County Commissioners Office
Auglaize County, Ohio
October 23, 2018

NO. 18-422

IN THE MATTER OF APPROVING AND EXECUTING THE NURSING FACILITY MANAGEMENT AGREEMENT BETWEEN ALS AUGLAIZE ACRES OPERATING, INC AND COUNTY OF AUGLAIZE, OHIO FOR THE AUGLAIZE ACRES FACILITY.

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The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 23rd day of October, 2018.

Commissioner Regula moved the adoption of the following:

RESOLUTION

WHEREAS, a Nursing Facility Management Agreement was submitted to the Auglaize County Board of Commissioners (the "County") with ALS Auglaize Acres Operating, Inc. ("Manager") concerning the business and real property of the Auglaize Acres nursing home; and,

WHEREAS, the County owns and operates a Medicare and Medicaid-certified 91 bed county home, commonly known as Auglaize Acres, located at 13093 Infirmary Road, Wapakoneta, Auglaize County , Ohio 45895 (the "Facility"); and,

WHEREAS, the County and Auglaize Holdings LLC, an Ohio limited liability company ("Purchaser"), have entered into a Purchase and Sale Agreement dated August 7, 2018, as amended (the "P&SA"), pursuant to which County has agreed to sell, transfer, and convey to Purchaser, and Purchaser has agreed to purchase and accept the Seller's Assets (as defined in the P&SA) from County; and,

WHEREAS, the County and Manager have entered into an Operations Transfer Agreement dated August 7, 2018, to transfer the operations of the Facility to Manager effective upon the closing of the P&SA; and,

WHEREAS, the County desire to retain Manager to provide certain administration, management, and operational services as further described herein, on the terms and conditions described below, with respect to the Facility, and Manager desire to provide such services to County as further described herein, on the terms and conditions described below, with respect to the Facility; and,

WHEREAS, the term of this Agreement will be for a period of three (3) months, beginning on or about October 19, 2018, or such other date as may be agreed by the parties as being the beginning of the window of time during which the Ohio Department of Health ("ODH") may conduct an on-site survey (inspection) for he Facility to determine its compliance with applicable nursing home statutes and administrative rules and the Facility's licensed bed capacity, and ending on the last date of the month that is three (3) months after the commencement date. Provided that due diligence under the PSA expires on October 26, 2018, without objections (or objections are addressed to Purchaser's satisfaction), Manager covenants and agrees to submit an expedited notice of readiness to ODH for nursing home license on or about November 1, 2018 but no later than November 7, 2018; and,

WHEREAS, the term shall terminate without further action by the parties upon: (a) the approval by ODH to issue a license to Manager to be the licensed operator of the Facility (the "Licensure Approval"); and (b) the consummation of the closing under the P&SA and OTA within three (3) days of the Licensure Approval; and,

WHEREAS, during the term, County will pay to manager a management fee equal to six percent **(6%)** of the "Collected Revenues" (as hereinafter defined) of the Facility.

WHEREAS, the Board finds the Nursing Facility Management Agreement to be in order.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby approve the agreement and authorize the County Administrator to execute and does hereby ratify the execution of the Nursing Facility Management Agreement and any transaction documents related thereto.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
23rd day of
October, 2018

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, Yes
Douglas A. Spencer

ABSENT,
John N. Bergman

Don Regula, yes
Don Regula

cc: County Auditor
County Prosecutor
Auglaize Acres – Kim Sudhoff
Rolf Goffman Martin Lang LLP

NURSING FACILITY MANAGEMENT AGREEMENT

This NURSING FACILITY MANAGEMENT AGREEMENT ("Agreement") is made and entered into as of the 18th day of October, 2018, by and between **ALS AUGLAIZE ACRES OPERATING, INC.,** an Ohio corporation ("Manager"), and **COUNTY OF AUGLAIZE, OHIO**, a county and political subdivision of the State of Ohio ("County").

RECITALS:

WHEREAS, County owns and operates a Medicare and Medicaid-certified 91 bed county home, commonly known as **Auglaize Acres,** located at **13093 Infirmary Road, Wapakoneta, Auglaize County, Ohio 45895** (the "Facility");

WHEREAS, County and Auglaize Holdings LLC, an Ohio limited liability company ("Purchaser"), have entered into a Purchase and Sale Agreement dated August 7, 2018, as amended (the "P&SA"), pursuant to which County has agreed to sell, transfer, and convey to Purchaser, and Purchaser has agreed to purchase and accept the Seller's Assets (as defined in the P&SA) from County;

WHEREAS, County and Manager have entered into an Operations Transfer Agreement dated August 7, 2018 (the "OTA"), to transfer the operations of the Facility to Manager effective upon the closing of the P&SA, which closing shall occur on or about the date that is three (3) business days following the Licensure Approval (as hereinafter defined).

WHEREAS, County desires to retain Manager to provide certain administration, management, and operational services as further described herein, on the terms and conditions described below, with respect to the Facility, and Manager desires to provide such services to County as further described herein, on the terms and conditions described below, with respect to the Facility.

NOW, THEREFORE, the parties hereto (individually, a "Party" and collectively, the "Parties"), in consideration of the mutual covenants and promises hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby consent and agree as follows:

AGREEMENT:

ARTICLE I
INCORPORATION OF RECITALS

Section 1.1 **Incorporation of Recitals**. The foregoing Recitals are hereby incorporated by this reference as if fully set forth and rewritten herein.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 **Representations and Warranties of Manager**. Manager represents and warrants to County that, as of the Commencement Date (as defined in Section 3.1 of this Agreement): (i) Manager is a corporation duly organized and validly existing under the laws of the State of Ohio; (ii) neither Manager nor any officer of Manager has ever been convicted of any act or omission constituting a felony under the laws of the State of Ohio or the United States of America or constituting Medicare or Medicaid fraud or any other offense or violation under Titles XVIII or XIX of the Act which would materially and adversely affect Manager's duties under this Agreement; (iii) the execution of this Agreement and the performance of Manager's duties and responsibilities hereunder will not violate Manager's Articles of Incorporation or Code of Regulations or any other written agreement to which it is a party; (iv) Manager has the requisite experience and authority to execute this Agreement and to perform Manager's duties and responsibilities hereunder; and (v) upon the execution and delivery, this Agreement will constitute a valid and binding obligation of Manager enforceable in accordance with its terms.

Section 2.2 **Representations and Warranties of County**. County represents and warrants to Manager that as of the Commencement Date: (i) neither County nor any officer of County has ever been convicted of, or has been investigated for any act or omission constituting a felony under the laws of the State of Ohio or the United States of America or constituting Medicare or Medicaid fraud or any other offense or violation under Titles XVIII or XIX of the Act; (ii) the execution of this Agreement and the performance of County's duties and responsibilities hereunder will not violate any written agreement to which it is a party and, to County's knowledge, will not require the consent or approval of any third person or entity; (iii) County has the requisite authority to execute this Agreement and to perform County's duties and responsibilities hereunder; (iv) upon the execution and delivery, this Agreement will constitute a valid and binding obligation of County enforceable in accordance with its terms; (v) all of the nursing home beds in the Facility are duly certified by Medicare and Medicaid under Titles XVII and XIX of the Act and such certifications are in full force and effect; and, (vi) there are no judicial, administrative or regulatory proceedings pending or, to County's knowledge, threatened in connection with the Facility that would materially and adversely impact the terms and conditions of this Agreement.

