

## LTC DEVELOPMENT AGREEMENT

**THE AGREEMENT** effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
*[Above date to be inserted by Ministry – when last Party signs]]*

**B E T W E E N:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by the Minister of Long-Term Care**

**(the “Minister”)**

**- and -**

**The Corporation of the City of Brantford and the Corporation of the  
County of Brant**

**(the “Operator”)**

### **BACKGROUND:**

1. The Operator applied for, and the Minister has approved, the Operator’s development of 10 Long-Term Care Home Beds in Brantford, comprising:
  - (a) 10 New Beds
2. In accordance with the Minister’s approval the Operator agrees to develop 10 Beds in that location subject to the terms and conditions set forth in this Agreement.

### **CONSIDERATION:**

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION AND DEFINITIONS**

- 1.1 **Interpretation.** For the purposes of interpretation:
  - (a) words in the singular include the plural and vice-versa;
  - (b) words in one gender include all genders;
  - (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;

- (d) any reference to dollars or currency shall be to Canadian dollars and currency; and
- (e) “include”, “includes” and “including” denote that the subsequent list is not exhaustive.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

“**Act**” means the *Long-Term Care Homes Act, 2007* (Ontario).

“**Agreement**” means this development agreement entered into between the Minister and the Operator, all of the schedules listed in section 28.1, and any amending agreement entered into pursuant to section 32.2.

“**Applicable Law**” means, with respect to any person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law relating or applicable to such person, property, transaction, event or other matter.

“**Applicable Policy**” means any orders, rules, policies, directives or standards of practice, as amended from time to time, issued or adopted by the Ministry or by other ministries or agencies of the province of Ontario (including the LHIN) that are applicable to the Operator, the Home, this Agreement or the Parties’ obligations under this Agreement or Applicable Law, and includes Applicable Policy as may be defined under a Service Accountability Agreement.

“**Application**” means the Application described in Schedule "A".

“**Application Guidelines**” means the Aging with Confidence: Ontario’s Action Plan for Seniors Guidelines for Submitting Applications for New Long-Term Care Bed Capacity together with the Application for Long-Term Care Home Development and Redevelopment issued on or about February 2018 together with any clarification of these documents that may be publicly announced by the Ministry prior to the date this Agreement is signed by the Operator.

“**Beds**” means the Long-Term Care Home Beds that are to be Developed by the Operator pursuant to this Agreement.

“**Business Day**” means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Ministry has elected to be closed for business.

“**Capital Occupancy Approval Letter**” has the meaning set forth in Schedule “D”, section 2(5).

“**Confidential Information**” has the meaning set forth in section 6.4 (a).

**“Construction”** has the meaning set forth in Schedule “B”, section 3.

**“Construction Manager”** means a construction manager for services under a CCDC5A Construction Manager Contract for Services or a construction manager for services and construction under a CCDC5B Construction Manager Contract for Services and Construction.

**“Construction Plans”** means Preliminary Construction Plans, Working Drawings and any revisions to the foregoing approved by the Minister.

**“Controlling Person”** means a person who holds a “controlling interest” (as defined in section 2 of the Act) in the Operator, or who would be deemed to hold such a controlling interest if the Operator were the “licensee” (as defined there) of the Home, unless the Operator is a municipality or board of management that is approved, or eligible to be approved, under Part VIII of the Act.

**“Design Manual”** means the Long-Term Care Home Design Manual, 2015 issued by the Ministry on or about February 2015, together with any modification that may be publicly announced by the Ministry prior to the date this Agreement is signed by the Operator.

**“Develop”** means to develop or redevelop Long-Term Care Home beds in accordance with this Agreement, and “Development” has a corresponding meaning.

**“Effective Date”** (where the term is capitalized) means the date set out at the top of the Agreement, which shall be the date it is fully executed by the last Party to execute it.

**“Environmental Laws”** means Applicable Law in respect of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Hazardous Substances.

**“FEC Form”** means a completed form, in the form set out in Schedule “F”, setting out the final estimate of the cost of the Project, or in such other form as may be required in writing by the Minister.

**“Final Statement of Disbursements”** means a completed form, in the form set out in Schedule “G”, or in such other form as may be required in writing by the Minister.

**“Force Majeure”** has the meaning set forth in section 14.2 (Force Majeure).

**“Funds”** means the money the Minister provides to the Operator, or causes to be provided to the Operator, pursuant to the Agreement.

**“General Contractor”** means the Contractor under a CCDC2 Stipulated Price Contract.

**“Grant”** means the Planning Grant of up to \$250,000 that is provided to eligible Operators under section 4.4 (Planning Grants for Non-Profit Homes).

**“Hazardous Substance”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property, plant or animal life or harm or impair the health of any individual.

**“Home”** means the Long-Term Care Home in which the Beds are being developed and for greater certainty, includes the Beds and the common areas and common elements which will be used, at least in part, for the Beds being developed by the Operator pursuant to this Agreement, but excludes any other part of the building which will be used for purposes not directly related to the Beds being developed by the Operator pursuant to this Agreement (for example, for retirement home purposes).

**“IEC Form”** means a completed form in the form set out in Schedule “F”, setting out the initial estimate of the cost of the Project or in such other form as may be required in writing by the Minister.

**“Indemnified Parties”** means Her Majesty the Queen in right of Ontario, and includes Her ministers, agents, (including Crown agencies, such as the LHIN) appointees and employees.

**“Items Eligible for Provincial Contribution”** means the actual cost of construction (including construction material), furniture, equipment, building permit, municipal development charges, architect fees and other eligible professional fees, and related net taxes (excluding any tax payments for which the Operator receives or expects to receive a rebate, tax credit, input tax credit or refund) together with the cost of any items declared eligible by the Minister. Items Eligible for Provincial Contribution do not include any costs relating to the acquisition of the land or building, demolition of the building, financing, letters of credit, rezoning, audit fees, site survey, insurance, travel and meals, plans and prints, commissioning or bonding, general administrative costs, marketing expenses, or items declared not eligible by the Minister.

**“LHIN”** means the Local Health Integration Network responsible for the area in which the Home is located, or such successor as may be identified by the Minister for the purpose of this Agreement.

**“Lien”** means a mortgage, charge, pledge, lien (statutory or otherwise), security interest or other encumbrance or adverse claim of any nature or kind whatsoever.

**“Long-Term Care Home”** means a long-term care home under the Act.

**“Long-Term Care Home Bed”** means a bed in a Long-Term Care Home.

**“Minister of Long-Term Care”** means the Minister of Long-Term Care for Ontario, or such other Minister who has been assigned responsibility for the administration of the Act at the relevant time, and includes any agent or representative thereof or any other person to whom the Minister has properly delegated the relevant responsibility(ies).

**“Ministry”** means the ministry over which the Minister presides.

**“Notice”** means any communication given or required to be given pursuant to the

Agreement.

**“Occupancy”** means the admission of the first person as a resident in one of the Beds, or, where this Agreement provides for the Construction and opening of the Beds in separate phases, the admission of the first person as a resident in one of the Beds in one of the agreed phases.

**“Occupancy Plan”** means the Occupancy Plan required to be submitted under Schedule “D”, s. 2(1)(a).

**“Operational Plan”** means a written description of measures to be taken by the Operator to assure resident health, safety and general well-being during Construction that is proposed in, or close to, existing Long-Term Care Homes Beds that will continue to be kept in operation during the Construction, prepared and approved in accordance with s. 6 of Schedule “B”.

**“Operator’s Personnel”** means the Controlling Persons (if any), directors, officers, employees, agents or other representatives of the Operator and any of their respective directors, officers, employees, agents or other representatives. In addition to the foregoing, for the purposes of Articles 10 (Indemnity) and 11 (Insurance), Operator’s Personnel shall include the General Contractor or Construction Manager and the Subcontractors for the Construction, and their respective controlling shareholders (if any), directors, officers, employees, agents or other representatives.

