

**MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT**

**between**

**The CITY OF STAMFORD, a municipal corporation organized and existing under the laws of the State of Connecticut, and located in the County of Fairfield in said State**

**("Operator")**

**and**

**Center Management Group, LLC**

**(in its capacity as Manager, "Manager")**

**and**

**Center Management Group, LLC**

**(in its capacity as New Operator, "New Operator")**

**Dated As Of**

**January 4, 2016**

**4**

Handwritten signature and initials in black ink, appearing to be 'J. M.' and a large flourish.

## MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT

THIS MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT (the "Agreement"), dated as of January 5, 2016 (the "Commencement Date") is by and among Operator, Manager, and New Operator. 

### BACKGROUND

A. Operator is the current licensee of the 128 bed Skilled Nursing Facility (a "SNF") known as The Smith House which is located at 88 Rock Rimmon Road in the City of Stamford, State of Connecticut (the "Premises") and is licensed in Connecticut as a chronic and convalescent nursing home ("CCNH") (the "Center").

B. Operator currently operates the Center.

C. Operator, New Operator and Manager have agreed to the Lease from Operator to New Operator or its permitted assignee attached hereto as Exhibit B (the "Lease"), said Lease to be effective as of the Closing Date, as that term is defined in the Supplemental Memorandum of Understanding Between the City of Stamford and Center Management Group dated November 25, 2015 (the Supplemental MOU, supplementing the Memorandum of Understanding entered into between the City of Stamford and Center Management Group dated November 6, 2015 (the "Initial MOU", and the Initial MOU and Supplemental MOU together, the "MOU"). The Closing Date is also referred to herein as the "Effective Date").

D. Manager is in the business of operating and managing long-term care facilities and providing operational, accounting and financial services to such facilities and is willing to provide management services with respect to the Center on the basis, terms and conditions set forth below.

E. Operator desires to engage Manager to manage the operations of the Center on Operator's behalf as of the Commencement Date on a short-term temporary basis pending the Effective Date.

F. In order to facilitate a transition of operational and financial responsibility from Operator to New Operator in a manner which will ensure the continued operation of the Center after the Commencement Date and the Effective Date in compliance with all applicable law and in a manner that promotes the health and welfare of the residents of the Center, the parties hereto have agreed to the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements set forth below, and intending to be legally bound, Operator, Manager, and New Operator agree as follows:

**SECTION 1. APPOINTMENT OF MANAGER** Operator hereby appoints and engages Manager as manager of the Center, and Manager agrees to act as manager of the Center, and to supervise, direct and control all aspects of the Center, including without limitation the day-to-day business activities, management and operation, repair and renovation of the Center and all phases of its operations in the name of and on behalf of Operator and for Operator's account during the term of this Agreement upon the terms and conditions hereinafter stated. In providing services hereunder, Manager shall exercise the same degree of diligence and skill as is usual and customary for managers of nursing facilities in the State of Connecticut and otherwise required by applicable law, rule or regulation. In providing services hereunder, Manager shall cause the Center to operate in compliance with the requirements of governmental authorities and third party payors; cause the Center to provide quality care to residents; and cause the Center to maintain and preserve necessary licenses, permits and approvals.

During the term of this Agreement, Operator shall retain authority over the Center solely to the extent required by law to operate as a licensee of a nursing home. Nothing in this Agreement shall require or obligate Manager to perform any service or to undertake any responsibility with respect to any matter that by law, regulation or requirement of a governmental authority or third party payor is required to be the direct responsibility or obligation of a nursing home licensee.

**SECTION 2. TERM** The term of this Agreement shall commence on the date hereof (the "Commencement Date") and shall continue until the earlier of (i) 150 days from the Commencement Date or (ii) the Effective Date (the "Initial Term"), or longer with respect to provisions that specify that they survive the term of this Agreement.

**SECTION 3. RESPONSIBILITIES OF MANAGER** In connection with its supervision, direction and management of the Center, Manager shall perform or cause to be performed, the following services:

**3.1 Regulatory Approvals**

Manager shall take all necessary steps to insure that Operator is and remains in compliance with all necessary licenses, certifications, accreditations, permits and approvals, and renewals thereof, to operate the Center to comply with all applicable laws, rules and regulations and to be eligible for participation in the state's Medicaid Program, the federal Medicare Program and applicable third-party payor programs.

**3.2 Management and Employees**

(a) It shall be the responsibility of the Manager to ensure that all employees of the Manager undergo satisfactory background checks to the same level as the Facility requires for all vendors, prior to said employee entering the Facility.

(b) Prior to the date hereof, Operator shall provide Manager with reasonable access to the Center so that Manager may discuss employment of Center employees by Manager pursuant to Manager's standard employment policies and criteria. Operator shall, as of the Commencement Date, terminate the employment of all Center employees.

(c) No later than five (5) business days prior to the Commencement Date, the Operator shall provide to the Manager a list of all individuals employed at the Center, which shall be updated at the Commencement Date, and which is to specify the compensation, benefits and any other remuneration provided to such employees by the Operator.

(d) The Operator shall not make any changes in the compensation, benefits or any other remuneration provided to employees at the Center subsequent to the date of this Agreement and prior to the Commencement Date.

(e) Manager shall offer equivalent - *i.e.*, full-time, part-time, seasonal or per diem - employment to all current non-executive Center employees that satisfy Manager's standard qualification criteria generally applied at other Manager affiliated skilled nursing facilities, unless the employee departs voluntarily, or the Manager shall have cause to terminate the employee, it being agreed that Manager shall subsequent to the Commencement Date have complete discretion with respect to all decisions pertaining the employees, subject to any collective bargaining agreement that Manager and/or New Operator shall have with a union. The employment offers shall be on terms set by Manager in its sole discretion that are equivalent to the terms offered to equivalent new employees concurrently offered positions by Manager at the Smith House, or in the case of employees covered by a collective bargaining agreements (a "CBA") the pay and benefits agreed upon in the CBA. The Operator shall conclude the employment of any and all of its employees as of 11:59 PM on the date immediately preceding the Commencement Date. The hired employees are referred to as the "Hired Employees".

(f) Operator (i) shall pay the Hired Employee salary for the shift that begins during the day preceding the Commencement Date which shift carries over to the Commencement Date and the employee health insurance cost for through the end of the month in which the Commencement Date occurs, without adjustment therefore, and (ii) shall pay the Manager, subject to union approval, if necessary, which approval the Operator shall use its best efforts to obtain, an amount representing all accrued time off, vacation time, sick time, personal time and similar entitlements and obligations which have been earned by the Hired Employees prior to the Commencement Date, but not yet paid for.

(g) Nothing in this Agreement shall create any rights in favor of any person not a party hereto, including the Center employees and Hired Employees, or constitute an employment agreement or condition of employment for any employee of Operator or New Operator or any affiliate thereof, nor shall this Agreement be deemed the assignment to or assumption by New Operator of any collective bargaining agreement, employment agreement or terms or conditions of employment, and New Operator shall not assume any liabilities or obligations under any employee benefit plan or defined benefit plan of Operator or its affiliates.

### **3.3 Billing, Accounting and Collection**

Operator expressly constitutes Manager, to the extent permitted by applicable law, as its agent to administer, process and collect, on Operator's behalf and in its name, all Medicare and Medicaid receivables RELATED TO THE PERIOD AFTER THE COMMENCEMENT DATE. Manager shall have the right to enforce Operator's rights as creditor under any contract relating to the Center or in connection with rendering any services at the Center for the purposes of collecting accounts receivable and monies owed the Center RELATED TO THE PERIOD AFTER THE COMMENCEMENT DATE, and Manager shall make reasonable efforts to collect all such receivables and monies at Manager's expense.