ARTICLE III
TERM

Section 3.1 **Commencement of the Term**. Unless terminated earlier pursuant to the provisions of Article VII of this Agreement, the term of this Agreement will be for a period of three (3) months, beginning on or about October 19, 2018, or such other date as may be agreed by the parties as being the beginning of the window of time during which the Ohio Department of Health ("ODH") may conduct an on-site survey (inspection) of the Facility to determine its compliance with applicable nursing home statutes and administrative rules and the Facility's licensed bed capacity, and ending on the last day of the month that is three (3) months after the commencement date. Provided that due diligence under the PSA expires on October 26, 2018, without objections (or objections are addressed to Purchaser's satisfaction), Manager covenants and agrees to submit an expedited notice of readiness to ODH for nursing home license on or about November 1, 2018, but in no event later than November 7, 2018.

Section 3.2 Termination of the Term. The Term shall terminate without further action by the parties upon: (a) the approval by ODH to issue a license to Manager to be the licensed operator of the Facility (the "Licensure Approval"); and (b) the consummation of the closing under the P&SA and OTA on the date that is on or about three (3) business days following the Licensure Approval.

ARTICLE IV
DUTIES OF COUNTY

Section 4.1 County's Duties. County will, at County's sole cost and expense, pay all costs of leasing, maintaining, repairing including, but not limited to, capital expenditures, operating, and supervising the operation of the Facility pursuant to the terms of this Agreement. County's duties and obligations under this Agreement shall include, without limitation: (i) providing funds for the purchase or lease of all furniture, supplies, fixtures and equipment, including, but not limited to, dietary, laundry, kitchen, computer and durable medical equipment, as may be necessary or appropriate for the operation of the Facility; (ii) making available sufficient financial and other resources to operate the Facility in an efficient and economic manner; (iii) employing all employees or contracting with an outside service or staffing agency to provide and/or lease the services of such agency's employees to County for the operation and upkeep of the Facility; (iv) maintaining all existing certifications pertaining to the Facility in full force and effect; and (v) keeping and retaining all other rights, duties, obligations and responsibilities not specifically delegated to Manager pursuant to this Agreement. Manager will supervise County's compliance with the provisions of Ohio Revised Code Chapter 3721 and, the regulations promulgated thereunder pertaining to the requirements for nursing home license applicants (collectively, the "Licensure Requirements"). Manager will supervise, and County will take all actions necessary to comply with the Licensure Requirements as follows:

- If the Facility does not pass the ODH Licensure Requirements due to one or more deficiencies, then the County will be responsible for correcting the deficiencies in an amount not to exceed $10,000 (in the aggregate).

Section 4.2 Cooperation with Manager. County will furnish Manager with all information in its possession or to which it has access relating to the Facility that is reasonably requested by Manager. In addition, County will cooperate with Manager and take all actions reasonably necessary or appropriate to facilitate Manager's performance of its duties hereunder, and County will not unnecessarily interfere with Manager's duties under this Agreement. All initial Manager contact with County shall be through Erica L. Preston, as representative of County. Any substitute or replacement County representative shall be identified in writing to Manager, with suitable contact information for such representative.

Section 4.3 Operating Account. County will continue to fund the operation of the Facility and will promptly provide Manager with a copy of each monthly financial statement from County's financial system.

Section 4.4 **Notice to Manager**. To the extent not already received by Manager, County will forward to Manager, within three (3) business days of receipt, copies of all information, surveys, inspection reports, management reports, audit reports, correspondence, notices and memoranda received by County in connection with the Facility from any federal, state or local authority, including, but not limited to, the Internal Revenue Service, the ODH, the Ohio Department of Medicaid, the Centers for Medicaid and Medicare Services, or any other government authority that has jurisdiction over any aspect of the Facility or the operation thereof. In addition, the extent not already received by Manager, County will forward to Manager, within three (3) business days of receipt, copies of all information, correspondence and notices relating to union activities, labor, employee and similar matters with respect to County, the Facility or the operation of the Facility.

ARTICLE V
DUTIES OF MANAGER

Section 5.1 **Manager's Duties**. Manager will manage and supervise the operation of the Facility on behalf of County in an efficient, effective, prudent and workmanlike manner in accordance and in compliance with all applicable federal, state and local laws, rules and regulations, and will perform the duties and obligations detailed in this Article V. Except as otherwise specifically stated herein and the OTA, all costs and expenses associated with the operation and the licensure and certification of the Facility will be the sole obligation and liability of County.

Section 5.2 **Administration**. Manager will oversee the administration of the Facility. If necessary, on behalf of County, Manager will recruit, direct and supervise a licensed nursing home administrator to administer the Facility.

Section 5.3 **Employment of Facility Staff and Outside Services and Reports**.

(a) Except as otherwise set forth in this Agreement, all Facility employees will remain County's employees. Manager shall recruit and recommend on behalf of the County such additional qualified, competent personnel as are necessary or appropriate in the operation of the Facility including, but not limited to, registered nurses, licensed practical nurses, nurses' aides and maintenance and janitorial workers, and will secure or contract for all of the Facility's required outside services including, but not limited to, physical, occupational and respiratory therapy, laboratory and pharmacy, in each case with County's prior written consent (the "Outside Services").

(b) Manager will recommend to County processes in which to: (i) administer and schedule all Facility functions including, but not limited to, the work schedules of all of County's employees and of any Outside Services; and (ii) establish and implement appropriate employee compensation and benefits, and vacation and sick-time policies.

(c) Manager will assist County in the maintenance and modification of all personnel policies and procedures, which policies and procedures will include, but not be limited to, the following subjects: (i) employment, supervision, discipline and termination of personnel; (ii) rates of compensation generally for various categories of workers; (iii) designation of working hours (including designation of holidays, vacations and work shifts); and (iv) job classifications. Manager will maintain a current set of such written policies and procedures on file at the administrative offices of the Facility, and will supply copies to County upon request. Upon the written request of County, Manager will also administer the furnishing of a copy of pertinent employment policies and procedures, including any modifications, additions, or deletions thereto, in the form of an employee handbook to every new employee at the Facility.

(d) Manager will abide by the terms of any existing collective bargaining agreement with respect to all or any portion of the employees of County with respect to the Facility. Manager will not negotiate any changes to the existing collectively bargaining agreement of County without County's prior written consent.

(e) Manager will supervise the maintenance of all of County's payroll records for the Facility employees, including, but not limited to, earnings records, payroll tax summaries, and withholding tax statements. County will be responsible for the filing of federal and state payroll returns for such Facility employees, and County will be responsible for disbursing payroll checks to employees on a timely basis.

