

**REGULAR STUDY SESSION**  
CITY HALL - 425 EAST DEWEY AVENUE  
2ND FLOOR CONFERENCE ROOM  
5:30 P.M., MONDAY, MAY 1, 2017

Notice is hereby given that the Mayor, Board of Councilors of the City of Sapulpa, Oklahoma, and the Trustees of the Sapulpa Municipal Authority, a Public Trust, will meet in study session at 5:30 p.m., on the 1st day of May, 2017, in the 2nd floor Conference Room of the Sapulpa City Hall, located at 425 E Dewey Avenue in said city. No decision or action, except to direct staff to take action, or to schedule the matter for discussion at a later date shall be taken during said meeting.

**- AGENDA -**

1. **CALL TO ORDER.**
2. **AT THE COUNCIL'S REQUEST, DISCUSS ANY ITEM OF CONCERN ON THE REGULAR SESSION AGENDA OF MAY 1, 2017.**
3. Introduction of Steve Kauble, Clermont Innovative Design, LLC
4. Discuss renaming New Sapulpa Road to State Highway 66.
5. Discuss Franchise Agreement with ONE Gas, Inc. through its Oklahoma Natural Gas Company (ONG) division.
6. Discuss entering into a public-private partnership to authorize Non-State Government-Owned (NSGO) nursing care facilities within the city.
7. Discuss Annexation request from Susan Cravens, President, Landmark Farm Stables LLC, 9300 South 51st West Avenue, Tulsa, Oklahoma.
8. Discuss Annexation of 250 acre tract of Senegence.
9. Discuss Annexation of City of Sapulpa property (67 acres) located at NW corner of 81st Street and Frankhoma Road.
10. Discuss status of active, inactive, and outstanding subcommittees of the City of Sapulpa.
11. **ADJOURN.**

Posted this 28th day of April, 2017 at 2:30 o'clock p.m., at the Sapulpa City Hall, 425 East Dewey, Sapulpa, Oklahoma.

Name:

A J Fife

Title:

Adm. Clk.

**City Council Study Session**

3.

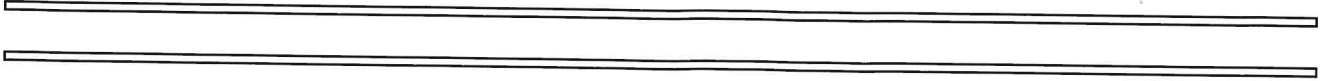
**Meeting Date:** 05/01/2017

Introduction of Steve Kauble Clermont Innovative Design, LLC

**Submitted For:** Joan Riley, City Manager

**Submitted By:** Amy Hoehner, Legal Assistant

**Department:** City Manager



**City Council Study Session**

**4.**

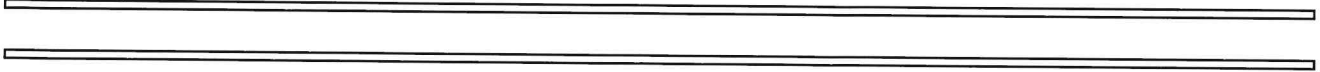
**Meeting Date:** 05/01/2017

renaming New Sapulpa Road

**Submitted For:** David Widdoes, City Attorney

**Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Legal



**Attachments**

Guy Berry email

New Sapulpa Rd. Map

SH 66 Resolution



From: David Widdoes [david@widdoeslaw.com]  
Sent: Wednesday, April 26, 2017 11:15 AM  
To: 'Amy Hoehner'  
Subject: FW: Re-naming New Sapulpa Road to Highway 66  
Attachments: Guy L Berry.vcf

Please place in Agenda Quick as support material for Resolution.

david

-----Original Message-----

From: Joan Riley [mailto:jriley@cityofsapulpa.net]  
Sent: Wednesday, April 05, 2017 5:03 PM  
To: 'David Widdoes' <david@widdoeslaw.com>  
Subject: FW: Re-naming New Sapulpa Road to Highway 66

FYI

-----Original Message-----

From: Guy L. Berry [mailto:gberry@AHB-OK.com]  
Sent: Tuesday, April 04, 2017 5:19 PM  
To: 'jriley@cityofsapulpa.net'  
Cc: 'Suzanne'  
Subject: Re-naming New Sapulpa Road to Highway 66

Joan- I want to let you know that I am looking into the procedure to change the Highway 66 name of "New Sapulpa Road" back to Highway 66. "New Sapulpa Road" is a small section of Highway 66, approx. 5 miles in length. The name was changed 35 years ago when ODOT four-laned Highway 66 from the Liberty Glass plant in Sapulpa to the Tulsa Co.-Creek County line. The name "New Sapulpa Road" is very confusing to travelers and Route 66 tourists. We have approximately 60 businesses on "New Sapulpa Road". I sent them all a letter last November to get their opinion on getting rid of the name. No one wanted to keep "New Sapulpa Road". I talked to Randle White, who oversees Northeastern Oklahoma for ODOT. He looked into doing a name change. Randle called me back yesterday to say that the only action would be for the Sapulpa City Council to pass a resolution changing the name of "New Sapulpa Road" to Highway 66. He will not let us change the name to Route 66, but there are Route 66 signs all up and down "New Sapulpa Road". As you know Route 66 is a big selling point for Sapulpa. Tex Slyman who owns Freddie's on "New Sapulpa Road" is a big supporter of the name change, as are many other business owners. There would be no cost to the City of Sapulpa, although



there are 5 or 6 street signs that would need to be changed. Mark Lawson, our State Representative, and I both talked to our Postmaster. He did not believe that there would be any problem delivering the mail. Please call me when you have a chance to talk about this. My cell phone number is 918-808-7809. Thanks- Guy Berry

This e-mail and any attachments contain information from the company of American Heritage Bank, and are intended solely for the use of the named recipient or recipients. This e-mail may contain privileged client communications or work product. Any dissemination of this e-mail by anyone other than an intended recipient is strictly prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you believe you have received this e-mail in error, notify the sender immediately and permanently delete the e-mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e-mail or attachments.







RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY OF SAPULPA, OKLAHOMA, NAMING THE ROADWAY DESCRIBED AS "NEW SAPULPA ROAD" FROM FRANKHOMA ROAD TO W. 61<sup>ST</sup> STREET AS "STATE HIGHWAY 66", AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, that portion of SH-66 lying between Frankhoma Road and W. 61<sup>st</sup> Street was named New Sapulpa Road by the City of Sapulpa upon completion of a highway construction and expansion project nearly forty (40) years ago; and

**WHEREAS**, that portion of the SH -66 roadway lies solely within the city limits of the City of Sapulpa; and

**WHEREAS**, the City of Sapulpa desires to support, promote and encourage tourism and economic development activities along New Sapulpa Road for the benefit of the citizens and community of Sapulpa; and

**WHEREAS**, changing the name of New Sapulpa Road back to its original description as State Highway 66 will stimulate and encourage additional tourism and economic development activities along said roadway and other areas of the community. **NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF SAPULPA, OKLAHOMA:**

**Section 1.** That the name of the roadway described as New Sapulpa Road from Frankhoma Road to w. 61<sup>st</sup> Street be official named as State Highway 66.

**Section 2.** That this change in name shall not become effective until thirty (30) days after the date of passage of this Resolution, so as to provide sufficient time for street sign changes, postal service adjustments and business and personal address changes to be implemented by those affected by the change.

**Section 3.** That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED and APPROVED by the City Council of the City of Sapulpa, Oklahoma, and signed by the Mayor this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Reg Green, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Shirley Burzio, City Clerk

\_\_\_\_\_  
David R. Widdoes, City Attorney

**City Council Study Session**

5.

**Meeting Date:** 05/01/2017

ONG Franchise Agmt Ordinance

**Submitted For:** David Widdoes, City Attorney      **Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Legal

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**Attachments**

ONG Franchise Ord

ONG Ex. A

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ORDINANCE NO. -17

AN ORDINANCE OF THE CITY OF SAPULPA, OKLAHOMA, GRANTING TO ONE GAS, INC., ACTING BY AND THROUGH ITS OKLAHOMA NATURAL GAS COMPANY DIVISION, AND ITS SUCCESSORS AND ASSIGNS, FOR A PERIOD OF TWENTY-FIVE (25) YEARS FROM APPROVAL AND ACCEPTANCE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC WAYS TO INSTALL, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM WITHIN, ALONG, ACROSS, OVER AND UNDER THE PUBLIC WAYS OF THE CITY OF SAPULPA, OKLAHOMA FOR THE TRANSPORTATION, DISTRIBUTION AND/OR SALE OF GAS TO CONSUMERS AND THE PUBLIC GENERALLY IN THE CITY; DEFINING THE WORDS AND PHRASES THEREIN; PROVIDING FOR ASSIGNMENT, SALE OR LEASE OF THE FRANCHISE; PROVIDING THAT THE CITY MAY ENACT AN ORDINANCE CHARGING PERSONS TRANSPORTING GAS THROUGH GRANTEE'S DISTRIBUTION SYSTEM A FEE ON THE CALCULATED VALUE OF SUCH TRANSPORTED GAS; PROVIDING FOR USE AND REPAIR OF THE PUBLIC WAYS; PROVIDING FOR REGULATION OF SERVICE; ESTABLISHING DEPTH OF PIPELINES; ESTABLISHING RIGHTS AND DUTIES IN THE MOVEMENT AND ALTERATION OF PIPELINES; PROVIDING FOR INDEMNIFICATION OF THE CITY OF SAPULPA; PROVIDING FOR GRANTEE'S RULES AND REGULATIONS; PROVIDING FOR INSPECTION OF GRANTEE'S RECORDS; REQUIRING GRANTEE TO PAY A FRANCHISE FEE; PROVIDING FOR CONDITIONS OF THE FRANCHISE; PROVIDING FOR CONSTRUCTION OF THIS ORDINANCE UPON THE INVALIDITY OF ANY PART THEREOF; PROVIDING FOR THE SUBMISSION OF THIS ORDINANCE TO AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY; PROVIDING FOR ACCEPTANCE OF THIS FRANCHISE BY GRANTEE AND BOTH AN EFFECTIVE AND AN OPERATIVE DATE THEREOF; REPEALING ALL OTHER ORDINANCES DIRECTLY IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAPULPA, OKLAHOMA:

SECTION 1. DEFINITIONS

As used in this Ordinance, the following words and phrases shall have the following meanings:

- A. "Calculated Value" shall mean the total Transport Gas measured in Dekatherms (Dth), delivered to a Transport Gas Consumer for a billing period, multiplied by the Settlement Price to arrive at the value of the Transport Gas transported by Grantee for that Transport Gas Consumer.
- B. "Consumer" shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, or public or private entity located within the municipal corporate limits of the City and serviced by the Grantee through any use of the Public Ways.
- C. "Dekatherm" or "Dth" shall mean a measurement of natural gas equal to 1,000,000 British Thermal Units ("Btu"), or 1 MMBtu, on a dry basis. Btu shall be computed on a temperature base of 60 degrees Fahrenheit and a pressure base of 14.73 PSIA.
- D. "Distributed" or "Distribution" shall mean all sales, distribution, or transportation of natural gas to any Consumer or user located within the municipal corporate limits of the City by the Grantee or by others through Grantee's Distribution System.
- E. "Distribution System" shall mean a system of works, pipes, pipelines, apparatus, machinery, structures, appliances and appurtenances as are reasonably necessary for the transportation, distribution or sale of gas to Consumers.
- F. "Franchise" shall mean the rights and privileges granted by Grantor to Grantee under Subsection A of Section 2 of this Ordinance.
- G. "Franchise Fee" or "Franchise Fees" shall mean the sum of fees to be paid to the City by Grantee under Section 11 of this Ordinance, at Paragraph A(1), as consideration for the use of the Public Ways and shall be inclusive or in lieu of any permit fees, lane closure fees and similar fees or charges for construction, installation, maintenance or restoration work on the Distribution System with the Public Ways.
- H. "Grantee" shall mean ONE Gas, Inc., a corporation acting by and through its Oklahoma Natural Gas Company division, and its successors and assigns.



- I. "Grantor" shall mean the City of Sapulpa, Oklahoma, a municipal corporation, hereinafter also referred to as the "City".
- J. "Gross Receipts" shall mean any and all compensation derived by Grantee directly from the Distribution of natural gas to a Consumer for any use, including residential, industrial and commercial purposes, and shall include without limitation revenues from any operation or use of any or all of the Distribution System by Grantee or others. Gross Receipts shall not include revenues received by Grantee from Consumers as franchise fee reimbursement nor Volumetric Rate Fees collected by Grantee and remitted to Grantor in accordance with Paragraph 11.A(2) pursuant to an ordinance enacted by Grantor according to Paragraph 3.B(1) hereof, nor shall Gross Receipts include revenues from incidental charges or miscellaneous fees not directly generated by the Distribution of natural gas to Consumers, such as, by way of example, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, delayed or late payment charges, temporary service charges, and other such charges.
- K. "Install, operate and maintain" shall mean to acquire, erect, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.
- L. "Public Ways" shall mean any street, alley, avenue, boulevard, lane, park, parkway, sidewalk, driveway, public right of way, and any other public ways, places, areas, or grounds within the municipal corporate limits of the City as now constituted or as may be added or extended hereafter.
- M. "Settlement Price" shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX), or any successor exchange or index, on the 15<sup>th</sup> day of each month as published daily in *The Wall Street Journal* (WSJ) on the following business day (or the next day in which a Settlement Price is published) for each month of the twelve-month period immediately following.
- N. "Transportation Tariff Arrangement" shall mean any arrangement between Grantee and a Consumer pursuant to which natural gas owned by any party other than the Grantee shall be transported, distributed or sold through any portion of Grantee's Distribution System and under one of Grantee's tariffs or special contract for delivery to the Consumer.

- O. "Transport Gas" shall mean all natural gas transported by Grantee pursuant to a Transportation Tariff Arrangement or by other agreement, but not sold by Grantee through Grantee's Distribution System to any Consumer or user located within the municipal corporate limits of the City.
- P. "Transport Gas Consumer" shall mean a Consumer which uses Transport Gas.
- Q. "Volumetric Rate" shall mean Four Percent (4%) of the Calculated Value of Transport Gas as determined by Grantee in accordance with the provisions of this definition. The Volumetric Rate Calculation Form incorporated herein as Exhibit "A" shall be used for the calculation of the Volumetric Rate; provided, that the Grantor enacts an ordinance as described in Paragraph 3.B(1) below, the four percent (4%) multiplier labeled "4% Bundled Franchise Fee Rate" set forth on "Exhibit A" shall be completed by Grantee and filed with the City Clerk of the City upon Grantee's acceptance of this franchise and annually by each July following acceptance. The calculation filed upon Grantee's acceptance of this franchise shall be effective from the date of such filing through and including December 31 of the next succeeding calendar year. The calculation filed by Grantee on July 31 in years following the year of acceptance of this franchise shall be effective on January 1 of the next succeeding calendar year through and including December 31 of such calendar year. The calculation shall be subject to review by the City for mathematical correctness and the City shall notify Grantee in writing within forty-five (45) calendar days after submission if the City deems such calculation to be incorrect. The volumetric rate calculation shall be based on the average of the average Settlement Prices for the twelve-month period beginning in July of the immediately preceding year and ending in June immediately preceding the July 31 calculation. The average Settlement Prices for each month during said twelve-month period shall be calculated by adding the Settlement Prices for such month and the previous eleven (11) months as published and dividing by twelve. The average Settlement Prices for each of the twelve months shall then be summed and divided by twelve to determine the average of the average Settlement Prices and then multiplied by four percent (4%) to obtain the Volumetric Rate; provided, in the event the then-current average of the average Settlement Prices as calculated above and entered on the Volumetric Rate Calculation Form, attached as Exhibit A (see line designated on Exhibit "A" as "settlement price average"), exceeds the Index price for ONEOK Gas Transportation, L.L.C., that is listed in the issue of Platt's "Inside FERC's Gas Market Report" published on the first business day of the respective month ("Platt's Index price"), then the Platt's Index price shall be used to calculate the Volumetric Rate for that



delivery month in lieu of the average of the average Settlement Prices entered on the Volumetric Rate Calculation Form (Exhibit A) (*i.e.*, for that respective delivery month, the Volumetric Rate shall be determined by taking the Platt's Index price and multiplying that price by 4% or the then applicable increased percentage determined in the same manner set out in Paragraph 11.A(2) of this franchise).

