurance required to be carried by Tenant under this Agreement shall be a Facility Operating Cost in accordance with the Pro Forma. Tenant shall also cause to be issued and shall maintain during the Term of this Agreement:

4.10.1 Fire, tornado and windstorm insurance with extended coverage endorsement on the Facility on the Illinois standard form with a responsible company or companies approved by Landlord, which approval will not be unreasonably withheld. Such insurance shall, at all times, be maintained (without any co-insurance clause, if possible) in an amount as may be required by any mortgagee of the Facility or, absent such requirement, in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under applicable provisions of the insurance policies. Such insurance shall at all times be payable to Landlord and Tenant as their interests may appear.

4.10.2 A public liability policy naming Landlord and Tenant, as insureds, and insuring them against claims for bodily injury, or property damage occurring upon, in or about the Facility, or in or upon the adjoining streets, sidewalks, passageways and areas, such insurance to afford protection to the limits of not less than \$1,000,000 per each occurrence and \$2,000,000 in the aggregate.

4.10.3 Boiler explosion insurance, if required, in the amount of not less than \$100,000, under the terms of which Landlord and Tenant will be indemnified, as their interests may appear, against any loss or damage which may result from any accident or casualty in connection with any boiler used in the Facility, whereby any person or persons may be injured or killed or property damaged in or about the Facility.

4.11 Insurance Provisions. All policies of insurance to the extent applicable shall provide that:

4.11.1 They are carried in favor of Landlord, Tenant and any mortgagee, as their respective interests may appear, and any loss shall be payable as therein provided, notwithstanding any act or negligence of Landlord or Tenant, which might otherwise result in forfeiture of insurance; and

4.11.2 They shall not be canceled, terminated, reduced or materially modified without at least twenty (20) days' prior written notice to Landlord.

4.11.3 All Tenant insurance required under Section 4.10 shall be primary insurance in the event of any claim.

CONDITION OF PREMISES

4.12 Condition. Tenant has examined and accepts the Premises in its present “as is” condition as suitable for the purposes for which the same are leased as of the Effective Date.

4.13 Alterations. All alterations, additions and improvements installed at the expense of Tenant (except computer software) shall remain upon and be surrendered with the Premises as a part thereof upon Tenant vacating the Premises. Alterations, additions, and improvements to the Facility with a cost in excess of Five Thousand Dollars (\$5,000.00) per instance may be made by Tenant upon written notice to and approval by Landlord. Notwithstanding the foregoing, Landlord notice shall not be required in the event that immediate alterations, additions or improvements to the Facility are necessary to ensure compliance with applicable Life Safety Code requirements, in which case Tenant shall have the option of immediately making such necessary alterations, additions and/or improvements, and the parties respective rights and obligations shall be as set forth in Section 4.5 and Section 4.6. The making of alterations, additions, and/or improvements to the Premises shall not commence until Tenant has furnished to Landlord a certificate of insurance showing coverage in an amount satisfactory to Landlord which protects Landlord from liability for injury to any person and damage to any personal property, on or off the leased premises, in connection with the making of such alterations, additions, and improvements.

4.14 Landlord’s Right to Perform. Subject to Section 4.21, should Tenant fail to perform any of its covenants herein agreed to be performed, Landlord may, but shall not be required to, make such payment or perform such covenants, and all sums so expended by Landlord thereon shall be reduced from the Progress Payments payable to Tenant, as applicable, under the terms of this Agreement, plus an administrative fee of 10% for Landlord’s overhead costs with respect to performing such obligations. Performance of and/or payment to discharge said Tenant’s obligations shall be optional with Landlord and such performance and payment shall in no way constitute a waiver of, or a limitation upon, Landlord’s other rights hereunder.

4.15 Demolition. Tenant will not demolish the Facility or any portion thereof or allow it to be removed or demolished, in accordance with the Lake County Surplus Policy, without the prior written consent of Landlord.

4.16 Compliance with Laws & Ordinances. Throughout the Term of this Agreement, Tenant will use its best efforts to obey, observe and comply with all Legal Requirements. Tenant shall likewise observe and comply with the requirements of all policies of public liability and fire insurance and all other policies of insurance at any time in force with respect to the Facility.

4.17 Discharge of Liens. Tenant shall promptly discharge any lien, encumbrance or charge levied on account of any mechanic’s, laborer’s or materialman’s lien upon the Facility for work or materials or personal property furnished or supplied to, or claimed to have been supplied to or at the request of Tenant, unless Tenant timely contests such lien or charge.

4.18 Inspection & Occupancy of Premises by Landlord. At any time, Landlord or its authorized representative shall have the right to enter and inspect the Facility. Landlord agrees that upon entering and inspecting the Facility, Landlord will cause as little inconvenience to

Tenant and the residents and operations of the Facility as may reasonably be possible under the circumstances, and in no event shall Landlord violate the terms of any resident agreement or other lease agreement at the Facility.

4.19 Inspection of Accounts. Following any Event of Default hereunder which remains uncured after the expiration of any applicable cure period, Landlord shall have the right, upon fifteen (15) days prior written notice, to inspect and copy all of Tenant's books, records and financial data relating to the Facility including, without limitation, Tenant's quarterly accounts receivable and payable. Tenant shall provide Landlord copies of all licensure and certification surveys conducted at the Facility.

4.20 Condemnation. If all of the Facility is taken by the exercise of the power of eminent domain, or sold under eminent domain proceedings, this Agreement shall terminate as of the date possession is taken by the condemnor. If less than all of the Facility is taken by the exercise of the power of eminent domain or sold under eminent domain proceedings and if such exercise affects the improvements located at the Facility, Landlord shall, with reasonable diligence, restore or rebuild to the extent reasonably practicable any improvements upon the Facility affected by the taking, but shall not be obligated to spend for such restoration any amount in excess of the amount awarded or paid to it by the condemnor for such purpose. In the event that all or less than all of the Facility is taken or sold, and this Agreement shall terminate as provided herein, then Landlord shall be entitled to the entire award for the Facility and improvements thereof. Tenant shall be entitled to any award that it can prove for damage to its leasehold interest, provided that such award is separately allocated to lease by the condemning authorities and does not diminish or reduce the award to Landlord for the Facility and improvements.

4.21 Rent Absolute. Damage to or destruction of any portion of the buildings, structures and fixtures of the Facility, by fire, the elements or any other cause whatsoever, whether with or without fault on the part of Tenant, shall not terminate this Agreement or entitle Tenant to surrender the Facility or entitle Tenant to any abatement of or reduction in the Rent payable, or otherwise affect the respective obligations of the parties hereto, any present or future law to the contrary notwithstanding.

DEFAULT

4.22 Events of Default.

4.22.1 The following acts or events shall be deemed to be an "**Event of Default**":

(a) The failure of either party to pay when due, and as applicable, any sum or sums of money due or payable, other than Progress Payments withheld under the discretion of Landlord pursuant to the terms of this Agreement, by Landlord or Tenant under the provisions of this Agreement, when such failure shall continue for a period of ten (10) days after written notice to such party;

(b) Other than the failure to pay under Section 4.22.1(a), the failure of either party to perform, or the violation by either party of, any of the covenants, terms, conditions or provisions of this Agreement, if such failure or violation shall not be cured within thirty (30)

days after notice thereof by the other party; provided, if within said thirty (30) days such party in good faith commences to correct such breach, and diligently proceeds therewith to completion, then such failure or violation shall not be considered an Event of Default. Notwithstanding anything to the contrary contained in this Agreement, either party's willful failure to perform, or gross misconduct in the performance of its duties hereunder shall be a non-curable Event of Default;

(c) The making by either party or beneficiary of such party of an assignment for the benefit of creditors;

(d) The levying of a writ of execution or attachment on or against the property of either party utilized under this Agreement which is not discharged or stayed by action of such party contesting same, within ninety (90) days after such levy or attachment (provided if the stay is vacated or ended, this paragraph shall again apply);

(e) If proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of either party or for its adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of either party, or beneficiary of such party and said proceedings are not dismissed and any receiver, trustee or liquidator appointed therein discharged within ninety (90) days after the institution of said proceedings;

(f) The sale of the interest of either party in the Facility under execution or other legal process;

(g) Tenant receives a final, non-appealable notice of license revocation from the IDPH; or

(h) The occurrence of any of the Special Defaults (as defined in Section 4.24).