(f) Manager will forward to County, within three (3) business days of receipt, copies of all information, surveys, inspection reports, management reports, audit reports, correspondence, notices and memoranda received by Manager in connection with the Facility from any federal, state or local authority, including, but not limited to, the Internal Revenue Service, the ODH, the Ohio Department of Medicaid, the Centers for Medicaid and Medicare Services, or any other government authority that has jurisdiction over any aspect of the Facility or the operation thereof. In addition, Manager will forward to County, within three (3) days of receipt, copies of all information, correspondence and notices relating to union activities, labor, employee and similar matters with respect to County, the Facility or the operation of the Facility. Any notice received by Manager or the Facility in which any government authority of competent jurisdiction makes a citation of "immediate jeopardy" with respect to the Facility shall be forwarded to County within forty-eight (48) hours of receipt.

(i) Manager shall supervise and implement all tasks required to be completed to enable the Facility to be issued an ODH nursing home license for no fewer than eighty-seven (87) beds. Manager shall keep County timely advised of all material developments in the process of securing a nursing home license for the Facility.

Section 5.4 Inventory Control and Purchasing Authority. Manager will make recommendations to County with respect to maintaining adequate supplies for the efficient operation of the Facility and for the licensure and certification of the Facility. The supplies will include, but not be limited to, raw food and dietary supplies, nursing and pharmaceutical supplies, housekeeping and laundry supplies, office supplies, and supplies necessary for the repair and maintenance of the Facility. The supplies will be of the quality prudently used in the efficient operation of high-quality nursing facilities. Manager will oversee the establishment and maintenance of procedures for the safekeeping of all the supplies. Manager will maintain accurate records and procedures to insure efficient control over such supplies.

Section 5.5 Records and Accounts.

(a) Manager will assist County in maintaining accounting, billing, patient and collection records, as necessary, including medical and nursing records, charts of accounts, accounting systems and internal controls, classifications and procedures, consistent with the requirements of all applicable laws, statutes, rules and regulations. Manager will forward to County, within seventy-two (72) hours of receipt, copies of all surveys, inspection reports, management reports, correspondence and memoranda received by Manager in connection with the Facility from any federal, state or local board, authority or entity including, but not limited to, the Ohio Department of Health, the Ohio Department of Medicaid, the Centers for Medicare and Medicaid Services, the Ohio Department of Industrial Relations, Division of Factory and Building Inspection, the local health department or any other governmental agency which has jurisdiction over any aspect of the Facility or over the operation thereof.

(b) Manager will not file any certificate of need application with any state or local agency, body or entity ("CON Application") for the Facility without the prior written consent of County.

Section 5.6 Maintenance and Repair. Manager will recommend to County commercially-reasonable best efforts to keep and maintain the Facility at all times in good repair and operating condition and make any repairs, replacements and expenditures as are necessary and appropriate to maintain the Facility in a manner consistent with the operation of a high-quality nursing facility, and in substantial compliance with all applicable laws, statutes, rules and regulations, including, but not limited to, laws relating to the licensure and certification of nursing facilities in the State of Ohio and the life safety, zoning, health and fire codes applicable to the Facility.

Section 5.7 Insurance. Manager will recommend to County the purchase of and maintenance at all times during the Term, the insurance coverages for the Facility's and County's protection, including, but not limited to, business interruption, fire and extended coverage, public liability and malpractice insurance. Manager and such other parties designated by Manager who will have an interest in or relationship with the Facility, including Manager, will be named as additional insureds on all policies of insurance purchased and maintained by the Facility on or with respect to the operation of the Facility, and such policies will provide that the same will not be amended, modified or terminated except upon thirty (30) days' prior written notice to Manager and County.

Section 5.8 Rates and Charges. Manager will recommend to County efforts relating to establishing, charging, and collecting all charges, rates and fees charged to the residents of the Facility for services, subject to the requirements or restrictions imposed by applicable law, statutes, rules and regulations.

Section 5.9 Use of Facility.

(a) The Facility will be operated solely as a long term care nursing facility and for no other purpose without County's prior consent. Manager will not intentionally or knowingly do, or permit to be done, any act or thing which materially impairs the usefulness of the Facility, or any part thereof, or intentionally or knowingly commit or permit any act or omission in violation of any governmental or municipal law, regulation, rule or ordinance applicable to the Facility that impacts upon the operation of the Facility in a materially adverse manner.

(b) County and Manager acknowledge that the Facility, including the nursing home bed rights and the certification of such beds under Titles XVIII and XIX of the Act, was, and at all times during the Term of this Agreement is, the sole and absolute property of County.

Section 5.10 Patient Trust Accounts. Manager will assist County in administering and causing the establishment of patient trust accounts as required by applicable laws, statutes, rules and regulations.

Section 5.11 Records; Billing and Payment of Accounts. Manager will assist County in administering the maintenance of all resident records required for the billing of nursing and miscellaneous services and the control of resident ledgers to ensure the proper identification of all accounts. Manager will utilize its best efforts to collect the monthly billing for all services rendered to the Facility's residents.

Section 5.12 Permits and Privileges. Manager will exert its best efforts to ensure that no license, certification, permit, right, franchise or privilege in connection with the Facility is allowed to lapse, be endangered, or be revoked so long as the same will be necessary for the operation of the Facility. Manager will assist in procuring the extension and/or renewal of all such licenses, certifications, permits, rights, franchises or privileges during the Term. County will cooperate with Manager in connection with this Section 5.12.

Section 5.13 Litigation. County, with Manager's cooperation and assistance, will supervise at County's sole cost and expense, the defense against any and all third-party claims, actions and causes of action in operating, managing or owning a licensed nursing home which are not covered by the applicable insurance coverage of the Facility; provided, however, that Manager will not have the right to settle or compromise any such litigation without the prior consent of County.

Section 5.14 Marketing. Manager shall assist County in providing reasonable marketing efforts with respect to the Facility during the term of this Agreement.

ARTICLE VI
OPERATING EXPENSES AND MANAGEMENT FEE

Section 6.1 Payment of Operating Expenses. During the Term, all of the Facility's operating expenses including, but not limited to, the Management Fee due Manager, any debt or rental due for any owned or leased buildings, land, equipment, furniture or furnishings located at the Facility, and all of the day to day expenses associated with the Facility (collectively the

"Operating Expenses"), will be paid by and will remain the sole and exclusive obligation of County, except as otherwise specifically set forth in this Agreement.

Section 6.2 **Management Fee**. During the Term, County will pay to Manager a management fee equal to six percent (6%) of the "Collected Revenues" (as hereinafter defined) of the Facility. Such payments shall be paid in arrears, commencing on the fifteenth (15^{th}) day of the first (1^{st}) calendar month next following the commencement date and continuing on the fifteenth (15^{th}) day of each month thereafter until this Agreement is terminated. For purposes of this Agreement, "Collected Revenues" will mean all funds received at the Facility or on account of the Facility by Manager or County for any services rendered at or in connection with the operation of the Facility.