- R. "Volumetric Rate Fee" or "Volumetric Rate Fees" shall mean the fee or fees based on the Volumetric Rate to be collected and remitted to the City by Grantee as required by Paragraph 11.A(2) of this franchise upon the enactment of an ordinance as described in Paragraph 3.B(1).

## SECTION 2. GRANT OF FRANCHISE

- A. The Grantor hereby grants to Grantee for the term of twenty-five (25) years from the passage and voter approval of this Ordinance and the filing of a written acceptance by the Grantee, the right to enter upon the Public Ways to install, operate and maintain a Distribution System along, across, over and under the Public Ways for the privilege of transporting, distributing and/or selling gas to consumers and the public generally within the municipal corporate limits of the City.
- B. The Ordinance shall have the effect of and shall be a contract between Grantor and Grantee and shall be the measure of the rights and liabilities of Grantor as well as Grantee.
- C. The franchise granted by this Ordinance is not exclusive and nothing herein shall be construed to divest the Grantor of its control and regulation of the Public Ways.

## SECTION 3. FRANCHISE ASSIGNMENT, SALE OR LEASE

- A. Grantee shall not have the right to assign, sell, lease, or otherwise transfer in any manner whatsoever to any third party not affiliated with Grantee the rights and privileges granted under this Ordinance except as hereinafter provided. Any assignment, sale, lease, or other transfer by the Grantee of the franchise granted herein to any third party not affiliated with Grantee shall be ineffective and void unless:

- (1) The proposed assignment, sale, lease or transfer shall be in writing:

- (2) The prospective assignee, buyer, lessee or other transferee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations, and liabilities contained in this Ordinance; and
- (3) Such writing shall be submitted to the City Clerk of the City.

This Subsection shall not apply to any arrangement which is in compliance with the provisions of Subsection B of this Section. This Section shall not apply to the use of any portion of Grantee's distribution system for the transportation, distribution or sale to any Consumer purchasing, receiving and using natural gas outside the municipal corporate limits of the City.

- B. After the operative date of this ordinance, Grantee shall have the right to enter into or continue to operate pursuant to any "Transportation Tariff Arrangement" or to enter into or continue any arrangement by which natural gas owned by any party other than Grantee shall be transported, distributed or sold through any portion of Grantee's Distribution System for delivery to any Consumer located within the municipal corporate limits of the City, subject to the following:
  - (1) Should Grantor, by separate ordinance, require persons transporting gas pursuant to a Transportation Tariff Arrangement to pay compensation to Grantor for use of the Public Ways in connection with the sale of Transport Gas, said compensation shall be calculated as a Volumetric Rate Fee and collected and remitted by Grantee as provided in Paragraph 11.A(2) of this ordinance;
  - (2) The Transport Gas Consumer shall have obtained a license from the Grantor, if the Grantor shall have a licensing ordinance in effect, for the use of the Public Ways in connection with such transport of natural gas, and the Grantor shall have notified the Grantee in writing of such license.

#### SECTION 4. USE AND REPAIR OF THE PUBLIC WAYS

- A. Grantee's Distribution System shall be erected, placed, and laid or otherwise installed, operated and maintained in such a manner as will, consistent with reasonable necessity, least interfere with other public uses of the Public Ways.

- B. Before Grantee shall excavate or disturb the surface of any Public Way, except in the case of emergency, at least forty-eight (48) hours notice shall be given to the City's Engineer, Public Works Director or other proper authority designated in writing by the Grantor. After such excavation or disturbance, the Grantee shall, with due diligence and dispatch, place the Public Way in a condition in compliance with the Grantor's reasonable standards and specifications.
  
- C. Upon Grantee's failure to commence or complete any construction, maintenance or restoration work required by this Ordinance with due diligence and dispatch, the Grantor may cause such work to be done after written notice to Grantee, given so as to afford Grantee an opportunity to commence and complete such work within a reasonable time. The cost of such construction, maintenance or restoration incurred by Grantor upon Grantee's failure shall then be charged and collected from the Grantee.
  
- D. Grantor reserves the right to make and enforce reasonable regulations concerning the construction of Grantee's Distribution System located within, along, across, over, or under the Public Ways and to reasonably designate where the Distribution System's works and pipelines shall be placed, so long as such regulations are not in conflict with the laws of the State of Oklahoma and the United States or the orders, rules or regulations of the Oklahoma Corporation Commission or other regulatory authority having jurisdiction over Grantee.

## SECTION 5. REGULATION OF SERVICE

- A. The Distribution System of the Grantee shall at all times be installed, operated and maintained in accordance with accepted good practice and in such condition as will enable the Grantee to furnish adequate and continuous service as required by the orders, rules and regulations of the Corporation Commission of Oklahoma or other regulatory authority having jurisdiction. The requirements set forth in this Section shall not relieve Grantee of any other obligations set forth herein.
  
- B. In the event that the Corporation Commission of Oklahoma or other state regulatory authority shall be deprived of the authority to regulate Grantee, then Grantor shall have the authority to set rates, terms and conditions of service for transportation, distribution or sale of natural gas by Grantee within the municipal corporate limits of the City.



## SECTION 6. DEPTH OF PIPELINES

After the operative date of this franchise, Grantee's main or lateral lines installed or replaced in Public Ways shall be installed or replaced at depths which comply with all applicable state and federal rules and regulations establishing minimum safety standards for the design, construction, maintenance and operation of pipelines. Depth shall be measured from the lower of existing grade or proposed future grade as set forth on plans or other specifications existing at the time such lines are installed or replaced.

## SECTION 7. DUTY TO MOVE OR ALTER LINES

- A. Grantor reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas or other pipelines and to do or permit to be done any underground work deemed necessary and proper by the Grantor, along, across, over or under the Public Ways. In permitting such work to be done, the Grantor shall not be liable to the Grantee for any damage to Grantee's pipeline unless Grantor or its agents or contractors are negligent in causing said damage.
- B. Whenever by reason of establishing a grade or changes in the grade of any street or in the location or manner of construction of any public way, cables, electric conduits, water, sewer, gas or other underground structures, it shall be deemed necessary by the Grantor to alter, change, adapt or conform any portion of Grantee's Distribution System located in the Public Ways, such alterations or changes shall be made within a reasonable time by the Grantee, as ordered in writing by the Grantor, without claim for reimbursement or compensation for damages against Grantor; provided, however, that this Section is not intended to require Grantee to alter, change, adapt or conform any portion of its Distribution System without reimbursement or compensation where the right to locate the same, whether by private right-of-way grant, utility easement or otherwise, was acquired prior to its location in the public way.
- C. If Grantor shall require the Grantee to adapt or conform its Distribution System or in any way to alter, relocate or change its property to enable any other person, firm, corporation or entity (whether public or private), other than the Grantor, to use the Public Ways, the Grantee shall be reimbursed by the person, firm corporation or entity desiring or occasioning such change for any and all loss, cost or expense occasioned thereby.

- D. "Person," "firm," "corporation," and "entity" as used in Subsection C of this Section shall not include regular departments of the Grantor, or any trust or authority formed by or for the benefit of Grantor for public utility purposes, but shall include any other agency or authority of the City, whether acting in a governmental or non-governmental capacity, including, but not limited to, any urban renewal authority, or any other agency or authority, which as a part of its program clears whole tracts of land within the municipal corporate limits and relocates citizens for the purpose of urban development or similar aims.

#### SECTION 8. INDEMNIFICATION OF GRANTOR

The Grantee shall indemnify, become responsible for and forever save harmless the Grantor from any and all damages, judgments, reasonable costs and expenses, including attorney fees, which the Grantor may suffer or incur, or which may be legally obtained against the Grantor, for or by reason of the negligent use, repair or occupation of any public way within the municipal corporate limits of the City by the Grantee pursuant to the terms of this Ordinance or resulting from the negligent exercise by the Grantee of any of its privileges or by reason of its carrying on its business in the City (except where such damages, judgments, reasonable costs and expenses, including attorney fees, result from the negligence of Grantor or its agents or contractors); provided, however, that in the event of such claim or claims being prosecuted against the Grantor, the Grantee shall have the right to defend against the same, and to settle or discharge same in such manner as it may see fit, and the Grantor shall give prompt written notice to the Grantee of the presentation or prosecution of such claims.

#### SECTION 9. GRANTEE'S RULES AND REGULATIONS

The Grantee shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its facilities, the sale of its gas and the prudent conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Oklahoma, with the orders, rules or regulations of the Corporation Commission of Oklahoma or other regulatory authority having jurisdiction, nor with the ordinances and regulations of the Grantor insofar as they are consistent with the jurisdiction of the Corporation Commission of Oklahoma or such other regulatory authority.

## SECTION 10. INSPECTION OF RECORDS

Grantee shall permit Grantor or its agents to inspect, during regular business hours, the books, papers and records kept by Grantee in the ordinary course of business and pertaining to the natural gas business carried on by it in the City, such as plats, maps and atlases identifying Grantee's pipelines in the City, and the books and records necessary to verify the franchise fee payment provided for in Section 11 hereof. Notwithstanding the obligation herein, Grantee shall have the right to request the reasonable protection of proprietary information and to provide redacted documents or require Grantor or its agents to enter into such agreements pertaining to confidentiality as may reasonably protect the proprietary information of Grantee but which do not unreasonably frustrate the purposes of this Section. Grantor shall promptly notify Grantee in writing of areas newly annexed into or de-annexed from the corporate limits of Grantor, and Grantee shall update its records for the purpose of payment of franchise fees as soon as reasonably practicable after receiving such notice.

## SECTION 11. CONSIDERATION FOR FRANCHISE: FRANCHISE FEE

- A. In consideration for the rights and privileges enjoyed under this franchise, Grantee agrees to pay Grantor as follows:
- (1) Grantee shall pay Grantor a franchise fee the sum of which is equal to Four Percent (4%) of the Gross Receipts received by Grantee, per billing period, from the transportation, distribution, and sale of natural gas for domestic, commercial or industrial consumption within the municipal corporate limits of the City. All sums due from Grantee shall be in lieu of all other franchise, license, or occupational taxes or fees, which may be levied or attempted to be levied on Grantee by the City.
  - (2) In the event that Grantor, pursuant to Paragraph 3.B(1) of this ordinance, requires persons transporting gas pursuant to a Transportation Tariff Arrangement to pay compensation to Grantor for use of the Public Ways in connection the sale of Transport Gas, said compensation shall be calculated as a Volumetric Rate fee for such Transport Gas, which shall be the sum equal to the then current Volumetric Rate multiplied by the number of Dth of Transport Gas reported or distributed through Grantee's facilities within the municipal corporate limits of the City by Grantee or by any third-party to transport customers for consumption within the City. Grantee will in that event collect such Volumetric Rate Fees

from persons transporting gas pursuant to a Transportation Tariff Arrangement and remit the same to Grantor.

- B. In the event a customer of Grantee does not pay a monthly bill from Grantee in full, Grantee shall prorate its payments of remissions to the City for sums due on that particular bill so that the amount actually paid by the customer to Grantee on the bill is distributed to Grantee for the natural gas commodity and transportation or distribution service and to the City for sums due on the bill in proportion to the percentage of the total bill actually paid by the customer. In the event Grantee actually collects any outstanding amounts due on a past due, unpaid or partially paid monthly bill to a customer, then Grantee shall pay Grantor its proportionate share of sums due to the City on such bill.
- C. Grantee's franchise fee based upon a percentage of gross cash receipts or a volumetric rate shall be payable monthly on or before the 25<sup>th</sup> day of each month, on its gross cash receipts for the preceding calendar month.
- D. All sums due from Grantee under this Section shall be in lieu of all other franchise, license, or occupation taxes or fees, which may be levied or attempted to be levied on Grantee by the City.
- E. The City's chief administrative officer or his designee may waive the Volumetric Rate Fee or any part thereof due from a Transport Gas Consumer, but such waiver shall only be granted if:
  - (1) The Transport Gas Consumer could otherwise obtain its energy needs from another source that would not be subject to the fees imposed in Subparagraph 2 of Subsection 11.A above and sufficient evidence is produced by the Transport Gas Consumer so as to substantiate such alternative source; and
  - (2) Such alternative source, including all other fees, would be less than the cost of utilizing Grantee to furnish and transport the gas or transport alone, as the case may be.
- F. Grantee shall update its records for the purpose of franchise fee payments as soon as reasonably practicable after receiving such notice.
- G. Should Grantee accept any franchise from any other municipality in Oklahoma in which Grantee provides consumers with natural gas service,

and should such other franchise provide for a franchise fee, exaction fee or other similar assessment greater than the applicable rate specified above in Subparagraph 11(A)(1) of this ordinance for a specified class of service, whether domestic, commercial or industrial, then Grantee shall inform Grantor's governing body of such occurrence. Thereafter, at the sole discretion of Grantor's governing body and pursuant to such process as it deems appropriate, Grantee may be directed by Grantor's governing body to pay to Grantor such increased rate applicable to the class of service affected.

- H. In the event the accounting rendered to Grantor by Grantee is found to be incorrect, then payment shall be made on the corrected amount, it being agreed that Grantor may accept amount offered by Grantee, but the acceptance thereof by Grantor shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. Grantee shall have no obligation, however, to make payment upon Transport Gas for which Grantee has not been paid. Grantee shall provide notice to Grantor of such delinquent accounts within ninety (90) days and Grantor shall hold Grantee harmless from the cost or liability for the collection of franchise fees on such delinquent accounts.
  
- I. Grantor agrees that the franchise fee percentage rate set forth in Subsection 11.A, at Paragraphs (1) and (2), of this Ordinance shall in no event exceed the percentage rate hereafter approved to calculate any fee paid to Grantor by any other person or entity for use of the Public Ways if such fee or volumetric rate is based in any way on the amount of revenues or gross receipts from the transportation, distribution, or sale of natural gas or electric energy, excluding any municipally-owned electric utility, by such other person or entity to ultimate Consumers within the City. If at any time after the effective date of this Ordinance the fee or rate required to be paid by another is less than the percentage rate set forth in Paragraphs A(1) or (2) of Section 11, then the percentage rate set forth in Paragraphs A(1) or (2) of Section 11 of this Ordinance shall be reduced to equal such lesser percentage rate on the date such lesser percentage rate becomes effective and without any further action by the City or the qualified electors residing therein.

## SECTION 12. CONDITIONS OF FRANCHISE

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction.



### SECTION 13. INVALIDITY OF ORDINANCE

If any clause, sentence, or section of this Ordinance shall be held to be invalid, it shall not affect the remaining portions of this Ordinance, which shall remain valid and effective as if such invalid provision did not exist, although the parties shall be entitled to a judicial interpretation or construction of this Ordinance to address the validation of such provision by minimal amendment thereof. Further, should any governmental body now or hereafter having jurisdiction determine that Grantee shall not be permitted to collect in whole or in part the compensation due Grantor by others for Transport Gas as set forth in Paragraph (2) of Subsection B of Section 3 and Paragraph (2) of Subsection A of Section 11 of this Ordinance, Grantee shall thereafter have no obligation to make such payment to Grantor and Paragraph (2) of Subsection B of Section 3 and Paragraph (2) of Subsection A of Section 11 shall be of no force and effect.

### SECTION 14. ELECTION REQUIRED

This Ordinance shall not become operative until it shall be approved by a majority of the qualified electors voting thereon residing within the municipal corporate limits of the City at an election called for that purpose, and a special election is hereby called for the purpose of submitting to the qualified electors residing in said City, the question of approval or disapproval of this Ordinance, which election shall be held on the      day of           , 2017, between the hours prescribed by law. The Mayor of the City is hereby authorized and directed to issue a proper and lawful call and proclamation of such special election to be held on such date as aforesaid for said purpose, and the City Council of the City are hereby directed to give due and lawful notice of such election and submission of said question to the electors of said City as prescribed by law and the Ordinances of the City.

### SECTION 15. ACCEPTANCE, OPERATIVE AND EFFECTIVE DATE; EMERGENCY

In the event this Ordinance is approved by a majority vote of said electors voting thereon at said election, the Grantee shall file with the City Clerk, within thirty days after the official canvass of the votes and declaration by the City Council of the results thereof, a written acceptance. This Ordinance shall become *operative* on the date of filing of such acceptance.

An emergency is hereby declared to exist by reason of the fact that no other person, firm or corporation has a franchise to furnish natural gas to residents and inhabitants of the City, and for the preservation of the public peace, health and safety, and by reason whereof this Ordinance shall be *effective* immediately from and after its passage, approval and publication.

SECTION 16. REPEALER

Each and every other Ordinance or part thereof which is directly in conflict with any provision herein as to the grant of a franchise for natural gas services and the regulation thereof is hereby repealed.