In the event that any Event of Default under Section 4.22.1(a) or Section 4.22.1(b) is not cured within the applicable cure period, or in the event that any other Event of Default is not cured within thirty (30) days after notice thereof by the other party; then such Event of Default shall be deemed to be a "**Default**."

REMEDIES UPON DEFAULT

4.23 Remedies.

4.23.1 The parties understand that the Facility constitutes the residence or home of each individual residing in it, and that any default or remedy must take into account an orderly transition that ensures the safety and wellbeing of the Facility's residents and public at large. In the event of any Default, the non-defaulting party may, if it so elects, forthwith terminate this Agreement. In the event of any material default on the part of Tenant, Landlord may, if it so elects, forthwith terminate this Agreement and Tenant's right to possession of the Facility, or, at the option of Landlord, terminate Tenant's right to possession of the Facility without terminating this Agreement. Upon any such termination of this Agreement, Tenant shall, in compliance with

Legal Requirements, “**Vacate the Facility**” (and in the case of any Default occurring in Phase II or thereafter under this Agreement, “Vacate the Facility” shall mean the orderly transfer and transition of residents out of the Facility) in an orderly manner while ensuring the safety and wellbeing of the residents, and shall quietly and peaceably deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Facility in such event with or without process of law and to repossess the Facility as Landlord’s former estate, subject to compliance with Legal Requirements. In the event of any such termination of this Agreement, Landlord shall again have the right to the possession and enjoyment of the Facility to the extent as if this Agreement had not been made, as allowed by applicable law, and thereupon this Agreement and everything herein contained on the part of Tenant to be done and performed shall cease and terminate.

4.23.2 Notwithstanding anything to the contrary in this Agreement, in the event of Tenant’s Default, Tenant shall be responsible for all costs and expenses associated with Vacating the Facility, including but not limited to the orderly transition of residents from Facility to a comparable licensed, skilled nursing facility.

4.23.3 In the event that a Default occurs under Section 4.22.1(e) regarding a receivership by a bankruptcy court or the IDPH, the parties shall cooperate with respect to the management and transition of the operations of the Facility, and the defaulting party shall be responsible for any and all receivership fees, costs and expenses of the non-defaulting party associated with said receivership, including but not limited to receiver fees, resident transfer fees, monitor fees, or other staffing fees in accordance with Legal Requirements.

4.23.4 In the event that a Landlord Default occurs under Section 4.22.1(a) or Section 4.22.1(b) and Tenant elects to terminate this Agreement, Landlord shall reimburse Tenant for the actual amount of Tenant’s Pre-Development Expenses incurred by Tenant as of the date of such termination.

4.24 Use of Phone Number and Name. In the event of any Default on the part of Tenant, and Landlord elects to terminate this Agreement, Landlord shall have the right to continue to utilize the telephone number and name used by Tenant.

SPECIAL DEFAULTS

4.25 Special Defaults. Upon the Effective Date, Tenant shall provide an irrevocable standby letter of credit, attached hereto and incorporated herein as **Exhibit M**, in an amount equal to Seven Hundred Thousand Dollars (\$700,000) (the “**Letter of Credit**”) to be used for purposes of remedies to be paid to Landlord upon committing the acts or omissions listed in Sections 4.25.1 - Section 4.25.3 below (the “**Special Defaults**”) which cannot be adequately covered by compensatory damages. In addition to any other remedies provided in this Agreement, and not in lieu thereof, Landlord shall have the option to draw upon the Letter of Credit upon the occurrence of any of the below listed Special Defaults. Notwithstanding the foregoing, Landlord shall not draw on or otherwise demand performance under the Letter of Credit unless and until there occurs a Special Default.

4.25.1 Tenant has its certification to participate in the Medicare and Medicaid programs revoked; provided that such suspension or revocation is not due to any action or inaction of Landlord;

4.25.2 If Tenant relinquishes the Facility to Landlord during the Term of the Agreement without adequately providing for the health, safety, or welfare of the residents of the Facility; or

4.25.3 If Tenant fails to commence construction by breaking ground and continuing thereafter with consistent progress toward the construction of the Replacement Facility within 24 months after receiving the Replacement Facility CON Approval, unless Landlord has otherwise granted Tenant an extension of such deadline, or Tenant is prevented from continuing construction due to acts beyond the reasonable control of Tenant.

4.26 Letter of Credit Draw Down. The parties agree herein, after consultation with their attorneys, that the Special Defaults are difficult to quantify in terms of money damages, and the parties agree that should any Special Default occur, that Landlord shall be entitled to demand performance under the Letter of Credit and the parties shall hereby allow for release of such Letter of Credit in the amount of such Letter of Credit that exists at the time of Special Default. The parties acknowledge that the amount of time, cost and expenses for Landlord to find a suitable tenant, licensee, and other regulatory approved operator for the Facility is unascertainable and unable to be quantified should Tenant commit the Special Default at the expense of Landlord, Facility residents, and LC Residents. The parties understand that the Facility constitutes the residence or home of each individual residing therein, and such abandonment or failure to act or commit any of the terms of the Special Default is a serious issue warranting Landlord to draw upon the Letter of Credit to protect the Facility residents and LC Residents.

4.26.1 Notwithstanding anything to the contrary contained in this Agreement, only after Tenant successfully completes Phase I and begins Phase II, the amount of the Letter of Credit upon which Landlord is permitted to draw on or otherwise demand performance under this Section 4.26 shall be reduced dollar for dollar upon Tenant's payment of the qualifying pre-development expenses set forth on Exhibit L (the "**Pre-Development Expenses**").

4.27 Cumulative Remedies of Landlord. The specific remedies to which Landlord may resort under the terms of this Lease are cumulative, except for Rent payments after termination if this Agreement is terminated prior to the end of the Term, and are not intended to be exclusive of any other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach by Tenant of any provision or provisions of this Agreement. The failure of Landlord to insist, in any one or more cases, upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of any such term, covenant, condition, provisions, agreement or option. Furthermore, the exhaustion of Landlord's right to draw on or otherwise demand performance under the Letter of Credit, or unavailability of Landlord to draw or otherwise demand performance under the Letter of Credit due to Tenant's commencement of construction of the Replacement Facility under

Section 4.26 shall not preclude Landlord from pursuing other remedies, including compensatory damages, for any Defaults or Special Defaults under this Agreement.

INDEMNIFICATION

4.28 Indemnification by Tenant. Tenant shall protect, indemnify and save harmless Landlord from and against any and all claims, demands and causes of action of any nature whatsoever (including reasonable attorneys' fees) (collectively, "**Damages**") for injury to or death of persons or loss of or damage to property, occurring in the Facility or upon any adjoining sidewalks, or ways, or in any manner growing out of or connected with the use and occupation of the Facility or the condition thereof, or the use of any existing or future sewer system, or the use of any adjoining sidewalks or ways during the Term of this Agreement. Tenant further agrees to protect, indemnify and save harmless Landlord from and against any suits, arbitration proceedings, administrative actions or investigations to the extent relating to the lease and use of the Premises during the Term of this Agreement (including any Medicaid/Medicare overpayment obligations for such periods). Tenant shall provide adequate proof of insurance coverage to Landlord with Landlord named as an additional insured, in amounts acceptable and approved by Landlord per the parameters set forth in **Exhibit "G"**, prior to the Effective Date of this Agreement, with all Tenant insurance being the primary insurance in the event of any claim. For the avoidance of doubt, Tenant's insurance coverage for workers compensation and employer liability insurance shall be primary in the event of any claim. Furthermore, Tenant shall maintain adequate Business Interruption Insurance which shall also be primary in the event of any claim. Should Tenant fail to keep such insurance coverages in effect, Tenant shall be deemed in breach of this Agreement.