ARTICLE VII
TERMINATION OF AGREEMENT

Section 7.1 **Termination by County**. County may, upon written notice to Manager (after the expiration of any applicable grace period set forth below), terminate this Agreement upon the happening of any of the following:

(a) If Manager breaches any representation, warranty or covenant set forth in this Agreement or fails to perform any material duty or obligation to be performed by Manager pursuant to this Agreement, and Manager does not cure such breach or failure within fifteen (15) days of Manager's receipt of notice of the alleged breach;

(b) In any event, upon thirty (30) days prior written notice.

Section 7.2 **Termination by Manager**. Manager may, upon written notice to County (after the expiration of any applicable grace period set forth below), terminate this Agreement upon the happening of any of the following:

(a) If County materially breaches any representation, warranty or covenant set forth in this Agreement or fails to perform any material duty or obligation to, be performed by County pursuant to this Agreement, and County does not cure such breach or failure within fifteen (15) days of County's receipt of notice of the alleged breach;

(b) In any event, upon thirty (30) days prior written notice.

Section 7.3 **Mutual Termination and Automatic Termination**. Notwithstanding the foregoing, this Agreement may be terminated at any time by the written agreement of County and Manager. In addition, this Agreement shall automatically terminate upon any termination of the P&SA and/or OTA.

Section 7.4 **Pro Rata Payment**. Manager will be entitled to a pro rata payment of the Management Fee in the event that any termination occurs during any month during the Term.

Section 7.5 **Remedies**. The termination of this Agreement by either County, Manager or both, pursuant to the terms and provisions of this Article VII, will not be construed to limit the rights of either party hereto with respect to any remedy available in law or in equity, including, without limitation, any liability with respect to any right to recover for a breach of this Agreement.

ARTICLE VIII
[INTENTIONALLY OMITTED]

ARTICLE IX
ARBITRATION

Except with respect to any breach of confidentiality contemplated under Article XVII of this Agreement, in the event of a dispute as to the rights and duties of the Parties under this Agreement, the Parties will meet and confer and attempt in good faith to resolve the dispute. The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement that are not resolved by their mutual agreement within thirty (30) days after one Party is notified of such dispute by the other Party, if so agreed in writing by the Parties, the matter will be submitted to final and binding arbitration before the American Health Lawyers Alternative Dispute Resolution Service ("AHLA"), or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 *et seq.* to be conducted in accordance with AHLA arbitration rules. The arbitration will be conducted in accordance with the provisions of AHLA arbitration rules in effect at the time of filing of the demand for arbitration. Both Parties are entitled to be represented by counsel at the arbitration hearing and the rights and remedies otherwise available to the Parties, if established, under applicable federal, state or local law, will remain available in the arbitration proceeding. Either Party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with AHLA, with a copy to the other Party. The Parties will cooperate with AHLA and with one another in selecting an arbitrator from AHLA's panel of neutrals (or the accounting firm's panel of neutrals as applicable), and in scheduling the arbitration proceedings. The Parties covenant that they will participate in the arbitration in good faith and share the costs of the arbitration proceeding equally. The provisions of this Article IX may be enforced by any court of competent jurisdiction, and the Party seeking enforcement will be entitled to an award of all costs, fees and expenses, including attorneys fees, to be paid by the Party against whom enforcement is ordered.

ARTICLE X
ASSIGNMENT OF DUTIES

Neither Party will have the right to assign this Agreement without the express written consent of the other Party. Any assignment or delegation purported to be made in violation of this Article X will be void and of no force or effect.

ARTICLE XI
NOTICES

Any notice or consent required to be given by any Party hereunder will be in writing, and will be delivered and deemed received: (i) upon receipt, if by personal delivery; (ii) the next business day if sent by a recognized overnight courier; or (iii) on the fifth (5th) business day after such notice is deposited in the United States mail system, if sent by certified mail, return receipt requested, addressed as follows or addressed to such other address as will be designated by either party to the other:

To County:	Auglaize County Commissioners 209 S. Blackhoof Street, Room 201 Wapakoneta, Ohio 45895 Attention: Board President Phone: (419) 739-6710 Fax: (419) 639-6711 Email: commissioners@auglaizecounty.org
with a copy to:	Rolf Goffman Martin Lang LLP 30100 Chagrin Boulevard Cleveland, Ohio 44124-5705 Attention: Paul A. Lang, Esq. Phone: (216) 682-2135 Fax: (216) 682-2135 Email: lang@rolflaw.com
To Manager:	ALS Auglaize Acres Operating, Inc. c/o Bryan Casey 3546 Dunfee Road Coolville, Ohio 45723 Phone: (740) 350-9095 Email: bryan@daybreakohio.com
with a copy to:	Eric M. Simon, Esq. Taft Stettinius & Hollister LLP 200 Public Square, Suite 3500 Cleveland OH 44114-2302 Phone: (216) 241-2838 Email: esimon@taftlaw.com

ARTICLE XII
NON-EXCLUSIVITY

Nothing in this Agreement will limit or restrict the right of Manager or any officer, manager, employee, agent, successor or assign of Manager, to engage in any other business or provision or to devote his/her time and attention in part to the management or other aspects of any other business or profession, whether of a similar nature or a dissimilar nature, nor limit or restrict the right of Manager to engage in any other business or to render the same, similar, or other services of any kind to any other corporation, firm, individual or association. Manager agrees that under no circumstance shall it discharge, transfer or relocate any resident, or divert any potential admission to an alternate facility, if not for reasons related to the request of the resident or their responsible party (in accordance with statutory resident rights), or if required to secure a level or type of care not available in the Facility.

ARTICLE XIII
SUBCONTRACTING

During the Term, and continuing until the expiration of four (4) years after the furnishing of any services pursuant to this Agreement, and upon written request by the Secretary of Health and Human Services in compliance with 42 CFR Part 420, Subpart D, the Comptroller General, or a duly authorized representative, or such other party or parties as may be required by State or Federal law, Manager will provide access to this Agreement and to all books, documents and records which are necessary to verify the nature and extent of the costs of the services provided under this Agreement. Any subcontract or series of any subcontracts entered into by Manager or County with a related organization with significant ownership or significant common control, for the provision of any of the services under this Agreement, the cost or value of which is Ten Thousand Dollars ($10,000.00) or more in a twelve (12) month period, will provide that, during the term of such subcontract and continuing until the expiration of four (4) years after the furnishing of any services pursuant to such subcontract, upon written request by the Secretary of Health and Human Services in compliance with 42 CFR Part 420, Subpart D, the subcontractor will provide to the Secretary of Health and Human Services, the Comptroller General, or a duly authorized representative, or such other party or parties as may be required by State or Federal law, access to such subcontract and all books, documents and records necessary to verify the nature and extent of the costs of services provided under such subcontract.

ARTICLE XIV
[INTENTIONALLY OMITTED]

ARTICLE XV
INSPECTIONS

County will have the right to inspect the Facility and the records of Manager with respect thereto during normal business hours and upon reasonable prior written notice. Manager agrees to cooperate with County's exercise of such rights of inspection as provided in this Agreement.