SECTION 17. SEVERABILITY

The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

PASSED and the emergency clause ruled upon separately and passed and approved by the City Council of the City of Sapulpa, Oklahoma, this        day of       , 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney

**Exhibit "A"**

**The City of Sapulpa, Oklahoma  
Volumetric Rate Calculation Form  
For the Transportation of Natural Gas in Pipelines Located in the City of Sapulpa, Oklahoma**

Based on the NYMEX settlement prices for each month of the twelve forward months as occurred on the 15th of each month, published the following business day.

Source: *Wall Street Journal*

Deadline: Form must be filed each year with the City Clerk by July 31 and notices to the Natural Gas Companies.

Month	Last Year Jul 15	Last Year Aug 15	Last Year Sep 15	Last Year Oct 15	Last Year Nov 15	Last Year Dec 15	This Year Jan 15	This Year Feb 15	This Year Mar 15	This Year Apr 15	This Year May 15	This Year Jun 15
Aug Last Year												
Sep Last Year												
Oct Last Year												
Nov Last Year												
Dec Last Year												
Jan Current Year												
Feb Current Year												
Mar Current Year												
Apr Current Year												
May Current Year												
Jun Current Year												
Jul Current Year												
Aug Current Year												
Sep Current Year												
Oct Current Year												
Nov Current Year												
Dec Current Year												
Jan Next Year												
Feb Next Year												
Mar Next Year												
Apr Next Year												
May Next Year												
Jun Next Year												

Avg Settlement Price

July _____ through June _____
settlement price average
X. Bundled Franchise Fee Rate
= Volumetric Rate/MCF
%

Note: If the 15th of the month falls on a week-end or holiday, then use the next business day settlement price.

**City Council Study Session**

6.

**Meeting Date:** 05/01/2017

NSGO Scott Pilgrim

**Submitted For:** David Widdoes, City Attorney      **Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Legal

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**Attachments**

NSGO Explained

2017.04.03 email Scott Pilgrim

2017.04.25 email Scott Pilgrim

2017.04.25 spreadsheet Scott Pilgrim

DRAFT - Mgmt Agmt

DRAFT - OTA

DRAFT - Sublease

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## Public - Private Nursing Facility Partnership Program

We propose a public-private partnership with the City in order to access a new supplemental payment program being introduced by the State of Oklahoma through the Oklahoma Health Care Authority (OHCA). This new program, called the upper payment limit (UPL) program, provides additional funding to nursing facilities to increase their payment rate for services provided to Medicaid residents. This additional funding will be available to increase the quality of services provided, to enhance the physical plants, purchase new equipment and to reimburse providers for their current losses in providing these services.

The Oklahoma Nursing Home UPL Program is reserved for nursing homes licensed and operated by non-state government entities (NSGOs). Like most cities across the state, the City does not currently own, or operate, a nursing home. However, under this plan which is sanctioned by OHCA, the City would lease, license and obtain the Medicaid provider number from our firm (the current "Provider"). The City would then enter into a management contract wherein Provider would operate the Nursing Home in return for all the net revenue of the Nursing Home plus a percentage of UPL funds.

This arrangement generates extra money because of a wrinkle in the payment policies of the federal/state Medicaid program. Medicaid rules allow governmental entities that own nursing facilities to receive a much higher rate for Medicaid services. This is accomplished with no impact on the state budget by having the NSGOs pay OHCA extra fees called inter-governmental transfers that then trigger higher federal matching funds, up to a point that lets them receive the maximum federal payments. Because the Oklahoma Medicaid program pays nursing homes at rates well below the maximum federal rate, the difference is quite substantial.

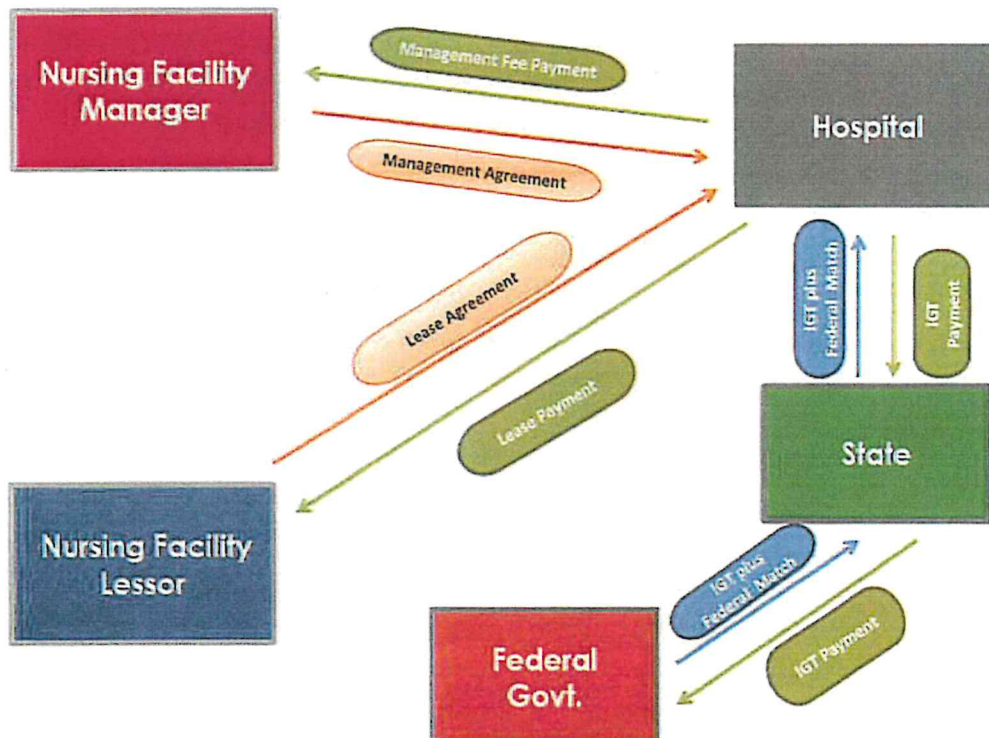
The nature of the proposal can be visualized as shown on the following page. Just replace "Hospital" with "City".

Under this plan:

1. The City would own the operations, license and Medicaid/Medicare provider numbers of the Nursing Home. Specifically, the Provider would submit a Application for Certificate of Need Transfer ("CON") and change of ownership ("CHOW") to the Oklahoma State Department of Health ("OSDH"), which will transfer the state nursing home license to the City. The City will not pay the Provider for this transfer.
  2. The Provider would lease the physical premises of the Nursing Home to the City at a rate supported by an independent assessment of fair market value.
  3. The City would contract with Provider to oversee the operations of the Nursing Home. Provider would be paid a base management fee that is equivalent to the net patient revenue of the Nursing Home. Provider would then receive 70% of the
-

UPL payments as an incentive management fee. Provider would ultimately be the sole party responsible for the operations of the Nursing Home. The City will retain 30% of the net UPL payments it receives. Provider will retain the net patient revenue (all gains or losses from operations) and 70% of the UPL payment as its total management fee.

4. The City would open separate bank accounts to be used for operations of the Nursing Home. Payment of expenses may be structured in a number of different ways and has yet to be determined. However, the structure currently being contemplated is for all operating funds to be deposited into these separate accounts and be available for Provider to pay all expenses and management fees on the City's behalf.
5. The City would be the sole recipient of revenue related to the operations of the Nursing Home. The money for the IGT will come from a City account that is separate from any account associated with the Nursing Home operations and whose account balance is 100% from sales tax or other non Medicaid/Medicare revenue streams. Once Nursing Home UPL funds are received, they will go back into this same account. From there, the City will distribute the incentive management fee to Provider.
6. Provider will indemnify the City for any operating losses or expenses related to the operation of the Nursing Home.



From: David Widdoes [dwiddoes@cityofsapulpa.net]  
Sent: Wednesday, April 26, 2017 11:29 AM  
To: 'Amy Hoehner'  
Subject: FW: Latest UPL figures  
Attachments: Mgmt Agmt Sample Draft 010417.docx; OTA Sample Draft 010417.docx;  
Sublease Sample Draft 010417.docx

Needs added to SS agenda as Draft Items

-----Original Message-----

From: Scott Pilgrim [mailto:Scott.Pilgrim@DiakonosGroup.com]  
Sent: Monday, April 03, 2017 5:27 PM  
To: David Widdoes <dwiddoes@cityofsapulpa.net>  
Subject: Re: Latest UPL figures

Here you go.

Scott

On 4/3/17 3:22 PM, David Widdoes wrote:

> Scott:

>

> Do you have a drafts of the Prime Lease agreement

>

> -----Original Message-----

> From: Scott Pilgrim [mailto:Scott.Pilgrim@DiakonosGroup.com]

> Sent: Friday, March 24, 2017 11:04 AM

> To: jriley@cityofsapulpa.net; David Widdoes  
<dwiddoes@cityofsapulpa.net>

> Subject: Latest UPL figures

>

> Latest UPL figures. I wanted to show that the annual partner share for  
Tulsa area homes is  
now over \$1mm per year.

>

> Also, we are getting indications that the NSGO partner can not be a  
Title 60 Trust Authority.

This means a couple of things. One, we can't use your EDA as planned. We  
will have to use the

City itself. Second, that means I can help to bring other nursing homes  
to you that were planing

to use Title 60 Hospital Authorities as there partners, should you be  
interested. That would

include our homes under redevelopment in OKC.

>

>

> --

> Scott Pilgrim

> Diakonos Group

>

> Privileged/Confidential information may be contained in this message.  
If you are not the

addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such a case, you should destroy this message, and notify us immediately.

>  
>

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Scott Pilgrim  
Diakonos Group

Privileged/Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such a case, you should destroy this message, and notify us immediately.



From: David Widdoes [dwiddoes@cityofsapulpa.net]  
Sent: Wednesday, April 26, 2017 11:27 AM  
To: 'Amy Hoehner'  
Subject: FW: updated math  
Attachments: City of Sapulpa UPL Calculations.xlsx

Add this to SS agenda please on the NSGO item

-----Original Message-----

From: Scott Pilgrim [mailto:Scott.Pilgrim@DiakonosGroup.com]  
Sent: Tuesday, April 25, 2017 8:46 PM  
To: David Widdoes <dwiddoes@cityofsapulpa.net>; jriley@cityofsapulpa.net  
Subject: Re: updated math

On 4/25/17 8:23 PM, Scott Pilgrim wrote:

> David and Joan,  
>  
> I have updated the spreadsheet that I showed you yesterday by adding  
> rows 27-35 AND by adjusting the share ratio for out of city buildings  
> to 65/35. Those rows show the quarterly payment to OHCA to be a total  
> of nearly \$800,000 when Beacon Ridge is full. This will likely not  
> occur until mid 2018.  
>  
> Quarterly, the city would pay \$795,221 to OHCA. Then receive back  
> \$1,587,693. After recovering the \$795,221 paid in, the net of \$792,472  
> would be split \$259,346 to the City and \$533,126 to the respective  
> facilities.  
>  
> I hope this is more clear than I was able to explain verbally. i look  
> forward to hosting a tour for three of your Commissioners on Thursday  
> 5/4. If I can provide any more information, please do not hesitate to  
> email or call. I will be out of the office through next Wednesday but  
> I will be checking my messages and emails regularly.  
>  
> Scott  
>  
>

--  
Scott Pilgrim  
Diakonos Group

Privileged/Confidential information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such a case, you should destroy this message, and notify us immediately.

Diakonos Group  
UPL Calculations

	Heartsworth Vinita	North County Collinsville	Franciscan Villa BA	Arbor Village Sapulpa	Beacon Ridge Sapulpa	
Avg Medicaid RUG	217.97	231.99	230.07	216.64	210.00	
Ancillary Adjustment	9.50	9.50	9.50	9.50	9.50	
Medicare Equivalent	208.47	222.49	220.57	207.14	200.50	
Medicaid Base	107.57	107.57	107.57	107.57	107.57	
Other Cost	10.28	10.28	10.28	10.28	10.28	
Direct Care	23.84	25.61	30.68	23.97	21.17	
FOE	3.35	2.85	2.40	4.20	3.35	
Total Medicaid Rate	145.04	146.31	150.93	146.02	142.37	
Gross Delta	63.43	76.18	69.64	61.12	58.13	
State Share	25.37	30.47	27.86	24.45	23.25	
OHCA Fee	6.50	6.50	6.50	6.50	6.50	
Net	31.56	39.21	35.28	30.17	28.38	
Expected Ptr Share	35%	35%	35%	30%	30%	
Medicaid Census	56	46	33	66	69	
Gross Annual UPL	645,046	658,302	424,996	726,843	714,700	3,169,887
Partner Share	225,766	230,406	148,749	218,053	214,410	1,037,383
Manager Share	419,280	427,897	276,247	508,790	500,290	2,132,504
Quarterly Payment to OHCA	162,866	155,190	103,455	186,384	187,326	795,221
Quarterly Payment from OHCA	324,127	319,766	209,703	368,095	366,001	1,587,693
Quarterly net to Partner	56,441	57,601	37,187	54,513	53,602	259,346
Quarterly net to Manager	104,820	106,974	69,062	127,198	125,072	533,126
Medicaid Initial Revenue	2,964,618	2,456,545	1,817,952	3,517,622	3,585,588	
Total Medicaid Revenue	3,383,897	2,884,441	2,094,199	4,026,412	4,085,878	
Medicaid PPD	165.55	171.80	173.86	167.14	162.23	
5 Star Overall	4	3	3	4		
Survey	4	3	2	4		
Staffing	3	3	4	2		
QMs	4	2	2	2		
RN Staffing	4	3	3	1		

**MANAGEMENT AGREEMENT**

BETWEEN

NSGO, (“AUTHORITY”)

AND

NURSING HOME COMPANY, (“MANAGER”)

FOR

NURSING HOME

## MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT ("Agreement") is effective as of \_\_\_\_\_, 20\_\_\_\_ ( "Effective Date" ) by and between NSGO, a \_\_\_\_\_ ("Authority") and NURSING HOME COMPANY, a \_\_\_\_\_ ("Manager").

### RECITALS

WHEREAS, Authority is authorized to be engaged in or is engaged in the business of, among other things, operating licensed health care facilities, and Manager is engaged in the business of managing licensed health care facilities;

WHEREAS, simultaneously with the execution of this Agreement, Authority is entering into a sublease of the real property and certain personal property (the "Sublease") associated with the licensed health facility known as NURSING HOME, located at \_\_\_\_\_, (the "Facility");

WHEREAS, prior to the Sublease to Authority, the Facility was leased and operated by Manager;

WHEREAS, Authority desires to engage Manager to manage the Facility on behalf of Authority and Manager desires to manage the Facility on behalf of Authority in accordance with the terms and conditions of this Agreement;

WHEREAS, Authority and Manager represent and warrant that each has the full authority and approval required to enter this agreement, agreeing to indemnify and hold the other harmless in the event of any lack of such authority or approval;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

### ARTICLE 1. DEFINITION OF TERMS

The following terms when used in this Agreement shall have the meanings indicated:

"Affiliate" means any individual or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with Manager or Authority. Manager or Authority shall be deemed to control another entity if either possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other entity, whether through the ownership of voting securities, membership interests, manager or board membership, by contract, or otherwise.

“Agreement” shall mean this Management Agreement as amended from time to time as provided herein.

“Annual Operating Budget” shall have the meaning set forth in Section 7.3.

“Base Management Fee” shall have the meaning set forth in Section 5.1.

“Capital Expenditures” means expenditures on property, plant and equipment, and other expenditures, that are required to be capitalized pursuant to GAAP.

“Commencement Date” means \_\_\_\_\_, 20\_\_\_\_\_.

“Default” shall have the meaning with respect to Authority or Manager, as the case may be, as set forth in Article 14.

“Effective Date” shall have the meaning set forth in the first sentence of this Agreement.

“Emergency Working Capital” shall have the meaning set forth in Section 6.1.

“Employment Laws” means any federal, state or local law (including the common law), statute, ordinance, rule, regulation, order or directive with respect to employment, conditions of employment, benefits, compensation, or termination of employment that currently exists or may exist at any time during the Term of this Agreement, including, but not limited to, the Family Medical Leave Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Workers Adjustment and Retraining Act, the Occupational Safety and Health Act, the Immigration Reform and Control Act of 1986, and the Americans With Disabilities Act of 1990.

