

Notice:

Article 5 and Schedule B of the agreement are confidential as mandatory exemptions under the Municipal Freedom of Information and Protection of Privacy Act, Section 10(1)(a) and (c), and must be redacted from any copies made for public use/ disclosure/ dissemination.

THIS MANAGEMENT AGREEMENT is made effective as of the 1st of December 2017.

BETWEEN:

THE CORPORATION OF THE CITY OF KAWARTHA LAKES,
a corporation incorporated under the laws of the Province of Ontario

(the “**Owner**”)

-and-

**THE ROYALE DEVELOPMENT GP CORPORATION as a
general partner of THE ROYALE DEVELOPMENT LP,** a
corporation incorporated under the laws of the Province of Ontario

(the “**Manager**”)

WHEREAS the Owner is the legal and beneficial owner of the VICTORIA MANOR HOME FOR THE AGED, municipally located 220 Angeline Street South, Lindsay, Ontario, K9V 4R2 (the “**Home**”);

AND WHEREAS the Owner and the Manager wish to enter into a management agreement, whereby the Manager shall provide management services on behalf of the Owner in connection with the Home in accordance with the terms and conditions of this Agreement;

THIS AGREEMENT WITNESSETH that in consideration of the reciprocal covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree each with the other as follows:

ARTICLE 1 – DEFINITIONS AND SCHEDULES

1.1 The terms defined in this Article 1 shall, for all purposes of the Agreement, have the meanings hereafter specified, unless the context otherwise requires;

“**Administrator**” means the Home’s administrator as required under the *Long-Term Care Homes Act, 2007*, S.O. 2007, c.8 s. 70 (1) (whom shall be an employee of the Manager);

“**Affiliate**” when used in connection with any person shall mean an affiliated body corporate as defined in the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16 and the regulations thereunder, as amended from time to time;

“**Agreement**” means this Management Agreement, together with all schedules and instruments in amendment of it; and the expression “Article” and “Section”, followed by a number means and refers to the specified Article or Section of this Agreement;

“**Annual Budgets**” shall have the meaning ascribed to this phrase pursuant to Section 3.1;

“**approved by the Owner**” or “**approval of the Owner**” means approved in writing by the Owner;

“**arm’s length**” and “**non-arm’s length**” have the meanings that they have for purposes of the *Income Tax Act* (Canada);

“**Auditors**” shall mean the chartered professional accountants, as may be approved by the Owner and appointed from time to time by the Owner;

“**Bank**” shall mean a Canadian chartered bank;

“**Business Day**” means any day which is not a Saturday, a Sunday, or a day observed as a statutory or civic holiday under the laws of the province of Ontario or the federal laws of Canada applicable in the province of Ontario, and on which the principal Banks in the city of Toronto, Ontario are open for business;

“**Capital Expenditures**” for a Fiscal Year shall mean Major Repairs and any other expenditures of a capital nature relating to the Home incurred in such Fiscal Year determined in accordance with GAAP consistently applied;

“**Commencement Date**” shall mean the 1st day of December 2017;

“**Event of Default**” shall have the meaning ascribed thereto in Section 9.1 hereof;

“**Fiscal Year**” shall mean each twelve-month period during the term of this Agreement commencing on the first day of January and ending on the last day of December in each year (or such other twelve (12) month period as may be approved by the Owner), except where a shorter fiscal year occurs at the commencement or end of the term of this Agreement in which case such shorter fiscal year shall be deemed to be a Fiscal Year with all appropriate adjustments being made by the parties;

“**Force Majeure**” means any event, fact, circumstance, delay, failure, loss, or damage that, directly or indirectly, arises from, or as a result of, or that fails to occur because of, occurrences that are beyond, or outside of, the reasonable control of any person, including but not limited to: Acts of God; the occurrence of any casualty event; outbreak of disease; acts of declared or undeclared war; the occurrence of any military or terrorist attack; public disorders; rebellion; sabotage; revolution; earthquakes; fires; floods; riots; strikes; and labor or employment difficulties; but excluding the financial inability of any party to this Agreement;

“**Gross Receipts**” shall mean all revenues and income of any kind derived directly or indirectly from the Home (including rental or other payments from licensees, tenants, and other users of the Home), whether on a cash basis or on credit, paid, collected or received, as determined in accordance with GAAP consistently applied, excluding, however: (a) federal, provincial and municipal excise, sales and use taxes collected directly from residents or others as a part of the sales price of any goods or services or otherwise; (b) proceeds arising from the sale or other disposition of capital assets; (c) any reversal of any contingency or tax reserve; and (d) gratuities to Home Employees. Gross Receipts shall include the proceeds of use and occupancy, insurance funds arising as a result of or from any health insurance program or prepaid care plan or program whether governmental or private. For the purpose of calculating the Management Fee and without limiting the other exclusions to Gross Receipts set out herein, Gross Receipts shall be restricted to receipts arising from the regular and ongoing operations of the Home and shall not include: (i) any receipt of a capital nature; (ii) monies received as the result of or in contemplation of the expropriation of the Home (or any part thereof); (iii) proceeds of any financing or refinancing of the Home; (iv) security deposits, damage deposits or last month rent deposits received from residents or tenants; (v) insurance proceeds except to the extent relating to business loss interruption or rental loss coverage for commercial rents; (vi) interest received or accrued with respect to the monies in any operating or reserve accounts of the Home; (vii) awards of damages, settlement proceeds and other payments received by the Owner in respect of any litigation other than litigation to collect fees due for services rendered from the Home; (viii) income derived from securities and similar investment property; (ix) cash contributions by the Owner; and (x) refunds of utility deposits or refundable sums deposited in connection with the Home.

“**Home**” shall mean the Victoria Manor Home for the Aged building and operations, located at 220 Angeline Street, South, Lindsay, Ontario, K9V 4R2, including, without limitation, the Home Equipment and all fixtures annexed or to be annexed thereto or located or to be located therein;

“**Home Employee(s)**” means all employees employed at the Home by the Owner (with the exception of the Administrator who shall be an employee of the Manager), including, for certainty, the assistant administrators, department heads and all operating and service employees (including registered nurses and registered practical nurses, but not including physicians) performing services in and around the Home and all such other persons as may be necessary for the proper maintenance and operation of the Home and who are employed by the Owner and remunerated pursuant to the terms outlined hereunder;

“**Home Equipment**” shall mean all the chattels including furnishings, furniture, bedding linens, toilet supplies, dietary supplies, fixtures, equipment and machinery now or hereafter situated in or about the Home and to be used in conjunction with operations therewith;