### **3.4 Contracts**

Manager shall negotiate and enter into, in the name of Manager, such agreements, contracts and orders as Manager may deem necessary or advisable for the furnishing of services, concessions and supplies for the operation and maintenance of the Center.

**3.5 Employee Relations.** From and after the Commencement Date, Manager shall be responsible for all union and non-union employee relation matters and shall comply with and be responsible for all legal obligations of the employer of the Center employees.

**3.6 Proprietary Property.** Manager retains all ownership and other rights in all proprietary systems, policy and other manuals, materials and other information, in whatever form, developed by Manager prior to this Agreement. Operator transfers to Manager all ownership and other rights in all proprietary systems, policy and other manuals, materials and other information, in whatever form, developed in connection with the operation of the Center.

**3.7 Solicitation of Employees.** In the event that this Agreement is terminated prior to the Effective Date, (i) Operator shall have the right to solicit the continued employment of those Center employees who are employees of the Manager at the time of termination.

**SECTION 4. RESPONSIBILITIES OF OPERATOR.** Operator makes the following covenants that are material covenants and upon which Manager relies as an inducement to enter into this Agreement:

**4.1 Cooperation.** Operator shall cooperate with Manager in every respect to allow Manager to perform its services under this Agreement. Operator shall permit Manager full access to the Center and will allow Manager to examine and copy any data in the possession and control of Operator affecting management and/or operation of the Center.

**4.2 Operations Control.** During the term of this Agreement, Operator shall retain authority over the Center solely to the extent required by law to operate as a licensee of a nursing home.

**4.3 Cost Reports.** Operator shall prepare and timely file with the appropriate agencies its final cost reports, as required, in respect to its operation of the Center as soon as practicable after the Effective Date, but in any event prior to or on the expiration of the period of

time as may be required for the filing of each such final Cost Report. It is specifically understood and agreed that the intent and purpose of this provision is to ensure that the reimbursement paid to the New Operator for the period beginning on the Effective Date is not delayed, reduced or offset in any manner as a result of the Operator's failure to timely file such final Cost Reports and the Manager shall make available to the Operator such of its financial records as the Operator needs to complete such Cost Reports.

4.4 Manager shall not be required to seek or obtain Operator's approval for any actions, other than to the extent required by law. Operator shall execute and deliver any and all applications and other documents that may be deemed by Manager to be necessary or proper to be executed by Operator in connection with the operation of the Center.

**SECTION 5. COOPERATION BETWEEN OPERATOR AND MANAGER** Manager and Operator shall mutually cooperate with each other as follows:

5.1 Mutual Cooperation. Manager and Operator shall mutually cooperate with each other as follows:

(a) On and after the Commencement Date, neither Operator nor Manager shall knowingly take any action or fail to take any action which may cause any governmental authority or third party payor having jurisdiction over the operation of the Center to institute any proceeding for the suspension, rescission or revocation of any necessary license, permit, consent, certification or approval.

(b) Manager and Operator shall each use its best efforts to abide by all relevant laws, ordinances, rules and regulations of federal, state and local governing authorities, and any third party payors.

5.2 HIPAA Compliance. Manager acknowledges that it is a "Business Associate" as defined by the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") under the Health Insurance Portability and Accountability Act of 1996. Manager shall protect the privacy of individually identifiable health information pursuant to the Privacy Agreement set forth in Exhibit A hereto, which is incorporated by this reference as if fully set out herein.

**SECTION 6. REVENUE AND EXPENSE**

Subject to the provisions set forth herein, Manager shall be entitled to all revenue earned by the Center after the Commencement Date and shall be liable for all expenses incurred by the Center after the Commencement Date.

**SECTION 7. ASSUMED AND RETAINED LIABILITIES; OVERPAYMENTS; RIGHTS TO APPEAL; EXPENSES**

(a) As of the Commencement Date the Manager will assume and agree to perform and discharge all of the liabilities and obligations under any contracts expressly assumed by Manager (the "Assumed Contracts") to the extent such liabilities and/or obligations relate to

any period on or after the Commencement Date and all liabilities and obligations related to the operation of the Center to the extent such obligations and liabilities relate to any period on or after the Commencement Date (the "Assumed Liabilities").

(b) Notwithstanding anything herein to the contrary, the Manager is not assuming, and the Operator is retaining and shall remain liable for and shall indemnify Manager for all liabilities of the Operator other than the Assumed Liabilities (the "Retained Liabilities"), including the following liabilities: (i) all liabilities and obligations arising from or relating to the ownership or operation of the Center and its related property, at any time prior to the Commencement Date, including but not limited to accounts payable; (ii) all amounts due third party payors, as a result of an audit, rate adjustment or otherwise, arising from or relating to services rendered prior to the Commencement Date; (iii) claims attributable to rate revisions received by the Center before and/or after the Commencement Date for services rendered by the Center prior to the Commencement Date; (iv) all amounts relating to all revenue received by the Center or Operator with respect to the Center before and/or after the Commencement Date arising from or relating to services rendered by the Center prior to the Commencement Date; (v) all liabilities or obligations relating to any collective bargaining agreement arising prior to the Commencement Date; (vi) all workers' compensation and/or COBRA obligations accruing prior to the Commencement Date; (vii) all Operator related loans, payables or other obligations incurred before the Commencement Date; (viii) liability arising from or relating to claims of medical malpractice and/or other professional liability of the Operator or any of its employees, agents or independent contractors in connection with events occurring prior to the Commencement Date, and (ix) all liabilities arising from any contract that is not an Assumed Contract. The Operator shall have the right to defend any claims, appeal or contest any ruling, judgment or determination resulting in any of the aforementioned obligations, and the Manager shall cooperate with the Operator in regard thereto to the extent reasonably necessary to pursue such action; provided, however, that in the event of rate appeals as described in 7(e) below, the Operator's rights hereunder shall be subject to the provisions of 7(e) below.

(c) The Operator shall remain liable for any Medicaid charges, claims, overpayments and paybacks attributable to periods prior to and up to the Commencement Date, with the Operator reserving the right, subject to the provisions of Section 7(i), to challenge or appeal same, and on the understanding that the Manager shall cooperate with the Operator in regard thereto to the extent reasonably necessary to pursue such action.

(d) The Operator is, and shall remain, liable for any Medicaid and Medicare charges, overpayments, claims and paybacks, and similar claims from other payors, arising from and/or relating to services rendered during the period prior to the Commencement Date, which shall include any penalties, interest, damages, fines, fees and charges thereon, (all of the foregoing collectively herein referred to as the "Overpayment Obligations"). The Operator acknowledges that the Overpayment Obligations may be collected by lump sum, or by decreasing the third party payments that are otherwise payable for services provided on or after the Commencement Date. The Operator shall promptly (within no more than 20 business days after written notice to Operator) reimburse the Manager with respect to Overpayment Obligations paid by or withheld from the Manager or the Center at any time on and after the Commencement Date.