**“Parties”** means the Minister and the Operator.

**“Party”** means either the Minister or the Operator.

**“Policy”** means the Ministry’s Construction Funding Subsidy Policy for Long-Term Care Homes, 2019, together with any modification of this document that may be publicly announced by the Ministry prior to the date this Agreement is signed by the Operator, attached hereto as Schedule “C”.

**“Preliminary Construction Plans”** means the content of the Preliminary Plans Submission after it is approved by the Minister in accordance with section 6 (a) of Schedule “B”.

**“Preliminary Plans Submission”** means the submission referred to in section 6 (a) of Schedule “B”.

**“Proceeding”** (where the term is capitalized) means any action, claim, demand, lawsuit, or other proceeding that anyone makes, brings or prosecutes as a result of or in connection with the Project or the Agreement.

**“Project”** means the construction described in Schedule “B”, and the steps taken to meet the conditions of Funding under Schedule “D”.

**“Project Documents”** means the Project Documents referred to in section 6 of Schedule “B”.

**“Project Schedule”** is the schedule set out in Schedule “E”.

**“PSSDA”** means the *Public Sector Salary Disclosure Act, 1996* (Ontario).

**“Public Tender”** means a public tender that complies with the requirements set out in section 12 (1) of Schedule “B”.

**“Regulation”** means Ontario Regulation 79/10 under the Act.

**“Reports”** means the reports required to be submitted to the Minister by or on behalf of the Operator .

**“Service Accountability Agreement”** is a service accountability agreement that the Operator is required to enter into with the LHIN or such successor or alternative Long-Term Care Home funding agreement as may be identified by the Minister for the purpose of this Agreement.

**“Site”** means the site specifically identified in the Application, or approved by the Minister, on which the Beds to be developed under the Agreement will be situated.

**“Subcontractor”** means a subcontractor who is retained by the Operator for the Construction, where the Operator has retained a Construction Manager.

**“Total Completion”** means that the Construction (or the Construction of the applicable phase, where the Construction is specifically permitted under Schedule B to be carried out in phases) has been completed in accordance with the terms of the Agreement and is ready to be opened for use as a Long-Term Care Home.

**“Working Drawings Submission”** means the submission referred to in section 6 (b) of Schedule “B”.

**“Working Drawings”** means the content of the Working Drawings Submission after it is approved by the Minister in accordance with section 6 (b) of Schedule “B”.

## **ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS**

**2.1 General.** The Operator represents, warrants and covenants that:

- (a) it is, and shall continue to be, from the Effective Date until the Project is completed, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and shall continue to have, from the Effective Date until the Project is completed, the necessary power and capacity to own its property and assets and conduct its affairs in the Province of Ontario.

- (c) it has, and shall continue to have, from the Effective Date until the Project is completed, the experience and expertise necessary to carry out every aspect of the Project that has not already been completed;
- (d) it is, and shall continue to be, from the Effective Date until the Project is completed, in compliance with all Applicable Law and Applicable Policy that are still applicable and related to any aspect of the Project, the Funds or both;
- (e) at the time of entering the Agreement, no act or proceeding has been taken by or (to the knowledge of the Operator) against the Operator in connection with, or seeking, the dissolution, liquidation, winding-up, bankruptcy or reorganization of the Operator;
- (f) it holds, or will hold by the time they are required, all permits, licenses, consents, intellectual property rights, registrations and authorizations required to conduct its affairs and to perform its obligations under this Agreement;
- (g) the execution, delivery and performance by the Operator of this Agreement and such other agreements and instruments referred to herein do not and will not conflict with, result in a breach or violation of or constitute a default under any Applicable Law or any agreement, instrument or other document to which the Operator is a party or by which the Operator or any of its property or assets are bound (including, without limitation, any applicable constituting documents, by-laws, unanimous shareholders agreements, partnership agreement, or limited partnership agreement) except for violations which do not relate to the Site, the Home or the Project or will not, in the aggregate, have a material adverse effect on the present or future business, operations, property, prospects or condition (financial or otherwise) of the Operator; and
- (h) this Agreement constitutes a legal, valid and binding obligation of the Operator enforceable against the Operator in accordance with its terms, subject to limitations on enforcement imposed by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and subject to general principles of equity.

2.2 **Execution of Agreement.** The Operator represents and warrants that:

- (a) it has the full power and capacity to enter into this Agreement and to carry out the Project in accordance with this Agreement; and
- (b) it has taken all necessary actions to authorize the execution of the Agreement.

2.3 **Governance.** The Operator represents, warrants and covenants that from the commencement of the Project until Total Completion of all the Beds it has, will maintain in writing and will follow:

- (a) procedures to enable the Operator, in a timely manner, to identify risks to achievement of Total Completion, and strategies to address the identified risks; and

- (b) procedures to enable the Operator to deal with such other matters as the Operator considers necessary to ensure that the Operator carries out its obligations under the Agreement.

2.4 **Supporting Documentation.** Upon request, the Operator shall provide the Minister with proof of the matters referred to in this Article 2.

2.5 **Interest in Site.**

On and as of the later of:

- (a) the Effective Date ; and
- (b) the date on which the Operator acquires the Site,

the Operator has good and marketable title to the Site, free and clear of any and all Liens except those Liens which have been listed by the Operator, as set out in Schedule "H".

2.6 **Environmental Matters.** On and as of the later of (a) the Effective Date and (b) the date on which the Operator acquires the Site or enters into a lease of the Site, the Operator warrants that:

- (i) to the best of the Operator's knowledge upon reasonable inquiry, no Hazardous Substance is now or was formerly (including the period prior to the Operator's acquisition of the Site) used, stored, generated, manufactured, installed, disposed of or otherwise present at or about the Site or any property adjacent to the Site, other than in accordance with Environmental Laws;
- (ii) the Site has been remediated in accordance with any and all Environmental Laws, and that it shall submit proof of this to the Ministry; or
- (iii) the Operator has a plan to remediate the Site in accordance with any and all Environmental laws, and that it shall remediate the Site in accordance with any and all Environmental Laws before construction begins, and that it shall submit proof of this to the Ministry;

and that

- (iv) all current permits, licences, approvals and filings required with respect to the Site by Environmental Laws have been obtained,
- (v) the Operator's use, operation and the present condition of the Site does not and will not violate any Environmental Laws during the term of this Agreement,



- (vi) except as disclosed in writing to the Minister prior to entering this Agreement, the Operator has not violated any Environmental Laws in the conduct of its business (including business not relating to the Site or the Project), and
- (vii) except as disclosed in writing to the Minister prior to entering this Agreement, to the best of the Operator's knowledge, no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought, nor have any settlements been reached by or with any party or any Liens imposed, concerning any Hazardous Substance or Environmental Laws in connection with the Site or any other real property owned or leased by the Operator, or otherwise on or against the Operator.

2.7 **Full Disclosure.** All written statements made or furnished by or on behalf of the Operator to the Minister in connection with the transactions contemplated by this Agreement, were, as of the time such statements were made, true in all material respects and remain true in all material respects on the date hereof, and such statements do not contain any untrue statement of a material fact or omit a material fact necessary to make such statements not misleading, and all such statements, taken as a whole, do not contain any untrue statement of a material fact or omit a material fact necessary to make such statements or the statements contained herein not misleading. All expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Operator (and any other person who furnished such material). To the best of the Operator's knowledge, there is no fact which the Operator has not disclosed to the Minister in writing prior to entering into this Agreement which adversely and materially affects, or so far as the Operator can now reasonably foresee, will adversely and materially affect its business, operations, property, prospects, liabilities or condition (financial or otherwise), or its ability to perform its obligations under this Agreement or to operate the Beds and the Home in accordance with this Agreement, the Application, Applicable Policy and Applicable Law.