4.29 Indemnification by Landlord. Landlord shall protect, indemnify and save harmless Tenant from and against any and all Damages for injury to or death of persons or loss of or damage to property, occurring in the Facility or upon any adjoining sidewalks, or ways, or in any manner growing out of or connected with the use and occupation of the Facility or the condition thereof, or the use of any existing or future sewer system, or the use of any adjoining sidewalks or ways, to the extent any of the foregoing occurred or relates to the period of time prior to or after the expiration of the Term of this Agreement. Landlord further agrees to protect, indemnify and save harmless Tenant from and against any suits, arbitration proceedings, administrative actions or investigations to the extent relating to the ownership and use of the Premises on or before the Effective Date (including any Medicaid/Medicare overpayment obligations for such periods). In addition, Landlord further agrees to protect indemnify and save harmless Tenant from and against any and all Damages related to or arising out of any lawsuits, claims or other legal challenges concerning the validity or authority of Landlord to enter into and consummate the Transaction in accordance with the terms of this Agreement.

4.30 Financing. Tenant shall use its best efforts to obtain a written loan commitment for financing of the Transaction as soon as practicable during the Term. In the event that Tenant is unable to obtain such written loan commitment on terms reasonably acceptable to Tenant, Tenant shall promptly notify Landlord and the parties shall cooperate to determine an appropriate course of action for moving forward.

ARTICLE 5 OBLIGATIONS OF TENANT

5.1 Services. Tenant will provide the following management services in connection with the operation of the Facility. Services to be provided under this Agreement shall include extraordinary items such as facilities development and planning services.

5.2 Administrator. Tenant will recruit, retain and provide an on-site, full-time administrator (“**Administrator**”) for the Facility. Under Tenant’s supervision, the Administrator will oversee on a day-to-day basis the Facility and execute policies governing the Facility’s operation. The Administrator will be employed or engaged by Tenant, and the salary or wages and cost of benefits of such Administrator shall be a Facility Operating Cost.

5.3 Personnel. Tenant will arrange for such staffing and employment as may be necessary or required for the efficient operation of the Facility, and as otherwise necessary to meet the applicable Legal Requirements, and the salary or wages and cost of benefits of such personnel shall be a Facility Operating Cost.

5.4 Certification, Licensure, Registration, Legal Requirements. Tenant will use its best efforts to adhere to all applicable State and federal rules and regulations applicable to the Facility, including without limitation the provisions of the Nursing Home Care Act, 210 Ill. Comp. Stat. 45/1-101 *et seq.* and all associated regulations and rules, including without limitation the Skilled Nursing and Intermediate Care Facilities Code, 77 Ill. Admin Code Part 300, and will cooperate fully with all legitimate State and federal requests for inspections and information. Tenant will oversee the preparation by Facility personnel of all materials necessary and compliance with procedures necessary for Tenant to obtain, (a) certification of the Facility as a provider of services under Titles XVIII (Medicare) and XIX (Medicaid) of the Social Security Act and (b) State licensure and registration of the Facility as a long term care facility under all applicable Legal Requirements. Tenant will oversee completion by Facility personnel of all reasonable steps necessary to keep the Facility fully licensed and registered by the State and duly accredited by applicable agencies and bodies. Tenant may engage legal counsel and accountants to accomplish the foregoing.Clinical Consulting, Staff Development, Program Implementation. Tenant will be responsible for clinical policymaking and provide general clinical support, staff development and implementation of resident programs and operational efficiencies.

5.6 Operational Policies. Tenant shall be responsible for the review of existing or development and implementation of new policies and procedures to reasonably conform with all applicable Legal Requirements and then-current industry standards in the areas of budgeting, business office management, quality assurance, human resources, dietary and nursing.

5.7 Reviews, Reports and Board Meetings. Tenant will periodically review the resident care policies, documentation procedures and operational policies used at the Facility to determine if they reasonably conform to then-current industry standards and applicable Legal Requirements. Tenant shall track and monitor resident satisfaction in a manner consistent with Landlord’s reasonable direction. Consistent with the requirements of Counties Code 55 Ill. Comp. Stat. § 5/5-21006, Tenant will provide monthly and annual written reports to the County Board or its designee setting forth its reviews of Facility operations and management to the

Landlord. The monthly and annual reports will include operations, management and financial updates for the Facility as compared to the Pro Forma. The content of the monthly and annual reports will include a detailed Facility financial report, census, updates as to regulatory surveys of the Facility, and resident satisfaction surveys. The content of the annual report will also include an annual financial audit (the cost of which shall be a Facility Operating Cost), and shall further include information concerning resident activities, satisfaction, quality ratings, monthly census by payor type, Medicare/Medicaid cost reports, a detailed Facility financial report, and a year-end financial report which will be submitted within one hundred twenty (120) days of the end of the Landlord's fiscal year. Tenant will meet with the Landlord at least once every two (2) months and will meet with the Landlord promptly upon the County Administrator's reasonable advance written request. Tenant will attend all reasonably requested County Board, or its designee, and any other Landlord meetings, upon receipt of reasonable advance written notice, which notice shall be not less than three (3) days. Tenant shall ensure, in accordance with 55 Ill. Comp. Stat. § 5/5-21006, that the facilities and records of the Facility shall be open for inspection by the Landlord at all times.

5.8 Intentionally Deleted.

5.9 Capital Improvements. An annual capital expenditure reserve for the Tenant of Five Hundred Dollars (\$500.00) per licensed bed shall be established in accordance with the terms of the Pro Forma. Tenant shall be responsible for determining the capital needs of the Facility, and shall communicate with and cooperate with Landlord in arranging for any necessary maintenance and repairs and/or capital improvements in accordance with Section 4.5 and 4.6. Any movable capital items procured during the Term shall be the property of the Tenant and it shall be the Tenant's responsibility to remove or dispose of items at the conclusion of this Agreement.

5.10 Billing and Third-Party Reimbursement. Tenant will oversee the billing for goods and services provided by the Facility in accordance with the terms of the Operations Transfer Agreement and in accordance with Legal Requirements.

5.11 Resident Trust Accounts. Tenant will oversee management of resident trust accounts by Facility personnel in accordance with the terms of the Operations Transfer Agreement and in accordance with Legal Requirements.

5.12 Cooperation. The parties shall cooperate with one another in good faith with respect to the coordination of all administrative and legal matters related to the operation of the Facility, and with respect to the implementation and achievement of each of Phase I, Phase II, and Phase III and the respective Milestones, including, without limitation, preparation of the application necessary to obtain the CON CHOW Approval and Replacement Facility CON Approval.

5.13 Legal Notices and Services to Residents. Tenant will provide legally required notice of this Agreement to residents of the Facility and to the State if required, but at all times upon prior approval of Landlord, which shall not be unreasonably withheld. Among other things, any notice will explain that Landlord continues to be the owner of the Facility and that

the licensed entity for the provision of services to residents will change in accordance with Phase II implementation.