“Environmental Laws” means any law, ordinance, regulation or requirement now or hereinafter in effect relating to land use, air, soil, surface water, groundwater (including the protection, cleanup, removal, remediation or damage thereof), human health and safety or any other environmental matter, including, without limitation, the following laws as the same may be amended from time to time: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Safe Drinking Water Act, 14 U.S.C. Section 1401 et seq.; the Superfund Amendment and Reauthorization Act of 1986, Public Law 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., any legal requirements or common law requirements relating to toxic mold, or any other similar federal, state, county or local statute, law, ordinance, resolution, code rule, regulation, order or decree now or hereinafter adopted, published and/or promulgated pursuant thereto, as are now or at any time hereinafter in effect.

“Event of Default” shall have the meaning with respect to Authority or Manager, as the case may be, as set forth in Article 14.

“Extended Terms” shall have the meaning set forth in Section 4.1.

“Fiscal Year” means the fiscal year of Authority.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” shall mean any court or any federal, state, or local legislative body or governmental municipality, department, commission, board, bureau, agency or authority, including without limitation, the Centers for Medicare and Medicaid Services (“CMS”), the Oklahoma Health Care Authority (“OHCA”), the Oklahoma State Department of Health (“OSDH”), but not including Authority.

“Hazardous Materials” means and include any substance or material containing one or more of any of the following: "hazardous material," "hazardous waste," "hazardous substance," "regulated substance," "petroleum," "pollutant," "contaminant," or "asbestos" as such terms are defined in any applicable Environmental Law in such concentration(s) or amount(s) as may impose clean up, removal, monitoring or other responsibility under any applicable Environmental Law, or which may present a significant risk of harm to residents, invitees or employees of the Facility.

“Authority” shall have the meaning set forth in the first sentence of this Agreement.

“IGT” means an intergovernmental transfer of public funds from the Authority to OHCA.

“IGT Responsibility Agreement” means an agreement between Authority and OHCA that obligates Authority to make IGTs to OHCA.

“Impositions” means all real estate and personal property taxes, levies, assessments and similar charges including, without limitation, the following: all water, sewer or similar fees, rents, rates, charges, excises or levies; vault license fees or rentals; license fees; permit fees; inspection fees and other authorization fees and other governmental fees, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed (including all interest and penalties thereon), which at any time during or in respect of the Term of this Agreement may be assessed, levied, confirmed or imposed on Prime Lessor, Authority, or Manager with respect to the Facility or the ownership or operation thereof or any property of Prime Lessor, Manager, or Authority located thereon. Impositions shall not include any federal or state income or franchise taxes payable by Prime Lessor, Authority, or Manager.

“Incentive Payments” shall have the meaning set forth in Section 5.1.2.

“Initial Term” shall have the meaning set forth in Section 4.1.



“Interim Report” shall have the meaning specified in Section 7.4.

“Inventories and Supplies” means all provisions in storerooms, refrigerators, pantries and kitchens, medical supplies, other merchandise intended for sale, fuel, mechanical supplies, stationery, linen, utensils, dishware, glassware, flatware, uniforms, rugs, drapes, bedspreads, wall and floor coverings, mats, shower curtains, janitorial equipment and supplies, and other expenses, supplies and similar items.

“Legal Requirements” means (i) any law, code, rule, ordinance or regulation, as amended, applicable to Authority, Manager, or the Facility or the operation thereof, including without limitation Employment Laws, Environmental Laws, 42 U.S.C. §1396 et seq, the Health Insurance Portability and Accountability Act (Public Law 104-91) (“HIPAA”), the Social Security Act (including the Medicare and Medicaid Anti-Fraud and Abuse Amendments (42 U.S.C. § 1320a-7a and -7b) and the federal Physician Anti-Self Referral (“Stark”) Law (42 U.S.C. § 1395nn) (ii) any applicable State law; and (iii) any order of any Governmental Authority having jurisdiction over Authority, Manager, or the Facility or the operation thereof.

“Lender” means and refers to any third party financing of the Facility by Prime Lessor prior to the Effective Date.

“License” means any license, permit, decree, act, order, authorization or other approval or instrument which is necessary in order to operate the Facility in accordance with Legal Requirements or otherwise in accordance with this Agreement.

“Litigation” means: (i) any cause of action commenced in a federal, state or local court in the United States relating to the Facility and/or the ownership or operation thereof; and (ii) any claim brought before an administrative agency or body (for example, without limitation, employment discrimination claims) relating to the Facility or the ownership or operation thereof.

“Manager” shall have the meaning set forth in the first sentence of this Agreement.

“Material Contract” means any contract related to the Facility with an annual financial liability in excess of \$25,000.00.

“Net Operating Income” for any given time period shall mean Total Net Revenue less: (a) Operating Expenses and (b) amounts allocated to Working Capital Reserves, including any Surplus Working Capital; provided, however, that if Net Operating Income as calculated above is less than the amount of Supplemental Payments, then Net Operating Income shall be deemed to be equal to the amount of Supplemental Payments.

“Operating Expenses” means any or all, as the context requires, of the expenses the Manager is required to pay under this Agreement, including the following: (i) all costs and expenses incurred in connection with the Sublease and operation, management, and maintenance

of the Facility, including, without limitation, Base Management Fees, rent and all other payments to be made to Lessor under the Sublease, departmental expenses, personnel costs, administrative and general expenses, advertising and business promotion expenses, heat, light, power, electricity, gas, telephone, television and other utilities, routine repairs, maintenance and minor alterations treated as Operating Expenses under Section 8.1 and any Emergency Working Capital funded by Manager pursuant to Section 6.1.1; (ii) the cost of Inventories and Supplies consumed in the operation of the Facility; (iii) a reasonable reserve for uncollectible accounts receivable as determined by Manager in accordance with GAAP; (iv) the cost and expense of audit, accounting, legal, technical, and other professional consultants and operational experts who are retained by Manager relating to the Facility or the ownership or operation thereof; (v) costs and expenses for preparation of Medicare and Medicaid cost reports and billing submissions; (vi) insurance costs; (vii) any and all Impositions; (viii) those costs and expenses that are expressly identified as Operating Expenses in this Agreement; and (ix) any other non-capital costs and expenses incurred as are specifically provided for elsewhere in this Agreement or are reasonably necessary for the proper and efficient operation of the Facility.

“Ordinary Revenue” for any given time period means Total Net Revenue minus any Supplemental Payments.

“Personnel Costs” means the actual out-of-pocket payroll costs and expenses incurred by Manager or any of its Affiliates in connection with hiring or leasing the personnel the Manager is required to provide pursuant to Section 3.1.

“Prime Lease” means that certain Lease Agreement by and between Prime Lessor and Manager dated as of \_\_\_\_\_.

“Prime Lessor” means LANDLORD,

“Proprietary Marks” means all trademarks, trade names, symbols, logos, slogans, designs, insignia, emblems, devices, service marks and distinctive designs containing the assumed business name of the Facility or any variation thereof as of the Effective Date or during the Term of this Agreement.

“Software” means computer software and accompanying documentation (including all future upgrades, enhancements, additions, substitutions and modifications thereof) which have been developed by, or specifically on behalf of, and owned by Manager or an Affiliate of Manager, other than computer software that is commercially available, which are used by Manager in connection with its operations at the Facility. Notwithstanding the foregoing, the term “Software” shall not include any computer software owned by or licensed to Authority.

“Standard of Care” means the quality of care consistent with the standards of a reasonably prudent provider of nursing facility services and in substantial compliance with standards set forth by any Governmental Authority and any Legal Requirements. Manager shall



use its commercially reasonable efforts to ensure that the Facility is operated in a manner that meets or exceeds the Standard of Care.

“Supplemental Payments” shall mean any payment received by Authority from CMS, the State of Oklahoma or any of their respective intermediaries or contractors, including Medicaid managed care organizations, for participation in the Nursing Facility Upper Payment Limit Program, the Minimum Payment Amount Program or any similar program (regardless of whether such payments are received by Authority before or after any Termination of this Agreement), for services provided to Medicaid residents of the Facility during the Term of this Agreement that are in excess of the Medicaid reimbursement rates (direct care staff enhancement, liability insurance add-on or other rate components or add-on payments are not considered Supplemental Payments) for nursing facilities, established by the Oklahoma Health Care Authority, minus the amount of any funds that Authority has transferred in Authority’s sole discretion to the State of Oklahoma for the purpose of receiving a Supplemental Payment.

“Surplus Working Capital” for any given time period shall mean the amount by which the Working Capital Reserve exceeds three (3) days of the Facility’s expected Operating Expenses, provided however, in lieu of using funds from Ordinary Revenue, Manager may establish and maintain the Working Capital Reserve through a working capital line of credit from which cash is readily available as needed to provide adequate working capital for the Facility as required under this Agreement.

“Term” means the Initial Term plus any Extended Term.

“Termination” means the termination of this Agreement as provided in Article 4.

“Total Net Revenue” shall mean for any given time period the difference between:

- (i) all revenue received in connection with the operation of the Facility, including but not limited to the revenue from monthly occupancy fees, health care fees and ancillary services fees received pursuant to various agreements with residents of the Facility; income from food and beverage, and catering sales at the Facility; income from vending machines located at the Facility; Supplemental Payments; and proceeds, if any, from business interruption or other loss of income insurance claims made with respect to the Facility; less
- (ii) amounts refunded, adjusted, owed or credited to residents or third parties (including but not limited to third party or governmental payors) as a result of contractual allowances, erroneous payments, overpayments or for any other reason, including, without limitation, any claims, assessments, adjustments or other amounts required to be paid; and any cash refunds, rebates or discounts to residents of the Facility, cash discounts and credits of a similar nature, given, paid or returned in the course of obtaining Total Net Revenue or components thereof.

The calculation of Total Net Revenue shall be made using the accrual method of accounting in accordance with GAAP. Without limiting the foregoing, the following amounts shall not be taken into account in computing Total Net Revenue:

- (a) federal, state or municipal excise, sales or use taxes or similar taxes imposed at the point of sale and collected directly from residents or guests or the Facility or included as part of the sales price of any goods or services;
- (b) proceeds from the sale of any capital asset;
- (c) interest received or accrued with respect to any funds or investments, including, without limitation, funds in any operating reserve account, working capital account or any other accounts established in the name of Authority or for the benefit of the Facility;
- (d) proceeds, income of any financing or refinancing of the Facility or any portion thereof; and
- (e) proceeds of any insurance policy or condemnation or other taking.

“Working Capital Reserve” shall mean a reserve established by Manager, subject to the reasonable approval of Authority, from Ordinary Revenue, after payment of all Operating Expenses, to provide adequate working capital for the Facility.

## **ARTICLE 2. APPOINTMENT OF MANAGER**

### **2.1 Appointment**

2.1.1 Upon the terms and subject to the conditions of this Agreement, Authority hereby engages Manager to manage the Facility on behalf of Authority commencing on the Commencement Date.

2.1.2 The performance of all activities by Manager hereunder shall be on behalf of Authority for the benefit of Authority. By entering into this Agreement, Authority does not delegate to Manager any powers, duties or responsibilities that Authority is not authorized by law to delegate. Authority retains all other authority and control that has not been expressly delegated to Manager pursuant to this Agreement.

### **2.2 Authority and Responsibility of Manager**

2.2.1 In the performance of its duties hereunder, Manager shall be and act as an independent contractor, with the sole duty to supervise, manage, operate, control and direct the performance of the Facility for the benefit of Authority and subject

to the ultimate authority and control of Authority and other restrictions described herein. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, employment relationship, or otherwise to create any liability for one party with respect to indebtedness, liabilities or obligations of the other party except as otherwise may be expressly set forth herein.

2.2.2 As a material condition of this Agreement, Manager shall use its commercially reasonable efforts to perform its duties and obligations in substantial compliance with all Legal Requirements.

2.2.3 Subject to Section 2.2.2 and Section 2.3 and except as otherwise provided herein, Manager shall have the authority to manage the Facility in accordance with the Annual Operating Budget and all applicable Legal Requirements. Manager shall be responsible for payment of all Operating Expenses and Capital Expenditures of the Facility on behalf of Authority. Without limiting the foregoing, Manager shall perform or cause to be performed the following:

(a) Assist Authority in obtaining, and take all commercially reasonable steps to keep in full force and effect, in Authority's name, or as may be required by all Legal Requirements, any and all licenses, certifications and permits necessary for the operation of the Facility;

(b) Subject to the approval of Authority, establish, implement and revise, as necessary, resident care and health care policies and procedures and general administrative policies and procedures, including, without limitation, policies and procedures for the control of revenue and expenditures (which shall be subject to Authority approval), for the purchasing of supplies and services, for the control of credit, and for the scheduling of maintenance;

(c) Manage the collection and deposit of Ordinary Revenue to the Depository Account and manage the cash flow of the Facility, including, without limitation, billing all patients and governmental or other third-party payors for all services provided by or at the Facility, collecting all Ordinary Revenue and paying all Operating Expenses and other accounts payable related to the operation of the Facility;

(d) Payment of all Operating Expenses of the Facility from Ordinary Revenue and Working Capital Reserves in the following order;

(1) current period and accrued prior period Operating Expenses, other than the Base Management Fee; and

(2) current period and accrued prior period Base Management Fees.

All Ordinary Revenue remaining after satisfaction of the foregoing obligations shall be allocated to the Working Capital Reserve. If there are insufficient Ordinary Revenue funds to pay Operating Expenses in any given month, then Manager shall use Working Capital Reserve funds to pay such Operating Expenses, provided, however, that Manager may, with the consent of the Authority, which consent shall not be unreasonably withheld, obtain working capital financing for the sole purpose of paying Operating Expenses;

(e) Maintain all books and records relating to the operation of the Facility and prepare monthly and annual financial statements for the Facility on a GAAP basis, and in consultation with Authority, and consistently applied;

(f) Procure, manage, and replenish all Inventories and Supplies and such other non- capital items, and any services from third-parties, , in the name of and on behalf of Authority, as are necessary to keep, operate and maintain the Facility;

(g) Prepare, keep, and provide Authority with access to all contracts, books, records, documents, policies and other information reasonably necessary for the lawful operation and sound financial management of the Facility;

(h) Establish prices, rates and charges for services provided at the Facility consistent with the Annual Operating Budget and negotiate all third party payor contracts relating to and only to services provided at Facility and, in the name of and on behalf of Authority, promptly issue bills and other necessary reports to appropriate parties and governmental agencies and take all reasonable measures to timely pursue collection of amounts due for goods and services furnished by the Facility;

(i) Retain all professionals, in the name of and on behalf of Authority, to provide necessary audit, accounting, legal, cost reporting and other professional services in connection with the operation of the Facility;

(j) Retain, in the name of and on behalf of Authority, all necessary contractors or vendors for ancillary medical, diagnostics, laboratory, pharmacy, social, therapy, dietary, dental, podiatry, behavioral or other required health services;



(k) Retain, in the name of and on behalf of Authority, professionals for risk management services relating to the types of insurance required to be maintained by Manager or Authority under this Agreement, provided that the costs and expenses of providing such services are to be paid as described in Section 9.3;

(l) Cooperate, participate in and be responsible for any survey, inspection or site investigation or accreditation process conducted by a governmental, regulatory, certifying or accrediting entity with authority or jurisdiction over the Facility, and implement any official findings of such reviews;

(m) Cooperate and assist Authority with any legal dispute in which Authority is involved relating to the ownership, management or operation of the Facility;

(n) Cooperate with Authority and its certified public accountants in connection with any audit, review or reports conducted or prepared in connection with the ownership or operation of the Facility;

(o) Market and advertise the Facility;

(p) Manage the performance of all covenants, duties and obligations of Authority and Manager pursuant to all agreements with residents;

(q) Execute, negotiate, renew and/or cancel agreements with residents of the Facility in accordance with all Legal Requirements;

(r) Upon promulgation of final regulations requiring same, operate the Facility in accordance with a quality assessment performance improvement program and a compliance plan to ensure that the operation of the Facility, the delivery of services to residents and the billing and collection of reimbursement are all accomplished in compliance with the laws, regulations, rules, policies and procedures of any federal, state or other regulatory body or agency having authority or jurisdiction over the Facility;

(s) After consultation with Authority, institute and prosecute such legal actions as Manager determines may be necessary to collect delinquent accounts receivable;

(t) Notify Authority as promptly as possible of any developments with respect to the operation of the Facility that are

reasonably likely to cause the actual operating results of the Facility to be materially different from the Annual Operating Budget for the Facility;

(u) Upon the request of Authority and not less than quarterly, attend meetings of Authority's governing board or executive staff to discuss management, operations, quality and other relevant issues;

(v) Plan, execute, and supervise repairs and maintenance at the Facility;

(w) The parties understand and agree that certain deficiencies or situations of non-compliance with various Legal Requirements are likely to occur from time to time in the normal course of business operations. The parties acknowledge that these may include, but are not limited to building codes, OSHA, ADA, CMS, deficiencies cited in connection with annual or periodic surveys pursuant to 42 CFR Section 483(B), et. seq., (requirements for long term care facilities) 12 O.S. Section 1-1901, et. seq. (Nursing Home Care Act) or otherwise. Such occurrences will not constitute a breach or Default by Manager hereunder, provided that Manager takes commercially reasonable actions to cure such deficiencies or situations of non-compliance within regulatory defined timelines. The costs (including any fines for non-compliance) of curing such deficiencies or circumstances of non-compliance shall constitute Operating Expenses;

(x) Prepare, assist, or cause to be prepared and filed with the applicable federal and state governmental agencies any and all reports (including, without limitation, cost reports as outlined in section 2.7.6) required for the proper payment or reimbursement to Authority and the Facility for services provided to residents within required deadlines;

(y) Notify Authority immediately upon receipt of any actual awareness or notice whether formal or informal regarding an actual or potential non-compliance with any Legal Requirements including, but not limited to, immediate jeopardy citations or substandard quality of care citations, that could result in suspension or termination of the Facility's license, Medicaid provider agreement(s), and/or Medicare provider agreement;

(z) Operate the Facility in such a manner that no default shall remain uncured in the mortgage loan, or any equipment lease for the Facility between the Prime Lessor and any financial institution; and



(aa) Pay and discharge in a timely manner all liabilities and obligations of the Tenant under the Prime Lease and the Subtenant under the Sublease and comply fully with and abide by each and every obligation, liability, responsibility and duty of Tenant as set forth in the Prime Lease and of Subtenant set forth in the Sublease. All costs and expenses incurred by Manager in performance of its obligations under this section shall be Operating Expenses; and

(bb) Perform such other obligations required to be performed by Manager pursuant to this Agreement.