### **ARTICLE 3 TERM OF THE AGREEMENT**

3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire upon the Minister approving a Final Statement of Disbursements from the Operator as required by section 4.3 (b), following upon all the conditions for funding set out in Schedule "D", section 1 (Funding Conditions) having been satisfied, in the sole and absolute determination of the Minister, and unless terminated earlier pursuant to Article 12, Article 13 or Article 14. Any termination or expiry of the Agreement is subject to Article 30 (Survival).

### **ARTICLE 4 FUNDS AND CARRYING OUT THE PROJECT**

4.1 (1) **Funds Provided.** After all the conditions of funding set out in section 1 of Schedule D are met, the Minister shall provide the Operator with the Funds, or ensure the provision of the Funds, for the costs of the Construction and development of the Beds, (or for the Beds in the applicable construction phase where the Construction is specifically permitted under Schedule B to be carried out in phases) in accordance with the Policy, provided that for an Operator that is carrying out only new construction as defined in the Policy, the full applicable CFS Per Diem determined in accordance with the Policy shall only be provided where the Operator demonstrates to the satisfaction of the Minister that costs of \$120,000 per Bed have been expended by the Operator for Items Eligible for Provincial Contribution, (and if less than \$120,000 was expended the applicable CFS Per Diem will be reduced proportionately).

(2) The Funds shall be deposited into an account the Operator designates, provided that the account:

- (i) resides at a Canadian financial institution; and
- (ii) is in the name of the Operator.

4.2 **Limitation on Payment of Funds.** Despite section 4.1:

- (a) the Minister is not obligated to provide any Funds to the Operator unless the conditions of funding set out in Schedule D are met; and
- (b) the payment of Funds under the Policy may be terminated or adjusted by the Minister pursuant to the *Financial Administration Act* (Ontario), especially section 11.3, if the Minister does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement.

4.3 **Calculation of Amount of Funds.**

- (a) The amount of Funds to be provided shall be calculated in accordance with s. 4.1 based on the FEC Form approved by the Minister pursuant to Schedule "F" until such time as the Operator provides the Minister with a Final Statement of Disbursements for the Project, in or substantially in the form set out in Schedule "G", and proof, where requested by the Minister and in a form satisfactory to the Minister, of the costs expended by the Operator on the Project.
- (b) **Final Statement of Disbursements.** The Operator shall use reasonable efforts to provide the Minister with such Final Statement of Disbursements (together with any required proof of costs) as soon as possible after Occupancy, but in no event more than one year after the date of Occupancy (or such longer period as the Minister may consent to in writing). The Final Statement of Disbursements is subject to the approval of the Minister. The amount of Funds provided prior to, and the amount of Funds to be provided after, the provision of such Final Statement of Disbursements and proof to the Minister may be adjusted by the Minister:

- (i) based on such approved Final Statement of Disbursements and proof such that the amount of Funds being provided to the Operator for the costs of the Construction and development of the Beds is in accordance with s. 4.1, or
- (ii) in the sole and absolute determination of the Minister, if the Operator has not provided such Final Statement of Disbursements and proof, acceptable to the Minister, within the time period set out in the previous sentence, based on the costs of the Construction and development of the Beds which the Minister believes were actually incurred by the Operator in order that the amount of such Funds is in accordance with s. 4.1.

4.4 (1) **Planning Grants for Non-Profit Homes.** If the Operator is a non-profit home as defined in the Policy, the Minister shall provide an advance payment of the \$250,000 grant referred to in the Policy to the Operator upon entering into this Agreement, on condition that the Grant shall be used by the Operator only for eligible expenses relating to planning and organizing for the development of the Beds, and on condition that no grant of this type has previously been provided to the Operator in respect of the development of the Home, or any other Long-Term Care Home at the same location, as determined by the Minister.

- (2) For the purposes of subsection (1), expenses are eligible if they are expenses in planning and organizing for the development of the Beds that are substantiated to the satisfaction of the Minister in accordance with subsection (4), and are incurred for:
  - (a) the retention of professional or consultant services, including an architect, engineer, project manager, or the like; or
  - (b) other services that are identified in writing by the Minister for this purpose.
- (3) Despite subsection (2) expenses are not eligible for the purposes of subsection (1) if they are:
  - (a) not Items Eligible for Provincial Contribution;
  - (b) incurred after the commencement of the Construction; or
  - (c) incurred prior to the earlier of
    - (i) the Effective Date, and
    - (ii) the date that is one year prior to the date of the submission of the Application as set out in Schedule A.
- (4) For the purposes of subsection (3), expenses are deemed to be incurred on the date (or date range) when the services purchased are actually provided, as determined and substantiated to the satisfaction of the Minister.
- (5) The Operator shall account to the Minister for the use of the Grant, through completing the applicable sections of the IEC and FEC Forms and the Final Statement of Disbursements, or through such other form as the Minister may direct. The Minister may require that the Operator submit a detailed list of the expenses that are being claimed as eligible expenses under subsection (1), and any other attestations, information, and documentation as the Minister deems necessary to

assess the eligibility of the expenses. Any expenses that are paid for with the Grant shall not be eligible to be applied to the minimum construction cost that is required to be demonstrated under this Agreement and Part 2 of the Policy.

- (6) If the Minister determines that the substantiated claimed eligible expenses in respect of the Grant are less than the amount of the Grant, then the Operator shall repay the surplus to the Minister in accordance with Article 15 upon the written request of the Minister.
- (7) In the event that this Agreement is terminated by either Party, or the licence(s) in respect of the Beds is transferred or expires before Total Completion of all the Beds, then the Minister may make a written request for the Operator to repay all or part of the Grant and the Operator shall repay the amount requested by the Minister, in accordance with Article 15.

- 4.5 **Funding, Not Procurement.** For greater clarity, the Operator acknowledges that:
- (a) any Funds received from the Minister are to help the Operator to pay the costs of carrying out the Project, and the Operator is not providing goods or services to the Minister;
  - (b) the Minister is not responsible for carrying out the Project, or for paying any amounts other than the Funds; and
  - (c) the Funds are funding for the purposes of the PSSDA.

## **ARTICLE 5 ACQUISITION OF GOODS OR SERVICES**

- 5.1 **Acquisition.** If the Operator acquires goods, services, or both, for the purpose of carrying out the Project up to the time of Total Completion of all the Beds, it shall do so through a process that promotes the best value for money, and that complies with Applicable Law and Applicable Policy.
- 5.2 **Construction Services and Work.** The acquisition of services to carry out the Construction (including building material supplied under a construction services contract with a General Contractor or Subcontractor), shall be done in accordance with Schedule B.

## **ARTICLE 6 CONFLICT OF INTEREST AND CONFIDENTIALITY**

- 6.1 **No Conflict of Interest.** The Operator shall carry out the Project and use the Grant, (where applicable), without any actual, potential or perceived conflict of interest by the Operator or Operator's Personnel, subject to section 6.3.
- 6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances, as would be interpreted by a reasonable person, in which any of the Operator's Personnel, or any member of the immediate family of such a person, is able to materially benefit financially from the Project. For these purposes,

“benefit financially” shall not include

- (a) the receipt or delivery of services provided to a person through the Operator in the ordinary course of business, and
- (b) where the Operator is a for-profit entity, as defined in s. 269 [3] of the Regulation, the general and financial benefits that result solely from profits derived from the Operator’s operation of the Beds.

6.3 **Disclosure to Minister.** The Operator shall:

- (a) disclose to the Minister, without delay, details of any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and
- (b) comply with any directions that the Minister may provide in order to avoid or appropriately manage the conflict of interest.