(e) The Operator shall retain the sole and absolute right to defend any claims, protest, contest or appeal, at its own cost and expense, any charge, claim, payback, overpayment or similar claim, or any other third-party reimbursement decision, relating to services rendered by the Center for the period prior to Commencement Date, and to receive and retain any payment, reimbursement or additional reimbursement resulting from such defense of claim, protest, contest or appeal therefrom. The Manager shall retain the sole and absolute right to protest, contest or appeal, at its own cost and expense, any charge, claim, payback, overpayment or similar claim, or any other third-party reimbursement decision, relating to services rendered by the Center for periods on and after Commencement Date, and to receive and retain any payment, reimbursement or additional reimbursement resulting from such defense, protest, contest or appeal therefrom. The Parties shall reasonably cooperate with each other in connection with any such protect, contest or appeal.

(f) If any retroactive adjustment in payments is made as a result of an audit, rate appeal or otherwise, with respect to Medicaid or Medicare rate payments, cash receipts, assessments or other liabilities to any third-party payor, or any other third-party reimbursement is paid or owing by the Operator for services rendered before the Commencement Date, and such adjustment is made by decreasing the Medicare, Medicaid or other third-party payments made by such payor to the Manager on or after the Commencement Date, then the Manager shall provide to the Operator all statements and supporting documentation related thereto, and the Operator shall pay to the Manager the amount withheld or otherwise recovered within twenty (20) business days after receipt of notice from the Manager of such withholding or recovery.

(g) After the Commencement Date, if either party receives a notice relating to any audit, rate appeal, retroactive rate adjustment, or other rate determination or re-determination, or of the results of any protest, contest or appeal thereof, which is attributable or relates in whole or in part to services rendered prior to the Commencement Date (the "Claim Notice") the receiving party shall deliver to the other party, within ten (10) business days of such receipt, a true and correct copy of any such Claim Notice.

(h) If on or after the Commencement Date, either the Manager or the Operator (an "Initiating Party") intends to defend, protest, contest or appeal any Medicaid or Medicare rate determinations, or any third-party reimbursement determination, relating to any period prior to the Commencement Date, then the Initiating Party shall notify the other party (the "Receiving Party") of such intention in writing (a "Protest Notice") within ten (10) business days of the receipt of such determination or claim. The Receiving Party shall have the right to participate in such protest, contest or appeal by giving the Initiating Party notice of such election within ten (10) business days after the receipt of the Protest Notice.

(i) If the Receiving Party elects to participate in such protest, contest or appeal, then (as a "Participating Party") it shall pay its *pro rata* share of the Initiating Party's legal, accounting and other costs of pursuing such protest, contest or appeal based on such costs, the number of calendar days subject to such protest, contest or appeal, and the number of days during which the Participating Party is, or was, in an ownership position as to the Center.

(A) Regardless of whether a party is a Participating Party, it shall cooperate in the protest, contest or appeal to the extent reasonably necessary to pursue such action and shall provide access to the books and records of the Center;

(B) As long as either party is contesting any such claim in good faith, the other party shall not pay or settle such claim unless the failure to do so shall affirmatively jeopardize its participation in an applicable third-party payor program;

(C) The Operator, if a Participating Party, shall, subject to the payment of all related costs as described above, be entitled to receive all increased reimbursements resulting from such defense, protest, contest or appeal that relate to services provided at the Center prior to the Commencement Date;

(D) The Manager, if a Participating Party, shall, subject to the payment of all related costs as described above, be entitled to receive all increased reimbursements resulting from such protest, contest or appeal that relate to services provided at the Center on or after the Commencement Date; and

(E) If a Party does not elect in a timely manner to participate in any such protest, contest or appeal, then the Initiating Party shall bear the entire cost of such proceeding and, notwithstanding any other provision of this Agreement, shall be entitled to receive and retain all increased reimbursements resulting from such proceeding regardless of when the services were provided.

(j) Medicaid Liabilities. Subject to the reimbursement obligations of the Operator as set forth in this Section, the Manager shall be responsible for all Medicaid overpayments and/or Medicaid audit liabilities with respect to any payment for services rendered during any period of time on, and subsequent to, the Commencement Date, and the Operator shall be responsible for all Medicaid overpayments and/or Medicaid audit liabilities with respect to any payment for services rendered during any period of time prior to the Commencement Date.

(k) Expenses. Except as otherwise expressly provided herein, the Manager and the Operator shall bear their own respective expenses incurred in connection with the preparation and negotiation of this Agreement and in connection with all obligations required to be performed by each of them under this Agreement, including, without limitation, attorney and other professional fees. Operator shall be solely responsible for any payment obligation to any advisor or broker retained by it, and Operator agrees to indemnify and hold harmless the Manager from any liability for any such commission or compensation in the nature of a brokerage or advisor's or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which the Operator is, or may be, responsible. The Manager agrees to indemnify and hold harmless the Operator from any liability for any commission or compensation in the nature of a brokerage or advisor's or finder's fee or agent's commission (and the costs and expenses of defending against such liability or asserted liability) for which Manager or any of its members, officers, directors, employees or representatives is, or may be, responsible.

(l) The obligations of the Operator and the Manager pursuant to this Section 7 shall survive the expiration or other termination of this Agreement.

(m) At the Commencement Date, Operator shall deliver to Manager (i) the cash equivalent of the positive balance for all Resident Trust Funds to be held by the Manager for the benefit of the designated resident, (ii) all bank books and other assets belonging to residents of the Center maintained in the custody of the Center together with a schedule listing such assets and the name of the resident for whom they are being held; and (iii) a schedule of all resident deposits and prepayments designated on a resident by resident basis, together with a check in the amount of the security deposits and unexpended prepayments. To the extent necessary, and to the extent not possible at or prior to the Commencement Date, the foregoing information shall be updated by Operator within ten (10) days after the Commencement Date and delivered to the Manager along with all appropriate payments such that it shall be true, accurate and complete as of the Commencement Date.

(n) If a federal and/or state determination adjusts Operator's rate(s) in effect prior to the Commencement Date and such rate adjustment reduces Manager's and/or New Operator's rate(s) subsequent to the Commencement Date, then Operator is only required to reimburse Manager and/or New Operator for any amount withheld from Manager and/or New Operator that is directly related to resident payments received from such agency for dates of residency prior to the Commencement Date.

## **SECTION 8. BANK AND RESIDENT TRUST ACCOUNTS AND WORKING CAPITAL**

8.1 Patient Trust Accounts Manager shall oversee the Center's maintenance of accounts held in trust for residents to the end that said accounts are maintained in compliance with the requirements of governmental authorities and third party payors. Manager is responsible for any missing funds from said trust account and any balance shortages which occur on or after the Commencement Date.

8.2 The method of delivering between the parties the Accounts Receivable amounts to which each respective party is entitled pursuant to this Agreement shall be reasonably agreed upon by the parties.

## **SECTION 9. CONFIDENTIALITY**

(a) Confidentiality. No Party may, without the other Party's (the "Other Party") prior written consent, publish or disclose or otherwise authorize or permit any of its officers, employees, directors, agents or representatives or any third party to publish or disclose any trade secrets, confidential or proprietary data or information or financial books, records or other similar information (collectively, the "Confidential Information") of or pertaining to the Other Party; provided, however, that the foregoing shall not apply to information which: (i) prior to or

after the time of disclosure becomes publicly known and made generally available; or (ii) is required to be disclosed by applicable law or proper legal, governmental or other competent authority, provided that the Other Party shall be notified sufficiently to the extent possible in advance of such requirement so that the Other Party can seek an appropriate protective order with respect to such disclosure, with which the disclosing Party shall fully comply; (iii) is otherwise disclosed to agents, representatives (including attorneys, accountants and financial advisors), employees, vendors, or consultants whose knowledge of the information is needed for evaluation purposes and/or in connection with the consummation of the transactions contemplated by this Agreement and who recognize the confidential nature of such information and agree to be legally bound to the same burdens of confidentiality contained in this Agreement or (iv) any disclosure that the Operator is obligated to make pursuant to its rules and regulations, including obligations to present financial information as it pertains to the Operator to various boards and commissions, which may or may not be subject to FOIA requests, or other public communication responsibilities that the Operator may have as a municipal government, including but not limited to its obligations under FOIA, but in all cases the Operator will maintain confidentiality with respect to all of Manager's proprietary trade secrets, to the extent that it has access to any and is able to do so without violating applicable legal requirements.