ARTICLE XVI
CONFIDENTIALITY

Section 16.1 Confidentiality of Management Agreement. Manager and County will not disclose to any person other than the members, shareholders, directors, owners, managers, officers, employees, agents, advisors or affiliates (collectively, the "Representatives") of the parties hereto or any government authorities, on a need-to-know basis, or as required under applicable law any confidential or proprietary information, knowledge or data concerning the business, affairs, operations, secrets, dealings or finances of the other Party furnished directly or indirectly by such other Party (collectively, the "Confidential Information"). As used in this Agreement, the term "Confidential Information" does not include any information which: (i) at the time of disclosure is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by either Party or their representatives); (ii) was available to either Party on a non-confidential basis from a source other than a Party to this Agreement, provided that such source is not and was not bound by a confidentiality agreement with the party hereto; (iii) has been independently acquired or developed by either Party without violating any of the obligations hereunder; or (iv) such disclosure is required by law.

Section 16.2 **Confidential Resident Medical Information**. Manager may be granted access to medical records of Facility residents, and, to the extent that such access is granted to Manager, Manager therefore agrees to maintain the confidentiality of information contained in the medical records of Facility's residents in accordance with applicable laws and regulations, including but not limited to all applicable Health Insurance Portability and Accountability Act of 1996 ("HIPAA") privacy and security provisions.

Section 16.3 **Manager's Proprietary Marks**. Manager's "Proprietary Marks" means all trademarks, trade names, symbols, logos, slogans, designs, insignia, emblems, designs, service marks and distinctive designs of buildings and signs, or combinations thereof, which are used in connection with the operation of the Facility during the Term. The term "Proprietary Marks" will include all present and future Proprietary Marks, whether they are not or hereafter owned by Manager or any of its affiliates, and whether or not they are registered under the laws of the United States or any other country. Such Proprietary Marks will in all events remain the exclusive property of Manager, and nothing contained herein will confer on County the right to use the Proprietary Marks. Upon the termination of this Agreement, any use of or right to use the Proprietary Marks by County will cease forthwith and County will promptly remove from the Facility any signs or similar items that contain the Proprietary Marks.

Section 16.4 **Manager's Computer Software and Equipment**.

(a) Manager's Software ("Software" means computer software and accompanying documentation, including all future upgrades, enhancements, additions, substitutions and modifications thereof) which have been developed by, or specifically on behalf of, and owned by Manager or an affiliate of Manager, other than computer software that is commercially available, which are used by Manager in connection with its operations at the Facility, is and will remain the exclusive property of Manager or one of its affiliates, and County will have no right to use, or to copy, any Software.

(b) Upon termination of this Agreement, Manager will have the right to remove from the Facility, without compensation to County, all Software. Furthermore, upon the termination of this Agreement, Manager will be entitled to remove from the Facility any computer equipment that is utilized as part of a centralized operations control or property management system of Manager. If any of such removed computer equipment is owned by County, Manager will reimburse County for the replacement value of such equipment and will repair any damage caused by the removal of such computer equipment.

(c) Prior to any removal of Software and/or computer equipment pursuant to the provisions of this Section 16.5, Manager will afford County a reasonable period of time to arrange for the replacement of such Software, databases or other means of information and record storage, and/or computer equipment in order to avoid disruption to the operation of the Facility.

Section 16.5 **Manager's Intellectual Property**. Manager's Intellectual Property ("Intellectual Property") means: (i) all Software developed and owned by Manager or any affiliate of Manager; and (ii) all manuals, instructions, policies, procedures and directives issued by Manager to employees at the Facility regarding the procedures and techniques to be used in the management of the Facility to the extent such policies, manuals, instructions, procedures and directives are exclusive to Manager) will at all times be proprietary to Manager or its affiliates, and will be the exclusive property of Manager or its affiliates. During the Term, Manager will be entitled to take all reasonable steps to ensure that the Intellectual Property remains confidential. Upon termination, all Intellectual Property will be removed from the Facility by Manager, without compensation to County.

Section 16.6 Injunctive Relief. Manager and County acknowledge that: (i) each term of this Article XVI is required to protect County's and Manager's respective interests and that none confers a benefit on County or Manager that is disproportionate to the detriment imposed on the other party; (ii) the remedy at law for any breach by Manager or County of any term of Article XVI of this Agreement would be inadequate; (iii) the damages flowing from such breach are not readily susceptible to measurement in monetary terms; and (iv) County and/or Manager will be entitled to immediate injunctive relief without the posting of any bond restraining any breach or threatened breach hereof by the other party. Nothing in this Agreement will be deemed to limit County's or Manager's remedies at law or in equity for any such breach by the other party in connection with this Article XVI of this Agreement.

ARTICLE XVII
MISCELLANEOUS

Section 17.1 Waiver. Any waiver by any party of an act, failure to act or breach on the part of the other party will not constitute a waiver by such waiving party of any prior or subsequent act, failure to act, or breach by such other party unless such waiver is signed by the Party against whom such waiver is asserted.

Section 17.2 Severability. In the event any provision of this Agreement will be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof, and such invalid, illegal or unenforceable provision will be deemed enforceable to the fullest extent permitted by law.

Section 17.3 Binding Effect. This Agreement will inure to the benefit of, and will be binding upon, County and Manager and their respective successors and permitted assigns.

Section 17.4 Governing Law. This Agreement will be governed for all purposes by the laws of the State of Ohio.

Section 17.5 Captions and Headings. The captions and headings of this Agreement are for convenience of reference only and will not define or limit any of the terms or provisions hereof.

Section 17.6 Consent. Unless otherwise specifically stated in this Agreement, any consent, approval or determination of County or of Manager required to be obtained or made by Manager or by County hereunder will not be unreasonably withheld, conditioned or delayed.

Section 17.7 Entire Agreement. Except for the First Right Memorandum, this Agreement evidences the entire agreement of the parties hereto with respect to the subject matter hereof.

Section 17.8 Counterpart Execution; Facsimile Execution. This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. All counterparts will be construed together and will constitute one agreement. Signatures transmitted by facsimile will have the same effect as original signatures.

Section 17.9 Amendments. This Agreement may only be amended or modified by the mutual consent of the parties hereto, with any such amendment or modification to be invalid unless set forth in writing and signed by the Parties.

Section 17.10 Negation of Partnership, Joint Venture and Agency. Nothing contained in this Agreement will constitute or be construed to be or to create an employment arrangement or a partnership, joint venture or lease between Manager and County with respect to the Facility. The relationship of Manager to County under this Agreement is that of an independent contractor, and nothing contained herein will be construed to create any other relationship between Manager and County.

Section 17.11 Non-assumption of Liabilities. Manager will not, by entering into and performing this Agreement, become liable for any of the existing or future obligations, liabilities, or debts of County or the Facility.

Section 17.12 Remedies Cumulative. The remedies of Manager and County hereunder will be cumulative, and no one of them will be construed its exclusive of any other or of any remedy provided by law or in equity. The exercise of any one such right or remedy by Manager or County will not impair its standing to exercise any other such right or remedy.

