

Bill No. 85
2015

By-law No. A.- _____

A By-law to approve an "Agreement to Approve a Management Contract" between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Health and Long-Term Care, The Corporation of the City of London and Extendicare (Canada) Inc.; and to authorize the Mayor and City Clerk to execute the agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 110(1) of the *Long-Term Care Homes Act, 2007* provides that a licensee of a long-term care home shall not allow anyone else to manage the home except pursuant to a written contract approved by the Director;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement to Approve a Management Contract to be entered into between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Health and Long-Term Care, The Corporation of the City of London, and Extendicare (Canada) Inc. regarding the approval of a management contract for the Dearness Home, attached as Appendix "1" to this by-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council February 24, 2015.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading – February 24, 2015
Second Reading – February 24, 2015
Third Reading – February 24, 2015

Appendix "1"

This **AGREEMENT TO APPROVE A MANAGEMENT CONTRACT** is made on the _____ day of _____, 20____.

AMONG:

Her Majesty the Queen in Right of Ontario,
as represented by the **Minister of Health
and Long-Term Care**

(hereinafter referred to as the "**Minister**")

- and-

The Corporation of the City of London, a corporation
incorporated under the laws of the Province of Ontario

(hereinafter referred to as the "**Licensee**")

- and -

Extendicare (Canada) Inc., a corporation
incorporated under the laws of Canada

(hereinafter referred to as the "**Manager**")

WHEREAS:

1. The Licensee is licensed or approved under the *Long-Term Care Homes Act, 2007* (the "**Act**") to operate and maintain 243 long-term beds in Dearness Home for Senior Citizens (the "**Home**") at a site at 710 Southdale Road East, in London, Ontario (the "**Site**").
2. The Licensee has entered or will enter into a management contract with the Manager whereby the Manager is proposed to manage and operate the Home on behalf of the Licensee.
3. The management contract requires the approval of the Director under section 110(1) of the Act.
4. The Director under section 110(1) of the Act (the "**Director**") is prepared to grant the approval on the terms and conditions set out in this Agreement.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** In addition to the terms defined in the recitals to this Agreement, the following words and phrases will have the meanings set forth below unless the context requires otherwise:

"Agreement" means this agreement, including Schedule "A" hereto, and any instrument that amends or supplements this agreement;

"Applicable Law" means any statute, regulation, by-law, order, judgment, principle of law, guideline, policy or code relating to the operation of the Home, as determined by the Minister, including the Act and regulations thereunder;

"LHIN" means the Local Health Integration Network responsible for the area in which the Home is located;

"Management Contract" means the management contract attached hereto as Schedule "A" between Manager and the Licensee, as may be amended under Section 8 of this Agreement; and

"Service Accountability Agreement" means any service accountability agreement that may be entered into by the LHIN and the Licensee in respect of the Home in accordance with Applicable Law, and also includes any other agreement that may be entered into between the Minister and the Licensee in respect of the Home.

2. **Approval.** Subject to the terms and conditions set out herein, the Director hereby approves the Management Contract pursuant to Section 110(1) of the Act. This Approval shall not be interpreted to constitute any other approval required by law, and anything that is or may be authorized under the Management Contract shall be subject to any applicable approval, consent, etc. that is required by Applicable Law.
- 2.1 **Term.** Subject to any earlier withdrawal of approval of the Management Contract pursuant to s. 110 (5) of the Act and s.12 of this Agreement, this Agreement commences on the day it is signed by the Director, and terminates on the day the Management Contract terminates.
3. **Compliance with Applicable Law by Manager.** The Manager shall manage and operate the Home and perform its duties under the Management Contract in accordance with this Agreement, Applicable Law and the Service Accountability Agreement. This Agreement is subject to the requirements set out in s. 110 of the Act and s. 276 of Regulation 79/10 thereunder, as these may be amended from time to time, and this Agreement shall be interpreted in a manner that is consistent with those provisions, as interpreted by the Minister. Without limiting the generality of the foregoing, the Manager:
 - (a) shall keep the Licensee adequately informed about the operation of the Home, including promptly giving the Licensee any document served on or notice given to the Licensee by being delivered to the Home;
 - (b) acknowledges and agrees that funding under the Act will be paid to the Licensee, not to the Manager directly; and
 - (c) acknowledges that the Director's approval of the Management Contract can be withdrawn under subsection 110(5) of the Act at any time without liability.
4. **No Release of the Licensee and Liabilities of the Licensee.** Nothing in this Agreement shall release the Licensee from any of its obligations or liabilities as the Licensee for the Home under Applicable Law or as the Licensee under the Service Accountability Agreement, and, for greater certainty, the Licensee shall be liable and responsible to the Minister, Director for all acts and omissions of the Manager, its agents, directors, officers and employees in respect of the Home as if the acts and omissions were the acts and omissions of the Licensee and its directors, officers, agents and employees. The Minister acknowledges that the Licensee has agreed not to amend the Service Accountability Agreement without the consent of the Manager. For greater certainty, and subject to the foregoing as set out in this section, nothing in this Agreement shall release the Manager from its indemnification and insurance obligations to the Licensee in the Management Contract.