“**Intellectual Property**” shall mean any and all of the following items owned, acquired or applied for, as applicable, and paid for by the Manager and used in conjunction with, or otherwise comprising, the Proprietary Property: (a) any patent applications, issued patents and continuations, reissues, divisions, or disclosures relating thereto, and industrial design applications and registrations; (b) trademarks, service marks, and trademark or service mark registrations and applications, trade names, trade dress, fictitious names, assumed names, logos and slogans, together with all goodwill related to the foregoing; (c) copyrights, copyright registrations, renewals and applications for copyright registrations, and mask works; (d) software; and technology, trade secrets and know-how, proprietary processes, formulae, algorithms, models and methodologies; and (e) all claims against third parties for infringement of the foregoing. For greater certainty, the Policies and Procedures constitute Intellectual Property and shall at all times remain the property of the Manager;

“**Losses**”, in respect of any matter, means all losses, damages, liabilities, obligations, deficiencies, fines, costs and expenses (including all reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) and judgments, incurred pursuant to any actions, claims, suits, demands, or proceedings;

“**Major Repairs**” shall mean any single item of repair where the cost of effecting such repair equals or exceeds \$10,000;

“**Management Fee**” shall have the meaning ascribed thereto in Section **Error! Reference source not found.**;

“**Minor Repairs**” shall mean any single item of repair where the cost of effecting such repair is less than \$10,000;

“**Name**” means the name for the Home chosen by the Owner and any of the trademarks and any reference thereto, in whole or in part, that is visible on any part of the Home;

“**Net Operating Expense**” shall mean Gross Receipts less Operating Expenses, excluding depreciation and amortization, capital reserves, bad debt expense and mortgage interest;

“**Net Expenses**” shall mean Net Operating Expenses, less depreciation and amortization, capital reserves, and mortgage interest, if greater than zero;

“**Net Loss**” shall mean Net Operating Expenses, less depreciation and amortization, capital reserves, and mortgage interest, if less than zero;

“**Operating Expenses**” shall mean all of the operating expenditures of the Home, but shall not include Major Repairs, any payments whether for principal and/or interest made pursuant to any mortgage or mortgages on the Home, and shall, without limiting the generality of the foregoing include Home Employee salaries, realty taxes, operating expenditures, Minor Repairs and the Management Fee;

“**Performance Payment**” shall have the meaning ascribed thereto in Section 5.1;

“**Policies and Procedures**” shall have the meaning ascribed to this phrase pursuant to Section 2.4;

“**Proprietary Programs**” means the proprietary management and resident care methods, systems and programs developed and owned by the Manager and used by the Manager in association with the services provided to the Home pursuant to this Agreement, as amended from time to time, and the Intellectual Property associated therewith shall belong to the Manager and not the Owner, provided Proprietary Programs and the Intellectual Property associated therewith shall not include any of the foregoing items to

the extent the Owner (or its predecessors) have paid for or provided any funding in connection therewith or on account thereof, which items shall be the property of the Owner;

“Proprietary Property” means the Intellectual Property, Proprietary Programs, and Policies and Procedures of the Manager;

“Restricted Contract” means: (a) any contract with a party that does not act at arm’s length to the Manager and each of its Affiliates; (b) any contract that cannot be terminated by the Owner on 90 days’ notice or less without cost or penalty to the Owner; or (c) any contract providing for the hedging of utility or other costs or fixing utility rates;

“Term” shall mean the period commencing on the Commencement Date and ending 1st of December 2022 and if the Agreement is terminated prior to the expiry of the initial Term, to the date of such termination as set out under Section 3.1(c); and

“Trust Account” shall mean a bank account at a Bank which shall contain a sum of money funded by the Owner, such amount to be in conformity with the Annual Budgets, to be used by the Manager for the purposes contemplated herein.

1.2 The following Schedules, contained herein and as may be amended from time to time in accordance with the terms hereof, form an integral part of this Agreement:

Schedule “A”	-	Statement of Work
Schedule “B”	-	Performance Payment

1.3 All monetary references are to Canadian dollars. If anything herein falls to be done on a day which is not a Business Day, the same shall be done on the next succeeding Business Day. Words importing the singular shall include the plural and vice versa.

1.4 All calculations required or permitted under this Agreement and the interpretation of accounting terms used herein shall be made, and applied on a consistent basis.

ARTICLE 2 – MANAGER APPOINTMENT AND RESPONSIBILITY

2.1 For and during the Term, the Owner hereby grants to the Manager the sole and exclusive right to manage and operate the Home upon the terms and conditions herein contained.

2.2 The Manager hereby accepts its appointment in accordance with the terms hereof and covenants and agrees to perform the services and functions to be performed by it hereunder, as Manager of the Home, in a competent, efficient, honest and diligent manner, in keeping with the standards of the sector applicable to comparable long term care facilities having regard to the size, nature and location of the Home.

2.3 The duties to be performed and obligations to be assumed by the Manager under this Agreement shall be as an independent contractor and not as an agent (except to the extent that the Manager is expressly authorized by this Agreement to incur obligations on behalf of, or to act as agent of, the Owner), and nothing herein shall be construed to create any partnership, joint venture, fiduciary or non-contractual relationship of any kind whatsoever between the parties.

2.4 The Manager shall create, provide and maintain the policies and procedures, programs, operating methods, systems, audits, tools, and employee programs (the **“Policies and Procedures”**), relating to the standards of operation, quality of service, and other matters for the Home, which Policies and Procedures shall be provided to the Owner for reference purposes upon request. The Owner acknowledges that the Policies and Procedures mandate the use of certain information technology processes and applications (such as PCC, Activity Pro, Synergy on Demand etc.), and the Owner shall support and implement such policies, procedures and applications for the purposes of this Agreement, and otherwise provide for their use at the Home. The Policies and Procedures may be customized only to accommodate the use of the Owner’s logo

and any other non-substantive changes not impacting content or process, in the Manager's sole discretion and at the cost of the Owner, if any; provided that the Manager shall not assume responsibility for any such customizations nor be held liable on account thereof.