Section 17.13 Construction. Whenever in this Agreement a singular word is used, it will also include the plural wherever required by the context and vice versa. As used in this Agreement and when required by the context, each gender will include all genders; and unless the context otherwise requires, the word "person" will include individuals, corporations, firms, associations, partnerships and any other type of entity.

Section 17.14 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants of Manager and County will survive the termination of this Agreement.

Section 17.15 No Third Party Beneficiaries. Nothing in this Agreement is intended by the parties to grant any rights, privileges, benefits, claims or causes of action to any parties other than the Parties hereto, and no provisions of this Agreement will inure to the benefit of any party who is not a Party hereto. Neither Party will assign or transfer any of its rights or obligations under this Agreement except in accordance with the terms and conditions of this Agreement, including, but not limited to, Article X hereof.

Section 17.16 Interpretation. The Parties to this Agreement have each negotiated the terms and conditions hereof and reviewed this Agreement carefully. It is the intent of both Parties that each word, phrase, sentence and other part hereof shall be given its plain meaning, and that rules of interpretation or construction of contracts that would construe any ambiguity of any part hereof against the draftsman, by virtue of being the draftsman, will not apply.

Section 17.17 Weekends and Holidays. Should any date for performance, or other deadline set forth in this Agreement, fall on a weekend or holiday, the parties acknowledge and understand that such deadline or performance obligation shall be considered to fall on the next succeeding business day.

Section 17.18 Exhibits and Schedules. It is acknowledged and understood that this Agreement may be executed without the benefit of Exhibits and Schedules being fully complete and, therefore, the parties agree to work diligently and in good faith to complete and attach all Exhibits and Schedules within thirty (30) days after the execution of this Agreement and to account for any updates of the same which may be specified herein. All post-execution Exhibits and Schedules attached hereafter, together with all documents and incorporated by reference therein, form an integral part of this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point in which such reference is made.

[no further text on page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

MANAGER:

ALS Auglaize Acres Operating, Inc.

By:______________________
Title: President
Printed Name: Bryan Casey

COUNTY:

County of Auglaize, Ohio

By: Erica L. Preston
Name: Erica L. Preston
Title: County Administrator

County Commissioners Office
Auglaize County, Ohio
October 23, 2018

NO. 18 .423

IN THE MATTER OF AUTHORIZING A BUDGET ADJUSTMENT.
****

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 23rd day of October, 2018.

Commissioner Regula moved the adoption of the following:

RESOLUTION

WHEREAS, the Board has been requested to authorize the budget adjustment as follows: and,

Municipal Court Judge Fund:

Amount:	**From:**	**To:**
$ 600.00	**001.0210.530900 (Other Expenses)**	**001.0210.530600 (Contract Services)**

Treasurer Fund:

Amount:	**From:**	**To:**
$ 359.00	**001.0106.530300 (Supplies)**	**001.0106.530600 (Contract Services)**

THEREFORE BE IT RESOLVED that the Board of County Commissioners of Auglaize County, Ohio, does hereby authorize the budget adjustment to show the changes as tabulated above.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
23rd day of
October, 2018

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, Yes
Douglas A. Spencer

Don Regula, Yes
Don Regula

ABSENT
John N. Bergman

cc: Auditor
County Administrator
Municipal Court Judge
Treasurer

County Commissioners Office
Auglaize County, Ohio
October 23, 2018

NO. 18-424

IN THE MATTER OF APPROVING THE REPRESENTATION AGREEMENT WITH MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES, INC.; AND AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE SAID AGREEMENT.

****

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 23rd day of October, 2018.

Commissioner Regula moved the adoption of the following:

RESOLUTION

WHEREAS, a Representation Agreement was submitted and executed on July 11, 2017 in Resolution #17-291 for the Auglaize County Board of Commissioners (the "Board") by Marcus & Millichap Real Estate Investment Services, Inc. ("Agent") for consulting and representation services concerning the business and real property of the Auglaize Acres nursing home, physically located at, 13093 Infirmary Road, Wapakoneta, Ohio 45895 through December 31, 2017; and,

WHEREAS, an addendum to the representation agreement with Marcus & Millichap Real Estate Investment Services, Inc. was executed on June 7, 2018 in Resolution #18-224 extending the representation agreement to October 31, 2018; and,

WHEREAS, a Representation Agreement was submitted to the Board that will supersede the above mentioned agreements and it will be commencing on October 17, 2018 and ending at midnight on November 15, 2018 to procure a prospective purchaser for the above mentioned location; and,

WHEREAS, according to the terms of the Representation Agreement the Board maintains the sole discretion to determine whether or not to move forward with a third party transaction within the parameters of the law; and

WHEREAS, under the terms of the Representation Agreement, if the Board does move forward with a sales transaction during the term of the Representation Agreement or within thirty days thereafter, the Board shall pay to the Agent a commission not to exceed four percent (4%) of the gross transaction price; and

WHEREAS, the Board finds the Representation Agreement to be order.

THEREFORE, BE IT RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby approve the Representation Agreement; and does authorize the President of the Board of Auglaize County Commissioners, to execute said agreement; and,

BE IT FURTHER RESOLVED that the Board of Commissioners, Auglaize County, Ohio, does hereby authorize the President of the Board of Auglaize County Commissioners to execute those documents directly related to the representation under the Representation Agreement and deemed necessary and desirable to accomplish the goals set forth in this resolution, including but not limited to the "Seller's Request and Authorization For Controlled Marketing" document as presented by the Agent.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
23rd day of
October, 2018

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, Yes
Douglas A. Spencer

Don Regula, yes
Don Regula

ABSENT,
John N. Bergman

cc: Auglaize Acres – Kim Sudhoff
Marcus & Millichap Real Estate Investment Services, Inc.

REPRESENTATION AGREEMENT
(Exclusive Authorization to Sell or Exchange)

THIS DOCUMENT IS INTENDED TO BE A LEGALLY BINDING CONTRACT. READ IT CAREFULLY.

The undersigned, Auglaize County Commissioners ("Seller"), hereby employs Marcus & Millichap Real Estate Investment Services ("Agent") and grants to Agent, under the terms and conditions of this exclusive representation agreement ("Agreement"), for a period of time (the "Term") commencing on October 17, 2018, and ending at midnight on November 15, 2018 to procure a prospective purchaser or acquirer of the Property (hereinafter "Buyer"), and subject to extension as set forth in paragraph 25 below, the exclusive and irrevocable right and authority to represent Seller in the presentation for sale or exchange of that certain real property and all improvements thereon (the "Property") referred to as AUGLAIZE ACRES NURSING HOME, generally located at 13093 INFIRMARY RD. in the City of WAPAKONETA, County of AUGLAIZE, State of Ohio, and more particularly described as follows:

AUGLAIZE ACRES NURSING HOME, 13093 INFIRMARY RD, WAPAKONETA, OH 45895

The term "Property" shall include Seller's interests in Parcel #B0720100100 minus the interest in the group home and parking facility located on the eastern portion of such property, including Seller's interest in:

1. Any and all privileges and appurtenances pertaining to the Property, including any right, title and interest of Seller in or to adjacent streets, alleys or right(s)-of-way;
2. Any and all leases, licenses, occupancy agreements, permits, rents, warranties, guarantees or security deposits with respect to the Property, or any portion thereof;
3. Any and all tradenames used in connection with the Property.