### 2.3 Limitations on Authority of Manager

Notwithstanding anything contained in this Agreement to the contrary and in addition to the various other provisions of this Agreement that prohibit Manager from taking certain actions or allow certain actions only with the prior consent of Authority, Manager shall not, without the prior written consent of Authority, which consent Authority may not unreasonably withhold, perform any of the following actions on behalf of Authority:

2.3.1 Acquire any real property except as approved by Authority;

2.3.2 Unless required by OSDH, Manager will not reduce or increase the number of operating and/or licensed beds and/or certified beds in the Facility;

2.3.3 Borrow money or incur indebtedness on behalf of Authority other than indebtedness associated with the operation of the Facility, provided, however, that Manager may obtain in Manager's name working capital financing for the purpose of paying Operating Expenses of the Facility;

2.3.4 Pledge or provide a security interest in any assets of Authority, provided, however; that Manager may pledge a security interest in the Facility Operating Account as collateral for working capital financing obtained in Manager's name;

2.3.5 Sell or otherwise dispose of any assets of Authority; or

2.3.6 Confess a judgment or settle any claim that arose subsequent to the signature date of this Agreement in connection with the Facility without the prior consent of Authority which consent shall not be unreasonably withheld.

### 2.4 Licenses and Permits

Manager on behalf of Authority shall at all times from and after the Effective Date and during the Term of this Agreement and with the assistance of Authority be responsible for Authority obtaining and maintaining all licenses, permits, qualifications,

certifications, and approvals from any applicable governmental agency required for the operation of the Facility. Authority shall promptly provide Manager with all information requested by Manager to complete and maintain any licenses, permits, qualifications, certifications or approvals. Manager shall furnish and make current copies of all required licenses or certifications available for inspection by Authority. Manager will be responsible for all reporting and other requirements necessary to obtain and maintain on behalf of Authority all licenses, permits, qualifications, certifications, and approvals from any applicable governmental agency required for the operation of the Facility; provided, however, certain obligations necessary to obtain and maintain Authority's current license and Medicaid and Medicare certifications may not be assigned to Manager, including but not limited to, signature of the license application, license renewal applications, Medicaid and Medicare applications and provider agreements. Authority shall perform all actions reasonably requested by Manager to obtain and maintain the state licenses and federal certifications promptly and without delay. Upon Termination of this Agreement for any reason, Authority shall cooperate with Manager and Manager shall cooperate with Authority in obtaining all licenses, permits or other approvals necessary for operation of the Facility by Manager or a successor operator designated by Manager. Notwithstanding anything else to the contrary, Authority shall reimburse Manager for one half of the expenses, incurred in connection with the regulatory change of ownership (CHOW) process relating to initial licensure and certification of Authority as the Facility's licensed operator and Medicaid and Medicare provider and fair market value opinions.

## 2.5 Representations and Warranties

### 2.5.1 Authority represents and warrants to Manager as follows:

(a) Authority is non state governmental entity as defined by regulations established by the Oklahoma Health Care Authority as a part of the Nursing Supplemental Payment Program and has been duly established under the laws of the State of Oklahoma.

(b) Authority has full power and authority to enter into this Agreement and to carry out its obligations set forth herein. Authority has taken all action required by law, its organizational documents, or otherwise to be taken to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement is a valid and binding agreement of Authority enforceable in accordance with its terms, except that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditor's rights, and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) violate any provision of the organizational documents of Authority; (ii) violate any statute or law, or any judgment, decree, order, regulation or rule of any court or Governmental Authority, or (iii) violate any agreements or covenants to or by which it is bound.

(d) Authority is a non-state governmental entity, qualified to participate in the nursing facility supplemental payment program in accordance with OAC 317:30-5-9 and the enabling statutory authority.

2.5.2 Manager represents and warrants to Authority as follows:

(a) Manager is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_.

(b) Manager has full power and authority to enter into this Agreement and to carry out its obligations as set forth herein. Manager has taken all action required by law, its organizational documents or otherwise to be taken to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement is a valid and binding agreement of Manager enforceable in accordance with its terms, except that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditor's rights, and the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

(c) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) violate any provision of the organizational documents of Manager; (ii) violate any statute or law, or any judgment, decree, order, regulation or rule of any court or Governmental Authority, or (iii) violate any agreement to which Manager is a party or by which Manager or any of its properties are bound.

2.6 Environmental Matters

In the event of the discovery of Hazardous Materials on or in a Facility during the Term of this Agreement which are in violation of applicable Environmental Laws, Manager shall promptly remove to the extent required by applicable Environmental Laws such Hazardous Materials, together with all contaminated soil and containers, and shall

otherwise remedy the problem in accordance with all Environmental Laws. All costs and expenses of the removal of Hazardous Materials from the Facility pursuant to this Section and of the compliance with all Environmental Laws shall be paid from Ordinary Revenue or Working Capital Reserves and treated as an Operating Expense.

## 2.7 Other Services

Manager, subject to the provisions of this Agreement, for and on behalf of Authority shall manage and supervise all areas of operations of the Facility for Authority, in compliance with all Legal Requirements and Governmental Entity requirements.

### 2.7.1 Health Care Services

(a) Generally. Manager shall manage the Facility so that each resident receives the necessary and appropriate health care services, including but not limited to medical, pharmaceutical, nursing, dental, dietary, recreational, social, and rehabilitative services needed to maintain or improve levels of functioning as required by law, regulation, Standard of Care, and/or as prescribed or directed by appropriate and qualified practitioners. Manager shall provide such services directly, arrange for their provision, or coordinate with appropriate third party payors for the provision of such services.

(b) Primary Physician. Each resident must have a designated licensed and qualified primary physician who will be responsible for the overall medical care of the resident. Residents may be seen or treated by a physician or other health care practitioner of their own choosing at their own expense.

(c) Nursing Services. Provide nursing services twenty-four (24) hours per day, seven (7) days per week. The mix and number of staff must address the appropriate Standard of Care and the individual resident's acuity level. Nursing services shall also be designed to focus on rehabilitative nursing, addressing proper restorative programs assisting each resident to achieve and maintain the highest possible level of self-care and independence. Nursing services shall be provided under the supervision of Manager's Director of Nursing.

(d) Rehabilitative Services. Specialized rehabilitative services including physical therapy, speech therapy, occupational therapy, and psychological services when covered by payor programs.

(e) Dental Services. Dental services, including emergency, and routine services when covered by payor programs.

(f) Pharmaceuticals. Pharmacy goods and services, including medical supplies and over-the-counter medications when covered by payor programs.

(g) Nutrition. A nutritional program that meets all residents' individual dietary needs including special dietary meals, goods, and supplements. Said program shall be reviewed by a registered and/or licensed dietitian.

2.7.2 Infection Control. Manager shall institute and maintain an infection control program designed to prevent the development and transmission of disease and infection. All infection control recommendations made by Authority or its representative shall be duly considered by Manager; however, the final decision as to the appropriate measures to be taken shall vest entirely in the Medical Director of the facility.

2.7.3 Quality Assurance Committee. Manager shall establish and maintain a quality assurance committee that shall be responsible for objectively measuring the quality of health care provided at the Facility. Manager, on behalf of Authority, shall ensure that the work product of such committee, including its books, documents, deliberations, papers, internal communications, and memoranda, shall be maintained so as to preserve the legal privilege available for the same. Further, Manager shall keep all resident personal, health, and other information, as appropriate, confidential in compliance with HIPAA and state and federal law.

2.7.4 Resident Trust Fund Accounts. Manager, in accordance with all Legal Requirements, shall establish and maintain a resident trust fund account for the use of residents who wish to hold their personal funds. Manager shall not commingle the funds in this account with any other financial account. Manager shall establish and maintain all appropriate security and accounting systems in connection with the trust fund accounts.

2.7.5 Provider. The Facility, by and through Authority, will enter into and maintain a Health Insurance Benefits Agreement (HCFA 1561) with CMS to provide Medicare Part A and Medicare Part B services to eligible residents. The Facility shall be licensed in the name of Authority, and Authority shall serve as the provider of services in accordance with the provisions of Section 1866 of the Social Security Act and applicable provisions in the Medicare regulations. Manager shall be responsible if "take-backs" or related obligations associated with Authority's provider number or license or related obligations accrued during the Term and Manager has exhausted all appeals regarding such "take-backs;"

and same shall be Operating Expenses during the Term and Manager's expense thereafter.

2.7.6 Cost Reports. Manager shall timely and accurately prepare, in the name of and on behalf of Authority, all cost, expense and reimbursement reports and related documents relating to services provided to residents, including without limitation the Medicare and Medicaid cost reports in accordance with Title 42 C.F.R. and the Provider Reimbursement Manual (CMS Publication 15-2) and the Oklahoma program for supplemental payments to non-state government owned nursing facilities. Manager is hereby authorized by Authority to make appropriate and accurate representations regarding eligibility, billings, and provision of services to Medicare and Medicaid on behalf of Authority. Manager also is authorized by Authority to make reasonable elections to Medicare and Medicaid as permitted in the Medicare and Medicaid regulations and in the Medicare Provider Reimbursement Manual (CMS Publication 15-2). Manager shall have Medicare and Medicaid cost reports prepared by a party with adequate experience in the preparation of such reports. Manager shall complete cost reports and provide them to Authority for review at least fifteen (15) days prior to the required deadline for filing the cost reports. Manager shall provide Authority at least eight (8) days to review the cost reports prior to Manager timely filing same.

2.7.7 Medicare and Medicaid Certification. Authority and Manager shall ensure that the Facility is state licensed and Medicare and Medicaid certified at all times during the Term of this Agreement according to the duties and obligations of Manager and Authority pursuant to this Agreement. Manager shall maintain the Facility, its programs and operations in accordance with this Agreement and in such a way that Medicare and Medicaid certification and state licensure is maintained. Manager shall be responsible for all licensure and Medicare and Medicaid penalties and other enforcement actions related to incidents that occurred during the Term of this Agreement and shall take all actions necessary to correct regulatory deficiencies cited by state and federal regulators. The costs (including penalties) associated with such action shall constitute Operating Expenses.

2.7.8 Minimum Data Sets Reporting and Record Maintenance. Manager shall use the state approved resident Assessment Instrument ("RAI") to complete and submit Minimum Data Set ("MDS") and resident Assessment Protocols ("RAPs") on a schedule and as required by applicable federal regulations, including 42 C.F.R. § 483.20, and applicable state law. Manager shall be responsible for maintaining all records relating to resident assessments and classifications to include a resident's MDS, RAP, and Resource Utilization Group ("RUG") classifications. Manager shall permit Authority or its designee to inspect and copy said records upon request.



2.7.9 Data Sets Reporting and Record Maintenance Amendments. In the event the laws, rules, and regulations governing or otherwise relating to Medicare reimbursement change or are amended such that Manager determines that Authority's participation in Medicare reimbursement is no longer financially attractive, the parties shall enter into negotiations to modify or reform this Agreement, together with any other applicable agreements between the parties and their Affiliates. Services will continue to be provided to those residents covered by Medicare after termination of the Authority's Medicare provider status until the earlier of the resident's discharge from the Facility or the termination of Medicare benefits.

2.7.10 Separately Billable Medicare Part B Services. Medicare Part B covered services which are not required to be billed by Authority under the provider number of the Facility under the Medicare consolidated billing provisions for nursing homes and that are separately billable items (e.g., Medicare Part B services other than physical therapy, occupational therapy, or speech therapy services), may be furnished by an appropriate, qualified third party. All such separately billable Medicare Part B covered services shall be billed to the appropriate payor by the third party that provides such services, and Manager shall not bill any payor for such services. Based upon the best interests and welfare of the residents of the Facility, Manager shall either provide such separately billable Part B services on behalf of Authority or arrange for another third-party supplier to provide such services.

2.7.11 Billing and Payment of Separately Billable Medicare Part B Services. Physical therapy, occupational therapy, and speech therapy services and other like services that may be treated the same for billing purposes under Medicare regulations that are covered under Medicare Part B and furnished to patients of the Facility who are not in a Medicare Part A covered stay shall be furnished by or arranged by Manager. All such Medicare Part B Therapy Services shall be billed to Medicare by Manager in the name of Authority and using the Medicare provider number assigned to the Facility.

### **ARTICLE 3. PERSONNEL**

#### **3.1 Personnel**

3.1.1 Manager shall be responsible for providing all personnel necessary to operate the Facility in accordance with the terms of this Agreement and all applicable Legal Requirements. All wages, salaries and benefits for such personnel shall be allowable Operating Expenses. Manager shall employ and maintain appropriate, competent and qualified staffing ensuring that all personnel who provide services at the Facility are appropriately licensed or certified as necessary and required by the State of Oklahoma. Manager, or an Affiliate of

Manager, shall: (i) recruit, employ, train, promote, direct, discipline, suspend, and discharge all personnel in compliance with all applicable Employment Laws; (ii) establish salary levels and personnel policies; and (iii) establish employee performance standards, as needed during the Term of this Agreement, to ensure the efficient operation of all departments within, and services offered by, the Facility. Manager shall engage a licensed physician, on behalf of Authority, to serve as Medical Director of the Facility, an Administrator, and a Director of Nursing, all of whom must be properly licensed and/or possess the appropriate education and experience in the long-term health care field. Manager, or an Affiliate of Manager, shall manage and administer all employees and provide all human resource services for employees at the Facility, including benefits for such employees. Manager, or an Affiliate of Manager, may employ all personnel directly as employees of Manger or lease the personnel from other parties. Regardless of whether Manager or its Affiliate employs or leases the personnel, Manager or its Affiliate shall have complete control over such personnel and shall be responsible for recruiting, hiring, training, supervising, controlling and terminating or discharging all personnel. Manager or its Affiliate shall be responsible for fixing the compensation of all personnel providing services to the Facility, establishing all employee policies and ensuring that all personnel who provide services at the Facility are appropriately licensed or certified as necessary and required by the State of Oklahoma. Authority shall have no authority to hire, supervise, direct, train or control in any manner the personnel required to be provided by Manager or its Affiliate pursuant to this Section. None of the personnel provided pursuant to this Agreement or assigned to the Facility shall be employees of Authority.

3.1.2 Manager shall be responsible for defending and resolving any and all claims, suits, causes of action or charges brought by any employee of Manager or its Affiliate providing services to the Facility. The costs of defending and resolving any claims pursuant to this Section shall be paid from Ordinary Revenue or Working Capital Reserves and treated as an Operating Expense.