(b) Restrictive Covenant. For a period of five (5) years after the Commencement Date (the "Restriction Term"), Operator shall not (a) own, lease, operate, or sponsor any skilled nursing facility located in the City of Stamford, other than any health care facility the Operator is currently supporting on the date of this Agreement, or (b) except as otherwise provided in this Agreement, solicit, as an employee, independent consultant or otherwise, any person who is an employee of the Center as of the date of this Agreement or within thirty (30) days preceding the date of this Agreement, or induce or attempt to induce any employee of the Center to terminate his or her employment with the Manager or New Operator, unless such person sought employment with Operator within the sixty (60) day period prior to this Agreement, or seeks employment with the Operator in response to an advertisement or other public communication targeting the general public for the relevant position.

(c) The provisions of this Section 9 shall survive the expiration or other termination of this Agreement.

## **SECTION 10. LICENSES, PERMITS, CERTIFICATIONS AND LEGAL PROCEEDINGS**

10.1 Government Actions Neither Operator nor Manager shall knowingly take any action or fail to take any action which such party knows will cause any governmental authority having jurisdiction over the operation of the Center to institute any proceeding for the suspension, termination, rescission or revocation of any necessary license, permit, certification or approval. Manager shall not knowingly take any action or fail to take action which Manager knows will adversely affect Operator's right to accept and obtain payments under Medicare, Medicaid or any other public or private third party medical payment programs.

10.2 Compliance Operator and Manager shall comply with all federal, state and local laws, rules and regulations and requirements which are applicable to such party provided that

such party shall not be deemed to be in breach of this covenant if the failure to comply with any such law, rule, regulation or requirement is the result of the negligence or misconduct of the other party.

**10.3 Contracts: Resident Agreements**

(a) Except for existing residency/admission agreements with residents, or any guarantors thereof, the Operator has, contemporaneously with this Agreement or heretofore, delivered to the Manager a final, true, accurate and complete copy of all contracts in effect as of the date of this Agreement, and/or scheduled to take effect at any time thereafter, and subsequent to such delivery the Operator shall not amend or revise such contracts or enter into any new contracts without the written consent of the Manager.

(b) On the Effective Date the Landlord shall transfer, convey and assign to the New Operator all existing agreements with residents and any guarantors thereof (excluding the right to any payments for periods prior to the Effective Date).

**SECTION 11. REPRESENTATIONS AND WARRANTIES** Operator and Manager make the following representations and warranties to the other party:

11.1 Status The representing party is duly organized and validly existing in good standing under the laws of its state of formation, and has all necessary power to carry on its business as now being conducted, to operate its properties as now being operated, to carry on its contemplated business, to enter into this Agreement and to observe and perform its terms.

11.2 Authority and Due Execution The representing party has full power and authority to execute and to deliver this Agreement and all related documents and to carry out the transactions contemplated by this Agreement. The execution of this Agreement by such party will not, with the passing of time, the giving of notice, or both, result in a default under or a breach or violation of such party's (i) organizational documents; or (ii) any law, regulation, court order, injunction or decree of any court, administrative agency or governmental body; or (iii) any mortgage, note, bond, indenture, agreement, lease, license, permit or other instrument or obligation to which such party is now a party or by which such party or any of its assets may be bound or affected. This Agreement constitutes a valid and binding obligation of the representing party, enforceable against such party in accordance with its terms, except to the extent that its enforceability is limited by applicable bankruptcy, reorganization, insolvency, receivership or other laws of general application or equitable principles relating to or affecting the enforcement of creditors' rights.

11.3 Litigation There is no litigation, claim, investigation, challenge or other proceeding pending or, to the knowledge of the representing party, threatened against such party, its properties or business which seeks to enjoin or prohibit it from entering into this Agreement.

11.4 Program Representations With respect to any federal health care program as defined in section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(f)) or any State health care program as defined in section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(h))

(collectively, the "Programs"), neither party, nor any individual with a direct or indirect ownership or control interest of five percent (5%) or more of such party, nor any director, officer, agent or employee of such party has ever been debarred, suspended or excluded from any Program.

## **SECTION 12. TERMINATION**

### **12.1 Operator's Right To Terminate**

In addition to all other remedies given to Operator at law or in equity, Operator may by written notice to Manager, terminate this management agreement at any time prior to the Effective Date upon the following occurrences:

- a) Manager fails to operate the Center as a Chronic and Convalescent Nursing Home ("CCNH") with a minimum of 90 licensed beds at no less than 80% occupancy.
- b) Manager fails to abide by the terms of the Initial MOU and/or the Supplemental MOU, except in regard to terms that are inconsistent with this Agreement and/or have been superseded – e.g., the deadline set in the Initial MOU for deposit of the Earnest Money.

## **SECTION 13. RESERVED**

#### **SECTION 14. NOTIFICATION**

The Operator shall promptly notify the Manager of (i) any condemnation, environmental, zoning or other land-use regulation notices or proceedings specifically relating to the property on which the Center is located received by the Operator, (ii) any notices of violations of any legal requirements relating to the property on which the Center is located, received by the Operator and (iii) any litigation of which the Operator receives written notice that arises out of the ownership or operation of the property on which the Center is located, or any other threatened or actual claim, action, litigation, suit or proceeding, arbitration or investigation against the Center or an employee thereof of which the Operator receives written notice, (v) any notice, citation, warning or communication, regardless of the source of such notice, citation, warning or communication, regarding any violation or any deficiency of any type, kind, nature or description received by the Operator with regard to any of the property on which the Center is located.

#### **SECTION 15. MEDICARE PROVIDER AGREEMENTS**

(a) At New Operator's election, Operator's rights and interests in and to Operator's Medicare provider numbers and Medicare provider reimbursement agreements (individually the "Provider Agreement" and collectively the "Provider Agreements") shall be assigned to New Operator at the Effective Date, provided that such assignment and assumption shall be permissible under applicable law and (ii) Operator shall remain liable for all liabilities and obligations arising under the Provider Agreements for all periods prior to the Effective Date. Operator will execute such documents as may be necessary to assign Operator's Medicaid and Medicare provider number(s) and provider agreement(s) to the Manager and/or New Operator.

(b) Operator shall indemnify and defend Manager and/or New Operator and hold it harmless against and with respect to any and all damage, loss, liability, deficiency, cost and expense (including, without limitation, reasonable attorneys' fees and expenses) relating to the Provider Agreements and arising out of the operation of the Center by Operator prior to the Commencement Date, including but not limited to any overpayments made to Operator under the Provider Agreements relating to the operation of the Center prior to the Commencement Date. Manager and/or New Operator shall indemnify and defend Operator and hold it harmless against and with respect to any and all damage, loss, liability, deficiency, cost and expense (including, without limitation, reasonable attorneys' fees and expenses) relating to the Provider Agreements and arising out of the operation of the Center by Manager and/or New Operator after the Commencement Date, including but not limited to any overpayments made to Manager and/or New Operator under the Provider Agreements relating to the operation of the Center after the Commencement Date.