5.14 Confidentiality of Facility Records. The parties to this Agreement recognize that the Landlord, as a public entity, is subject to laws such as the Illinois Freedom of Information Act and the Illinois Open Meetings Act, and that any attempt at providing confidentiality must conform with those laws. To the extent possible, the parties agree that the information, documents and instruments delivered to one party by another party or their respective agents and the information, documents and instruments delivered to a party by another party or their respective agents including this Agreement and all documents delivered hereunder are of a confidential and proprietary nature (“**Confidential Information**”). Each of the parties agrees that both prior and subsequent to the Term of this Agreement, it will maintain the confidentiality of all such Confidential information delivered to it by the other party or its agents in connection with the negotiation of this Agreement or in compliance with the terms, conditions and covenants hereof and only disclose such Confidential Information, documents and instruments to its duly authorized officers, directors, representatives and agents unless (i) compelled to disclose by judicial or administrative process (including in connection with obtaining the necessary approvals of this Agreement and the transactions contemplated hereby) or by other requirements of law or (ii) disclosed in an action or proceeding brought by a party in pursuit of its rights or in the exercise of its remedies hereunder; provided, however, that the parties hereto shall not disclose any Confidential Information not required to be disclosed as part of such permitted disclosure, or (iii) is public information or (iv) has become public through no fault of the disclosing party. Each of the parties hereto further agrees that if the Transaction is not consummated, it will return all such documents and instruments and all copies thereof in its possession to the other Party to this Agreement. Except as required by Legal Requirements, each of the parties hereto agree that any release to the public with respect to the matters set forth herein will be made only in the form and manner approved by the parties and their respective counsel. Each of the parties recognizes that any breach of this Section would result in irreparable harm to the other Party and that therefore either Tenant or Landlord shall be entitled to an injunction to prohibit any such breach or anticipated breach, without the necessity of posting a bond, cash or otherwise, in addition to all of their other legal and equitable remedies. Nothing in this Section, however, shall prohibit the use of such Confidential Information for such governmental filings as in the mutual opinion of Landlord’s counsel and Tenant’s counsel are: (i) required by Legal Requirements, or (ii) otherwise appropriate.

In accordance with Legal Requirements, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and its attendant rules and regulations, as amended by the Health Information Technology for Education and Clinical Health Act (“**HITECH Act**”) and the HITECH Act Final Rule, and as otherwise may be amended, Tenant will comply with Legal Requirements concerning confidentiality of health information of residents at the Facility, and will enter into and will cause any other person or entity required to do so under the Legal Requirements to enter into a Business Associate Agreement on terms and conditions mutually acceptable to the parties to such agreements. Additionally, the parties shall enter into a Business Associate Agreement, attached hereto and incorporated herein as **Exhibit F**, the final form of which will be agreed upon on or before the Effective Date.

5.15 Contracts, Supplies and Equipment. Tenant shall purchase such supplies and non-capital equipment necessary and appropriate for the operation of the Facility in accordance with the terms of the Pro Forma. Tenant shall inform Landlord of the contracts it wishes to continue or terminate, as the case may be, in accordance with the Operations Transfer Agreement.

5.16 Ancillary Services. Tenant will either provide or arrange for the provision of ancillary services not covered by this Agreement to the Facility as needed, including without limitation marketing and promotion, training, construction, and care-related consultants, which may include nurse consultants, dietary consultants, therapy health nurses, physician/medical director, and activities, social services and religious consultants.

5.17 Dietary Services. Tenant shall manage the dietary department of the Facility at Tenant's direction.

5.18 Marketing and Customer Relations. Tenant will oversee the development and implementation of marketing and customer relations programs for the Facility, in consultation with established groups representing Facility constituencies, such as family, residents and care providers.

5.19 Advisory Support. At no cost to Landlord, Tenant will provide timely assistance to Landlord with respect to reasonable requests for graphs, market analysis, business plans, program planning, and analysis charts and information assimilation relating to the Facility.

5.20 Occupancy. Tenant will use commercially reasonable efforts to achieve and maintain Landlord's historical census and payor mix with respect to Facility occupancy, subject to compliance with applicable Legal Requirements concerning discrimination based on payor type, and as needed to meet the financial performance set forth in Tenant's pro forma estimates in **Exhibit B**. Nothing in this Agreement affects the powers of the Landlord contained in 55 Ill. Comp. Stat. §§ 5/5-21009 and 5/5-21010, which are powers Landlord maintains, to the extent those Landlord powers do not conflict with the Service Covenant set forth in Section 6.5.

5.21 Tenant's Designated Representative. For any situation in which pursuant to the terms of this Agreement, Tenant is required or permitted to take any action, give any report or make any request to or of Landlord, Tenant will act by and through Tenant's Designated Representative.

5.22 Primary Goals & Quality Care. The primary goals of Tenant under this Agreement shall be to:

(a) at all times acknowledge and implement, through the oversight of the Landlord, the Lake County Mission;

(b) provide an accurate and objective reporting and approval channel for the Facility to the Landlord; and

(c) maintain and strive to continually improve the operations of the Facility to:

- of the community;
- (i) Provide quality nursing and rehabilitation services for the benefit of the community;
 - (ii) Maintain programs to promote the effective utilization of Facility's services;
 - (iii) Maintain the current public image for the Facility;
 - (iv) Maintain quality and proper staffing of the Facility;
 - (v) Operate the Facility on a sound financial basis;
 - (vi) Institute sound financial accounting systems and internal fiscal controls through effective budgeting procedures, all in accordance with GAAP, with accounting performed on an accrual basis;
 - (vii) Provide sound operating and billing procedures;
 - (viii) Control the cash position of the Facility through sound collection methods;
 - (ix) Take such other steps as are necessary to provide quality care to all residents of the Facility; and
 - (x) Adhere to and fully cooperate with all applicable Legal Requirements.

5.23 Offer of Beds to Current Residents in the Replacement Facility. Prior to the transfer of residents from Facility to the Replacement Facility at the end of the Term of this Agreement, Tenant shall first offer all then current residents of Facility admission to the Replacement Facility and Tenant shall make all reasonable efforts to maintain that bed for those current residents of Facility that choose to be admitted to the Replacement Facility. The Tenant obligation under this Section 5.23 shall survive the termination of this Agreement.

ARTICLE 6 PAYMENTS

6.1 Payments. Landlord shall make Progress Payments and Start-Up Capital Payments to Tenant for the Term of this Lease in accordance with the provisions of this Article and the Pro Forma. Landlord shall be permitted to withhold Progress Payments in accordance with the provisions of Section 6.2 of this Agreement. Notwithstanding the foregoing, Landlord's obligation to make the Start-Up Capital Payments shall be unconditional, provided that Tenant submits written invoices to Landlord at least thirty (30) days in advance for each monthly Start-Up Capital Payment. Each such Start-Up Capital Payment shall be paid by Landlord to Tenant in the amount set forth on the Pro Forma, at least ten (10) Business Days prior to the first day of each such month, provided that Tenant submits written invoices timely in accordance with this Section 6.1.

6.2 Amount and Conditions for Progress Payments:

6.2.1 Landlord shall make the Progress Payments to Tenant on a monthly basis, beginning on the Effective Date, in the amounts set forth for each respective month on line G45 of the Pro Forma. Provided that Tenant submits written invoices to Landlord at least thirty (30) days in advance for each monthly Progress Payment, Progress Payments shall be paid by Landlord to Tenant accordingly. Progress Payments shall be paid by Landlord to Tenant at least ten (10) Business Days prior to the first day of the respective month to which such payment relates, provided that Tenant submits written invoices timely in accordance with this Section 6.2. The parties understand that Progress Payments are expressly conditioned on Tenant meeting the milestones set forth in **Exhibits C, D, and E** (individually, a “**Milestone**” and collectively, the “**Milestones**”). Should Tenant fail to satisfy any Milestone, Landlord shall be permitted, in its discretion, to withhold the Progress Payment for such month, along with Progress Payments for subsequent months, until such time as Tenant has completed the task/objective covered by such Milestone. Notwithstanding the foregoing, if Tenant subsequently completes the task/objective covered by a Milestone that was previously unsatisfied, Landlord shall not be permitted to withhold further Progress Payments.