#### **ARTICLE 4. TERM AND TERMINATION**

##### **4.1 Term**

The term of this Agreement shall be for an initial period of two years beginning on the date \_\_\_\_\_, 20\_\_\_\_ (the "Initial Term") or such later time as may be required in order to allow the parties to obtain all necessary regulatory approvals prior to the initiation of the term of the Agreement. The term may be extended for successive two (2) year periods ("Extended Terms") upon the mutual agreement of the parties. The terms and conditions during any such Extended Term shall be the same as the terms and conditions during the Initial Term except for the terms of Article 5 which shall be modified as mutually agreed to by the parties. This Agreement shall terminate upon

termination of the Prime Lease or the Sublease in accordance with the terms of the Prime Lease and Sublease, as applicable. Any notice of termination of the Prime Lease or the Sublease will serve as sufficient written notice of termination of this Agreement.

#### 4.2 Termination by Authority

This Agreement may be terminated by Authority as follows:

4.2.1 Immediately by Authority upon an Event of Default by Manager described in Sections 14.1.1 or 14.1.4;

4.2.2 Upon thirty (30) days prior written notice to Manager upon an Event of Default by Manager described in Sections 14.1.2, 14.1.3, or 14.1.5 that remains uncured;

4.2.3 Upon sixty (60) days prior written notice to Manager without cause. If Authority terminates this Agreement without cause, Manager shall have no obligation to pay the Termination Fee (as defined in Section 4.2.4 below);

4.2.4 If Authority terminates this Agreement upon an Event of Default pursuant to Section 4.2.1 or Section 4.2.2, after Authority has entered into an IGT Responsibility Agreement with respect to the Facility, then Manager shall pay Authority a termination fee equal to the amount of any IGT that Authority makes (and/or penalty that Authority incurs under such IGT Responsibility Agreement if any such penalty is caused by the fault of Manager) and for which the Authority does not receive Supplemental Payments or other full reimbursement as a result of the termination of this Agreement (the "Termination Fee").

#### 4.3 Termination by Manager

This Agreement may be terminated by Manager as follows:

4.3.1 Immediately by Manager upon an Event of Default by Authority described in Section 14.2.1, or upon the termination or expiration of the Sublease for any reason; provided however, that if this Agreement terminates due to (i) Manager's termination or non-renewal of the Sublease, or (ii) termination or non-renewal of the Prime Lease after Authority has entered into an IGT Responsibility Agreement with respect to the Facility, then Manager shall first pay Authority the Termination Fee.

4.3.2 Upon thirty (30) days prior written notice to Authority if Manager or Prime Lessor, receives any notice of default from any Lender under any credit agreement or loan agreement to which Manager or Prime Lessor is party with Lender and such Lender directs Manager to terminate the Sublease and this

Agreement; provided, however, that if OSDH approves a change of ownership of the Facility license and Medicaid provider agreement sooner than the termination date set forth in the notice required by this subsection, then this Agreement shall terminate on the effective date of such change of ownership;

4.3.3 Upon thirty (30) days prior written notice to Authority upon an Event of Default by Authority described in Section 14.2.2 or 14.2.3 that remains uncured (and in such event Manager shall have no obligation to pay the Termination Fee); or

4.3.4 Upon sixty (60) days prior written notice to Authority without cause; provided, however, that if Manager terminates this Agreement without cause after Authority has entered into an IGT Responsibility Agreement with respect to the Facility, then Manager shall first pay Authority the Termination Fee.

#### 4.4 Actions to be Taken Upon Termination

Upon any Termination of this Agreement, the following shall be applicable:

4.4.1 Manager shall, within sixty (60) Days after Termination of this Agreement, prepare and deliver to Authority a final accounting statement with respect to the Facility, in the format and containing the information as prescribed for the Annual Report in Section 7.5, along with a statement of any sums due from one party to the other pursuant hereto, dated as of the date of Termination (the "Final Accounting Statement"). The Final Accounting Statement is subject to audit and approval by Authority. If Authority does not notify Manager in writing of exceptions to the Final Accounting Statement within thirty (30) days after receipt, then Authority shall be deemed to have approved the Final Accounting Statement. Within thirty (30) days after the approval by Authority of the Final Accounting Statement, the parties will reconcile any amounts in controversy and make whatever cash adjustments are reasonably necessary pursuant to such final statement. The cost of preparing the Final Accounting Statement, any audit thereof by Authority, and any mediation of amounts in controversy shall be an Operating Expense, unless the Termination occurs as a result of a Default by either party, in which case the defaulting party shall pay such costs. Manager and Authority acknowledge that there may be certain adjustments for which the information or funding is not available at the time of the Final Accounting Statement and the parties agree to readjust such amounts and make the necessary cash adjustments when such information becomes available; provided, however, that (except for ongoing disputes of which each party has received notice or legal claims for which the statute of limitations has not expired) all accounts shall be deemed final two (2) years after date of Termination;

4.4.2 As of the date of the Final Accounting Statement referred to in Section 4.4.1, Manager shall release and transfer to Authority any of Authority's funds which are held or controlled by Manager with respect to the Facility;

4.4.3 The parties will transfer operations of the Facility as provided in Exhibit A to this Agreement;

4.4.4 Various other actions shall be taken as described in this Agreement; and

4.4.5 The provisions of this Section 4.4 shall survive any Termination.

#### 4.5 Termination Payment

Upon Termination of this Agreement, (i) all funds in the Facility Operating Account, (ii) any Ordinary Revenue in the Depository Account (iii) any Ordinary Revenue and fifty percent (50%) of any Net Operating Income received thereafter attributable to the operation of the Facility prior to Termination, and (iv) all Working Capital Reserves (collectively "Termination Funds") shall be paid in accordance with the final financial report and reconciliation statement prepared pursuant to Section 4.4.1 and in the following order:

4.5.1 To pay Operating Expenses and Capital Expenditures that accrued prior to Termination;

4.5.2 To pay Authority any Termination Fee due under Section 4.2.4, 4.3.1 or 4.3.4;

4.5.3 To pay Manager: all accrued but unpaid Base Management Fees, Incentive Payments, and earned Quality Incentive Fees; provided, however, Authority's liability to pay Manager such amounts on Termination shall not exceed the amount of Termination Funds remaining, if any, after payment of Operating Expenses; and

4.5.4 To pay any amounts not paid under Section 4.5.1, 4.5.2 or 4.5.3 that remain due to Authority or Manager pursuant to the final reconciliation provided for in Section 4.4.1.

The reconciliation and timing of these payments will be completed as soon as practicable after Termination of this Agreement. The provisions of this Section 4.5 shall survive any termination of this Agreement.



## ARTICLE 5. COMPENSATION OF MANAGER

### 5.1 Fees and Incentive Payments

5.1.1 In consideration of services to be performed hereunder, each month during the Term, Authority shall pay Manager a fee (the "Base Management Fee"), which shall be an Operating Expense, equal to one hundred percent (100%) of Ordinary Revenue recorded for such month plus ten percent (10%) of Net Operating Income. The amount of any Base Management Fee payment will be reduced by any payments for Operating Expenses, including payments under the Sublease, advanced by Authority out of funds other than Ordinary Revenue and not previously reimbursed by Manager. Any such reduction in the Base Management Fee shall be paid to Manager when (a) Ordinary Revenue exceeds Operating Expenses, and (b) advances by Authority have been repaid to Authority from Ordinary Revenue.

5.1.2 In addition to the Base Management Fee, Manager shall be entitled to receive incentive payments (the "Incentive Payments") that are equal to any Surplus Working Capital plus sixty percent (60%) of Net Operating Income not paid as a part of the Base Management Fee.

### 5.2 Payment of Fees and Incentive Payments

Authority shall pay Manager the Base Management Fee monthly in arrears on a pro rata basis within five (5) business days after the closing of the previous month's books. Authority shall pay Manager the Incentive Payments within five (5) business days after the completion of the reconciliation process required by Section 5.3. If there are insufficient Ordinary Revenue funds and Working Capital Reserves to pay the Base Management Fee in any month, the shortfall shall accrue as a receivable for Manager; provided, however, upon Termination of this Agreement Authority's liability for such receivable shall not exceed the limit on Authority's liability set forth in Section 4.5.

### 5.3 Reconciliation Process

5.3.1 On a quarterly basis, or as otherwise agreed by the parties, Authority in cooperation with Manager will calculate Total Net Revenue, Ordinary Revenue, the Base Management Fee, Operating Expenses, Surplus Working Capital, Incentive Payments, Quality Incentive Fees, and the amount of Net Operating Income for the prior period and for the Fiscal Year. Any payments or adjustments as may be necessary to "true up" or correct any payments previously made to Manager under Sections 5.1 and 5.2, to the extent such payments exceed or are less than the amounts required pursuant to Sections 5.1 and 5.2, shall be made within five (5) business days after the completion of the reconciliation.

5.3.2 After the Annual Report required by Section 7.5 is approved by Authority, Authority and Manager agree to make such payments or adjustments as may be necessary to “true-up” or correct any amounts that were paid during the Fiscal Year covered by the Annual Report, to the extent such payments exceed or are less than the amounts required pursuant to Sections 5.1 and 5.2, within five (5) business days after Authority approves the Annual Report.

## **ARTICLE 6. EMERGENCY WORKING CAPITAL, INVENTORIES AND SUPPLIES**

### 6.1 Emergency Working Capital

If Manager determines at any time, based on its good faith projections, that Ordinary Revenue plus Working Capital Reserves will not be sufficient to satisfy all of the Facility’s obligations as they come due (a “Working Capital Shortfall”), then Manager shall provide funds to meet the projected Working Capital Shortfall and shall transfer immediately available funds into the Facility Operating Account in an amount equal to the anticipated Working Capital Shortfall (the “Emergency Working Capital”). Manager shall be reimbursed for any Emergency Working Capital that Manager provides from future Facility Ordinary Revenue.

### 6.2 Inventories and Supplies

As of the Commencement Date, the Facility will be stocked with Inventories and Supplies sufficient for the operation of the Facility in accordance with industry standards. Manager will maintain Inventories and Supplies at levels reasonably determined by Manager to be necessary to operate the Facility in compliance with the terms of this Agreement. Purchases of Inventories and Supplies shall be Operating Expenses.

## **ARTICLE 7. BOOKKEEPING AND BANK ACCOUNTS**

### 7.1 Books and Records

7.1.1 Manager shall maintain, on behalf of Authority, all books and records relating to the operation of the Facility on an accrual basis in accordance with GAAP. Authority may examine and copy such records during Manager's normal business hours. Manager shall be authorized to retain and enter into further agreements with affiliates to carry out the functions and purposes of this agreement, including but not limited to cash management agreements.

7.1.2 Manager shall comply with all Legal Requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement. Upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, Manager will make available those contracts, books, documents and records

necessary to certify the nature and extent of the costs of providing services under the terms of this Agreement. Such inspection shall be available up to four (4) years after the rendering of such services. The Parties acknowledge and agree that Manager may carry out any of the duties of this Agreement through a subcontract provided such agreement shall not diminish the obligations of the Manager hereunder.

7.1.3 To the extent allowed by law, Authority shall own all licensure, Medicaid and Medicare certification records, documents, files, reports, work papers, and working documentation, electronic or otherwise, created in connection with the Facility during the Term of this Agreement, including but not limited to cost report and resident records, except that Manager's internal administrative files and internal correspondence shall remain the property of Manager. Manager shall be entitled to retain electronic or paper copies of all Facility records for its files. To the extent that any records are owned by a resident, Manager may have access to such records; however, Authority shall have the ultimate right to possess and control such records during the Term of this Agreement. Upon termination of this Agreement, Manager shall deliver such documents to the new operator and/or manager within thirty (30) days. Manager's use of any resident records shall expressly be subject to all Legal Requirements.

7.1.4 Notwithstanding any other provision of this Agreement, during the Term and for four (4) years thereafter, Authority or any duly authorized representative(s), upon seven (7) days written notice, shall have unimpeded, prompt access for all purposes to any of Manager's books, documents, papers, and/or records, including but not limited to financial records of the Facility, that are maintained or produced in relation to the Facility. Further, Manager shall retain all records related to this Agreement for ten (10) years after final payment is made under this Agreement and all pending matters are closed. However, if any audit, litigation, or other action is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later. Notwithstanding the terms of this provision, however, the retention of any records by Manager shall be in accordance with all Legal Requirements, as well as the record retention policy promulgated by Manager. It is also agreed that following the termination of this Agreement, if either party is involved in any audit, litigation, or other action, such party shall have access to and the use of, as allowed by law, any and all records, files, documents, or other information as necessary to prepare for or defend itself in such actions, whether such records, files, or documents are in the possession of the other party or a successor operator or manager. The provisions of Section 7.1 shall survive termination of this Agreement.

## 7.2 Authority Bank Account, Facility Accounts, Expenditures

All Ordinary Revenue derived from operation of the Facility shall be deposited in a designated account of Authority which shall at all times be segregated from other funds of Authority (the "Depository Account"). The Depository Account shall be the sole and exclusive property of Authority, and Manager shall have no interest therein; provided, however, that Manager's representatives shall be provided with log-in credentials sufficient to allow them to have on-line access to view all transactions posted to the Depository Account. Authority shall not commingle the funds deposited in the Depository Account with any other funds of the Authority and shall, to the extent permitted by law, shield such funds from the claims of any creditors of the Authority. Further, Authority agrees to indemnify and hold Manager harmless from the claims of any creditors of the Authority which are not related to the operation of the Facility. All other Facility non-patient related earnings and reasonable petty cash funds shall be maintained at the Facility. Manager and Authority shall coordinate development of a cash management system that provides for periodic, daily or weekly but not less often than weekly, sweep and transfer of Ordinary Revenue from the Depository Account into an account or accounts that are the sole and exclusive property of Manager or its Affiliates and controlled by Manager or its Affiliates (the "Facility Operating Account"). Manager shall pay Facility Operating Expenses from funds deposited into the Facility Operating Account and from Working Capital Reserves.

### 7.3 Annual Operating Budget

7.3.1 At least \_\_\_\_\_ (\_\_\_\_) days prior to the beginning of each Fiscal Year during the Term, Manager shall submit to Authority, for review and approval by Authority, a projection of the estimated financial budget for the operation of the Facility during the next Fiscal Year, including without limitation budgeted Total Net Revenue and budgeted resident occupied bed days, in a format reasonably acceptable to Authority (the "Annual Operating Budget").

7.3.2 If Authority fails to approve the Annual Operating Budget prepared by Manager pursuant to Section 7.3.1 within \_\_\_\_\_ (\_\_\_\_) days following Authority's receipt thereof, the Annual Operating Budget prepared by Manager shall be the annual operating budget for the budgeted Fiscal Year until such time as Authority approves the Annual Operating Budget.

7.3.3 In the event that Ordinary Revenue or Total Net Revenue is projected to change materially, the parties agree to meet and confer in good faith to establish an Annual Operating Budget that does not cause the impact of such change to unduly affect either party.



#### 7.4 Interim Report

By the \_\_\_\_\_ (\_\_\_\_th) day after the close of each calendar month, Manager shall furnish to Authority a report (“Interim Report”) for the immediately preceding calendar month, in a format acceptable to Authority that includes, at a minimum, the following:

- (a) A statement of the actual and budgeted Total Net Revenue and Operating Expenses for the calendar month and the period commencing at the beginning of the Fiscal Year through the end of such calendar month, and a statement of reconciliation pursuant to Section 5.3.1;
- (b) An aged schedule of accounts receivable;
- (c) An occupancy report;
- (d) Such other reports as may be reasonably requested from time to time by Authority; and
- (e) A year to date balance sheet.

#### 7.5 Annual Report

By the \_\_\_\_\_ (\_\_\_\_th) day after the close of each Fiscal Year or such other date agreed to by the parties, Manager shall furnish to Authority an unaudited report (“Annual Report”) for the immediately preceding Fiscal Year in a format acceptable to Authority that includes, at a minimum, the Total Net Revenue and Operating Expenses for the Facility for such Fiscal Year, the amounts payable pursuant to Section 5.2, and the following:

- (a) A statement of the actual and budgeted Total Net Revenue and Operating Expenses for the Fiscal Year and a statement of reconciliation pursuant to Section 5.3.1;
- (b) An aged schedule of accounts receivable;
- (c) An occupancy report; and
- (d) Such other reports as may be reasonably requested from time to time by Authority.

Authority agrees to cooperate with Manager and its independent accountants in connection with the preparation of the Annual Report.

## 7.6 Authority Audit Rights

Authority shall have the right, in addition to performing an annual program and/or fiscal audit, to conduct a special or targeted audit of any aspect of the operation and finances of the Facility, using an auditor of Authority's choice upon reasonable notice to Manager. The costs associated with performing such special or targeted audits shall be the responsibility of Authority.