**SECTION 16. Reserved**

**SECTION 17. TRANSFER OF RESIDENT TRUST FUNDS AND DEPOSITS**

(a) As soon as practical, the parties shall reconcile the Resident Trust Funds and Resident Deposits transferred from Operator to New Operator.

(b) Operator agrees to indemnify, defend and hold harmless Manager and/or New Operator from any losses, liabilities, damages, claims, actions, causes of action, costs, expenses, including, without limitation, reasonable attorneys fees, which Manager and/or New Operator may incur as a result of (i) discrepancies between the Resident Trust Funds or Resident Deposits as delivered by Operator to New Operator and the correct amount of the Resident Trust Funds or Resident Deposits for such resident as required under applicable law, including any shortfall in the amount of Resident Trust Funds or Resident Deposits delivered by Operator to Manager and/or New Operator, (ii) material inaccuracies in the accounting of Resident Trust Funds or Resident Deposits provided by Operator or (iii) claims which arise from actions or omissions of Operator with respect to the Resident Trust Funds or Resident Deposits prior to the Commencement Date.

(c) Manager and/or New Operator agree to indemnify, defend and hold harmless Operator from any losses, liabilities, damages, claims, actions, causes of action, costs, expenses, including, without limitation, reasonable attorneys fees, which Operator may incur as a result of any claims made by residents against Operator for Resident Trust Funds and Resident Deposits which arise from actions or omissions of Manager and/or New Operator after the Commencement Date .

**SECTION 18. ACCOUNTS RECEIVABLE AND PAYABLE**

(a) For avoidance of doubt, it is the intent of the Parties that the Operator shall be entitled to all accounts receivable related to the period prior to the Commencement Date, and that the Manager shall be entitled to all accounts receivable related to the period on and after the Commencement Date.

(b) Monies received by the Operator subsequent to the Commencement Date arising from the Manager's ownership and operation of the Center on or after the Commencement Date, shall be held by the Operator for the benefit of the Center and shall be paid over to the Manager within twenty (20) business days of the receipt thereof, together with all statements and supporting documentation related thereto.

(c) All invoices received on or after the Commencement Date by the Manager which represent liabilities of the Operator not assumed by the Manager shall be delivered by the Manager to the Operator within twenty (20) business days of the Manager's receipt. Upon receipt of such invoices the Operator shall promptly satisfy same, and other liabilities and obligations in connection therewith, and shall provide proof thereof to the Manager. Operator

shall further promptly after Commencement Date satisfy all accounts payable incurred but not yet paid as of Commencement Date, and shall provide proof thereof to the Manager.

(d) All invoices received on or after the Commencement Date by the Operator which represent liabilities assumed by the Manager shall be delivered by the Operator to the Manager within twenty (20) business days of the Operator's receipt. Upon receipt of such invoices the Manager shall satisfy same within the ordinary course, and other liabilities and obligations in connection therewith, and shall provide proof thereof to the Operator.

(e) The obligations of the Operator and the Manager pursuant to this Section 18 shall survive the expiration or other termination of this Agreement.

## **SECTION 19. PRORATIONS**

(a) The purpose and intent of the provisions for prorations and apportionments set forth in this Section and elsewhere in this Agreement are that, except as expressly set forth in this Agreement to the contrary, the Operator shall bear all expenses of the Center and property on which the Center is located accruing through midnight at the end of the day preceding the Commencement Date, and the Manager shall bear all expenses of use and operation thereafter.

(b) Except as specifically otherwise set forth hereinafter, the following closing adjustments (the "Closing Adjustments") shall be apportioned by and between the Operator and the Manager as of midnight at the end of the day preceding the Commencement Date and the net of the same shall be paid by the Manager or the Operator, as appropriate, at the Commencement Date:

(A) Prepayments for resident charges received by the Operator, if any, covering periods on and after the Commencement Date shall be a credit to the Manager;

(B) Equipment lease, rental and service contract payments, pursuant to Assumed Contracts conveyed under this Agreement, covering periods prior to the Commencement Date shall be a credit to Manager if unpaid at Commencement Date, and any such payments covering periods after the Commencement Date shall be a credit to the Operator if paid prior to the Commencement Date;

(C) Telephone, gas, water, vault charges, taxes and sewer rentals, electric and any other utility charges covering periods prior to the Commencement Date shall be a credit to the Manager if unpaid at Commencement Date, and any such payments covering periods after the Commencement Date shall be a credit to the Operator if paid prior to the Commencement Date;

(D) All amounts customarily paid by the Operator with respect to the relevant employees' pay in accordance with the Operator's customary payroll practice, including the federal and state taxes and FICA contributions, and other applicable taxes that are attributable to same (together with social security contributions, union dues and workman's

comp) and are the obligation of the employer, to the extent that same are due and then unpaid for the period prior to the Commencement Date, shall be a credit to the Manager;

(E) Overpayment Obligations known but not yet paid as of the Closing Date shall be a credit to the Manager.

(c) All of the Closing Adjustments shall be adjusted and paid on the Commencement Date. All of the Closing Adjustments shall be reviewed for accuracy and completeness and subject to correction or adjustment for a period of thirty (30) days after the Commencement Date. If Operator and Manager cannot agree on the Closing Adjustments on the Commencement Date, or to any corrections or adjustments during the thirty (30) day period after the Closing Date, their respective accountants shall choose a third independent accountant and the decision of at least two of the three accountants shall be final. Manifest mathematical errors are to be corrected by the accountants without resort to a third accountant. Any corrections or adjustments to the Closing Adjustments shall be paid in cash by one Party to the other Party, as applicable, within ten (10) days after such final determination has been made. The costs of the services of the third accountant shall be shared equally by Operator and Manager.

(d) The provisions of this Section 19 shall survive the expiration or other termination of this Agreement.

## **SECTION 20. ACCESS TO RECORDS**

(a) All: (i) patient records, resident records, MDS, care plans, therapy records, pharmacy records, clinical patient trust account records and admission agreements (the "Patient Care Records") for the period prior to the Commencement Date; and (ii) business records relating to the operation of the Center, including maintenance records, employment records for Hired Employees, including employment applications, W-9 Forms and performance evaluations; and governmental authority compliance records (including surveys and plans of correction) for the period prior to the Commencement Date (the "Operations Records") shall remain the property of the Operator, provided, however, that, with respect to that portion of the Patient Care Records and Operations Records that relate to residents in the Center as of the Commencement Date and Hired Employees (the "Current Patient Care Records" and "Current Operations Records"), Operator shall, at its expense, as promptly as reasonably possible following the Commencement Date, provide Manager with copies of all such Current Patient Care Records and Current Operations Records. Manager shall provide Operator with such reasonable assistance as Operator may reasonably request in order to properly and efficiently effectuate the copying of the Current Patient Care Records and Current Operations Records following the Commencement Date.

(b) Following, but not prior to, the delivery to Manager of copies of the Current Patient Care Records and Current Operations Records, Operator may remove all Patient Care Records and Operations Records from the Center. Operator shall file all notices required to be filed by it under applicable law (with a copy to Manager) with respect to the location of all files.