6.2.2 Landlord shall have no obligation to make Progress Payments: (a) beyond the Initial Term; or (b) in an amount greater than the aggregate amount of the Progress Payments set forth on the Pro Forma. Upon expiration of the Term, and within ten (10) calendar days following Tenant’s delivery of the final annual financial report at the end of the Term contemplated under Section 5.7 of this Agreement, Landlord and Tenant shall conduct a reconciliation (the “**Reconciliation**”) with respect to the Progress Payments paid to Tenant by Landlord and the actual Facility Operating Expenses paid by Tenant in operating the Facility. If the Reconciliation indicates that the Progress Payments utilized by Tenant are less than the amounts estimated in the Pro Forma attached as **Exhibit B**, then such difference shall be referred to as the “**Shared Savings**”, and such Shared Savings shall be treated as follows:

(a) Tenant shall be eligible to retain up to 50% of the Shared Savings (the “**Quality Incentive Payment**”), subject to Tenant’s satisfaction of the following standards:

(i) Provided that Tenant improves the overall star rating of the Facility by showing that the star rating for the last 24 months of this Agreement improves the overall star rating as a higher rating than when Tenant took over (Effective Date), and the star rating is higher than it was on the Effective Date when the tenant exits the building after successfully accomplishing Phase III, as such rating is published on <http://medicare.gov/nursinghomecompare/search.html> (or its successor entity/publication location), Tenant shall be entitled to retain 1/3 of the Quality Incentive Payment, with the remainder of the Shared Savings remitted back to Landlord;

(ii) Provided that Tenant maintains an average resident satisfaction level equal to or greater than 3.75 out of 5 on the Pinnacle Customer Satisfaction Surveys and the TCM employee surveys commencing on the Effective Date through the end of the Term, Tenant shall be entitled to retain 1/3 of the Quality Incentive Payment with the remainder of the Shared Savings remitted back to Landlord; and

(iii) Provided that Tenant achieves Shared Savings in its management and operation of the Facility commencing on the Effective Date through the end of the Term, Tenant shall be entitled to retain 1/3 of the Quality Incentive Payment with the remainder of the Shared Savings remitted back to Landlord.

(b) Any Quality Incentive Payment, if applicable, shall be retained by Tenant at the end of the Term of this Agreement. Otherwise, any Shared Savings that does not constitute a Quality Incentive Payment shall be remitted back to Landlord.

6.3 Start-Up Capital.

6.3.1 Landlord shall make the Start-Up Capital Payments to Tenant on a monthly basis, beginning on the Effective Date of this Agreement, in the amounts set forth for each respective month on line G46 of the Pro Forma, provided that Tenant complies with the requirements and timeframes set forth in Section 6.1.

6.3.2 Start-Up Capital, shall be repaid by Tenant to Landlord as follows: 50% of the amount of the Start-Up Capital shall be repaid within 90 days of the first to occur of the following, and the remaining 50% shall be repaid within 180 days of the first to occur of the following: (a) termination of Phase III; or (b) any other termination of this Agreement. Notwithstanding the foregoing, the aggregate amount of the Start-Up Capital which Tenant is obligated to repay shall be reduced, only by a maximum of \$900,000.00, only if Tenant provides evidence to Landlord of the following, and only to the extent of any of the following:

(a) any material decrease in Medicaid reimbursement for services provided by Tenant to residents of the Facility, calculated by subtracting the aggregate Medicaid reimbursement received by Tenant from such payor during the Term from the aggregate Medicaid reimbursement that would have been received by Tenant from such payor if the respective Medicaid reimbursement rate(s) remained consistent with the Medicaid reimbursement rate(s) effective as of the Effective Date throughout the Term;

(b) any Damages incurred by Tenant that relate, directly or indirectly, to the union that is currently providing services at the Facility pursuant to the agreement with Exiting Operator, and excluding any future union agreements with Tenant, including, without limitation, pension obligations related to such union and/or any claim made by the union regarding outstanding payment obligations, backpay obligations, or other benefits owed by Exiting Operator;

(c) the aggregate amount by which the actual real estate taxes payable by Tenant exceeds the amount set forth on the Pro Forma for real estate taxes;

(d) any Damages incurred by Tenant as a result of any Change in Law;
or

(e) any other Damages incurred by Tenant, which are mutually agreed upon by the parties, that relate to a material adverse event(s) not reasonably foreseeable by Tenant and not caused by any action or inaction of Tenant.

6.4 Changes in Law. Notwithstanding anything herein to the contrary, if during the Term hereof any Change in Law results in an Adverse Consequence (as such terms are defined in this Section 6.2), the parties agree to cooperate in making reasonable revisions to this Agreement and the Pro Forma in order to avoid and/or mitigate the effect of such Adverse Consequence. If the parties through good faith negotiations fail to agree to such revisions after thirty (30) days following written notice by either party to the other party requesting renegotiation, then this Agreement may be immediately terminated by either party upon written notice to the other party. In such event, the parties shall promptly proceed to unwind their relationship and place the other party in substantially the same position as such party was in prior to the Effective Date. During such unwinding, Tenant shall remain as manager of the Facility in accordance with Phase I of this Agreement.

As used herein, “**Change in Law**” shall mean: (i) any new legislation or rulemaking enacted by the federal or any state or local government; (ii) any governmental, judicial or administrative order, decree or decision that would affect the nursing home industry generally and not such orders, decrees or decisions applying to the Facility itself as a result of actions or omissions of Tenant; or (iii) any interpretation of (i) or (ii) above by a court of competent jurisdiction or by a formal written opinion issued by legal counsel to either party. As used herein, “**Adverse Consequence**” shall mean a Change in Law that prohibits, restricts, limits or otherwise affects either party’s rights or obligations hereunder in a material manner or otherwise makes it desirable for the parties to restructure the relationship established hereunder because of material legal or financial consequences expected to result from such Change in Law.

6.5 Service Covenant. In recognition of the role the Facility has played in caring for residents of Lake County, and with the intention of maintaining that level of commitment to Lake County residents and otherwise supporting the County’s interest in Lake County residents receiving services, Tenant shall comply with the following covenant:

6.5.1 In a simple majority of certain referrals to the Facility of prospective facility residents who are residents of Lake County (“**LC Resident**”) by Referral Sources (defined below) which do not result in an admission because Tenant cannot satisfy the resident’s needs (*e.g.*, advanced psychotic, schizophrenic, or suicidal conditions), Tenant shall use commercially reasonable efforts to undertake the following actions (“**Service Covenant**”): Within five (5) Business Days of declining to admit such LC Resident, Tenant will either identify available services to meet the needs of the LC Resident or identify an alternative nursing facility located preferably within the Lake County Marketplace, offering the types of services required by the resident (“**Alternate Placement**”), and Tenant will identify the Alternate Placement to the Referral Source by providing written or verbal notice. For purposes of this Section 6.4, “**Referral Source**” means a referral source, other than other facilities, that has referred a LC Resident to the Facility for admission, and the term “**LC Resident**” includes resident’s decision-making proxy, where appropriate in a given context.

6.5.2 Limitations on the Service Covenant.

(a) Tenant shall not be obligated to admit to the Facility any LC Resident who requires or may foreseeably require any of the categories of services listed or is

otherwise described on **Exhibit I** (“**Service Limitations**”) or whose needs may otherwise negatively affect then-current Facility residents. Such referrals are “**Non-qualifying Referrals**.”

(b) If Tenant has notified a Referral Source in writing of the Facility’s Service Limitations, and the Referral Source makes a referral to the Facility of a LC Resident whose needs fall within or foreseeably may fall within the Service Limitations, then Tenant may but shall have no obligation to identify an Alternate Placement, and such Non-qualifying Referral shall not be included in the assessment of Tenant’s compliance with the Service Covenant.