- 2.5 The Policies and Procedures shall be paid for by the Manager, shall be the exclusive property of the Manager and the Manager shall operate the Home in accordance with the Policies and Procedures and, subject to this Agreement, shall have discretion, acting reasonably, with regard to the operation and management of the Home, subject to maintaining the standard set out in Section 2.2.
- 2.6 The Manager agrees, in connection with the performance of the Manager's duties under this Agreement, that during the Term it shall not enter into a contract or incur any expense on behalf of the Owner unless the Manager has received budgetary or other approval by the Owner; provided that the Manager may incur, in each Fiscal Year, Operating Expenses in excess of the amount provided therefor in the operating budget contemplated by the Annual Budgets with the approval of the Owner.
- 2.7 In the event of an emergency (meaning, a circumstance or event in which the safety of the residents or integrity of the Home is at risk and time does not reasonably permit the Manager from consulting with the Owner in responding to such circumstance or event) and when any work or action is urgently required at times when the approval of the Owner cannot be reasonably obtained, the Manager is hereby authorized and instructed to proceed with such steps as in its discretion, acting reasonably, are deemed urgently necessary for the protection and preservation of the Home or to protect the Owner from exposure to a penalty, liability or expense.
- 2.8 Without limiting the generality of Sections 2.6 and 2.7, the authority of the Manager under this Agreement shall be limited to expenditures and contracts approved in the Annual Budgets.
- 2.9 The responsibilities of the Manager, acting on behalf of the Owner, shall include the following, subject to and in accordance with the Annual Budgets and any other limitations, qualifications and restrictions otherwise contained in this Agreement and in the Statement of Work set out in Schedule "A":
 - (a) the negotiation and entering into of contracts for supplies and services in connection with the operation of the Home; provided that any Restricted Contract will be subject to prior approval by the Owner;
 - (b) the support and implementation of the Policies and Procedures;
 - (c) full responsibility, power, authority and discretion (subject to the Annual Budgets) to hire, train, manage and terminate the Administrator, the Home Employees (as direct employees of the Owner) and any independent contractors; provided that the Owner shall have the right to provide input with respect to and to approve, acting reasonably, the hiring of the Administrator;
 - (d) the receipt of all Gross Receipts for the account of the Owner;
 - (e) advise the Owner with respect to actionable items or expenditures not contemplated by the Annual Budgets as shall be required from time to time to be done in and about the Home by virtue of any statute, ordinance, law, rule, regulation or order of any municipal, provincial or federal governmental or regulatory authority having jurisdiction in the premises respecting the use or manner of use of the Home or the construction, maintenance or operation thereof as well as to comply with all orders and requirements of the local fire marshal or any other body which may hereafter exercise similar functions;
 - (f) authorize all realty, municipal and business taxes, assessments and charges of every kind with respect to the Home imposed upon the Owner by any governmental authority, as they become due and payable from time to time; and shall authorize all bills as they become due and incurred in the operation of the Home, including utility charges, heating and cooling charges, and other operating expenditures and outlays incurred in the operation of the Home;

- (g) prompt submission to the Owner of accounting related to payroll for the Home Employees;
- (h) purchase such food, beverages, concessions, utilities, materials and operating supplies for the maintenance and operation of the Home;
- (i) implement protocols reasonably designed to enable residents to comply with their residency agreements, including the timely payment of accommodation fees and charges;
- (j) maintain a separate bank account in the name of the Owner in relation to the operation of the Home at a Bank and make all deposits of Gross Receipts thereto and disbursements therefrom and handle all banking necessary for the due performance of the Manager's accounting and administrative functions under the provisions of this Agreement and for the receipt and disbursement of all monies of the Owner pertaining to the operation of the Home by the Manager under this Agreement;
- (k) the Manager shall maintain proper records and books of account in accordance with good accounting procedure and GAAP wherein it records the income and expenses relevant to the Home separate and apart from the other properties owned, operated or managed by the Manager. All of such records and books, including without limitation, books of account and guest and resident records shall be the property of the Owner. The Manager shall provide such control over accounting and financial transactions as is reasonably required to protect the Owner's assets from theft, negligence or fraudulent activity on the part of the Manager, its employees or third parties for which the Manager is at law responsible under applicable law; provided that Losses arising from such instances are to be borne by the Owner to the extent not covered by insurance and subject to the terms set out in Article 14. The Owner shall have access upon reasonable notice and at reasonable times and intervals to the records contemplated in this paragraph;
- (l) the Manager may retain, as it deems necessary, and at the cost of the Owner, skilled or professional services (including legal services) from outside sources in connection with its duties in managing the Home, with the approval of the Owner, provided that the fees for such skilled or professional services shall be borne by the Owner. The Manager shall, subject to the approval of the Owner, select the service providers to be retained by the Manager as contemplated by this paragraph. The Owner shall be responsible for the payment of all fees, retainers, costs and other monies payable by reason of the proper exercise of the responsibilities of the Manager arising herein;
- (m) the Manager shall require that the terms and conditions of all contracts entered into by the Manager as subcontractor of or on behalf of the Owner pursuant to the Manager's duties under this Agreement and pursuant to its authority hereunder, shall acknowledge that such contracts create a contractual relationship between the other party thereto and the Owner, as the case may be, and that the Manager as subcontractor of the Owner is in a representative capacity and not personally liable thereunder, and where any such contracts do not so provide, the Owner acknowledges nevertheless that the Manager, although it may be personally liable to a third party, is in a representative capacity acting on behalf of the Owner to the extent that the Manager is acting within the scope of its authority;
- (n) to facilitate the prompt investigation and to provide information and support to the Owner to assist the Owner in making a full and timely written report to the applicable insurance company of all incidents, accidents and claims for damages relating to the Home, and any damage or destruction to the Home;
- (o) prepare and file the government reports listed under the "Manager's Responsibilities" column in Schedule "A"; and
- (p) perform such other ordinary course duties as are normally carried out by a manager in connection with the management of a long-term care home of the size, type and location of that operated at the Home.

- 2.10 The Manager, on behalf of the Owner, shall be responsible for the management of all cash generated by the Home. The Owner shall be responsible for all cash disbursements of the Home. Unless otherwise instructed by the Owner, no funds shall be disbursed except in accordance with the following provisions:
- (a) The Manager shall be entitled to and shall authorize all Operating Expenses and Capital Expenditures to arms' length parties properly chargeable to the Owner hereunder, provided that such Operating Expenses do not in the aggregate exceed the amounts set forth in the Annual Budgets and such Capital Expenditures do not exceed the amounts set forth in the Annual Budgets; any operating and development expenses in excess thereof or any Capital Expenditures that are a Major Repair shall be subject to the approval of the Owner in accordance with this Agreement.
 - (b) Subject to the provisions of this Agreement, provided that in the event that the amount of the projected costs and expenses to be incurred by the Manager on behalf of the Owner in the management of the Home may exceed the amount held in the Trust Account by the Manager, the Manager shall thereupon furnish the Owner with an accounting of same and the Owner shall be under an obligation to immediately furnish the Manager with sufficient funds to pay the Capital Expenditures to operate the Home.
- 2.11 Subject to the provisions of this Agreement, including that all financial obligations need to be set out in the Annual Budgets, all financial obligations related to the Administrator and the Home Employees, independent contractors and any on-site staff of the Manager, including wages, benefits and severance pay shall be at the expense of the Owner.