(c) Subsequent to the Commencement Date, Manager and/or New Operator shall provide to Operator copies of, at Operator's expense, the clinical, operational and financial records and supporting material of the Center relating to any period prior to the Commencement Date, to the extent reasonably necessary to enable the Operator to investigate and defend any claim (to include, without limitation, employee and patient claims), to file or defend tax returns, cost reports or other governmental filings and to verify payments, adjustments or allocations provided by this Agreement and involving the requesting party, which access shall not unreasonably disrupt the requested party's operations. Subsequent to the Commencement Date, Operator shall provide to Manager and/or New Operator the clinical, operational and financial records and supporting material of the Center relating to any period prior to the Commencement Date, to the extent reasonably necessary to enable the Manager and/or New Operator respond to data information requests of any governmental authority or current or former residents, or to investigate and defend any claim (to include, without limitation, employee and patient claims), to file or defend tax returns, cost reports or other governmental filings and to verify payments, adjustments or allocations provided by this Agreement and involving the requesting party, which access shall not unreasonably disrupt the requested party's operations.

(d) Each of Manager, New Operator and Operator shall, upon reasonable notice to the other, be entitled to remove the originals of any clinical, operational and financial records and supporting material of the Center relating to any period prior to or after the Effective Date in the possession of the other, for purposes of litigation involving a resident or employee to whom such record relates, if an officer of a court of competent jurisdiction or agency official certifies that such original must be produced in order to comply with applicable law or the order of a court of competent jurisdiction in connection with such litigation, and the requesting party shall provide the requested party with a complete copy of such records prior to its removal at the requesting party's cost and expense and as a condition precedent to receiving such original record. Any record so removed shall promptly be returned to the requested party following its use. The parties agree that Operator shall be deemed the custodian of all clinical, operational and financial records for the period prior to the Commencement Date, and Manager and/or New Operator shall be deemed the custodian of all clinical, operational and financial records for the period following the Commencement Date. If New Operator shall receive any request or demand from any third party or governmental authority for Patient Care Records and/or Operations Records for the period preceding the Commencement Date, New Operator shall, to the extent permitted by law, promptly forward such request or demand to Operator and shall not release any Patient Care Records and/or Operations Records for the period preceding the Effective Date without Operator's prior written consent, unless legally inadvisable.

(e) Each of New Operator and Operator agrees to maintain such books, records and other material comprising records of its operations of the Center, including, but not limited to, resident records and records of resident funds, to the extent required by law .

(f) This Section is included herein because of the possible application of Section 1861(v)(1)(I) of the Social Security Act to this Agreement. If such Section 1861(v)(1)(I) should not be found applicable to this Agreement under the terms of such Section and the regulations promulgated thereunder, then this Section will be deemed not to be a part of this Agreement and shall be conclusively deemed by the parties to be null and void. Until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, the New Operator will, as

provided in Section 1861(v)(1)(I) of the Social Security Act and regulations promulgated thereunder, make available, upon written request, to the Secretary of Health and Human Services or to the Comptroller General of the United States or any of their duly authorized representatives, this Agreement and all books, documents and records of the New Operator that are necessary to verify the nature and extent of the costs of any services furnished pursuant to this Agreement for which payment may be made under the Medicare program. Any party receiving a request for documents or information under this provision will promptly notify the other party.

**SECTION 21. OPERATING PROCEDURES MANUAL.** Operator makes no representation or warranty regarding its operating procedures manual or its related forms.

**SECTION 22. NOTICES** All notices, requests, demands, elections and other communications which either Party to this Lease may desire or be required to give hereunder shall be in writing, may be sent by a Party's attorney, and shall be deemed to have been duly given if delivered personally, by a reputable courier service which requires a signature upon delivery, by mailing the same by registered or certified first class mail, postage prepaid, return receipt requested, by facsimile with receipt confirmation (followed by a first class mailing of the same), or by e-mailing with receipt confirmation to the Party to whom the same is so given or made. Notice shall always be given by certified mail, return receipt requested, and may also be given by other means as well. Such notice, request, demand, waiver, election or other communication will be deemed to have been given as of the date so delivered or electronically transmitted or seven days after mailing thereof. Notices shall be addressed as follows:

If to Operator, to:

Director of Administration of the City of Stamford  
888 Washington Boulevard, PO Box 10152, Stamford, CT - 06904-2152  
Attn: Director of Administration - Michael Handler  
Facsimile: (203) 977-5657  
E-mail: mhandler@stamfordct.gov

With a copy to:

Director of Legal Affairs of the City of Stamford  
888 Washington Boulevard, PO Box 10152, Stamford, CT - 06904-2152  
Attn: Director of Legal Affairs - Kathryn Emmett  
Facsimile: (203) 977-5560  
E-mail: kemmett@stamfordct.gov

If to Manager and/or New Operator, to:

Center Management Group  
137-42 71st Avenue  
Flushing, NY 11367  
Attn: Mr. Charles-Edouard Gros  
Facsimile: (718) 380-0455  
Email: CGros@CenterMGT.com  
CC: sboehm@centermgt.com

With a copy to:

Tenzer and Lunin LLP  
32 East 57<sup>th</sup> Street, Tenth Floor  
New York, New York 10022  
Attn: Scott B. Lunin, Esquire  
Fax No. (212) 262-6959  
Facsimile: (212) 262-6959  
E-mail: slunin@tenzerlunin.com

or to such other address as such Party shall have specified by notice to the other Party hereto.

### **SECTION 23. INSURANCE**

(a) **Coverage.** Manager shall obtain and maintain such insurance coverage as is reasonably prudent for the operations of the Center, but in no event less than (i) any coverage amounts that may be required for licensure or certification and/or (ii) as provided, including all terms, in the Lease Agreement (attached to the Supplemental MOU as Exhibit A). Manager may obtain such insurance in its own name as part of one or more policies covering the Center and other facilities, provided that the amounts and terms required hereunder are provided therein and provided further that Operator and its lender shall be named as an additional insured thereunder. All premiums and costs of such insurance shall be an expense of the Center.

(b) **Certificates of Insurance.** Upon request, Manager shall furnish Operator with appropriate certificates of insurance, together with an additional insurance endorsement showing that each type of insurance required under this Section is in full force and effect and not cancellable or modifiable without thirty (30) days prior written notice to the Operator.

(c) **Other.** A duplicate original of each Policy and certificates of renewal shall timely be provided by Operator or Manager to the other upon request. If any Policy is a claims-made policy and not an occurrence policy, either appropriate claims made or tail insurance shall be maintained in full force for that period of time, after termination of this Agreement, required under applicable law to continue to provide insurance protection to the other party pursuant to this Agreement, with respect to occurrences prior to the termination of this Agreement.

## **SECTION 24. INDEMNIFICATION**

(a) **By the Operator.** Operator shall indemnify, save, protect, defend and hold harmless the Manager and/or New Operator from and against all Losses, whether or not resulting from third-party claims arising from, out of, or relating to (i) the breach of any representation or warranty made by Operator in this Agreement; (ii) the breach of any agreement, covenant or obligation of Operator in this Agreement; (iii) Operator's failure to pay any net Adjustment or Closing Adjustment due from it; (iv) the Retained Liabilities; and (v) the Operator's use, ownership and/or operation of the Center and the property on which the Center is located before the Commencement Date, in each case excluding claims to the extent arising from any breach, negligence or misconduct of Manager or New Operator hereunder.