6.4 **Duty of Confidentiality.** During the Term and after the termination or expiry of this Agreement, the Operator shall, (and shall cause the Operator’s Personnel to):

- (a) treat as confidential any document or information (whether oral, written, in computer readable format or otherwise) that the Minister or Ministry has indicated in writing is confidential, subject to the exceptions in section 6.5, or which is confidential under Applicable Law (the “Confidential Information”);
- (b) use Confidential Information only with the prior written consent of the Minister or as required for the performance of this Agreement or carrying out the Project (including for obtaining confidential professional advice or audit services); and
- (c) not directly or indirectly disclose to any person any Confidential Information without the prior written consent of the Minister, except where required to do otherwise by an order of the Information and Privacy Commissioner or a court.

6.5 **Exceptions.** Except as otherwise provided by Applicable Law, Confidential Information does not include information that,

- (a) is known to the public at the time such information is made available to the Operator other than through a breach of this Agreement,
- (b) becomes known to the public after the time such information is made available to the Operator other than through a breach of this Agreement; or
- (c) is required to be disclosed by the Operator by Applicable Law, but prior to such disclosure, and to the extent feasible, the Minister shall be consulted as to the proposed form and nature of the disclosure and the Operator shall cooperate with and assist the Minister if the Minister wishes to take reasonable action to challenge the requirement to disclose.

6.6 **Exception.** Subject to Article 9, the Minister agrees to treat as confidential all information provided to the Minister by the Operator pursuant to this Agreement that is explicitly marked “Confidential”, so far as there is a reasonable basis for the

confidentiality claim under Applicable Law, except where an order of the Information and Privacy Commissioner or a court require the Minister to do otherwise.

- 6.7 **Operator's Personnel.** The Operator shall not disclose Confidential Information to any of the Operator's Personnel not having a need to know such information in connection with the performance of this Agreement, and the Operator shall ensure that it maintains custody or control of any record of Confidential Information that results from any such disclosure.
- 6.8 **Return of Information.** Following termination or expiry of this Agreement and at the request of the Minister, the Operator shall on the written direction of the Minister deliver forthwith to the Minister all records of Confidential Information within the custody or control of the Operator (not including any records that the Operator is required to retain under Applicable Law), or destroy such records and certify the destruction in the form required by the Minister. No copy or duplicate of any such record of Confidential Information shall be retained by the Operator without the prior written consent of the Minister. The Operator shall not destroy any such records of Confidential Information without the prior written consent of the Minister.
- 6.9 **Privacy Compliance.** The Operator is solely responsible for compliance with any applicable privacy law, including the *Personal Health Information Protection Act, 2004*.
- 6.10 **Operator's Personnel.** The Operator shall make all reasonable efforts to ensure that the Operator's Personnel do not violate this Article 6. Such efforts shall include, but shall not be limited to, bringing the prohibitions under this Article to the attention of all such Personnel.
- 6.11 **Breach.** A breach of this Article by the Operator or the Operator's Personnel shall entitle the Minister to terminate this Agreement, in accordance with section 14.1 (1) (Termination by Minister) in addition to any other remedies that the Minister has in this Agreement, at law or in equity.
- 6.12 **Liability.** In addition to any other liabilities the Operator may have under this Agreement, the Operator shall be liable for all damages (including incidental, indirect and consequential damages), costs, expenses, losses, claims or actions arising from any non-compliance by the Operator's Personnel with this Article.

## **ARTICLE 7 REPORTING, ACCOUNTING AND REVIEW**

- 7.1 **Preparation and Submission.** The Operator shall:
- (a) submit to the Minister at the address provided in section 16.1, a Construction Progress Report prepared by the Operator's Architect and/or Construction Manager, for the Project, which report shall indicate the progress on the Project to the date of such report, and shall be prepared and submitted in accordance with the timelines, form and content requirements specified by the Minister;

- (b) submit to the Minister at the address provided in section 16.1, any other Reports as may be requested by the Minister in accordance with the timelines, form and content requirements specified by the Minister;
- (c) ensure that all Reports submitted to the Minister by or on behalf of the Operator are completed to the satisfaction of the Minister; and
- (d) ensure that all Reports submitted to the Minister by or on behalf of the Operator are signed on behalf of the Operator by (an) authorized signing officer(s) of the Operator.

7.2 **Record Maintenance.** The Operator shall keep and maintain, for a period of seven years from their creation, and in accordance with Applicable Law and Applicable Policy:

- (a) all financial records (including invoices and evidence of payment) relating to the Project in a manner consistent with either international financial reporting standards or generally accepted accounting principles, or any comparable accounting standards that apply to the Operator; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

7.3 **Inspection.** The Minister (including, for the purposes of the remainder of this Article, the Minister's authorized representative(s) or any auditor identified by the Minister) may, at the Minister's expense, upon twenty-four hours' Notice to the Operator and during normal business hours, enter upon the Operator's premises to review the Operator's conduct of the Project, any Project-related records, the truth of any of the Operator's representations, warranties and submissions (including any submissions regarding expenditures related to the Project), and for these purposes the Minister may take one or both of the following actions:

- (a) inspect and copy the records and documents referred to in section 7.2; and
- (b) remove any copies made pursuant to section 7.3 (a) from the Operator's premises.

7.4 **Disclosure.** To assist the Minister in respect of any inspection under section 7.3, the Operator shall disclose any information requested by the Minister, in the form requested by the Minister, , and shall

- (a) ensure that the Minister has access to the records and documents wherever they are located;
- (b) assist the Minister to copy records and documents;
- (c) provide to the Minister, in the form the Minister specifies, any information the Minister identifies, and

(d) carry out any other activities the Minister requests.

7.5 **No Control of Records.** No provision of the Agreement shall be construed so as to give the Minister any control whatsoever over any of the Operator's records.

7.6 **Auditor General.** The Minister's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

## **ARTICLE 8 COMMUNICATIONS REQUIREMENTS**

8.1 **Acknowledge Support.** Unless the Minister directs the Operator to do otherwise, the Operator will in each of its Project-related publications, whether written, oral, or visual,

- (a) acknowledge the support of the Minister in a form and manner as directed by the Minister, and
- (b) indicate that the views expressed in the publication are the views of the Operator and do not necessarily reflect those of the Minister.

8.2 **Publicity.** The Operator shall notify the Minister in advance of any proposed publicity or publications by or on behalf of the Operator relating to this Agreement or the development of the Beds (including press releases and press conferences but excluding brochures, pamphlets, books or other marketing materials intended to promote or advertise the Beds and the Home), where feasible, and shall use reasonable efforts to make such changes thereto reasonably requested by the Minister.

8.3 **Signage.** The Ministry may erect signs on the Site, at the Ministry's expense, at such time and in such location as the Ministry determines in its sole discretion, following consultation with the Operator, provided that a sign shall not be placed in a position that prevents the Construction, that interferes with the business of the Operator, or that is contrary to Applicable Law.

## **ARTICLE 9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY**

9.1 **FIPPA.** The Operator acknowledges that the Minister is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Minister in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

## **ARTICLE 10**



## INDEMNITY

- 10.1 **Indemnification.** The Operator hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Minister.
- 10.2 **Operator's Participation.** The Operator will, at its expense, to the extent requested by the Minister, participate in or conduct the defence of any proceeding against any Indemnified Parties in respect of the Agreement or the Project and any negotiations for their settlement.
- 10.3 **Minister's Election.** The Minister may elect to participate in or conduct the defence of any proceeding by providing Notice to the Operator of such election without prejudice to any other rights or remedies of the Minister under the Agreement, at law or in equity. Each Party participating in the defence will do so by actively participating with the other's counsel.
- 10.4 **Settlement Authority.** The Operator will not enter into a settlement of any proceeding against any Indemnified Parties unless the Operator has obtained the prior written approval of the Minister. If the Operator is requested by the Minister to participate in or conduct the defence of any proceeding, the Minister will co-operate with and assist the Operator to the fullest extent possible in the proceeding and any related settlement negotiations.
- 10.5 **Operator's Co-operation.** If the Minister conducts the defence of any proceedings, the Operator will co-operate with and assist the Minister to the fullest extent possible in the proceedings and any related settlement negotiations.