ARTICLE 3- ANNUAL BUSINESS PLAN AND REPORTING

- 3.1 The Manager shall deliver or cause to be delivered to the Owner the following financial reports:
- (a) Annual Budgets: not later than September 30 of each calendar year, prepare and submit to the Owner for approval of the Owner the following materials in respect of the ensuing Fiscal Year (collectively, the "**Annual Budgets**"):
 - (i) an annual operating budget, for the 12-month period January 1 to December 31 which shall set forth both anticipated revenues and expenses on an accrual basis; the operating budget is to be submitted to the Owner by September 30 for the next fiscal budget year; and
 - (ii) an annual capital budget, for the 12-month period January 1 to December 31 which shall set forth both anticipated revenues and expenses on an accrual basis; the capital budget is to be submitted to the Owner by September 30 for the next fiscal budget year.

The Owner shall either approve the submitted plans and budgets, or approve an amended budget (which shall be mutually acceptable to the Manager, acting reasonably), either of which shall be done by by-law. The budget approved by by-law will then become the Annual Budgets. In the event that any budget has not been so adopted by Council by-law prior to the commencement of the next fiscal budget year, then the Manager may proceed on the basis of the prior Fiscal Year's Annual Budgets until such time as a by-law is adopted.

- (b) Amendments: from time to time as are in the Manager's reasonable opinion required during each Fiscal Year, propose to the Owner amendments to the Annual Budgets.
- (c) Additional Reports: (i) monthly, by the fifteenth (15th) Business Day of the following month, an income statement, and (ii) a copy of any report in respect of the Home prepared or delivered to or by a regulatory authority having jurisdiction over the Home.
- (d) Other Reports: such other reports in respect of the Home as shall be agreed upon by the parties and set out (or marked for inclusion) in Schedule "A" hereto as applying to this Agreement.

3.2 The Manager covenants and agrees with the Owner at reasonable times and after reasonable notice, to make available to the Owner and the Auditors such information and material (including, without limitation, working papers of the Manager, books and records in respect of the Home and all Policies and Procedures maintained in respect of the Home) as may be required by the Owner, or the Auditors for the purpose of their audit and otherwise give such co-operation as may be necessary for such Auditors to carry out their duties on behalf of the Owner or the Home. All associated costs incurred in connection with or by the Auditors will be to the account of the Owner. Should either of the Owner's employees or appointees discover either weaknesses in internal control or errors in record keeping, the Manager shall forthwith correct such discrepancies, and in any event, within ninety (90) days' time. The Manager shall inform the Owner in writing of the action taken to correct such audit discrepancies. The Manager agrees to hold regular calls between personnel of the Manager and the designated appointees of the Owner.

ARTICLE 4 – TERM

4.1 The Manager's appointment hereunder shall be for the Term subject to earlier termination as herein provided.

ARTICLE 5 – MANAGER FEE/ REMUNERATION/PERFORMANCE PAYMENT

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ARTICLE 6– LICENCE

- 6.1 Subject to the provisions of this Agreement, the Manager hereby grants to the Owner the non-exclusive, non-transferable right, licence and privilege, without right to sublicense, to use the Proprietary Property at the Home in association with the Home until terminated in accordance with the provisions of this Agreement.
- 6.2 The Owner agrees and acknowledges that the rights granted herein to use the Proprietary Property apply only to its use in connection with the Home and Proprietary Programs available at the Home and further agrees:
- (a) that the Manager is the exclusive owner of the Proprietary Property and all goodwill associated therewith; that the Manager has the exclusive right to the use of the Proprietary Property and that any unauthorized use of the Proprietary Property is and shall be deemed an infringement of the Manager's rights;
 - (b) that, except as expressly provided in this Agreement, the Owner acquires no right, title or interest in the Proprietary Property and the Owner shall not in any manner represent that they have any ownership interest in the Proprietary Property or applications or registrations therefor; and
 - (c) not to dispute or contest for any reason whatsoever, directly or indirectly, during the Term and after the termination or expiration of this Agreement, the validity, ownership or enforceability of the Proprietary Property, nor directly or indirectly attempt to dilute the value of the goodwill attached to the Proprietary Property, nor counsel, procure or assist any one to do any of the foregoing.
- 6.3 The Manager shall have the right to transfer the Proprietary Property or any rights thereto to any person, including any bank or financial institution as it may in its sole discretion deem appropriate; provided that such transfer will not prejudice or adversely affect the use of the Proprietary Property by the Owner pursuant to this Agreement. The Owner shall not transfer their licensed right to use the Proprietary Property to any person including any bank or financial institution without the prior written consent of the Manager, save and except to a permitted assignee hereunder.
- 6.4 Upon expiry or earlier termination of this Agreement for any reason whatsoever, the Owner shall cease to be a licensee of the Manager and shall cease to use, directly or indirectly, in any manner whatsoever the Proprietary Property.

ARTICLE 7 – OWNER'S RIGHT TO INSPECTION

- 7.1 The Owner shall have the right at all reasonable times upon reasonable notice of not less than five (5) Business Days to cause an inspection to be made of the books and records maintained by the Manager in respect of the Home. The Manager shall make available to the Owner, as the case may be, and its authorized agents for such purpose such information and materials with respect to the Home and in connection with this Agreement as they may reasonably request and shall otherwise give such cooperation as may be reasonably required.
- 7.2 The Owner and its authorized agents, lenders, consultants and prospective purchasers (and their authorized agents, lenders and consultants) shall have the right to enter upon any part of the Home at all reasonable times for the purpose of examining or inspecting the same, but the same shall be done with as little disruption to the business of the Home as possible and upon reasonable notice to the Manager.
- 7.3 The Owner shall not have the right to directly discipline the Home Employees and may instead forward any such concerns through the Manager.

ARTICLE 8 – DUTIES OF OWNER

- 8.1 The Owner shall support and cooperate with the Manager in the operation and management of the Home and the performance of all obligations of the Manager assumed under and by virtue of this Agreement and the Statement of Work set out in Schedule “A”.
- 8.2 In connection with this Agreement, the Owner will:
- (a) provide and maintain such amount of working capital that is sufficient at all times to ensure the uninterrupted and efficient operation of the Home;
 - (b) pay, as they fall due, all payments to mortgages, charges and all other encumbrances of the lands and premises of the Home created by the Owner;
 - (c) subject to the terms of this Agreement, pay all costs and expenses incurred in connection with the Home including, without limiting the generality of the foregoing, all costs and expenses for repairs, replacements, additions and improvements to the Home and for maintaining, operating and supervising the Home;
 - (d) reimburse the Manager for all funds expended or costs and expenses incurred, if any, to which the Manager is entitled to reimbursement pursuant to the Agreement; and
 - (e) provided that the Manager is complying with the terms of this Agreement, not to interfere with the operations of the Home and with the Manager carrying out its duties hereunder.