(c) The following circumstances shall not be included in the assessment of Tenant’s compliance with the Service Covenant:

(i) If Tenant is unable to admit a LC Resident due to insufficient staffing at the Facility, or discontinuation or planned discontinuation of a category of service, Tenant may, but shall not be obligated to identify an Alternate Placement.

(ii) If Tenant is unable to admit a LC Resident due to damage to the Facility, construction, renovation, equipment failure or loss, or other structural or physical cause, Tenant may, but shall not be obligated to identify an Alternate Placement.

(iii) Tenant shall not be obligated to identify an Alternate Placement for a LC Resident if none exists suitable for the LC Resident’s needs within the Lake County Marketplace at the time of the referral to the Facility.

6.5.3 Tenant Not a Referral Source.

Under no circumstances shall Tenant be deemed to have made a referral in identifying an Alternate Placement. Landlord shall not take or support the position that Tenant has made a referral in identifying an Alternate Placement.

6.5.4 Certification by Tenant.

(a) At the end of each quarter beginning with the first three months after the Effective Date, and until the termination of this Agreement, Tenant shall certify (“**Quarterly Certification**”) to the Landlord that it has or has not met the Service Covenant. The Quarterly Certification shall provide cumulative information for the preceding quarters, ending in the applicable quarter to date. The Landlord shall meet within ten (10) Business Days following delivery of each Quarterly Certification to the Landlord. Such delivery may be electronic, at Tenant’s option. If for any quarter Tenant has not met the Service Covenant, the Landlord will notify the Tenant.

(b) Tenant shall deliver a cumulative annual certification to the Landlord as to whether Tenant has met the Service Covenant (“**Annual Certification**”), based on an annual cycle starting on the Effective Date. The Annual Certification shall be delivered within 10 Business Days of the end of each annual cycle. Such delivery may be electronic, at Tenant’s option.

(c) Both the Quarterly Certification and Annual Certification will identify (1) compliance with the Service Covenant by specifically setting forth those LC Residents referred by Referral Sources who are not admitted to the Facility, and state the reason and list the Alternate Placement identified by Tenant; provided however, such information shall be provided to the Landlord in a manner that will not violate standards that protect health information and identities of such LC Residents, (2) actual census numbers for the Facility by payor type, and (3) progress reports with respect to compliance with the Phase I, II, and II Milestones with explanations and evidence of same that is reasonably satisfactory to Landlord.

(d) An Alternate Placement notification by Tenant shall not be invalidated by (i) the refusal or failure of the Referral Source to communicate the Alternate Placement to the LC Resident, (ii) the refusal or failure of the Alternate Placement to accept the LC Resident, (iii) the failure or refusal of the LC Resident to become a resident of the Alternate Placement, (iv) efforts by the LC Resident or Alternate Placement to relocate or relocation of such LC Resident following admission to Alternate Placement, or (v) refusal of admission to the Alternate Placement based on facts concerning the LC Resident or the Alternate Placement not previously known to Tenant.

6.5.5 Landlord's Remedies. If Tenant fails to meet the Service Covenant for any quarter, Tenant shall immediately submit a plan of correction to Landlord. In addition, Tenant shall pay to Landlord \$500 per day for each day in which Tenant is in violation of the Service Covenant. If Tenant fails to meet the Service Covenant a second time while this Agreement is in effect, in addition to the \$500 per day penalty set forth above, Landlord shall have the option of arranging for the administration of the Service Covenant by qualified experts chosen by Landlord, the cost of which shall be a Tenant expense, but which shall not be includable on the Pro Forma.

6.5.6 Lender's Criteria. Landlord acknowledges that Tenant's and Tenant's lenders may impose financial performance covenants ("**Criteria**") on Tenant's operation of the Facility, that Tenant's ability to continue to operate the Facility and provide services to LC Residents in Lake County is conditioned on achieving such Criteria and on receiving timely Progress Payments under this Agreement, and that achieving the Criteria and/or making payments to Landlord under this Agreement may require Tenant to deviate from the Objective from time to time. In such event, together with any Quarterly or Annual Certification so effected, Tenant shall provide to Landlord financial information to demonstrate Tenant's need to deviate from the Objective, and identify what Criteria is implicated, and the Tenant shall be entitled to suspend the provisions of Section 6.2, at the reasonable discretion of the Landlord, without waiving Tenant's requirements to abide by the Objective throughout the Term of this Lease. If Landlord's non-payment of the Progress Payment would cause Tenant to fail to comply with the Criteria or be unable to make timely payments under the Lease, withholding of such Progress Payment and any previously withheld Progress Payments may be deferred by Landlord at Landlord's discretion.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Landlord's Representations and Warranties.

7.1.1 Organization and Qualification; Authority; Binding Effect.

(a) Landlord is an Illinois municipal corporation, duly formed, validly existing and in good standing under the laws of the State of Illinois, and has all requisite power and authority to own, lease, operate, and consummate the Transaction contemplated under this Agreement. Landlord is the sole owner of the Facility and holds good and clear title to the Facility and all of the related assets to be leased to Tenant under this Agreement.

(b) Landlord has, and as of the Effective Date and at all times up to and including termination of Phase III will have, the full and unrestricted right, power and authority to execute, deliver and perform this Agreement and to consummate the Transactions and perform all obligations contemplated hereby and in all agreements, instruments and documents being or to be executed and delivered by it in connection with such transactions, including the Operations Transfer Agreement (collectively, the “**Landlord Related Documents**”). The execution and delivery of this Agreement and the Landlord Related Documents by Landlord, the performance of this Agreement and the Landlord Related Documents by Landlord, and the consummation of the Transaction contemplated hereby and thereby, have been duly authorized by Landlord and no other proceeding on the part of Landlord is necessary to authorize this Agreement or the Landlord Related Documents or to consummate the Transaction contemplated hereby or thereby. This Agreement has been duly executed and delivered by Landlord and constitutes the valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms. When each of the other Landlord Related Documents has been duly executed and delivered by Landlord, such Landlord Related Documents will constitute a legal and binding obligation of Landlord enforceable against it in accordance with its terms, except to the extent that enforcement may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar law as is now or hereinafter in effect relating to creditors' rights generally.

7.1.2 No Conflict; Required Filings and Consents.

(a) The execution and delivery by Landlord of this Agreement and the Landlord Related Documents to which it is a party, Landlord's performance of this Agreement and the Landlord Related Documents to which it is a party, and the consummation of the Transaction contemplated hereby and thereby will not conflict with or violate or constitute, with or without notice or the lapse of time or both, a breach of or default under: (i) the governing or charter documents of Landlord, (ii) any Legal Requirement, (iii) any contract to which Landlord is a party, or (iv) any other instrument to which Landlord is a party or by which Landlord may be bound or to which Landlord or any portion of the Facility is subject.

(b) The execution and delivery by Landlord of this Agreement and the Landlord Related Documents to which it is a party, Landlord's performance of this Agreement and the Landlord Related Documents to which it is a party, and the consummation of the

Transaction contemplated hereby and thereby will not with or without notice or the lapse of time or both, give to others any rights of termination, amendment, acceleration or cancellation of, or require payment under, or result in the creation of any lien or adversely affect the Facility.

(c) The execution and delivery by Landlord of this Agreement and the Landlord Related Documents to which it is a party, Landlord's performance of this Agreement and the Landlord Related Documents to which it is a party, and the consummation of the Transaction contemplated hereby and thereby will not require Landlord to obtain any consents, authorizations, orders and approvals of, or to make any filing with or notification to, any governmental entity or any other person or entity, except with respect to the approval of the County Board.