## ARTICLE 11 INSURANCE

- 11.1 **General.** The Operator shall protect itself, by obtaining and maintaining insurance in accordance with this Article, from and against all claims that might arise from anything done or omitted to be done by the Operator or the Operator's Personnel, under this Agreement, and more specifically all claims that might arise from anything done or omitted to be done under this Agreement where bodily injury (including personal injury), death or property damage, including loss of use thereof, is or may be caused.
- 11.2 **Construction Insurance.** The Operator shall, at its own expense, maintain in full force and effect during the Term of this Agreement with financially sound and reputable insurance companies, at least the following:
- (a) Builder's Risk property insurance for the full Replacement value of the complete Project, including earthquake and flood and testing and commissioning, with a

reasonable deductible per loss, for which the Operator shall be solely responsible, and including the following endorsements: Replacement Cost Value, stated amount co-insurance and waiver of subrogation;

- (b) General (Wrap Up) Liability insurance, providing coverage with a limit of not less than Five Million Dollars (\$5,000,000.00) for each occurrence of a claim of bodily injury (including personal injury), death or property damage, including loss of use thereof, that may arise directly or indirectly from the acts or omissions of the Operator or the Operator's Personnel, and including at least the following policy endorsements: the Indemnified Parties as Additional Insureds, Cross Liability, Blanket Contractual Liability, Products and Completed Operations, Contingent Employers Liability, and thirty (30) day written notice of cancellation subject to the requirement that coverage of completed operations liability shall be maintained without cancellation for two (2) years from the date of Occupancy (and where the Construction is permitted to be carried out in phases under this Agreement, the relevant date of Occupancy for the purpose of this provision shall be the Occupancy date for the Beds constructed in the final phase of the Construction); and
- (c) Environmental/Pollution Liability insurance, providing coverage for Third Party bodily injury and property damage resulting from an environmental incident, in the amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence (per accident or incident or claim) and including at least the following policy endorsements: the Indemnified Parties as Additional Insureds.

11.3 **Other Insurance Requirements.** To the extent that any Applicable Law, Applicable Policy, the nature of the Operator's business or any other factor requires the Operator to maintain any particular type of insurance (in addition to the insurance expressly required by this Agreement) with respect to the Site, the Home, or any contents thereof, the Operator shall comply with all such requirements. Furthermore, the Operator shall take reasonable measures to ensure that professionals providing advice or services to the Project maintain in full force and effect during the Term of this Agreement with financially sound and reputable insurance companies Professional Errors & Omissions Liability Insurance, insuring liability for errors and omissions in the performance or failure to perform services contemplated in connection with the Project, in an amount of not less than Two Million Dollars (\$2,000,000) per claim.

11.4 **Proof of Insurance.** The Operator shall submit to the Ministry certificates of insurance or other proof of the insurance coverage and a Certificate of Good Standing under the *Workplace Safety and Insurance Act* (Ontario), together with copies of the relevant portion or portions of each insurance policy incorporating the terms and clauses referred to in sections 11.2 and 11.3. In the event of a Proceeding being initiated, and upon the Minister's request, the Operator will provide to the Minister a copy of any of the Operator's insurance policies that relate to the Project or otherwise to the Agreement.

## **ARTICLE 12 TERMINATION ON NOTICE**

- 12.1 **Termination by Operator.** Subject to Applicable Law, the Operator may terminate this Agreement at any time, without reason, upon sixty (60) days prior written notice to the Minister.
- 12.2 **Consequences of Termination.** If the Operator terminates the Agreement pursuant to section 12.1, or the Minister terminates the Agreement under Articles 13 or 14, then the effective date of the termination shall be the last day of the required notice period, if any, and if there is no required notice period, the effective date of the termination shall be immediately upon the delivery of the notice of termination to the Operator (or where the Minister terminates the Agreement, such later date as expressly stated in writing by the Minister). In the event of any such termination of this Agreement:
- (a) the Operator shall have no further entitlement under this Agreement to develop the Beds, and there shall be no obligation on the Minister to provide to the Operator any Funds in accordance with the Policy; and
  - (b) all rights and obligations of the Operator and the Minister under this Agreement shall cease (including any obligation on the Minister to provide to the Operator any Funds in accordance with the Policy), subject to Article 30 (Survival).

### **ARTICLE 13 TERMINATION WHERE NO APPROPRIATION**

13.1 **Termination Where No Appropriation.** If, as provided for in section 4.2 (b), the Minister does not receive the necessary appropriation from the Ontario Legislature for any payment the Minister is to make (or cause to be made) pursuant to the Agreement, the Minister has no obligation to make (or cause to be made) the payment, and the Minister may terminate the Agreement immediately, without liability, penalty or costs, by giving Notice to the Operator.

### **ARTICLE 14 TERMINATION BY MINISTER FOR DEFAULT**

- 14.1 (1) **Termination by Minister.** The Minister, without liability, cost or penalty, may, in the Minister's sole and absolute determination and without prejudice to any other rights or remedies of the Minister under this Agreement or at law or in equity, terminate this Agreement immediately upon giving written notice to the Operator if any of the following events or conditions have occurred or exist:
- (a) subject to section 14.1 (2) (Cure Period), the Minister is of the opinion that there has been a material breach by the Operator of any term, warranty, representation, condition, covenant or other provision of this Agreement or, subject to section 29.1 (Conflicts Between Contract Documents), the Project Documents;
  - (b) subject to section 14.2 (Force Majeure) and clause (d) below, an actual occurrence or condition is reasonably expected to cause a delay in meeting the deadlines set forth in the Project Schedule or stipulated in writing by the Minister

under this Agreement for submission of any of the Project Documents by more than 90 days;

- (c) subject to section 14.2 (Force Majeure), and clause (d) below, a deadline for Total Completion set out in the Project Schedule is not met or is not reasonably expected to be met;
- (d) an event of Force Majeure prevents or delays performance by the Operator of a material obligation for more than 270 days, as contemplated in section 14.2 (Force Majeure);
- (e) the Operator is adjudged bankrupt or is insolvent according to the provisions of the *Bankruptcy and Insolvency Act* (Canada) and the regulations made thereunder, or any bankruptcy, reorganization, arrangement, insolvency, liquidation or winding up proceedings or any other proceedings for the benefit of creditors generally are instituted by or against the Operator (including an assignment, proposal, compromise or arrangement for the benefit of creditors);
- (f) a receiver, a receiver and manager, trustee or other official with similar powers is appointed for the Operator or all or a substantial part of the property of the Operator, or the Operator files for the appointment of any such official, prior to Occupancy, provided that at the time the Minister notifies the Operator of the termination under this clause, such official (or a replacement thereof) has not sold, assigned or transferred the property of the Operator with the consent of the Minister to another person who will assume the obligations of the Operator under this Agreement;
- (g) the indebtedness of the Operator under any financing arrangements for the Project has been declared due and payable by the creditor(s) thereunder, where such financing has not been replaced by comparable financing arrangements approved by the Minister, prior to the date or dates on which such indebtedness would otherwise have been due thereunder;
- (h) the financing arrangements made by the Operator for the Project are cancelled or no longer available to the Operator, other than in the event contemplated in clause (f) above, and have not been replaced by comparable financing arrangements approved by the Minister;
- (i) the Operator attempts to execute a bulk sale of its property, except with the prior written consent of the Minister, which consent shall not be unreasonably withheld; or
- (j) the Operator ceases, or notifies the Minister of its intention to cease, carrying on business as presently carried on by it or any steps are taken to dissolve the Operator or the Operator is not, or ceases to be, qualified under Applicable Law to operate the Home.