## **ARTICLE 8. REPAIRS, MAINTENANCE AND REPLACEMENTS**

### 8.1 Repairs and Maintenance

Subject to the provisions of the Prime Lease, Manager shall be responsible for maintaining the building, grounds and equipment of the Facility as provided in this Agreement, including performing all routine and preventive maintenance. Authority shall have no maintenance and repair obligations with respect to the Facility. Manager shall, as an Operating Expense, keep and maintain the Facility and its equipment in good order, condition, and repair as required under the Prime Lease and/or Sublease and in order to comply with all Legal Requirements, the cost or depreciation of which can be expensed under GAAP. Unless resulting from the gross negligence or intentional acts or omissions of Manager or Authority (in which case such costs, to the extent not covered by insurance, shall be paid by the responsible party and are not considered Operating Expenses), the cost of such maintenance, repairs and alterations shall be paid from Ordinary Revenue or Working Capital Reserves and shall be treated as an Operating Expense. If Manager fails to maintain and repair the Facility as provided herein, Authority may, on five (5) days prior notice (except that no notice shall be required in case of emergency) enter the Facility and perform such repair and maintenance on behalf of the Manager. In such case, Manager shall reimburse Authority for all reasonable costs so incurred immediately upon demand. Manager shall not permit any mechanic's or materialmen's lien upon or against the Facility which is caused by or resulting from any work performed, materials furnished or obligation incurred by, through or under Manager. If such a lien is filed upon or with respect to the Facility, Manager shall, within 30 days after receiving notice of such lien, (i) cause such to be released of record or(ii) provide a sufficient bond for the purpose of perfection against said lien.

8.1.1 Manager shall use commercially reasonable efforts to obtain all necessary warranty repairs on all equipment and improvements, ensuring they are completed prior to the expiration date on warranties.

8.1.2 Manager shall provide or arrange for full janitorial services including trash removal, extermination and pest control, facility-wide housekeeping, and facility-wide laundry services, including personal laundry service.

8.1.3 Manager shall maintain or arrange for the maintenance of the Facility grounds and shall keep or arrange to have them kept in an attractive condition, appropriate to the seasonal weather and the location's soil, water, climate and topography. Manager shall ensure that the grass, trees, bushes, shrubs, flowers and other plants are mowed, trimmed, clipped, watered and fertilized as seasonally appropriate. Furthermore, Manager shall sweep and clean all sidewalks and outside concrete or paved areas, keeping them free of trash and debris.

8.1.4 Manager shall hire or contract with skilled maintenance persons to perform regular maintenance on the building, grounds, equipment, and assets of the Facility.

## ARTICLE 9. INSURANCE

### 9.1 Property and Operational Insurance

Subject to the Prime Lease, during the Term of this Agreement, Manager shall provide, procure and maintain the following types of insurance with financially responsible insurance companies reasonably acceptable to Authority and qualified to do business in the State of Oklahoma or by an actuarially sound self-insurance vehicle reasonably acceptable to Authority:

9.1.1 Commercial General Liability Insurance. Commercial General Liability Insurance on a "claims made and reported" basis with limits of at least \$\_\_\_\_\_ for each claim and \$\_\_\_\_\_ in the aggregate and which limits may be satisfied by any combination of primary and excess or umbrella policies and self-insurance programs. The insurance required in this section shall be on forms reasonably acceptable to Authority and shall provide coverage for claims for bodily injury or death or property damage. If such coverage is under a claims-made policy, Manager shall, at its expense, for a period of at least two years after termination of this Agreement continue such coverage naming Authority as an additional insured or purchase tail coverage insuring Authority. The provisions of this Section 9.1.1 shall survive termination of this Agreement.

9.1.2 Professional Liability Insurance Coverage. Liability for injury, death, loss of service or otherwise on account of professional services rendered or which should have been rendered by Manager or any person for which acts Manager is legally liable on account of injury, sickness or disease, including death at any time resulting therefrom, and including damages allowed for loss of service, and the costs to defend such actions brought against Authority in a minimum amount of \$\_\_\_\_\_ per claim and \$\_\_\_\_\_ in the aggregate. If such coverage is under a claims-made policy, Manager shall, at its expense, for a period of at least two years after termination of this Agreement continue such

coverage naming Authority as an additional insured or purchase tail coverage insuring Authority. The provisions of this Section 9.1.2 shall survive termination of this Agreement.

9.1.3 Automobile Liability Insurance. Automobile Liability insurance, insuring for legal liability of Authority and Manager and caused by bodily injury, property damage, or personal injury arising out of the ownership or use of motor vehicles, including vehicles not owned by Authority, and including the costs to defend such actions brought against Authority with minimum limits of liability of \$ \_\_\_\_\_ per occurrence/aggregate combined single limit.

9.1.4 Worker's Compensation Insurance

Worker's Compensation insurance, or a program of non-subscriber self-insurance, insuring for occupational disease or injury and employer's liability, and covering Authority's (if any), and Manager's full liability for statutory compensation to any person or persons who are employed by Manager and liability to the dependents of such persons. Upon reasonable approval by Authority, Facility as full compliance with this paragraph and insurance covenants, may provide Health and Safety Employee Benefit Program ("Plan"), a fully self-insured employee occupational injury program developed and maintained by the Facility to address employee work related claims and injuries as an alternative to subscribing to traditional worker's compensation insurance.

9.1.5 Property Insurance. Property Damage and business interruption insurance naming Prime Lessor and Manager as named insureds, insuring for all risks of physical loss and loss of income or damage (excluding the perils of earthquake and flood, unless specifically required by a Lender) to the real property comprising the Facility, personal property of Manager used to maintain or service the Facility, and new construction, additions, alterations and repairs to structures. Manager may aggregate coverage with other policies maintained by Manager, provided that, Manager shall maintain coverage in an amount sufficient to allow for the replacement of property damaged, without deduction for depreciation and/or such amounts as may be necessary to comply with the provisions of the Prime Lease.

9.1.6 Additional Insurance. Other insurance in amounts required under the Prime Lease or that Authority and Manager agree is advisable for protection against their respective malpractice liabilities, or other claims, liabilities and losses arising out of or connected in any manner with the operation of the Facility.

9.2 General Insurance Provisions



9.2.1 All insurance described in Section 9.1 shall be obtained by and be carried in the name of Manager and shall include Authority as an additional insured by endorsement or equivalent means under Manager's blanket insurance policies, provided that such blanket policies substantially fulfill the requirements specified herein. All insurance described in Section 9.1 shall be primary and non-contributory with respect to any other insurance or self-insurance that any additional named insured may maintain. Any property losses thereunder shall be payable to the respective parties as their interests may appear. Manager shall procure an appropriate clause in or endorsement to all property insurance described in Section 9.1 wherein the insurer waives subrogation or consents to a waiver of right of recovery against any of the additional insureds. Upon request, Authority shall be entitled to examine all insurance policies maintained by Manager regarding the Facility.

9.2.2 Upon the request of either Authority or any Lender, representatives of the requesting party shall be entitled to examine all insurance policies maintained by Manager regarding the Facility or have copies of such insurance policies delivered to the requesting Authority or any Lender.

9.2.3 Manager shall deliver to Authority certificates of insurance and endorsement pages showing Authority by name, reasonably acceptable to Authority, with respect to all policies so procured. In the case of insurance policies about to expire, shall deliver certificates prior to such expiration with respect to the renewal thereof. All certificates of insurance shall state that the insurance shall not be canceled or non-renewed without at least thirty (30) days' prior written notice to Manager or its Affiliates.

9.2.4 Manager shall notify Authority in writing at least thirty (30) days' before any material adverse change in the insurance coverage required under this Article 9.

### 9.3 Cost and Expense

Insurance premiums, contributions to trust accounts or loss fund accounts and any other costs or expenses with respect to the insurance required under Section 9.1 shall be paid from Ordinary Revenue and shall constitute Operating Expenses. To the extent such premiums, contributions and costs relate to insurance regarding properties or risks other than the Facility, they shall be allocated on an equitable basis to the Facility. Any reserves, losses, costs or expenses that are uninsured shall be treated as a cost of insurance and shall be Operating Expenses.

### 9.4 Sublease Requirements

Notwithstanding anything to the contrary in this Agreement, Manager shall also maintain insurance for the Facility as required under the terms of the Sublease.

## **ARTICLE 10. TAXES**

### 10.1 Real Estate and Personal Property Taxes

All Impositions which become payable during the Term of this Agreement (or are properly allocable to such Term under GAAP) shall be paid by Manager from Ordinary Revenue or Working Capital Reserves as Operating Expenses before any fine, penalty, or interest is added thereto or lien placed upon the Facility. Authority shall, within ten (10) days after its receipt of any invoice, bill, assessment, notice or other correspondence relating to any Imposition, furnish Manager with a copy thereof. Manager will notify Authority not less than ten (10) days prior to the due date of any Imposition if insufficient Ordinary Revenue or Working Capital Reserves exist to pay the Imposition. Manager shall, within thirty (30) days of payment, furnish Authority with copies of official tax bills and assessments that Manager has received, and evidence of payment or contest thereof. Authority, or Manager, may initiate proceedings to contest any Imposition (in which case each party agrees to sign the required applications and otherwise cooperate with the other party in expediting the matter), and all reasonable costs of any negotiations or proceedings with respect to any such contest shall be paid from Ordinary Revenue or Working Capital Reserves and shall be an Operating Expense.

## **ARTICLE 11. INTENTIONALLY OMITTED**

## **ARTICLE 12. ACCESS AND USE OF FACILITY**

### 12.1 Access

During the Term of this Agreement, Manager shall have complete access to the Facility to the extent necessary to perform its obligations under this Agreement.

### 12.2 Use

12.2.1 Manager shall cause the Facility to be used solely for the operation of a licensed nursing facility consistent with the manner in which the Facility is being used as of the Effective Date, including all activities in connection therewith which are customary and usual to such an operation.

12.2.2 Manager shall comply with and abide by all Legal Requirements pertaining to the operation of the Facility, provided that: (i) all costs and expenses of such compliance shall be paid from Ordinary Revenue or Working Capital Reserves as Operating Expenses, and (ii) Manager shall have the right, but not the obligation, in its reasonable discretion, to contest or oppose, by appropriate

proceedings, any such Legal Requirements. The reasonable expenses of any such contest shall be paid from Ordinary Revenue or Working Capital Reserves as Operating Expenses.

12.3 Authority's Right to Inspect

Notwithstanding any other provision in this Agreement to the contrary, Authority and its agents shall have complete access to the Facility at all times.

**ARTICLE 13. PROPRIETARY MARKS; SOFTWARE**

13.1 Proprietary Marks

During the Term of this Agreement, the Facility may be known by its current assumed business name, with such additional identification as may be necessary and agreed to by Authority and Manager to provide local identification. Upon Termination of this Agreement, any use of or right to use the Proprietary Marks by Authority shall immediately terminate. The right to use such Proprietary Marks belongs exclusively to Prime Lessor or Manager, and the use thereof inures to the benefit of Prime Lessor or Manager whether or not the same are registered and regardless of the source of the same.

13.2 Computer Software and Equipment

13.2.1 All Software and any additions thereto during the Term, including without limitation electronic health record software and health information exchange access rights, shall remain the exclusive property of Manager or one of its Affiliates (or the licensor of such Software, as the case may be), and Authority shall have no right to use, or to copy, any Software.

13.2.2 Upon Termination of this Agreement, Manager shall have the right to retain, without compensation to Authority, all Software at the Facility.

**ARTICLE 14. DEFAULT**

14.1 Default and Events of Default by Manager

The following shall each constitute a "Default" by, and an "Event of Default" with respect to, Manager for purposes of this Agreement:

14.1.1 Manager: (i) has become the subject of a decree or order for relief under any bankruptcy, insolvency or similar law affecting creditors' rights now existing or hereafter in effect; (ii) has initiated, either in an original proceeding or by way

of answer in any state insolvency or receivership proceeding, an action for liquidation, arrangement, composition, readjustment, dissolution, or similar relief; (iii) has consented to any order for relief entered with respect to the Manager under the Federal Bankruptcy Code; or (iv) has failed to cause the dismissal of any proceeding instituted against the party under the Federal Bankruptcy Code, or the removal of any trustee appointed with respect to the party's property under the Federal Bankruptcy Code, within ninety (90) days of the commencement of such proceeding or appointment of such trustee, as the case may be.

14.1.2 Manager fails to make any payment to Authority required to be made in accordance with the terms of this Agreement within twenty (20) days after such amount has become due and Manager has received written demand for such payment from Authority.

14.1.3 Manager commits any act or fails to take any action that is specifically identified as a "Default" or an "Event of Default" by Manager under any provision of this Agreement that is not cured, in full or in part, for a period of thirty (30) days after written notice thereof by Authority to Manager, or if such Default or Event of Default cannot be cured within such thirty (30) day period, then such additional period as shall be reasonable provided Manager commences to cure such Default or Event of Default within such thirty (30) day period and proceeds diligently to prosecute such cure to completion.

14.1.4 The suspension, termination, revocation or loss of any License required by the Facility to operate as a nursing home that becomes a final agency action after waiver or exhaustion of all administrative and judicial review rights; provided, however, the suspension, termination, revocation or loss of any such License shall not constitute a Default or an Event of Default while Manager is pursuing its administrative and judicial review rights.

14.1.5 The failure by Manager to keep, observe or perform any covenant, agreement, term or provision of this Agreement and the continuation of such failure, in full or in part, for a period of thirty (30) days after written notice thereof by Authority to Manager, or if such default cannot be cured within such thirty (30) day period, then such additional period as shall be reasonable provided Manager commences to cure such default within such thirty (30) day period and proceeds diligently to prosecute such cure to completion.

## 14.2 Default and Events of Default by Authority

The following shall each constitute a "Default" by, and an "Event of Default" with respect to, Authority for purposes of this Agreement:



14.2.1 Authority: (i) has become the subject of a decree or order for relief under any bankruptcy, insolvency or similar law affecting creditors' rights now existing or hereafter in effect; (ii) has initiated, either in an original proceeding or by way of answer in any state insolvency or receivership proceeding, an action for liquidation, arrangement, composition, readjustment, dissolution, or similar relief; (iii) has consented to any order for relief entered with respect to the Authority under the Federal Bankruptcy Code; (iv) has failed to cause the dismissal of any proceeding instituted against the party under the Federal Bankruptcy Code, or the removal of any trustee appointed with respect to the party's property under the Federal Bankruptcy Code, within ninety (90) days of the commencement of such proceeding or appointment of such trustee, as the case may be.

14.2.2 Authority commits any act or fails to take any action that is specifically identified as a "Default" or an "Event of Default" by Authority under any provision of this Agreement that is not cured, in full or in part, for a period of thirty (30) days after written notice thereof by Manager to Authority, or if such Default or Event of Default cannot be cured within such thirty (30) day period, then such additional period as shall be reasonable provided Authority commences to cure such Default or Event of Default within such thirty (30) day period and proceeds diligently to prosecute such cure to completion.

14.2.3 The failure by Authority to keep, observe or perform any covenant, agreement, term or provision of this Agreement and the continuation of such failure, in full or in part, for a period of thirty (30) days after written notice thereof by Manager to Authority, or if such default cannot be cured within such thirty (30) day period, then such additional period as shall be reasonable provided Authority commences to cure such default within such thirty (30) day period and proceeds diligently to prosecute such cure to completion.

### 14.3 Remedies Upon an Event of Default

14.3.1 Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to pursue any one or more of the following courses of action: (i) to terminate this Agreement as provided in Article 4; and (ii) to institute any and all proceedings permitted by law or at equity, including, without limitation, actions for specific performance and/or damages.

14.3.2 Upon the occurrence of an Event of Default by either party, any amounts owed to the non-defaulting party shall accrue interest at an annual rate of twelve percent (12%), compounded annually, or the maximum non-usurious rate allowed by law, on the principal balance due commencing on the original due date of such payment through the date of payment.

14.3.3 The rights granted hereunder are intended to be cumulative, and shall not be in substitution for, but shall be in addition to, any and all rights and remedies available to the non-defaulting party (including, without limitation, injunctive relief and damages) by reason of applicable provisions of law or equity.