(b) **By the Manager.** Manager shall indemnify, save, protect, defend and hold harmless the Operator from and against all Losses, whether or not resulting from third-party claims arising from, out of, or relating to (i) the breach of any representation or warranty made by Manager in this Agreement; (ii) the breach of any agreement, covenant or obligation of Manager in this Agreement; (iii) Manager's failure to pay any net Adjustment or Closing Adjustment due from it; (iv) the Assumed Liabilities; and (v) the Operator's use and/or operation of the Facility and the property on which the Center is located on or after the Commencement Date, in each case excluding claims to the extent arising from any breach, negligence or misconduct of Operator hereunder.

(c) **Control of Defense of Indemnifiable Claims.** Each party hereto who is entitled under the terms of this Agreement to indemnification (each, an "Indemnitee") from the other party hereto (the "Indemnitor") shall give the Indemnitor prompt notice of each claim for which it seeks indemnification. A claim for indemnification for any matter not involving a third-party claim shall be asserted by notice to the Indemnitor promptly following receipt by the Indemnitee of information giving rise to such claim, and such notice shall state with reasonable specificity the nature and basis of the claim and the amount thereof, to the extent known at such time. A claim for indemnification for any matter involving a third party claim shall be made against the Indemnitor promptly after receipt by the Indemnitee of notice of the commencement of any proceeding against the Indemnitee. Failure to timely notify the Indemnitor will not relieve the Indemnitor of any liability it may have to the Indemnitee, except to the extent the Indemnitor's defense of such action is prejudiced by the Indemnitee's failure to timely deliver such notice. The Indemnitor, upon written authorization by the Indemnitee, will be entitled to assume the defense of such claims (unless the Indemnitor is also a party to such claim and joint representation would be impermissible) and, after notice to the Indemnitee of its election to assume the defense of such claim, solely at its own expense. If the Indemnitor assumes the defense of a claim, no compromise or settlement of such claims may be effected by the Indemnitor without the Indemnitee's consent unless (i) there is no finding or admission of any violation of legal requirements or any violation of the rights of any person and no effect on any other claims that may be made against the Indemnitee, and (ii) the sole relief provided is monetary damages that are paid in full by the Indemnitor. If notice is given to an Indemnitor of the commencement of any claim and the Indemnitor does not, within ten days after the

Indemnitee's notice is given, give notice to the Indemnitee of its election to assume the defense of such claim, the Indemnitor will be bound by any determination made in such claim or any compromise or settlement effected by the Indemnitee, and Indemnitor shall be responsible for any and all legal costs in connection with Indemnitee's defense of such claim.

(d) Limitations on Indemnification. The rights of indemnity provided by this Agreement, shall be the sole and exclusive remedy of the parties notwithstanding any other rights and claims, whether created by law or otherwise, the parties may have relating in any way to the subject matter of this Agreement. Each Indemnitor's liability hereunder shall be limited to actual damages and no party shall be liable to the other party hereunder for special, consequential, incidental, punitive, extra-contractual, loss of profits, exemplary or other damages, fines and penalties, except when such damages, fines and penalties are asserted against or imposed upon the Indemnitee by a government or private third party, at which time such damages, fines and penalties shall be deemed to be the actual damages of Indemnitee.

(e) Survival of Indemnification. All indemnifications contained within this Agreement shall survive the expiration or other termination of this Agreement.

## **SECTION 25. MISCELLANEOUS**

25.1 Government Regulations. In accordance with its obligations under this Agreement, Operator and Manager shall operate and maintain the Center in compliance with the requirements of any statute, ordinance, law, rule, regulation or order of any governmental or regulatory body having jurisdiction over the Center. Notwithstanding anything to the contrary contained in this Agreement, in the event that any Medicare and/or Medicaid law, rule, regulation or payment policy, or any other applicable law or regulation, or any interpretation thereof, at any time, is modified, implemented, threatened to be implemented, or determined to prohibit, restrict or in any way materially change the terms of this Agreement, or by virtue of the existence of this Agreement has or will have a material adverse effect on either party, then Operator and Manager agree to negotiate in good faith to amend this Agreement in a manner consistent with such change and the intent of the parties. If for any reason any term or condition of this Agreement is found to be invalid or contrary to government laws, rules, regulations or orders, Operator and Manager agree to immediately and in good faith modify such term or condition to comply with such government law, rule, regulation or order.

25.2 Good Faith Effort by Manager. Manager shall be responsible for managing the Center and all of its assets and services with the same diligence and skill as is employed by prudent operators and managers in the management of similar healthcare facilities, and consistent with the provisions of this Agreement and in substantial compliance with all obligations imposed on Operator which are known to Manager.

**25.3 Assignment.** Operator shall not assign its rights or obligations under this Agreement. Manager shall not assign its rights or obligations under this Agreement other than to one or more entities 51% or more controlled by Mr. Charles-Edouard Gros and/or Mr. Shlomo Boehm.

**25.4 Retention of Control by Operator.** By entering into this Agreement, Operator does not delegate to Manager any of the powers, duties and responsibilities to the extent such power, duty, or responsibility is required by law to operate as a licensee of a nursing home.

**25.5 Force Majeure.** Manager shall not be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations under this Agreement for any reason beyond its control including, without limitation, strikes, lockouts, acts of God, unavailability of patients, personnel or supplies, unforeseen changes in statutes, regulations or rules of appropriate governmental or other regulatory authorities.

**25.6 Binding Agreement.** The terms, covenants, conditions, provisions and agreements contained in this Agreement shall be binding upon and inure to the benefit of Operator and Manager, and their permitted successors and assigns.

**25.7 Relationship of Parties.** Nothing contained in this Agreement shall constitute or be construed to be or to create a partnership, joint venture or lease between Operator and Manager with respect to the Center. Manager at all times shall act as an independent contractor to the Operator and shall not hold itself out to third parties as a partner, joint venturer, or employee of the Operator.

**25.8 Entire Agreement; Amendments.** This Agreement (including the Exhibits attached to and a part of this Agreement) contains the entire agreement between the parties hereto with respect to the subject matter set forth herein, and no prior oral or written, and no contemporaneous oral representations or agreements between the parties with respect to the subject matter of this Agreement except the Initial MOU and the Supplemental MOU, including attached Exhibits, and the Deposit Escrow Agreement continue in effect only to the extent not inconsistent with or superseded by this Agreement, shall be of any force and effect. Any additions, amendments or modifications to this Agreement shall be of no force and effect unless in writing and signed by Operator and Manager and New Operator.

**25.9 Captions and Headings.** The captions and headings throughout this Agreement are for convenience of reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect this Agreement.

**25.10 Governing Law.** This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Connecticut, without regard to the conflict of laws provisions thereof. Any dispute arising under this Agreement shall be settled by arbitration. The parties hereto shall each choose an arbitrator, and the two arbitrators thus chosen shall select a third arbitrator. The findings and award of three arbitrators thus chosen shall be final and binding on the parties hereto.

**25.11 Maintenance of Books, Records and Documents.** Pursuant to section 1395x(v)(1)(I) of Title 42 of the United States Code and applicable rules and regulations thereunder, until the expiration of four years after the termination of this Agreement, Manager shall make available, upon appropriate written request by the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or the applicable state agencies or departments, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by Manager under this Agreement.

(a) Until the expiration of four years after the furnishing of services pursuant to this Agreement, Manager shall, as provided in Section 952 of the Omnibus Reconciliation Act of 1980 and regulations promulgated thereunder make available, upon written request, to the Secretary of the United States Department of Health and Human Services, or upon request, to the Comptroller General of the United States, or any of their duly authorized representatives, this Agreement, and all books, documents and records of Manager that are necessary to verify the nature and extent of the costs of any services furnished pursuant to this Agreement for which payment may be made under the Federal Medicare Program.