(2) **Cure Period.** In the event that the Minister is of the opinion that there has been a material breach by the Operator of any term, warranty, representation, condition,

covenant or other provision of this Agreement and such breach is not remedied within 45 days (the “**Cure Period**”) after the Operator receives from the Minister written notice of such breach setting out the particulars thereof, then, in any such event, in addition to the Minister’s other rights and remedies under this Agreement or at law or in equity, the Minister shall have the right to terminate this Agreement immediately upon giving notice of termination to the Operator to that effect at the end of the Cure Period, provided, however, that if such breach is of such a nature that it cannot be completely cured or remedied within the Cure Period, or the Operator is not proceeding in a manner satisfactory to the Minister, the Minister shall have the right to extend the notice period or to terminate this Agreement immediately upon giving notice of termination to the Operator prior to the end of the Cure Period. This provision applies only to terminations pursuant to section 14.1 (1)(a).

(3) The Minister’s power to terminate this Agreement under section 14.1 shall not be exercised after an assignment of this Agreement permitted under s. 21.2(d) is implemented in accordance with s. 21.2 (e) and (f) unless the Minister is of the opinion, acting reasonably, that the Lender (as defined in s. 21.2(c)) is not appropriately and effectively pursuing, to the extent permitted by law, the Lender’s enforcement rights and remedies under the Loan documents.

(4) **Remedial Action.** Where any of the events or conditions set out in section 14.1 (1) occurs, the Minister may, at any time, initiate any action the Minister considers necessary in order to facilitate the successful continuation or completion of the Project. Where the Minister initiates any action under this section, it shall be without prejudice to the Minister’s right to terminate this Agreement as the Minister deems appropriate in accordance with this Agreement.

14.2 **Force Majeure.** If, as a result of an event of Force Majeure (as defined below), the Operator fails to perform or comply with any of its obligations under this Agreement, such failure shall not constitute a default or breach of this Agreement. Dates and times by which the Operator is required to render performance under this Agreement shall be postponed automatically to the extent and for the period of time that the Operator is prevented from meeting them by causes beyond its control which are not avoidable by the exercise of reasonable foresight. Such causes (each such cause, an event of “**Force Majeure**”) shall include, but not be limited to, acts of God, acts of war, riots, epidemics, fire, strikes, labour disruptions or lock outs and delays or difficulties (other than such as are caused by the actions or omissions of the Operator) in obtaining zoning which permits the Site to be used for a Long-Term Care Home of the type that the Home is proposed to be. The Operator must, however, notify the Minister immediately, in writing and in detail of the commencement and nature of such event of Force Majeure and the probable consequences thereof. The Operator must use its reasonable efforts to perform its obligations under this Agreement and to overcome or minimize the effects of such event of Force Majeure (including rearranging and rescheduling the work on the Project so as to minimize the ultimate delay in completion of the Project) in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available. Notwithstanding the foregoing, if performance of a material obligation is prevented or delayed for more than 270 days by reason of an event of Force Majeure, the Minister may on notice treat the delay as a material breach of a term of this Agreement and may

terminate this Agreement in accordance with section 14.1 (Termination by Minister).

## **ARTICLE 15 REPAYMENT**

- 15.1 **Debt Due.** If pursuant to the Agreement the Minister demands the repayment of any amount of the Funds from the Operator, such amount shall be deemed to be a debt due and owing to the Minister by the Operator, and the Operator shall pay or return the amount to the Minister immediately, unless the Minister directs otherwise.
- 15.2 **Interest Rate.** The Minister may charge the Operator interest on any money owing by the Operator at the then current interest rate charged by the Ontario Minister of Finance on accounts receivable.
- 15.3 **Payment of Money to Minister.** The Operator shall pay any money owing to the Minister by cheque payable to the “Ontario Minister of Finance” and delivered to the Minister at the address provided in section 16.1.
- 15.4 **Fails to Pay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Operator fails to pay any amount owing to the Minister under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Operator by Her Majesty the Queen in right of Ontario.

## **ARTICLE 16 NOTICE**

- 16.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by postage-prepaid mail, personal delivery or email (consisting of a scanned, duly signed document, sent by attachment to an email, and acknowledged by email by the receiving Party), and shall be addressed to the Minister and the Operator respectively as set out below, or as either Party later designates to the other by Notice:

<p><b>To the Minister:</b></p> <p>Ministry of Long-Term Care  1075 Bay Street  11<sup>th</sup> Floor  Toronto, ON M5S 2B1</p> <p><b>Attention:</b> Assistant Deputy  Minister</p> <p>Long-Term Care Operations Division</p> <p>Email:  <a href="mailto:LTCdevelopment@ontario.ca">LTCdevelopment@ontario.ca</a></p>	<p><b>To the Operator:</b></p> <p>The Corporation of the City of  Brantford and the Corporation of  the County of Brant  97 Mount Pleasant St. Brantford,  ON N3T 1T5</p> <p><b>Attention:</b>  Jennifer Miller  Administrator</p> <p>Email:  jmillier@jnh.ca</p>
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- 16.2 **Notice Given.** Notice shall be deemed to have been given:
- (a) in the case of postage-prepaid mail, seven days after a Party mails the Notice;
  - (b) in the case of personal delivery, at the time the other Party receives the Notice;  
or
  - (c) in the case of email delivery, at the time the other Party acknowledges receiving the Notice.
- 16.3 **Postal Disruption.** Despite section 16.2 (a), in the event of a postal disruption:
- (a) Notice by postage-prepaid mail shall not be deemed to be given; and
  - (b) the Party giving Notice shall provide Notice by personal delivery or by email.
- 16.4 **Notice on Non-Business Day.** Despite section 16.2, if either Party gives a Notice on a non-Business Day, or after 5 p.m. on a Business Day, the Notice shall be deemed to have been given on the next Business Day after the day determined under s. 16.2.

**ARTICLE 17  
CONSENT OR APPROVAL BY MINISTER AND COMPLIANCE BY OPERATOR**

- 17.1 **Consent.** When the Minister provides its consent or approval pursuant to the Agreement, the Minister will do so in writing and may impose any terms and conditions on such consent or approval, and the Operator may rely on the consent or approval only if in doing so it complies with all such terms and conditions (if any).

**ARTICLE 18  
SEVERABILITY OF PROVISIONS**

- 18.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement.

## **ARTICLE 19 WAIVER**

- 19.1 **Waiver Request.** Either Party may, by Notice, ask the other Party to waive an obligation under the Agreement.
- 19.2 **Waiver Applies.** If in response to a request made pursuant to section 19.1 a Party consents to a waiver, the waiver will:
- (a) be valid only if the Party that consents to the waiver provides the consent by Notice; and
  - (b) apply only to the specific obligation referred to in the waiver.

## **ARTICLE 20 INDEPENDENT PARTIES**

- 20.1 **Parties Independent.** The Parties acknowledge that neither is an agent, joint venturer, partner or employee of the other, and neither shall represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

## **ARTICLE 21 ASSIGNMENT OF AGREEMENT OR FUNDS**

- 21.1 **Heirs and Successors, etc.** Subject to Applicable Law, all rights and obligations contained in the Agreement shall extend to and be binding on,
- (a) the Operator's heirs, executors, administrators, successors and permitted assigns, and
  - (b) . the successors to Her Majesty the Queen in right of Ontario.
- 21.2 **Assignment.**
- (a) The Operator shall not assign, transfer, or pledge, directly or indirectly, any of its rights or obligations under this Agreement without the prior written consent of the Minister. Such consent of the Minister may be withheld by the Minister, in the Minister's sole and absolute determination.