ARTICLE 9 – TERMINATION

- 9.1 Each of the following events shall constitute an Event of Default of either party:
- (a) the filing of a voluntary assignment in bankruptcy or insolvency or a petition for a reorganization under any bankruptcy law by the Owner or the Manager;
 - (b) the consent to an involuntary petition in bankruptcy or the failure by the Owner or the Manager to vacate, within thirty (30) days from the date of entry thereof, any order approving an involuntary petition;
 - (c) the making of an order, judgement, or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating the Owner or the Manager bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or substantial part of a party’s assets if such order, judgement or decree shall continue unstayed and in effect for a period of thirty (30) consecutive days;
 - (d) the failure of either the Owner or the Manager to perform, keep or fulfill any of the covenants, undertakings, obligations or conditions set forth in the Agreement, except where same constitutes gross negligence at or on the Home, and the continuance of any such default for a period of thirty (30) days after written notice of said failure, provided, however, if the default is not reasonably capable of being cured within the thirty (30) day period (other than as a result of the financial position of the defaulting party), and the defaulting party with due diligence takes and continues action to cure and cures the failure as soon as possible, then no Event of Default shall be deemed to have occurred unless and until a defaulting party has failed to take or continue to take action, or to complete the cure within a period not exceeding ninety (90) days after written notice is received in respect of the applicable failure; and
 - (e) with respect to the Manager, the occurrence of a fraud or criminal act by the Manager or a breach by the Manager of any trust or fiduciary duty created by this Agreement for funds received by it, or the Manager’s refusal to account or unreasonable delay in accounting for such funds.

- 9.2 Upon the occurrence of any Event of Default, the non-defaulting party may, without prejudice to any other recourse hereunder or at law or in equity which it may have, terminate this Agreement. If an Event of Default involves gross negligence or wilful misconduct on the part of the Manager or the Owner, the 30 day cure period and extended cure period referred to in Section 9.1(d) shall be reduced to five (5) days in the aggregate.
- 9.3 Notwithstanding anything to the contrary contained in the Agreement, either party shall be entitled but not obligated to remedy any default of the other under the Agreement with reasonable notice to the other or without notice, in the event of any emergency or anticipated emergency, without prejudice to any rights under the Agreement, and the party so remedying such default shall be repaid upon demand by the defaulting party for the cost of remedying such default together with interest on such amount from the date of incurring such costs at an annual rate of five percent (5%) above the reference rate of interest published from time to time by the Bank as its prime rate.
- 9.4 Notwithstanding anything to the contrary in this Agreement, either party shall be entitled to terminate this Agreement on ninety (90) days' prior written notice to the other party.
- 9.5 Upon the termination of the Agreement for any reason whatsoever by either the Manager or the Owner:
- (a) The Manager shall, as soon as possible thereafter (and in any event within 30 days), render a final accounting to the Owner and pay over any balance in the Trust Account or other account remaining to the credit of the Owner (less any amounts necessary to satisfy commitments made by the Manager to others pursuant to its authority hereunder prior to the date of the termination and less any outstanding fees and expenses payable to the Manager, in each case, in accordance with the Agreement);
 - (b) The Manager shall, subject to Article 6, surrender to the Owner in an organized manner all documents, contracts, records, files and other information and items included therein (but not the Proprietary Property) which in the Manager's or Owner's opinion, acting reasonably, may be pertinent to the continuing operation of the Home;
 - (c) The Owner shall assume the obligations of any and all contracts which the Manager has entered into in accordance with and pursuant to this Agreement and the Owner shall reimburse or pay for and indemnify and save harmless the Manager from the costs and expenses of all services and supplies which may have been ordered by the Manager in accordance with this Agreement and which may not have been paid by the Owner at the time of termination;
 - (d) The Manager and the Owner shall be released from all obligations pursuant to this Agreement, save and except for obligations set out in the following provisions, which shall survive any termination of this Agreement, howsoever occurring: Sections 2.9(l) and 2.9(m), Sections 5.1 and 5.3, Section 6.4, this Article 9, Sections 12.1, 12.2, 12.4 and 12.5, Article 13, Article 15, and Sections 16.3, 16.5, 16.6, 16.7, 16.8, 16.12, 16.13, 16.14, 16.16 and 16.19;
 - (e) The Manager shall deliver to the Owner all materials, tools, telecommunication equipment, computers, equipment, furniture, supplies and other property for which the Manager has been paid or which have been paid for by the Owner, but excluding the Intellectual Property;
 - (f) The Manager shall generally provide its reasonable assistance and co-operate with the Owner to ensure a smooth transition to a new management team; and
 - (g) The Owner may not solicit or hire any of the Manager's employees for a period of three (3) years from the date of termination of this Agreement.
- 9.6 In the event of the termination of the Agreement for any reason whatsoever by either the Manager or the Owner, the Owner, in addition to complying with all other provisions of this Agreement, agrees to indemnify and save the Manager harmless from any claims, rights or benefits either past or future, to which

the Home Employees may have against the Manager whether for wages, severance pay or any other claim for employee compensation whatsoever in anyway relating to the Home, except where the Manager has been grossly negligent in breach in its duties under this Agreement or where this Agreement has been terminated due to an Event of Default with respect to the Manager and provided that the Owner shall not be liable for obligations to employees in respect of the employment of those employees prior to the acquisition of the Home by the Owner.

ARTICLE 10 – ASSIGNMENT

- 10.1 The Manager acknowledges that the Owner may assign its rights hereunder to its lender in conjunction with the Owner's financing of the Home and the Manager agrees, where requested by such lender, to enter into an acknowledgement agreement with such lender, in a form acceptable to such lender and the Manager, each acting reasonably, whereunder the Manager shall agree to: (a) provide notices of any default by the Owner hereunder and permit the lender to cure same (during an appropriate cure period); (b) permit such lender to assume the Owner's rights under this Agreement upon the occurrence of an event of default by the Owner under such financing; (c) if requested by such lender enter into a new agreement with such lender on the same terms and conditions hereof in the event that this Agreement is revoked or disclaimed as part of any insolvency proceedings relating to the Owner; (d) allowing such lender to terminate this Agreement on 30 days' notice if an event of default occurs under the financing; and (e) such other customary matters as the lender may reasonably require. The Owner further acknowledges that the Manager may, subject to Section 16.17 and any approvals required by the applicable regulator, assign this Agreement and any of its rights and obligations hereunder to any of its Affiliates that is qualified to perform the Manager's duties hereunder.