7.1.3 Compliance with Laws. Landlord is, and has been, in material compliance with all Legal Requirements applicable to the Facility. Landlord has not received, and to Landlord's knowledge, no other party has received, any written notice alleging non-compliance with any material Legal Requirements within the five year period preceding the Signing Date.

7.1.4 Environmental Matters. Landlord has not received any notice of any violation or alleged violation of any Environmental Law, and Landlord and the Facility are in compliance with all Environmental Laws. Neither Landlord nor the Facility are subject to any outstanding or threatened Environmental Action. The Facility has not been used by Landlord or any other person for the generation, storage, manufacture, use, transportation, disposal or treatment of Hazardous Substances, except for medical waste in the ordinary course of operating the Facility. There has been no Hazardous Discharge on or from the Premises by Landlord, or, to Landlord's knowledge, by any other person or entity. As used in this Agreement, "**Environmental Law**" means each and every applicable federal, state, local and foreign law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every governmental entity and the common law, pertaining to the protection of human health, safety the environment, or natural resources, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. 9601, *et seq.*, the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. 6901, *et seq.*, the Toxic Substances Control Act ("**TSCA**"), 15 U.S.C. 2601, *et seq.*, the Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. 1251, *et seq.*, the Occupational Safety and Health Act ("**OSHA**"), 42 U.S.C. 655, all as amended. As used in this Agreement, "**Hazardous Discharge**" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Substances. As used in this Agreement, "**Hazardous Substance**" shall mean any substance, compound, chemical or element which is: (i) defined as a hazardous substance, hazardous material, toxic substance, hazardous waste, medical waste, pollutant or contaminant under any Environmental Law; (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof; (iii) asbestos in any form; or (iv) radon, mold, lead, or other toxic compounds or substances. As used in this Agreement, "**Environmental Action**" means any Actions and Proceedings under or by virtue of any Environmental Law or in connection with any Hazardous Discharge or Hazardous Substance.

7.1.5 Full Disclosure. No representation or warranty by Landlord in this Agreement contains any untrue statement of a material fact, or omits to state a material fact

necessary to make the representation or warranty contained therein, in light of the circumstances in which they are made.

7.2 Tenant's Representations and Warranties.

7.2.1 Organization and Qualification; Authority; Binding Effect.

(a) Tenant is a _____, duly formed, validly existing and in good standing under the laws of the State of [_____], and has all requisite power and authority to own, lease, operate, and consummate the Transaction contemplated under this Agreement.

(b) Tenant has, and as of the Effective Date and at all times up to and including termination of Phase III will have, the full and unrestricted right, power and authority to execute, deliver and perform this Agreement and to consummate the Transactions and perform all obligations contemplated hereby and in all agreements, instruments and documents being or to be executed and delivered by it in connection with such transactions, including the Operations Transfer Agreement (collectively, the “**Tenant Related Documents**”). The execution and delivery of this Agreement and the Tenant Related Documents by Tenant, the performance of this Agreement and the Tenant Related Documents by Tenant, and the consummation of the Transaction contemplated hereby and thereby, have been duly authorized by Tenant and no other proceeding on the part of Tenant is necessary to authorize this Agreement or the Tenant Related Documents or to consummate the Transaction contemplated hereby or thereby. This Agreement has been duly executed and delivered by Tenant and constitutes the valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms. When each of the other Tenant Related Documents has been duly executed and delivered by Tenant, such Tenant Related Documents will constitute a legal and binding obligation of Tenant enforceable against it in accordance with its terms, except to the extent that enforcement may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or similar law as is now or hereinafter in effect relating to creditors' rights generally.

7.2.2 No Conflict; Required Filings and Consents.

(a) The execution and delivery by Tenant of this Agreement and the Tenant Related Documents to which it is a party, Tenant's performance of this Agreement and the Tenant Related Documents to which it is a party, and the consummation of the Transaction contemplated hereby and thereby will not conflict with or violate or constitute, with or without notice or the lapse of time or both, a breach of or default under: (i) the governing or charter documents of Tenant, (ii) any Legal Requirement, (iii) any contract to which Tenant is a party, or (iv) any other instrument to which Tenant is a party or by which Tenant may be bound or to which Tenant is subject.

(b) The execution and delivery by Tenant of this Agreement and the Tenant Related Documents to which it is a party, Tenant's performance of this Agreement and the Tenant Related Documents to which it is a party, and the consummation of the Transaction contemplated hereby and thereby will not with or without notice or the lapse of time or both,

give to others any rights of termination, amendment, acceleration or cancellation of, or require payment under, or result in the creation of any lien or adversely affect the Facility.

(c) The execution and delivery by Tenant of this Agreement and the Tenant Related Documents to which it is a party, Tenant's performance of this Agreement and the Tenant Related Documents to which it is a party, and the consummation of the Transaction contemplated hereby and thereby will not require Tenant to obtain any consents, authorizations, orders and approvals of, or to make any filing with or notification to, any governmental entity or any other person or entity.

7.2.3 Compliance with Laws. Tenant is, and has been, in material compliance with all Legal Requirements to allow Tenant to fulfill its obligations under this Agreement. Tenant has not received, and to Tenant's knowledge, no other party has received, any written notice alleging non-compliance with any material Legal Requirements, including but not limited to any pending compliance action(s) with the IHFSRB.

ARTICLE 8 MISCELLANEOUS

8.1 Quiet Enjoyment. Tenant, upon paying the Rent and all other charges herein provided, and for observing and keeping the covenants, agreements, terms and conditions of this Agreement on its part to be performed, shall lawfully and quietly hold, occupy and enjoy the Facility during the Term of this Agreement, and subject to its terms, without hindrance by Landlord or by any other person or persons claiming under Landlord.

8.2 Notices. All notices, approvals or other communications that a party may desire or be required to give to another party under the terms of this Agreement shall be in writing and shall be deemed to have been properly given, served and received: (i) if delivered by messenger, when delivered; (ii) if mailed in the United States certified or registered mail, postage prepaid, return receipt requested, on the third (3rd) postal delivery day after mailing; or (iii) if sent for next Business Day delivery by reputable, national next business day express carrier, freight prepaid, the next business day after dispatch to such carrier, addressed to such party as follows:

If to Tenant:

TCM
6400 Shafer Court, Suite 600
Rosemont, IL 60018
Attention: Mike Filippo

With copies to:

Benesch, Friedlander, Coplan & Aronoff LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2378
Attention: Daniel J. O'Brien

If to Landlord:

County of Lake
18 N. County Street 9th floor
Waukegan, IL 60085
Attn: County Administrator

With copies to: County of Lake
18 N. County Street 9th floor
Waukegan, IL 60085
Attn: Deputy of the Civil Division

Additional Copies To: Duane Morris LLP
190 South LaSalle Street
Suite 3700
Chicago, IL 60603
Attn: Nicholas J. Lynn

8.3 Memorandum of Lease. Upon demand by either party, Landlord and Tenant agree to execute and deliver a short form lease in recordable form so that the same may be recorded by either party.

8.4 Estoppel. Each party agrees that any time, and from time to time, upon not less than ten (10) days prior written request from the other party, to execute, acknowledge and deliver to the other party a statement in writing, certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which the Rent has been paid, and whether any events have occurred which, with the giving of notice or the passage of time, or both, could or do constitute a Default hereunder.

8.5 Fair Market Value. In determining the payments to be paid under this Agreement, including but not limited to the Progress Payments, the parties have agreed to the fair market value of the payments in light of the time, energies, training, experience and skills required, and experience and general economic conditions. The parties agree that the payments, including the Progress Payments set forth herein reflect fair market value and have not been determined by taking into account in any way the volume or value of any referrals or business generated between the parties which is reimbursed under Medicare, Medicaid or any private health insurance.