Seller and Agent understand and agree that a Parcel split will be required to remove the group home and related parking facility from the existing parcel referred to above. No adjacent parcels owned by Seller shall be subject to this agreement.

1) **TERMS AND CONDITIONS OF SALE OR EXCHANGE:** If the Seller receives an offer from a Buyer that in the Seller's sole discretion is a Buyer that represents the community values to operate the Property, Seller shall agree to accept the offer and enter into an agreement to convey the Property, including but not limited to a Real Estate Sales Contract, containing the following or substantially similar terms and conditions of sale or exchange:

   a. ACQUISITION PRICE ***ONE MILLION SEVEN HUNDRED THOUSAND*** Dollars ($**1,700,000**)

2) **TITLE AND CLOSING DATE:** Per the Purchase and Sale Agreement ("PSA"). On or before the Closing Date, Buyer and Seller shall prepare and exchange executed documents relating to the transfer including, but not limited to a Deed, Seller's Closing Affidavit, Closing Statement and FIRPTA ("Real Estate Transfer Documents").

   Seller represents and warrants to Agent that fee title to the Property is now vested as follows "Auglaize County Commissioners". Seller further represents and warrants that Seller and the individuals executing this Agreement on behalf of Seller are duly authorized and empowered to execute this Agreement and any subsequent agreements, including, without limitation, any Real Estate Sales Contract, and transfer title to the Property. Seller further represents and warrants to Agent that execution of this Agreement and any subsequent agreements necessary to carry out the intent of this Agreement shall not result in any breach of, or constitute a default under, any contract or other agreement to which Seller is a party.

3) **SURVEY:** Per the PSA

4) **PRORATIONS:** Per the PSA

5) **COMMISSION:** In consideration of the brokerage services to be rendered by Agent, Seller agrees to pay to Agent a commission equal to THREE percent (3%) of the acquisition price of the Property (the "Commission") up to an acquisition price of FOUR MILLION FIVE HUNDRED THOUSAND ($4,500,000) and FOUR percent (4%) of the acquisition price of the Property should acquisition price exceed four million five hundred thousand ($4,500,000); all commission owed upon the occurrence of any of the following events::

   a. The Property is sold, exchanged, leased with an option to purchase, master-leased or otherwise conveyed during the Term, or any extension thereof; or
   b. A sale, exchange or other conveyance of the Property is made within nine (9) months after the expiration of the Term to any person or entity with whom Agent has negotiated, or to whose attention Agent has brought the Property, or who was introduced to Seller or the Property by Agent as a prospective Buyer, provided that the name of any such person or entity has been

submitted to Seller by delivery of either a written offer to purchase the Property prior to expiration of the Term, or extension thereof, or by a written notice from Agent within thirty (30) calendar days after the expiration of this Agreement. With respect to a sale, exchange or other conveyance of the Property to any Buyer during the Term, Agent shall conclusively be deemed to be the procuring cause.

For purposes of this Paragraph Five (5), the term "Buyer" shall include that person or entity to whose attention Agent has brought the Property, as well as any partnership, joint venture, corporation, trust or other entity which that person or entity represents or in which that person or entity hold an ownership, beneficial or affiliated interest.

The Commission shall be paid at the Closing Date or within thirty (30) days following the Closing Date. Agent acknowledges and agrees that payment to Agent of said Commission is contingent upon the closing of a transaction contemplated hereunder between Seller and Buyer. Seller and Agent agree that if completion of any sale or exchange of the Property pursuant to a duly executed contract between Seller and any Buyer is prevented by default of Buyer, Seller shall be obligated to pay to Agent only an amount equal to one-half of any damages or other monetary compensation (including liquidated damages) that Seller recovers from said Buyer by suit, arbitration, or otherwise, as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the amount due to Agent shall not exceed the Commission due to Agent had the subject transaction been completed. Seller acknowledges and agrees that the existence of any direct claim which Agent may have against Buyer shall not alter or in any way limit the obligations of Seller to Agent as set forth herein.

Seller hereby acknowledges Agent's right to file a broker's lien against the Property pursuant to Ohio Revised Code Section 1311.85 et. seq., to secure any Commission or other amounts due hereunder.

6) **INSPECTION CONTINGENCIES:** Per the PSA

6.1) **BOOKS AND RECORDS:** Per the PSA

6.2) **INSPECTION OF PROPERTY:** Per the PSA

6.3) **COMPLIANCE WITH LAWS:** Per the PSA

6.4) **TENANT FINANCIAL INFORMATION (Commercial Leased Properties):** N/A

6.5) **NO INSPECTION CONTINGENCY:** Per the PSA
6.6) **OTHER INSPECTION:** Per the PSA

7.1) **ESTOPPEL CERTIFICATES (Commercial Leased Properties):** Per the PSA

7.2) **ESTOPPEL CERTIFICATES NOT APPLICABLE (Commercial Leased Properties):** N/A
Estoppel Certificates shall not be required as a condition of any transaction contemplated hereunder between Buyer and Seller. Buyer shall satisfy itself with the status of any occupancy agreements, if any, as part of Buyer's own due diligence investigation.

8) **PERSONAL PROPERTY:** Per the PSA
9) **INSPECTION OF PROPERTY:** Per the PSA

10) **SELLER EXCHANGE:** Per the PSA

11) **BUYER EXCHANGE:** Per the PSA

12) **SELLER'S REPRESENTATIONS AND WARRANTIES:** Per the PSA

13) **AGENCY DISCLOSURE:** Seller acknowledges the requirement to sign an Agency Disclosure Statement, to be provided by Agent, prior to signing a contract to purchase real estate.

14) **COMPANY AGENCY POLICY**: Seller (X Has) (____ Has Not) received Agent's written disclosure of Agent's policy on agency relationship.

15) **AGENT'S LIMITED AUTHORITY AND RESPONSIBILITY:** Agent shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale or exchange with any prospective Buyer. Agent shall not, however, have authority to bind Seller to any contract or agreement, including any Purchase Agreement. Agent shall not be responsible for, without limitation, performing any due

diligence or other investigation of the Property, or for providing professional advice with respect to, without limitation, any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of any agreement between Seller and a prospective Buyer, Seller and Agent agree that their relationship is at arm's length and is neither confidential nor fiduciary in nature.

16) **LIMITATION OF AGENT'S LIABILITY:** Except for Agent's sole gross negligence or sole willful misconduct, Agent's liability for any alleged breach or negligence in its performance of this Agreement shall be limited to the greater of Fifty Thousand Dollars ($50,000) or the amount of Commission actually received by Agent in any subject transaction contemplated hereunder between a prospective Buyer and Seller.