ARTICLE 11 – REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of the Manager

The Manager hereby represents and warrants to the Owner that as at the date of this Agreement:

- (a) It is a corporation duly organized and validly existing under the laws of the Province of Ontario;
- (b) It is in good standing with respect to the filing of returns in all jurisdictions in which it carries on business or proposes to carry on business;
- (c) It has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
- (d) All necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Manager;
- (e) This Agreement has been legally and properly executed by the Manager and is legally binding upon and enforceable against the Manager in accordance with its terms;
- (f) All information, statements, documents and reports furnished or submitted by the Manager to the Owner in connection with the negotiation and execution of this Agreement are true and correct;
- (g) The observance and performance of the terms and conditions of this Agreement does not constitute a breach by it of or a default by it under:
 - (i) any law of Canada, the Province of Ontario;
 - (ii) its constating documents; or
 - (iii) any agreement to which it is a party;

- (h) The Manager is not in breach of any law applicable to the Manager or its operations; and
- (i) The Manager holds all permits, licenses, consents and authorities issued by any government or an agency of any of them, that are necessary in connection with the operations of the Manager and the performance of the services under this Agreement.

11.2 Representations and Warranties of the Owner

The Owner hereby represents and warrants to the Manager that as of the date of this Agreement:

- (a) All necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Owner;
- (b) It has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement;
- (c) This Agreement has been legally and properly executed by the Owner and legally binding upon and enforceable against the Owner in accordance with its terms; and
- (d) The observance and performance of the terms and conditions of this Agreement does not constitute a breach by it or a default by it under:
 - (i) any law of Canada, the Province of Ontario; or
 - (ii) any agreement to which it is a party.

11.3 Reliance

All representations and warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Manager or the Owner is material and will conclusively be deemed to have been relied upon by the other party, notwithstanding any prior or subsequent investigation by the Owner or the Manager, as the case may be.

ARTICLE 12 – EMPLOYEES

- 12.1 Agency – All Home Employees shall be employees of the Owner. None of the employees, independent contractors or agents of the Owner shall be deemed to be the employees, contractors or agents of the Manager. The Owner shall be solely responsible for any salary, commission or other remuneration payable to any such employees, contractors or agents and hereby agrees to indemnify the Manager for any Losses by or against the Manager in respect thereof.
- 12.2 Labour Matters – The Manager will advise the Owner on proposals for union negotiations with any labour union lawfully entitled to represent the Home Employees, and may recommend or retain, at the Owner's request, skilled or professional service providers (including legal) to assist and attend all negotiations, conciliations and arbitration hearings, as necessary, provided that the Owner (and not the Manager) shall retain overall responsibility for all such negotiations, conciliations and hearings. All costs relating to the work undertaken by any skilled or professional service provider retained by the Manager to negotiate and attend at conciliations and arbitration hearings shall be the responsibility of the Owner.
- 12.3 Training and Performance Management – The Manager is responsible for directing and supporting the ongoing professional development training, both substantive and procedural, to be provided to all Home Employees, through its work with the department head(s). The Manager is responsible for setting up a process to facilitate the provision by the departmental heads (who, for certainty, are Home Employees) of required feedback to the Home Employees on an ongoing basis and conducting performance evaluations at least once per calendar year. Where performance improvement is noted, the Manager is responsible for creating a performance improvement plan for the applicable Home Employee and, if performance does not

improve within timelines set by the department head, termination of the employment of the applicable Home Employee. The Manager will assist, direct and support the department head in establishing a process to prepare and implement an annual training plan that reports on progress to the Committee of Management at least quarterly within the calendar year. This plan shall include professional development for Home Employees, as well as policy and procedure training and compliance monitoring.

- 12.4 Severance Costs – The Owner is responsible for the costs associated with the termination of employment of Home Employees and is responsible for all pay in lieu of notice of termination, termination pay, severance pay and other costs, liabilities and obligations including entitlements to pension and benefit coverage, or incentive compensation (and notwithstanding any other provision to the contrary including entitlements in respect of the benefit plans) whether due under contract, statute or common law relating to the termination of employment of such Home Employees.
- 12.5 Medical Healthcare Professionals – The Owner shall be responsible for the engagement, performance management and termination of all medical healthcare professionals (including physicians) providing services to residents of the Home. The Owner agrees that it shall only retain medical healthcare professionals that it reasonably concludes, pursuant to completion of appropriate appointment enquiries and processes, holds all necessary professional credentials and accreditations. The Manager shall be responsible for ensuring that each such medical healthcare professional enters into appropriate contractual arrangements with the Owner in respect of the provision of medical health services for residents of the Home, and shall provide to each such medical healthcare professional, prior to or at the commencement of their respective engagement, the Policies and Procedures applicable to the Home, which each medical healthcare professional shall be expected to comply with. The obligation to provide Policies and Procedures is ongoing; as the Policies and Procedures are created and revised they will be provided to the medical healthcare professionals. For certainty, nothing herein shall require the Manager to indemnify the Owner or any other person in respect of any alleged or actual act of professional negligence or malpractice asserted against any medical healthcare professionals providing services in connection with the Home.

ARTICLE 13 – INDEMNITIES AND INSURANCE

- 13.1 The Manager shall indemnify and save harmless the Owner, its Affiliates and their respective directors, officers and employees (the “**Owner Indemnified Parties**”), from any and all Losses suffered or incurred by any of the Owner Indemnified Parties as a result of, or arising directly or indirectly out of or in connection with: (a) a material breach by the Manager of this Agreement; (b), any claims, rights or benefits, either past or future, which the Manager’s employees or contractors may make or have, whether for wages, severance pay or any other claim for employee compensation whatsoever in any way relating to the Home, or (c) the negligence, fraud, or wilful misconduct of the Manager, its Affiliates and their respective directors, officers and employees (the “**Manager Indemnified Parties**”) or the Manager’s subcontractors or agents; except to the extent that such Losses result from any act or omission of, breach of this Agreement by, or the negligence, fraud or wilful misconduct of, any of the Owner Indemnified Parties.
- 13.2 The Owner shall indemnify and save harmless the Manager Indemnified Parties, from any and all Losses suffered or incurred by any of the Manager Indemnified Parties as a result of, or arising directly or indirectly out of or in connection with: (a) a material breach by the Owner of this Agreement, (b) any claims, rights or benefits, either past or future, which the Home Employees may make or have, whether for wages, severance pay or any other claim for employee compensation whatsoever, or (c) the negligence, fraud, or wilful misconduct of the Owner Indemnified Parties or the Owner’s subcontractors or agents; except to the extent that such Losses result from any act or omission of, breach of this Agreement by, or the negligence, fraud or wilful misconduct of, any of the Manager Indemnified Parties.
- 13.3 In no event shall a party be liable for any consequential damages or lost profits pursuant to the indemnification provisions contemplated by this Agreement, even if it has been advised of the possibility of such damages. No Losses shall be settled or compromised by a party in respect of the other party without the other party’s prior written consent. The indemnities contained in this Agreement shall not be prejudiced by, and shall survive the termination of this Agreement.