- (b) A consent under section 21.2 (a) shall be conditional upon the assignee, transferee or pledgee, as the case may be, before the assignment takes effect, executing an agreement, in form and substance satisfactory to the Minister, and the LHIN where applicable, whereby such assignee, transferee or pledgee, as the case may be, assumes all obligations and liabilities of the Operator hereunder and/or under the Service Accountability Agreement (if any) in effect at the time of such assignment, transfer or pledge, as the case may be, and agrees to comply with such other terms and conditions as the Minister and the LHIN (where applicable) may require.
- (c) In this section, “Lender” refers to a person that has lent the Operator funds exclusively for the purpose of allowing the Operator to finance or refinance the Project, and the lawful successors and assigns of that person, and “Loan” refers to such a loan.
- (c.1) Where the Operator has entered into a Loan with a Lender, then upon the Minister and the Operator entering into any amendment of this Agreement, the Operator shall promptly inform the Lender of the amendment and provide the Lender with a copy of the amendment.
- (d) Notwithstanding (a), the Minister hereby consents to the assignment by the Operator of this Agreement to the Lender, a receiver appointed by the Lender or by a court of competent jurisdiction in respect of the Operator (a “Receiver”), or a person designated by the Lender or Receiver (each person to whom this Agreement is assigned on implementation of this assignment being an “Assignee”) provided that the assignment may only be implemented at the time the Lender is entitled in accordance with the Loan agreement(s) with the Operator to implement the assignment, and provided that the assignment and its implementation meet the following conditions:
- (i) the assignment is solely for the purpose of securing payment of, or enforcing or realizing upon a security interest with respect to, the Loan;
  - (ii) the Lender provides concurrent notice to the Minister, together with the Operator and any guarantor of the Loan, of any alleged breach or default with respect to the Loan, of the Loan’s becoming due and payable prior to the time when the Loan would otherwise have become payable, of any demand for payment under the Loan by the Lender to the Operator or any guarantor of the Loan, and of any steps to be taken by the Lender to enforce any of its rights with respect to the Loan, which notice shall be provided to the Minister before any assignment under this paragraph is implemented (and the Operator hereby consents to the Lender providing this notice as circumstances warrant);
  - (iii) before being entitled to operate any Long-Term Care Home Beds at the Home, directly or indirectly, the Assignee or other party who is proposed to operate the Home complies with all applicable licensing and approval requirements under Applicable Law (including, where applicable, sections 107 and 110 of the Act and the related provisions of the Regulation thereunder);

- (iv) where there is a Service Accountability Agreement between the Operator and the LHIN, in effect with respect to the Home, the LHIN consents to the assignment of the Service Accountability Agreement, or issuance of a substantially similar replacement Service Accountability Agreement, to the Assignee, where that is required for the Assignee to operate, directly or indirectly, the Long-Term Care Home Beds in the Home;
  - (v) before implementing the assignment, the Lender provides to the Minister all documents evidencing the terms and conditions of the Loan and the assignment, and demonstrates to the satisfaction of the Minister that the Operator has consented (typically by way of an assignment agreement entered into before the Loan was advanced) to the Lender or Receiver implementing an assignment of the type that is proposed; and
  - (vi) before the Lender, a Receiver or a person designated by the Lender assigns this Agreement to any other person, the written consent of the Minister, which shall not be unreasonably withheld, and which may be subject to conditions similar to the conditions set out in this section 21.2, shall be obtained.
- (e) Before the assignment under section 21.2 (d) may be implemented, the Assignee shall execute an agreement, in form and substance satisfactory to the Minister, and the LHIN where applicable, whereby the Assignee assumes all obligations and liabilities of the Operator hereunder and under the Service Accountability Agreement (if any) in effect at the time of such assignment, or under a substantially similar replacement Service Accountability Agreement, and agrees to comply with such other terms and conditions as the Minister and the LHIN (where applicable) may reasonably require for the purpose of implementing the Assignment in accordance with Applicable Law and applicable Ministry policy.
- (f) An agreement under section 21.2 (e) shall also provide that from the time the Assignment takes effect:
- (i) the Assignee shall not be liable for any act or omission of the Operator, provided, however, that the Lender shall be required to remedy any curable breach or default by the Operator, under this Agreement;
  - (ii) the Assignee shall not be subject to any set-offs or defences that the Minister might have against the Operator;
  - (iii) the Assignee shall, subject to the limitations and requirements set out in this Agreement and Applicable Law, be entitled to the benefit of this Agreement and to exercise and enjoy all rights of the Operator hereunder;
  - (iv) the Assignee may, but is not obligated, except as provided in section 21.2 (f)(i) hereof, to cure any breach or default by the Operator under the Agreement during the cure period (if any) available to the Operator hereunder (and for greater certainty, the cure period available to the Assignee to cure such breach or default shall be commensurate with the

cure period available to the Operator in respect thereof under the Agreement), and shall commence on the later of the date that notice was provided by the Minister to the Operator under section 14.1(2) and the date that the notice referred to in section 21.2 (g.1), where applicable, is deemed to be received by the Lender;

- (v) despite anything in this Agreement to the contrary, the Minister shall not terminate this Agreement pursuant to section 14.1(1) if in the opinion of the Minister, acting reasonably, the Lender is appropriately and effectively pursuing, to the extent permitted by law, the Lender's enforcement rights and remedies under the Loan documents; and
  - (vi) each party to the agreement under this section 21.2 (f) agrees that it will execute, do or cause to be done, executed and delivered all such further acts, documents and things as may be reasonably requested by any other party, or the Lender, for purposes of giving effect to this section 21.1.
- (g) Where an assignment under section 21.2 (d) is implemented in accordance with this section 21.2, and the LHIN is a party to the Service Accountability Agreement, the Minister agrees to request, and if necessary to make best efforts to require, the LHIN to consent to the assignment to the Assignee of the Service Accountability Agreement, or issuance of a substantially similar replacement Service Accountability Agreement, where applicable, subject to terms and conditions similar to those set out in this section 21.2 with necessary changes.
- (g.1) Where the Operator and Lender have provided joint written notice to the Minister that the Lender has lent the Operator funds exclusively for the purpose of allowing the Operator to finance or refinance the Project, and that the Operator has assigned this Agreement to the Lender by way of security for the Loan, then the Minister shall provide to the Lender a copy of any Notice provided thereafter by the Minister to the Operator pursuant to Article 14 at the same time the Notice is provided by the Minister to the Operator.
- (h) For greater certainty, the Minister's consent under this section 21.2 does not:
- (i) obligate the Minister or any statutory officer to issue or renew, or undertake to issue or renew, any licence or approval to operate Long Term Care Home Beds, or any approval to enter into a management contract or exercise a security interest, or any other licence, consent or approval required by Applicable Law,
  - (ii) constitute a consent by the LHIN or obligate the LHIN to provide any consent, or
  - (iii) have the effect of waiving any requirement under Applicable Law.
- (i) The Operator hereby acknowledges and agrees that no assignment under this section 21.2 shall release the Operator from any obligation or liability for any act or omission of the Operator pursuant to or in connection with the Agreement, and that

the Operator shall continue to be subject to any set-offs or defences that the Minister or LHIN might have against the Operator.