17) **AFFILIATED BROKERS/POTENTIAL DUAL AGENCY:** Agent is affiliated with other brokerage companies in other states. Agent may disseminate information about the Property to such affiliated brokers, inviting the submission of offers by prospective Buyers to acquire the Property. Seller authorizes Agent and any affiliated broker to represent any prospective Buyer in the acquisition of the Property, and to submit offers on behalf of such Buyers. Seller understands that this authorization may result in Agent's representing both Seller and a prospective Buyer, and Seller hereby authorizes and consents to such dual representation and agrees to execute a Dual Agency Disclosure Statement provided by Agent. **[Note to IPA: We would like to discuss the dual agency relationship.]**

18) **BROKER CO-OP - SELLER'S OPTION:** N/A

19) **ARBITRATION OF DISPUTES:** If a controversy arises out of this Agreement or any transaction contemplated hereunder, Seller and Agent agree that such controversy shall be settled by final, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. In determining any question, matter or dispute, the arbitrator(s) shall apply the provisions of this Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof. Notwithstanding anything to the contrary herein, Agent may initiate a judicial action to the extent necessary to perfect and enforce Agent's lien rights hereunder.

20) **ATTORNEYS' FEES:** In any dispute arising out of this Agreement or any transaction contemplated hereunder, each party shall be responsible for its own attorneys' fees, experts' fees and costs, including costs of arbitration or other legal proceeding.

21) **EXCHANGE OR GROUND LEASE:** As used in this Agreement, the terms "sale", "sell", "purchase", or "exchange", or any derivatives thereof, shall be understood to include: (a) an exchange of the Property; (b) a lease or license of not less than 50% of the interior square footage of the Property, including but not limited to a ground lease or master lease; or (c) the sale or other transfer of Seller, if not an individual, unless otherwise agreed by Seller and Agent. In the event of an exchange, if no acquisition price is identified, the Commission described in Paragraph 5 above shall be calculated as a percentage of the exchange value of the Property. In the event of an applicable lease or license, the Commission described in Paragraph 5 above shall be calculated as FOUR percent (4%) of the total monetary compensation scheduled to be received by Seller thereunder. Agent is hereby authorized to represent all parties to any such exchange, lease or license transaction and to collect compensation or a Commission from such transactions.

22) **TAX WITHHOLDING:** Seller agrees to execute and deliver any instrument, affidavit or statement, or to perform any act reasonably necessary to carry out the provisions of the Foreign Investment in Real Property Tax Act and regulations promulgated thereunder in any transaction contemplated hereunder.

23) **ADDENDA:** Any addendum attached hereto, signed by the party(ies) to be charged, and delivered to the other party shall be deemed a part hereof. There are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any future modification of this Agreement will be effective only if it is in writing and signed by the party(ies) to be charged.

24) **GOVERNING LAW, Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties agree to the exclusive jurisdiction of the federal and state courts located in Auglaize County, Ohio, and agree that such courts shall be a proper place for venue in connection with any litigation initiated under this Agreement.

25) **EXTENSION OF TERM:** N/A

26) **NON-DISCRIMINATION:** Agent and Seller acknowledge that it is illegal for either Seller or Agent to refuse to sell, exchange or transfer the Property to any person on the basis of race, color, national origin, sex, age, marital status or physical disability.

27) **COMPLIANCE WITH LAWS:** Seller agrees to comply with any applicable local, state or federal ordinances and laws relating to the sale, exchange or other transfer of the Property. Seller further agrees to pay all transfer taxes and assessments allocable to Seller under local, state and federal ordinance or law and shall otherwise comply with all local, state and federal laws.

28) **INTEGRATION AND SURVIVAL:** This Agreement contains the entire understanding and agreement between Seller and Agent concerning the subject matter herein, and supersedes any and all prior agreements, understandings, promises, representations and warranties, whether written or oral, between the Seller and Agent, concerning the subject matter hereof. Should any provision of this Agreement or portion thereof be deemed illegal, invalid or otherwise unenforceable, then to the maximum extent permitted by law, the remainder of the Agreement shall remain valid and binding as between the parties.

[Remainder of Page Intentionally Left Blank]

29) **OTHER TERMS AND CONDITIONS:**

FAIR HOUSING STATEMENT

It is illegal, pursuant to the Ohio fair housing law, division (H) of section 4112.02 of the Revised Code, and the federal fair housing law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

EQUAL HOUSING OPPORTUNITY

SELLER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL OR TAX ADVICE, AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM SELLER'S ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL

THE UNDERSIGNED SELLER AND AGENT AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, AND SELLER ACKNOWLEDGES RECEIPT OF AN EXECUTED COPY HEREOF. This Agreement may be executed in counterparts, and transmitted by facsimile by and to each of the parties, and each such counterpart shall be deemed an original, and all of them together shall constitute a single instrument.

SELLER:
BY: Douglas A. Spencer
ITS: President of the Board of Auglaize County Commissioners
DATE: October 23, 2018

ADDRESS: 209 S. Blackhoof Street, Room 201
Wapakoneta, OH 45895
TELEPHONE: 419-739-6710

AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES

BY: Michael L. Glass, Ohio Broker of Record
DATE:

ADDRESS: 230 West St., Suite 100
Columbus, OH 43215
TELEPHONE: 614-360-9800

SELLER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL OR TAX ADVICE, AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM SELLER'S ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL

County Commissioners Office
Auglaize County, Ohio
October 23, 2018

NO. 18-425

IN THE MATTER OF AMENDING THE ANNUAL APPROPRIATION AS REQUESTED BY THE AUGLAIZE COUNTY ADMINISTRATOR.

****

The Board of County Commissioners of Auglaize County, Ohio met in regular session on the 23rd day of October, 2018.

Commissioner Regula moved the adoption of the following:

RESOLUTION

WHEREAS, under date of January 2, 2018, the Annual Appropriation for Auglaize County was accepted, having been prepared with the 2018 Annual Amended Official Certificate of Estimated Resources which was given to the Board of County Commissioners by the County Auditor; and,

WHEREAS, County Auditor Janet Schuler informed the Board that an amendment was made to the Annual Amended Official Certificate of Estimated Revenue for the (082) FAA 19-2018 Utility Reimbursement Grant Fund by $599,463.00; and,

WHEREAS, Auglaize County Administrator Erica Preston requested that the Board amend the 2018 Annual Appropriation to reflect the following increase:

Increase – 082.0082.535800 (Transfer Out) by $599,463.00.

THEREFORE BE IT RESOLVED that the Board of County Commissioners of Auglaize County, Ohio, does hereby order the 2018 Annual Appropriation Resolution be amended to show the change as tabulated above.

Commissioner Spencer seconded the Resolution and upon the roll being called, the vote resulted in the adoption of the Resolution as follows:

Adopted this
23rd day of
October, 2018

BOARD OF COUNTY COMMISSIONERS
AUGLAIZE COUNTY, OHIO

Douglas A. Spencer, Yes
Douglas A. Spencer

Don Regula, yes
Don Regula

ABSENT,
John N. Bergman

cc: County Auditor
County Administrator
Airport Manager
Airport Authority
Delta Airport Consultant