- 13.4 Notwithstanding any other provision of this Agreement, neither Manager nor its Affiliates shall be liable to Owner: (i) on account of any alleged errors of judgment made in good faith and exercising the degree of care normally associated with a competent manager in connection with the operation of the Home or the performance by Manager of its obligations hereunder; or (ii) for any loss or damage resulting from, incidental to or relating to the provision of services in respect of the Home, the personnel by Manager, including any exercise or refusal to exercise discretion, any mistake or error of judgement or any act or omission believed by Manager to be within the scope of authority conferred on it by this Agreement, unless such loss or damage resulted from the fraud, wilful default, intentional misconduct or negligence of Manager in performing its obligations hereunder.
- 13.5 Each party will maintain, at its own expense during the term of the Agreement, insurance coverage for comprehensive general liability insurance, insuring bodily injury (including death) and property damage, negligence, and errors and omissions liability insurance, each with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence and Thirty Million Dollars (\$30,000,000) in the aggregate. Upon the request of a party, the other party shall produce the applicable certificate(s) of insurance demonstrating compliance with this provision of the Agreement. All policies are to be underwritten by an insurance company licensed to conduct business in the Province of Ontario. All insurance shall apply as primary and not as excess of any insurance available to the applicable party. All applicable deductibles under the above required insurance policies are at the sole expense of the party maintaining such insurance. Each party shall, within ten (10) days of signing the Agreement, and upon the placement, renewal, amendment, or extension of all or any part of any of the required insurance, and annually throughout the term of the Agreement, provide the other party with the relevant Certificate(s) of Insurance and, if required, a certified true copy of the policy(s) together with copies of any amending endorsements applicable to the Agreement. Each party agrees that its insurance, as contemplated by this Section 13.5, will not be cancelled, permitted to lapse or materially change unless the insurer for such party notifies the other party in writing at least thirty (30) days prior to the effective date of cancellation, expiry or change.

ARTICLE 14– NOTICES

14.1 Notices

All notices, demands or requests provided for or permitted to be given pursuant to this Agreement shall be made in writing and shall be given by personal delivery or by telecopier or other electronic communication, addressed or sent as set out below, or to such other address or electronic communications number as may from time to time be the subject of a notice hereunder:

To the Owner at:

The Corporation of the City of Kawartha Lakes
26 Francis Street, PO Box 9000
Lindsay, Ontario
K9V 4R2

Attention: Rod Sutherland, Director, Human Services
Email: rsutherland@kawarthalakes.ca

To the Manager at:

Sienna Senior Living Inc.
302 Town Centre Blvd, Suite 300;
Markham, Ontario L3R 0E8

Attention: Joanne Dykeman
Email: Joanne.Dykeman@siennialiving.ca

Any notice, demand or request if personally delivered shall be deemed to have been given and received on the date of delivery and if sent by telecopier or other electronic communications with confirmation of transmission, will be deemed to have been given and received on the day of transmission, or if such day is not a Business Day or if the transmission is made after usual business hours, shall be deemed to have been given and received on the next immediately following Business Day.

ARTICLE 15- DISPUTE RESOLUTION

- 15.1 The parties agree that, during the performance of their respective obligations under this Agreement, each of them will make good faith efforts to resolve any disputes, controversies, questions or claims arising out of or relating to this Agreement (a “**Dispute**”) by non-binding mediation. If the matter has not been resolved within thirty (30) days of a party’s written request for non-binding mediation either party may initiate arbitration as provided for hereafter. Any Dispute shall be referred to and finally resolved by arbitration in accordance with the provisions of this Article 15.
- 15.2 Whenever any arbitration is permitted or required hereunder to resolve a Dispute between the parties, arbitration proceedings shall be commenced by a party desiring arbitration (the “**Initiating Party**”) giving notice to the other party (the “**Responding Party**”) specifying the matter to be arbitrated and requesting an arbitrator thereof. If the Initiating Party and the Responding Party are unable to agree upon an arbitrator within five (5) days after delivery of such notice, then either party shall be entitled to make application to the Court pursuant to the *Arbitration Act, 1991* (Ontario) as amended from time to time, for selection of the arbitrator, and the provisions of such Act shall govern such selection. In the event of the failure, refusal or inability of the arbitrator to act, or continue to act, a new arbitrator shall be appointed in his or her stead, which appointment shall be made in the same manner as hereinbefore provided. The arbitrator shall thereupon proceed to hear the submissions of the parties, and shall render a decision within thirty (30) days after his or her appointment. The decision of the arbitrator shall be final and binding upon the parties and not subject to appeal. The arbitrator shall have the authority to assess the costs of the arbitration against any one or more of the parties. If the arbitrator does not render a decision within the time limits aforesaid, any party to the arbitration may cancel the appointment of the arbitrator so appointed and initiate new arbitration proceedings pursuant hereto. The arbitrator shall have access to all books and records relating to the Home and the parties will co-operate with the arbitrator and provide all information reasonably requested by the arbitrator.
- 15.3 Mediation and arbitration will take place in the City of Kawartha Lakes, or the City of Toronto, within the Province of Ontario, as mutually agreed by the Owner and Manager, acting reasonably.

ARTICLE 16 - MISCELLANEOUS PROVISIONS

- 16.1 The Manager will receive direction from the Victoria Manor Committee of Management and senior staff of the Owner, as specifically identified to the Manager by the Owner, primarily the Director of Human Services acting on behalf of the Chief Administrative Officer. Provisions will be made by the Owner for regular meetings, reporting requirements, and ongoing communication with the Manager to ensure the Owner’s priorities and interests are followed, and accountability measures are in place. These accountability arrangements and requirements must be fluid and will be further developed during the Term hereof. The Manager will provide the information required by the Owner’s senior staff, the Committee of Management and Council to support their decision-making for the Home, and oversight of service levels and quality.
- 16.2 During the Term, the Home shall at all times be known and designated by the Name and accompanying phraseology, if any, as may from time to time be mutually approved by the Manager and the Owner, both acting reasonably.
- 16.3 Save as otherwise expressly set out in this Agreement, the Owner agrees that no provision of this Agreement (including the rights and remedies of the Owner for any default of the Manager), nor delivery of possession of the Home to the Owner upon the expiration of the Term shall confer upon the Owner or any transferee, assignee, or successor of the Owner, or any person, firm or owner claiming by or through the Owner, the right to use the Proprietary Property either alone or in conjunction with some other work or

words or any such trademark, logo or design in the use and operation of the Home by the Owner or any transferee, assignee or successor of the Owner, or any person, firm or owner claiming by or through the Owner. In the event of any breach of this covenant by the Owner, the Manager shall, unless specifically approved by the Manager, be entitled to damages or injunctive relief or to any other right or remedy at law or equity, and this provision shall survive the expiration or sooner termination of the Agreement.