- (j) Where the Operator has agreed with a Lender to assign this Agreement and assign or issue a substantially similar replacement Service Accountability Agreement (where applicable), which assignment is exercisable by the Lender as part of a security interest, on the occurrence of an event of default in respect of a Loan, then the Operator consents that on the occurrence of such an event of default,
  - (i) the Lender may, in accordance with and subject to the terms of any applicable loan or security agreements between the Operator and the Lender, acquire control over the operations of the Home by way of exercising its security interest, and rights under this section 21.2, subject to meeting the requirements under Applicable Law, including section 107 and 110 of the Act, and the related provisions of the Regulation thereunder, and
  - (ii) where the Lender acquires such control, all funding with respect to the Home will be provided to the Lender subject to and in accordance with section 107(2) of the Act, as though the Lender were acting as licensee of the Home.
- (k) The Minister and the Operator acknowledge and agree that a Lender may rely on and enforce the terms of this section 21.2, as if it were party to an agreement with the Minister and Operator to that effect. It is the Minister's intention, subject to the terms of this Agreement and Applicable Law, to work cooperatively with the LHIN and any Lender, in case of an assignment taking effect under section 21.2 (d), to facilitate the orderly transition of this Agreement to the Assignee and/or a qualified purchaser.
- (l) For greater certainty, the Operator may retain contractors and subcontractors for any and all aspects of the Construction (subject to the requirements set out in this Agreement) but the Operator shall at all times be held fully responsible for the acts and omissions of all of such contractors and subcontractors and their respective shareholders, directors, officers, employees, agents or other representatives, successors and assigns.

## **ARTICLE 22 GOVERNING LAW**

- 22.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any Proceeding shall be conducted in the courts of Ontario, which shall have exclusive jurisdiction over such Proceeding.

## **ARTICLE 23 FURTHER ASSURANCES**

- 23.1 **Agreement into Effect.** The Operator shall provide such further assurances as the Minister may request from time to time with respect to any matter to which the Agreement pertains, and shall otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

#### **ARTICLE 24 JOINT AND SEVERAL LIABILITY**

- 24.1 **Joint and Several Liability.** Where the Operator is comprised of more than one entity, all such entities shall be jointly and severally liable to the Minister for the fulfillment of the obligations of the Operator under the Agreement. For greater certainty, this provision does not impose any liability on the limited partners of a limited partnership, where the Operator is a limited partnership or is a general partner acting on behalf of a limited partnership.

#### **ARTICLE 25 RIGHTS AND REMEDIES CUMULATIVE**

- 25.1 **Rights and Remedies Cumulative.** The rights and remedies of each Party under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

#### **ARTICLE 26 ACKNOWLEDGMENT OF AGREEMENT**

- 26.1 The Operator:
- (a) acknowledges that it has read and understands the provisions contained in the entire Agreement; and
  - (b) agrees to be bound by the terms and conditions contained in the entire Agreement.

#### **ARTICLE 27 ACKNOWLEDGEMENT OF OTHER LEGISLATION**

- 27.1 **Operator Acknowledges.** The Operator acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the PSSDA and the *Auditor General Act* (Ontario).

#### **ARTICLE 28 SCHEDULES**

28.1 **Schedules.** The following schedules form part of the Agreement:

- (a) Schedule “A” - Application;
- (b) Schedule “B” – Project Requirements;
- (c) Schedule “C” – Construction Funding Subsidy Policy for Long-Term Care Homes, 2019;
- (d) Schedule “D” – Conditions of Funding;
- (e) Schedule “E” – Project Schedule;
- (f) Schedule “F” – Initial Estimate of Costs (IEC) Form and Final Estimate of Costs (FEC) Form;
- (g) Schedule “G” – Final Statement of Disbursements;
- (h) Schedule “H” – Liens; and
- (i) Schedule “I” – Permitted Design Variance Standards and Associated Conditions

## **ARTICLE 29 CONFLICTS**

29.1 **Conflicts.** In the event that there are any conflicts between the terms of

- (a) Applicable Law;
- (b) this Agreement, except for the Schedules;
- (c) the Project Schedule;
- (d) Schedules to this Agreement, except Schedules “A” and “E”;
- (e) the Design Manual;
- (f) the Project Documents approved by the Minister; and
- (g) the Application

the terms of the law or document that is higher on this list takes precedence.

## **ARTICLE 30 SURVIVAL**

30.1 **Survival.**

- (1) The obligations set out in section 11.2 (b), and section 11.4 as applicable, shall continue in full force and effect until two (2) years from the date of Occupancy (and where the Construction is permitted to be carried out in phases under this Agreement, the relevant date of Occupancy for the purpose of this provision shall be the Occupancy date for the Beds constructed in the final phase of the Construction).
- (2) The following Articles and sections, and all applicable cross-referenced sections and schedules, shall continue in full force and effect for a period of seven (7) years from the date of expiry or termination of the Agreement: Article 2 (Representations, Warranties and Covenant) except for section 2.3 (Governance) and section 2.6 (Environmental Matters), section 4.4 (Planning Grant for Non-Profit Homes), sections 6.4 to 6.12 (Confidentiality), section 7.1 (to the extent that the Operator has not provided the Reports to the satisfaction of the Minister), sections 7.2 to 7.6 (Records), Article 9 (FIPPA), Article 10 (Indemnity), section 12.2 (Consequences of Termination), Article 15 (Repayment), Article 16 (Notice), Article 17 (Minister's Consent/Approval), Article 18 (Severability), Article 22 (Governing Law) , Article 24 (Joint Liability), Article 25 (Rights Cumulative), Articles 26 and 27 (Acknowledgements), Article 28 (Schedules), Article 29 (Conflicts) and Article 30 (Survival).
- (3) The obligations set out in sections 2.1, 2.3, and 2.5, Article 4, the final sentence of section 3 of Schedule D (Service Accountability Agreement), and section 21.2 (c) to (k) (Assignment) of this Agreement shall survive the expiry of this Agreement, and shall bind the Parties and their successors and assigns, for a period of 30 years from Occupancy.
- (4) The obligations set out in section 4 (a) of Schedule B and section 1 (2) of Schedule D (Operation of Beds) shall survive the expiry of this Agreement and shall bind the Parties and their successors and assigns indefinitely.
- (5) With respect to any obligations that survive, Article 1 and any other applicable definitions and interpretive provisions continue to apply as the context requires.

### **ARTICLE 31 COUNTERPARTS**

- 31.1 **Counterparts.** The Agreement (and any amending agreements made hereafter) may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

### **ARTICLE 32 ENTIRE AGREEMENT**

- 32.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 32.2 **Modification of Agreement.** Subject to s. 32.3, the Agreement may only be amended by a written agreement duly executed by the Parties.

32.3 **Modification of Dates in Project Schedule.** Where the Operator requests in writing (by way of a letter signed by (a) person(s) who indicate there in writing that they have authority to bind the Operator) that the Minister agree to change one or more of the dates in the Project Schedule, (without making any other changes to the Agreement) then where the Minister agrees in writing to the requested change(s), the Agreement shall be deemed to be amended to include the agreed upon changes to the dates set out in the Project Schedule, effective as of the date of the Minister's agreement, and the Minister may provide an updated Project Schedule that contains the agreed changes.

**ARTICLE 33  
TIMING**

- 33.1 **Time of the Essence.** Time shall be of the essence of this Agreement in all respects.
- 33.2 **Approvals.** With respect to any matter which is subject to the approval or consent of the Minister pursuant to this Agreement, unless a time period for providing such approval or consent is expressly provided hereunder, the Minister shall use reasonable efforts to notify the Operator as to whether or not the Minister approves of or consents to such matter in a prompt and timely manner.

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by the Minister of Long-Term Care**

\_\_\_\_\_  
Dr. Merrilee Fullerton  
Minister of Long-Term Care

\_\_\_\_\_  
Date

(Pursuant to statutory authority)

**The Corporation of the City of Brantford and the Corporation of the  
County of Brant**

\_\_\_\_\_  
Name: David Bailey

\_\_\_\_\_  
Date

Title: Mayor, The Corporation of the County of Brant



\_\_\_\_\_  
Name: Heather Boyd  
Title: **County Clerk**

\_\_\_\_\_  
Date

I/We have authority to bind the Operator.

\_\_\_\_\_  
Name: Kevin Davis  
Title: Mayor, the Corporation of the City of Brantford

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Charlene Touzel  
Title: **City Clerk**

\_\_\_\_\_  
Date

I/We have authority to bind the Operator