8.6 No Requirement to Refer. Nothing in this Agreement shall constitute an agreement for referrals or an agreement to offer or receive anything of value as an inducement for referrals. The terms of this Agreement are not dependent upon the amount or volume of referrals. Nothing in this Agreement is intended to be, nor will it be construed as, an offer, inducement or payment, whether directly or indirectly, overtly or covertly, for the referral of residents or patients, or for the recommending or arranging of the purchase, lease or order of any item or service. No referrals are required under this Agreement.

8.7 Change in Legal Requirements. Upon either party's good faith determination, on the basis of events occurring subsequent to the date of this Agreement, that the Agreement fails to comply in a material way with any applicable Legal Requirements, the parties agree to take no action deemed to be in violation of such law and, after notice has been given, the parties shall promptly meet within a period of thirty (30) days and using good faith and due diligence shall

attempt to agree upon a new structure that will satisfy the business objectives of the Agreement and applicable Legal Requirements. If, by the end of the thirty (30) day period the parties have agreed upon a new structure, then the parties may amend this Agreement.

8.8 Interpretation. All of the provisions of this Agreement shall be deemed and construed to be “conditions” and “covenants” as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof. Any reference herein to the termination of this Agreement shall be deemed to include any termination thereof by expiration, or pursuant to Articles referring to earlier termination. All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require.

8.9 Headings. The headings and titles in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

8.10 Entire Agreement. This Agreement contains the entire agreement between the parties, but arises from the Lake County RFP dated July 23, 2014, (attached to this Agreement as **Exhibit J**), and approved by the Landlord on [REDACTED], and a Transitional Care Management Proposal dated August 14, 2014 (attached to this Agreement as **Exhibit K**). In the event of a conflict between these three documents, the order of precedence shall be (1) this Agreement; (2) the RFP; (3) the Transitional Care & Management Proposal. No oral modifications to this Agreement shall be valid, but rather all modifications must be made in writing and signed by both parties.

8.11 Assignment. Neither party shall be permitted to assign or sublet, whether by operation of law or otherwise, all or any portion of this Agreement without the prior written consent of the other party.

8.12 Force Majeure. Neither party shall be liable nor deemed to be in Default for any delay or failure in performance under this Agreement or other interruption of service resulting, directly or indirectly, from acts of God, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either parties' employees, legislative changes or rulemakings, or any similar or dissimilar cause beyond the reasonable control of either party.

8.13 Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

8.14 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. Signatures transmitted by facsimile or PDF shall have the same effect as original signatures.

8.15 Dates. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by persons authorized to do so on behalf of each of them respectively the day and year just above written.

Landlord:

COUNTY OF LAKE, an Illinois municipal corporation

By: _____

Its: _____

Consented to this _____ *day of* _____,
2015

Tenant:

_____, a _____

By: _____

Its: _____

EXHIBIT A

PREMISES

Winchester House
1125 North Milwaukee Avenue
Libertyville, Illinois 60048

EXHIBIT B

TENANT'S PRO FORMA ESTIMATES FOR OPERATION OF FACILITY

See attached.

EXHIBIT C

PHASE I MILESTONES

Phase I shall commence as of the Effective Date. During Phase I, Tenant shall take all commercially reasonable actions necessary to secure all Healthcare Licenses and Approvals needed to operate the Facility. During the pendency of Tenant's receipt of the Healthcare Licenses and Approvals, Tenant shall assist Landlord (or Landlord's agent) in Landlord's provision of services for the health, safety, nursing care, and welfare of all Facility residents. During this Phase I, Tenant shall work cooperatively with Landlord to assure a smooth transition to Phase II. Such transition shall include, but not be limited to, installation of systems and procedures needed to operate and sustain operations, performing inventory of existing movable equipment and supplies, establishing cut-off procedures for accounts receivable and accounts payable, assembling a workforce, transferring applicable contractual obligations to Tenant and such other practices necessary for the transition of the Facility operation to Tenant. Phase I shall terminate upon Tenant's receipt of the Healthcare Licenses and Approvals.

- Filing of CHOW CON Application within thirty (30) days of the Effective Date.
- Filing of Application for Licensure ("**Licensure Application**") with IDPH within ten (10) days of receipt of the CHOW CON Approval.
- Filing of documents for Medicare Certification fourteen (14) days after approval by IDPH of the Licensure Application.
- Filing of documents for Medicaid Certification fourteen (14) days after approval by IDPH of the Licensure Application.

EXHIBIT D

PHASE II MILESTONES

Phase II shall commence upon Tenant's receipt of the Healthcare Licenses and Approvals. During Phase II, Tenant shall continue to provide for the health, safety, nursing care and welfare of all Facility residents, and shall be the sole operator of the Facility pursuant to the terms of this Agreement and pursuant to any and all applicable Legal Requirements. In addition, during Phase II, Tenant shall diligently prepare and submit an application to obtain the Replacement Facility CON Approval. Phase II shall terminate upon Tenant's receipt of both: (a) the Replacement Facility CON Approval; and (b) the Healthcare Licenses and Approvals.

- (A) Contract to secure land for construction of Replacement Facility – ten (10) months from Effective Date.
- (B) Presentation of master design, architectural drawings, and master plan for Replacement Facility to Landlord – nine (9) months from Effective Date.
- (C) Preparation by Tenant of CON for Replacement Facility and discontinuation CON, and presentation to Landlord of Replacement Facility CON and any discontinuation CON in DRAFT form – nine (9) months from Effective Date.
- (D) Preparation by Tenant of construction schedule and list of contractors for building of Replacement Facility; presentation of same to Landlord – sixteen (16) months from Effective Date.
- (E) Filing of Replacement Facility CON Application by Tenant for Replacement Facility (to be coordinated by Tenant with Landlord discontinuation of Landlord CON) with IHFSRB – ten (10) months from Effective Date.

EXHIBIT E

PHASE III MILESTONES

Phase III shall commence upon Tenant's receipt of both: (a) the Replacement Facility CON Approval; and (b) the Healthcare Licenses and Approvals. During Phase III, Tenant shall continue to provide for the health, safety, nursing care and welfare of all Facility residents. Promptly following Tenant's receipt of the Replacement Facility CON Approval, Tenant shall diligently pursue construction of the Replacement Facility in accordance with the terms of the Replacement Facility CON Approval, followed by relocation of the residents. Phase III shall terminate upon transfer of the last then current resident to the Replacement Facility, in accordance with the laws, rules and regulations of the State of Illinois regarding the transfer of residents.

- (A) Tenant to begin construction of Replacement Facility project pursuant to Replacement Facility CON Approval - 24 months from Effective Date.
- (B) Filing of discontinuation of Facility CON with the IHFSRB – 24 months from Effective Date.
- (C) Completion of construction and submission of Final Project Report by Tenant to IHFSRB - 36 months from Effective Date.
- (D) Filing of Facility Closure Plan, with input from IDPH that is gathered by Tenant, including details of transfer of residents to replacement facility; presentation of same to Landlord – 30 months from Effective Date.
- (E) Filing of Application for Licensure ("**Licensure Application**") for Replacement Facility with IDPH – 30 months from Effective Date.
- (F) Tenant to provide to Landlord a draft transition and communication plan for families and residents regarding transfer of residents into Replacement Facility – 30 months from Effective Date.

EXHIBIT F
BUSINESS ASSOCIATE AGREEMENT

See attached.

EXHIBIT G

INSURANCE COVERAGES

[Include requirements for insurance coverage for Tenant]

See attached.

EXHIBIT H

LAKE COUNTY MARKETPLACE

See attached.

EXHIBIT I

SERVICE LIMITATIONS ON SERVICE COVENANT

See attached.

EXHIBIT J

RFP

See attached.

EXHIBIT K
TCM PROPOSAL

See attached.

EXHIBIT L

PRE-DEVELOPMENT COSTS

See attached.

EXHIBIT M

IRREVOCABLE STANDBY LETTER OF CREDIT

See attached.

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