(b) If Manager carries out any of the duties of this Agreement through a subcontract or subcontracts with an aggregate value or cost of Ten Thousand Dollars (\$10,000) or more over a 12 month period with a related organization, such subcontract or subcontracts shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract or subcontracts, the related organization shall, as provided in Section 952, make available, upon written request, to the above referenced Federal officials, or any of their duly authorized representatives, the subcontract or subcontracts, and all books, documents and records of such organization that are necessary to verify the nature and extent of the costs of any services furnished pursuant to such subcontract or subcontracts for which payment may be made under the Medicare program.

**25.12 Further Assurances.** At any time and from time to time during the term of this Agreement, at either party's request, each party shall promptly execute and deliver all such

further agreements, certificates, instruments and documents, including a certificate of Operator in a form reasonably satisfactory to Manager stating that this Agreement is in effect with respect to, and is binding against, Operator, and each party shall perform such further actions, as the other party may reasonably request in order to fully consummate the transactions contemplated by this Agreement and carry out the purposes and intent of this Agreement.

**25.13 Certain Definitions: Person**

The term "person," as used in this Agreement means any individual, sole proprietorship, joint venture, corporation, partnership, governmental body, regulatory agency or other entity of any nature.

**25.14 Severability.** If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provisions hereof shall not be affected thereby and shall be enforceable without regard thereto.

**25.15 Waivers.** No party's waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further and continuing waiver by such party of any such term, provision or condition of this Agreement.

**25.16 No Third-Party Rights.** This Agreement shall not confer any rights or benefits to or upon any person or entity not a party to this Agreement.

**25.17 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall constitute an original hereof, and it shall not be necessary in making proof of this Agreement to produce or account for more than one original counterpart hereof.

[remainder of page intentionally blank]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on their behalf their duly authorized representatives, as of the day and year first above written.

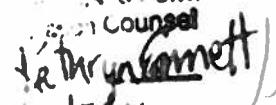
**OPERATOR:**

The CITY OF STAMFORD, a municipal corporation organized and existing under the laws of the State of Connecticut, and located in the County of Fairfield in said State

By:   
Name: David R. Martin  
Title: 1/5/16

**MANAGER:**

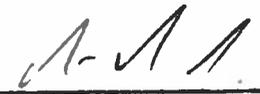
Center Management Group, LLC  
(in its capacity as Manager)

... of Form  
... Counsel  
By:   
... 1/5/16

By:   
Name: Charles-Edouard Gros  
Title: managing member

**NEW OPERATOR:**

Center Management Group, LLC  
(in its capacity as New Operator)

By:   
Name: Charles-Edouard Gros  
Title: managing member

## Exhibit A

### Privacy Agreement

#### 1. Terms and Terminology.

1.1 Terms. Terms used, but not defined in this Privacy Agreement shall have the same meaning as those terms in 45 CFR Part 160 and Part 164, Subparts A and E.

1.2 Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

#### 2. Obligations and Activities of Manager.

2.1 Manager agrees not to use or further disclose Protected Health Information other than as permitted or required by this Privacy Agreement or as required by law.

2.2 Manager agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Privacy Agreement or the Privacy Rule.

2.3 Manager agrees to mitigate, to the extent practicable, any harmful effect that is known to Manager of a use or disclosure of Protected Health Information in violation of the Privacy Rule.

2.4 Manager agrees to report to Operator any use or disclosure of Protected Health Information made in violation of the Privacy Rule.

2.5 Manager shall prepare a Notice of Information Practices for the Center in accordance with 45 CFR § 164.520.

2.6 Manager shall ensure that Center personnel provide each resident of the Center with a copy of the Center's Notice of Information Practices upon each resident's admission to the Center. If the Manager modifies the Center's Notice of Information Practices, Manager shall provide each resident with a copy of such revised Notice of Information Practices.

2.7 Manager shall ensure that the personnel of the Center obtain such acknowledgement of the Center's Notice of Information Practices or consent from each resident on behalf of Operator as the Privacy Rule requires the Operator to obtain.

2.8 Manager shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Manager in each case on behalf of Operator, agrees to the same restrictions and conditions that apply through this Privacy Agreement to Manager with respect to such information.

2.9 Manager agrees to provide access, at the request of Operator, and in the time and manner designated by Operator, to Protected Health Information in a Designated Record Set, to Operator or, as directed by Operator, to an Individual in order to meet the requirements of 45 CFR § 164.524.

2.10 Reserved.

2.11 Reserved.

2.12 Manager agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Operator to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

2.13 Manager agrees to provide to Operator or an Individual, in the time and manner designated by Operator, information collected in accordance with Section 2.12 of this Privacy Agreement, to permit Operator to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3. **Permitted Uses and Disclosures by Manager.** Except as otherwise limited in this Privacy Agreement, Manager may use or disclose Protected Health Information to perform functions, activities, or services for itself and/or on behalf of Operator as specified in the Management Agreement into which this Privacy Agreement has been incorporated by reference (the "Management Agreement"), provided that such use or disclosure would not violate the Privacy Rule if done by Operator.

#### 4. **Obligations of Operator**

4.1 Operator shall notify Manager of any restriction to the use or disclosure of Protected Health Information to which Operator has agreed in accordance with 45 CFR § 164.522.

4.2 Operator shall not request Manager to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Operator.

#### 5. **Term and Termination**

5.1 **Term** The Term of this Privacy Agreement shall be effective as of the Commencement Date of the Management Agreement and shall terminate when all of the Protected Health Information provided by Operator to Manager, or created or received by Manager on behalf of Operator, is destroyed or returned to Operator, or, if it is not feasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions of this Section 5.

5.2 **Termination for Cause** Upon Operator's knowledge of a breach by Manager of this Privacy Agreement, Operator immediately may terminate the Management Agreement and this Privacy Agreement.

### **5.3 Effect of Termination**

(a) Except as provided in paragraph (b) of this Section 5.3, upon termination of the Management Agreement for any reason, Manager shall return or destroy all Protected Health Information received from Operator, or created or received by Manager on behalf of Operator. This Section 5.3(a) shall apply to Protected Health Information that is in the possession of subcontractors or agents of Manager. Manager shall retain no copies of Protected Health Information.

(b) In the event that Manager determines that returning or destroying such Protected Health Information referred to in Section 5.3(a) is not feasible, Manager shall provide to Operator notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of the Protected Health Information is not feasible, Manager shall extend the protections of this Privacy Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Manager maintains such Protected Health Information.

6. **Indemnification** Notwithstanding any provisions to the contrary in this Privacy Agreement or the Management Agreement, Manager will indemnify, defend, and hold harmless Operator, its officers, directors, employees, medical personnel, and agents from any and all damages, claims, actions, liability, and expenses (including the cost of judgments, settlements, court costs, and attorneys' fees, but excluding consequential damages) relating to or resulting from Manager's breach of this Privacy Agreement or violation of the Privacy Rule.

### **7. Miscellaneous**

7.1 **Regulatory References** A reference in this Privacy Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

7.2 **Amendment** Manager and Operator agree to take such action to amend this Privacy Agreement as is necessary for Operator to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.

7.3 **Survival** The respective rights and obligations of Manager under Section 5 of this Privacy Agreement shall survive the termination of this Privacy Agreement and the Management Agreement.

7.4 **Interpretation** Any ambiguity in this Privacy Agreement shall be resolved in favor of a meaning that permits Operator to comply with the Privacy Rule.