## **ARTICLE 15. INDEMNIFICATION AND HOLD HARMLESS**

### **15.1 Indemnification by Manager**

Notwithstanding anything in this Agreement to the contrary, Manager shall indemnify, defend and hold Authority and its parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents (each an "Indemnitee") harmless from and against any Loss arising out of, resulting from or in any way related to the following, except to the extent finally determined to have resulted solely from the action or inaction of Authority (together with the items described in Section 15.2, each a "Claim"):

- (i) a claim alleging that any of the Manager's services or deliverables infringes the intellectual property rights of any third party;
- (ii) a breach of, or failure to perform or satisfy any of, the representations, warranties and covenants made by Manager in this Agreement, any exhibit or attachment thereto, the Operations Transfer Agreement, or any other agreement executed in conjunction with this Agreement;
- (iii) the negligence, gross negligence, fraud, recklessness or willful misconduct of Manager or any of its officers, employees, independent contractors, subcontractors or other agents in connection with this Agreement;
- (iv) any violation of any Legal Requirements, to the extent such violation occurred as a result of acts or omissions that Manager or its employees or agents took or failed to take;
- (v) a claim by an employee or contractor of Manager or its Affiliate governed by Section 3.1.2;
- (vi) A claim alleging any violation of any Environmental Laws regarding the Facility or arising from the presence of Hazardous Materials on or in the Facility;
- (vii) any demands for repayment of overpayments or payment of civil monetary penalties in connection with any governmental, Medicare or Medicaid matters, including without limitation any cost report appeals, RUG audit appeals, Resource Utilization Groups civil money penalties, licensure penalties, and Attorney General case penalties, excluding any demands for repayment of overpayments or payment of civil monetary penalties related solely to Authority's breach of any of its obligations under the IGT Responsibility Agreement not related or caused by

any action or inaction of Manager; provided, however, that Manager's indemnification obligations solely with respect to any demands for repayment, penalties imposed, or expenses incurred in connection with Supplemental Payments, shall not exceed the sum of the Incentive Payments and Quality Incentive Fees paid to Manager during the term of this Agreement and Manager and Authority shall share equally in the cost of such defense;

(viii) any claim made by reason of any injury or death to any person or persons, including Manager's its employees, agents, contractors and invitees, or damage or destruction to property of any kind whatsoever and to whomsoever belonging including without limitation from any cause or causes, while in, upon or in any way connected with the Facility; or

(ix) any claim or cause of action against or liability or obligation (actual or alleged), of any nature whatsoever arising out of or relating to the use or operation of the Facility or any other business of Manager, or any act or omission of Manager, or any of its agents, employees, or officers, including, without limitation, any claim or cause of action arising out of or relating to any act of malpractice.

#### 15.2 Indemnification by Authority

Notwithstanding anything in this Agreement to the contrary, to the extent permitted by law, Authority shall indemnify, defend and hold Manager and its parent organizations, subsidiaries, Affiliates, officers, directors, employees, attorneys and agents (each a "Representative" and together with Manager, the "Manager Indemnitees") harmless from and against any Loss arising out of, resulting from or in any way related to the following Claims, except to the extent to have resulted solely from the action or inaction of Manager:

- (i) a breach of, or failure to perform or satisfy any of, the representations, warranties and covenants made by Authority in this Agreement, any exhibit or attachment thereto, the Operations Transfer Agreement, or any other agreement executed in conjunction with this Agreement, including but not limited to the IGT Responsibility Agreement executed between the Authority and OHCA; and
- (ii) the negligence, gross negligence, fraud, recklessness or willful misconduct of Authority in connection with the receipt or handling of Supplemental Payments.

#### 15.3 Claims Related to Overpayment of Medicaid Payments

If, upon the exhaustion or waiver of available appeal rights, Authority is required to repay any Medicaid payments received in connection with the operation of the Facility during the term of the Agreement, then Authority shall repay such Medicaid payments on a

timely basis and, in any event, before such date on which such Medicaid payments can be deducted from future payments made by the State of Oklahoma for services provided to Medicaid residents of the Facility; provided, however that the Authority shall not consent to the entry of any judgment or enter into any settlement with respect to repayment of any Medicaid payments without the prior written consent of Manager, which consent shall not be unreasonably withheld. Notwithstanding the above, this provision shall not be construed as any waiver of any rights or remedies that Authority may have against Manager under the Agreement, including but not limited to, any indemnification rights under Section 15 of the Agreement.

#### 15.4 Loss

“Loss” includes any liability, loss, recoupment of funds by any Government Authority, claim, demand, suit, cause of action, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, liens, fines, fees, penalties, and Litigation Expense. “Litigation Expense” means any court filing fee, court cost, arbitration fee, and each other fee and cost of investigating or defending an indemnified claim or asserting any claim for indemnification or defense under this Agreement, including reasonable fees of attorneys and other professionals, and disbursements.

#### 15.5 Notice

15.5.1 Authority shall notify Manager in writing, and with reasonable promptness, of any Claim, or any event that may give rise to a claim against Manager for defense. If Authority fails to timely give notice, Manager is still obligated to indemnify, hold harmless and defend Authority upon receipt of written notice from Authority, to the extent set forth in this Agreement, except that Manager is not liable for any Loss that arises as a result of Authority’s failure to provide Manager with timely notice of a Claim.

15.5.2 Manager shall notify Authority in writing, and with reasonable promptness, of any Claim, or any event that may give rise to a claim against Authority for defense. If Manager fails to timely give notice, Authority is still obligated to indemnify, hold harmless and defend Manager upon receipt of written notice from Manager, to the extent set forth in this Agreement, except that Authority is not liable for any Loss that arises as a result of Manager’s failure to provide Authority with timely notice of a Claim.

15.4.3 Additionally, Manager shall notify Authority in writing, and with reasonable promptness, of any default related to (i) any mortgage related to the Facility; (ii) the Prime Lease; or (iii) any Material Contract related to the Facility.

#### 15.6 Defense of Claim



At the request of Authority, Manager shall conduct Authority's defense, whether or not litigation is actually commenced or the allegations are meritorious. Manager shall employ counsel reasonably acceptable to Authority. All defense costs related to Claims shall be Operating Expenses during the Term and, in the case of Claims described in Section 15.1, Manager's expense thereafter and, in the case of Claims described in Section 15.2, Authority's expense thereafter. At its own option and sole expense, Authority may employ separate counsel to conduct Authority's defense against a Claim. Authority and Manager shall cooperate in the defense of any such Claim. So long as Manager is conducting the defense of any third party Claim described in Section 15.1 in accordance with these requirements: (i) the Indemnitee shall not consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of Manager, which consent shall not be unreasonably withheld, and (ii) Manager shall not consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld. Manager shall have the sole right to conduct its defense of any Claim described in Section 15.2.

#### 15.7 Payment and Survival

All Losses incurred that are subject to indemnification hereunder shall be payable by Manager or Authority, as applicable, within thirty (30) days after a valid claim for indemnification is made by an Indemnitee or Manager Indemnitee, as applicable, in accordance with this Article 15. Any amount Manager or Authority, as applicable, is required to pay to indemnify an Indemnitee or Manager Indemnitee, as applicable, shall be deemed an Operating Expense during the Term and, in the case of Claims described in Section 15.1, Manager's expense thereafter and, in the case of Claims described in Section 15.2, Authority's expense thereafter. The provisions of this Article 15 shall survive the Termination or the expiration of this Agreement.

#### 15.8 Rights of Offset

If Manager fails to pay any amounts due under this Article 15 when due, Authority and any other Indemnitee may, in their sole discretion, deduct, set off, and make a claim for any amounts to which it may be entitled under this Article 15 against Total Net Revenue, subject in all events to the timely payment of rent under the Sublease. The exercise of such right by any Indemnitee in good faith will not constitute a breach or default unless it is ultimately determined not to be justified, in which event all such funds that were deducted, set off or otherwise diverted from transfer to the Facility Operating Account shall be refunded promptly (and in any event within five (5) business days after such determination). Neither the exercise of nor the failure to exercise such right will constitute an election of remedies or limit Authority in any manner in the enforcement of any other remedies that may be available to it.

## ARTICLE 16. ASSIGNMENT

### 16.1 Assignment

16.1.1 Except as provided below, neither Manager nor Authority shall assign or transfer its interest in this Agreement without the prior written consent of the other party which consent may be withheld in the sole discretion of such other party. For purposes of this Agreement, the following shall be considered an assignment or transfer of this Agreement: (i) any assignment, transfer, sale or disposition of the majority of the ownership interest of Manager, voluntarily or involuntarily, by the parties who owned such interest on the Effective Date, (ii) any issuance of ownership interest of Manager that results in a change in the control of Manager or Authority, or (iii) any merger, consolidation or other similar transaction to which Manager or Authority is party.

16.1.2 In the event either party consents to an assignment of this Agreement by the other, no further assignment shall be made without the express consent in writing of such party, unless such assignment may otherwise be made without such consent pursuant to the terms of this Agreement. An assignment by either Authority or Manager of its interest in this Agreement shall not relieve Authority or Manager, as the case may be, from their respective obligations under this Agreement that accrued prior to the effective date of such assignment.

16.1.3 Manager may assign this Agreement, without Authority's prior written consent, to an Affiliate of Manager; provided, however, such assignment shall not relieve Manager from its obligations under this Agreement. Notwithstanding anything else to the contrary, a change of the officers and/or managers of Manager or a transfer of ownership of Manager to an Affiliate of Manager shall not constitute an assignment of this Agreement. Manager may delegate any of its obligations under this Agreement to an Affiliated Entity.

## ARTICLE 17. MISCELLANEOUS

### 17.1 Further Assurances

Except as specifically provided in this Agreement, Authority or Manager, as the case may be, shall cause to be executed and delivered to the other party all such other instruments and shall take or cause to be taken such further or other action as may reasonably and in good faith be deemed by the other party to be necessary or desirable in order to further assure the performance by Authority or Manager, as the case may be, of any of their respective obligations under this Agreement.

## 17.2 Confidentiality

The parties hereto agree that the matters set forth in this Agreement are strictly confidential and other than as may be required by applicable state open records law and/or securities laws and regulations, each party will make every effort to ensure that the information is not disclosed to any outside person or entities (including the press) without the written consent of the other party.

## 17.3 Consents

Wherever in this Agreement the consent or approval of Authority or Manager is required and the same is not expressly indicated to be as the sole discretion of a party, such consent or approval shall not be unreasonably withheld, shall be in writing and shall be executed by a duly authorized officer or agent of the party granting such consent or approval. If either Authority or Manager fails to respond within thirty (30) days to a request by the other party for a consent or approval, such consent or approval shall be deemed to have been given.

## 17.4 Dispute Resolution

The parties agree to submit any dispute between them relating to this Agreement, the Operations Transfer Agreement or the Sublease to confidential mediation prior to bringing any legal action to interpret, construe or enforce this Agreement; provided, however, that if mediation is not concluded within sixty (60) days after one party notifies the other party of its demand for mediation, then the either party may bring an action to resolve the dispute in accordance with Section 17.5 of this Agreement. This provision shall not prohibit either Party from seeking any necessary injunctive relief prior to conducting a mediation.

## 17.5 Applicable Law

This Agreement shall be construed under and shall be governed by the laws of the State of Oklahoma, without regard to principles of conflict of laws. Each party agrees that if any action is necessary to interpret, construe or enforce this Agreement, including any action for injunctive relief, the action must be filed in Oklahoma County. Each party waives any objection to venue in the foregoing jurisdiction.

## 17.6 Headings

Headings of Articles and Sections are inserted only for convenience and in no way limit the scope of the particular Articles or Sections to which they refer.

## 17.7 Notices

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, on the fifth (5<sup>th</sup>) business day after being mailed by registered or certified mail (postage prepaid, return receipt requested), in each case, to the parties at the following addresses, or on the date sent and confirmed by electronic transmission to the telecopier number specified below (or at such other address or telecopier number for a party as shall be specified by notice given in accordance with this Section):

If to Authority, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

If to Manager:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Notwithstanding anything else to the contrary, any notice or communication is deemed duly given upon actual receipt by the party to whom such notice is addressed, regardless of the method of delivery.

17.8 HIPAA Compliance

The parties agree that the services provided under this Agreement will comply in all material respects with all federal and state-mandated regulations, rules, or orders applicable to the services provided herein, including but not limited to regulations promulgated under Title II, Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-91) ("HIPAA"). Furthermore, the parties shall amend this Agreement or execute any additional documentation, including a business associate agreement in substantially the form attached hereto as Exhibit C, necessary to conform with HIPAA, or any new or revised legislation, rules, and regulations to which they are subject now or in the future, including, without limitation, the Standards for



Privacy of Individually Identifiable Health Information or similar legislation in order to ensure that the parties are at all times in conformance with all such laws.

#### 17.9 Estoppel Certificates

Each party to this Agreement shall at any time and from time to time, upon not less than ten (10) days prior notice from the other party, execute, acknowledge and deliver to such other party, or to any third party specified by such other party, a statement in writing: (i) certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications); (ii) stating whether or not to the best knowledge of the certifying party: (a) there is a continuing Default by the non-certifying party in the performance or observance of any covenant, agreement or condition contained in this Agreement; or (b) there shall have occurred any event which, with the giving of notice or passage of time or both, would become such a Default, and, if so, specifying each such Default or occurrence of which the certifying party may have knowledge; and (iii) stating such other information as the non-certifying party may reasonably request. Such statement shall be binding upon the certifying party and may be relied upon by the non-certifying party and/or such third party specified by the non-certifying party as aforesaid. The obligations set forth in this Section 17.8 shall survive Termination (that is, each party shall, on request, within the time period described above, execute and deliver to the non-certifying party and to any such third party a statement certifying that this Agreement has been Terminated).

#### 17.10 Entire Agreement

This Agreement, together with other writings signed by the parties which are expressly stated to be supplemental hereto and together with any instruments to be executed and delivered pursuant to this Agreement, constitutes the entire agreement between the parties and supersedes all prior understandings and writings and may be changed only by a writing signed by both parties hereto.

#### 17.11 Waiver

The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

#### 17.12 Partial Invalidity

If any portion of this Agreement shall be declared invalid by order, decree or judgment of a court, this Agreement shall be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship on Manager or Authority, or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.

#### 17.13 Construction

No provisions of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, being represented by counsel, having fully participated in the negotiation of this instrument.

#### 17.14 Limit on Recourse

Authority's and Manager's obligations under this Agreement are without recourse to any director, manager, officer, employee, member, or agent of Authority or Manager, respectively.

#### 17.15 Disclaimer

None of the services or assistance offered to Authority by Manager, or payments made to the Manager, shall in any manner be construed as an inducement for the referral of any patients or for the arrangement of any services covered under a Federal healthcare program. The parties do not intend the terms of this Agreement to provide for, and nothing in this Agreement shall be deemed or in any manner construed to be, the solicitation, receipt, offer or payment of remuneration for the furnishing of any item or service for which payment may be made in whole or in part under a Federal healthcare program, or in return for purchasing, leasing, ordering or arranging for, or recommending purchasing, leasing, ordering, any good, facility, service or item for which payment may be made in whole or in part under a Federal healthcare program. Such services and assistance are wholly intended to improve the delivery of health care services to the population and communities served by the parties, and are provided in a manner so as to confer a benefit on those communities. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, Authority and Manager shall attempt in good faith to amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangement between Authority and Manager.

#### 17.16 Authority

Each individual who has signed this Agreement warrants that such execution has been duly authorized by the party for which he or she is signing.

17.17. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original. Executed counterparts may be delivered by facsimile (and/or Adobe ® PDF), and shall be effective when received, with the original copy sent by overnight delivery service. This Agreement shall be of no force or effect unless and until it has been executed and delivered by both parties.

17.18 No Unintended Beneficiaries

This Agreement is solely between the parties hereto, and shall not create any right or benefit in any third party, including without limitation any patient, creditor, agent, partner, employee or affiliate of Manager, or any entity or agency having jurisdiction of the License, the Facility or the operation of the business therein.

17.19 Approval of OSDH.

Notwithstanding any other provision in this Agreement, the Parties agree that this agreement shall be subject to and shall not become effective until all necessary regulatory approvals have been obtained, including but not limited to approval of certificate of need and licensure in the name of the Authority, approval of management agreement in the form or substantially in the form of this Agreement, and any other approvals as required by law. In the event the terms of this Agreement call for an effective date which would otherwise precede the date of such necessary approvals, the effective date shall be postponed until such approvals are obtained by all parties.

*Signature Page Follows*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

NSGO, ("Authority")

\_\_\_\_\_,  
By: \_\_\_\_\_  
Name:  
Title:

NURSING HOME COMPANY, ("Manager")

\_\_\_\_\_,  
By: \_\_\_\_\_  
Name:  
Its:

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