- 16.4 All contracts for the Home entered into by the Manager in connection with the Manager's duties hereunder with any partner, officer, employee or Affiliate of the Manager or other person not at arm's length with the Manager shall require the Owner's prior written approval.
- 16.5 The headings preceding the text and articles hereof have been inserted for convenience of reference only and shall not be construed to effect the meaning, construction or effect of this Agreement.
- 16.6 It is acknowledged and agreed that this Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties hereby irrevocably attorn to the jurisdiction of the courts of the Province of Ontario with respect to the subject matter hereof.
- 16.7 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the party.
- 16.8 If any event of Force Majeure occurs or is likely to occur, the party directly affected will notify the other party forthwith, and will use reasonable commercial efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its duties, covenants and obligations under this Agreement. Subject to the foregoing, neither party will be liable to another for any delay, interruption or failure in the performance of their respective duties, covenant or obligations under this Agreement if an event of Force Majeure occurs, and in such event the time period for the performance or completion of any such obligation will be automatically extended for the duration of the event of Force Majeure.
- 16.9 The parties shall sign such further and other documents and agreements and do and perform and cause to be done and performed such further and other acts and things as may be reasonably necessary or desirable in order to give full effect to this Agreement and every part hereof.
- 16.10 In this Agreement words imparting the singular number include the plural and vice versa and words imparting the masculine gender includes the feminine and neuter genders.
- 16.11 This Agreement may not be modified or amended except with the written consent of the parties.
- 16.12 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the parties.
- 16.13 This Agreement shall enure to the benefit of and be binding on all valid successors and permitted assigns.
- 16.14 If a court of competent jurisdiction should declare any section of this Agreement to be invalid or unenforceable, such section or part of a section shall not be construed as being an integral part of the Agreement or having persuaded or influenced a party to this Agreement to execute the same, and it is hereby agreed that the remainder of the Agreement shall be valid and in full force and effect.
- 16.15 This Agreement may be executed: (a) by facsimile or electronically; facsimile and electronic signatures shall be treated as originals for all purposes; and (b) in any number of counterparts, each of which will be

deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

- 16.16 Subject to the following provisions of this paragraph, the Manager will keep as confidential all information relating to the affairs of the Owner and the Home which comes into the possession of the Manager or its officers, servants or agents, by reason of this Agreement or the performance by the Manager of services under the terms of this Agreement, and to the extent that it is within its power to do so the Manager will ensure that its officers, servants and agents keep such information as confidential. The Manager shall not, either while this Agreement is in force or at any time thereafter, disclose or make accessible to any of its shareholders or to any other person, firm or corporation any information concerning the private internal affairs of the Owner other than for the purposes and for the benefit of the Owner or as required by law and the Manager shall not, either while this agreement is in force or thereafter, use any such information for its own benefit or the benefit of its shareholders or to the detriment or intended or probable detriment of the Owner. To the extent that it is within the power of the Manager to do so, the Manager will ensure that no such information is so disclosed or used by its officers, servants or agents, provided that nothing in this Section shall preclude disclosure of such information by the Manager in pleadings or in evidence in the course of any legal proceedings under circumstances whereby the Manager is obliged to disclose such information or as may be required by law or to any governmental authority having jurisdiction over the Owner or the Manager and being entitled in law to receive such information or the disclosure of such information which has become public at the time of disclosure through no fault of the Manager or its officers, servants or agents.
- 16.17 The Manager and Owner agree as follows:
- (a) Any change in who has a controlling interest in the Manager under the Agreement shall be deemed to be a material amendment to the Agreement that requires the Director's approval under S. 110(6) of the Act;
 - (b) Upon termination or expiry of this Agreement or in the event of expiry of the Director's approval, the parties agree to effect an orderly transition of the management of the Home from the Manager to the Owner or another manager;
 - (c) The Manager shall operate the Home in accordance with the requirements under the Act;
 - (d) The Manager shall keep the Owner adequately informed about the operation of the home, including promptly giving the Owner any document served on or notice given to the Owner by being delivered to the Home;
 - (e) The Manager acknowledges that funding under the Act will be paid to the Owner, not to the Manager directly;
 - (f) The Manager acknowledges that the Director must approve this Agreement, and any material amendments to the Agreement, before it can become binding between the parties (pursuant to subsections 110 (4) & 110 (6) of the Act); and
 - (g) The Manager acknowledges that the Director's approval of the Agreement can be withheld, or withdrawn under subsection 110 (5) of the Act at any time without liability to any party hereunder.
- 16.18 The Manager shall maintain a current account with the WSIB and shall provide the Owner with a current valid WSIB Clearance Certificate in confirmation thereof. If the Manager is an independent operator, a letter from WSIB stating their Independent Operator status shall be supplied in lieu of a WSIB Certificate.
- 16.19 The Manager acknowledges that the personal information, personal health information, and other information, to which legislative exemptions from disclosure apply or may apply, and to which it has access in respect of the operation of the Home is confidential and that it will take all necessary and reasonable precautions to ensure that it is treated as such by the Home Employees and the Manager's

employees and agents. In this respect, the Manager shall comply with the *Municipal Freedom of Information and Protection of Privacy Act*, the *Personal Health Information Protection Act*, all other applicable privacy legislation, and the provisions in Schedule B. the Manager shall not use, and shall ensure that its employees and agents do not use, such information for any reason other than meeting its obligations under this Agreement. The Manager shall be responsible for any breach of the terms of this section by its employees and agents. In addition, during the course of this Agreement, the Manager may have access to other confidential information made available by the Owner which is either marked “confidential”, “proprietary” or words of like effect or which the Manager should reasonably understand to constitute confidential information of the Owner. The Manager agrees to use confidential information made available to it by the Owner solely for purposes contemplated by this Agreement and shall maintain the confidentiality of such information. The terms of this section shall survive the expiry or termination of this Agreement for any reason.

[SIGNATURES FOLLOW]

DRAFT

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

**THE CORPORATION OF THE CITY OF
KAWARTHA LAKES**

By: _____
Andy Letham, Mayor

By: _____
Judy Currins, Clerk

We have the authority to bind the corporation pursuant to
Council Resolution _____

**THE ROYALE DEVELOPMENT GP
CORPORATION as a general partner of THE
ROYALE DEVELOPMENT LP**

By: _____
Authorized Signing Officer

By: _____
Authorized Signing Officer

I/We have the authority to bind the corporation

DRAFT

SCHEDULE "A"

STATEMENT OF WORK

See attached.

SCHEDULE "B"

Notice:

Article 5 and Schedule B of the agreement are confidential as mandatory exemptions under the Municipal Freedom of Information and Protection of Privacy Act, Section 10(1)(a) and (c), and must be redacted from any copies made for public use/ disclosure/ dissemination.

DRAFT