5. **Subcontracting and Assignment.** The Manager and the Licensee shall not:
 - (a) enter into a subcontract with respect to any of their rights or duties under the Management Contract;
 - (b) subcontract or assign the management of the Home, in whole or in part, without the specific written approval of the Director or
 - (c) assign the Management Contract.
6. **Change of Control of the Manager.** The Manager shall obtain the written approval of the Director prior to any change in who has a Controlling Interest (as determined in accordance with the principles set out in the Act) in the Manager.
7. **Use of Site and Home.** During the term of the Management Contract and this Agreement, the Manager shall not permit the Site and the Home to be used for any purpose other than a long-term care Home without first obtaining the written consent of the Minister.
8. **Amendment of Management Contract.** The Licensee and the Manager shall not materially amend the Management Contract without first obtaining the prior written consent of the Director.
9. **No Liability of Ministry under the Management Contract.** Nothing in this Agreement obligates the Minister or Director to perform any obligation or covenant under the Management Contract or in any way makes the Minister or Director liable for any of the Licensee's or Manager's obligations under the Management Contract or otherwise.
10. **Right of Inspection and Enforcement.** The Manager shall not, without the written consent of the Director, remove from the Home any records related to the Home that may be required to be kept by the Licensee under Applicable Law or the Service Accountability Agreement. Nothing in this Agreement limits or restricts any rights of entry, inspection or enforcement under any Applicable Law.
11. **Default by the Licensee or the Manager under the Management Contract.** The Manager and the Licensee shall give to the Minister a copy of any notice of default or notice of termination that either of them gives to the other pursuant to the Management Contract, and such notice shall be delivered to the Minister at the same time as it is delivered to the other party. Notwithstanding any provision of the Management Contract, if either the Licensee or the Manager is in default under the Management Contract in circumstances which would entitle the other party to terminate the Management Contract, the party shall not terminate the Management Contract until the party has given to the Minister no less than thirty (30) days' notice or such shorter notice as the Director may allow of that default and notice that the party intends to terminate the Management Contract by reason of a default by the other party. The rights granted to the Minister hereunder are not intended to limit or be in substitution for any rights that the Minister may have under Applicable Law or the Service Accountability Agreement to ensure the continuity of care for residents of the Home.
12. **Termination of Approval by the Director.** In the event that the Director withdraws his approval of the Management Contract pursuant to s.110(5) of the Act, the Manager shall if the Director so requests continue to perform its duties under the Management Contract and this Agreement for the period specified by the Director, up to a maximum of 60 days, and the Licensee (and not the Minister) shall be liable to the Manager for any payments due with respect to those duties during that period. The Director's approval of the Management Contract shall be deemed to continue during that period subject to any written stipulations provided by the Director to the Parties.

13. **Notice.** Any notice, request, demand, consent, approval, authorization, correspondence, report or other communication (each a "**Notice**") required, permitted or contemplated under this Agreement will be in writing and delivered by courier, personally delivered or sent by facsimile or by prepaid, registered mail addressed to the parties at the addresses set out below. A Notice sent by facsimile or delivered by courier prior to 5.00p.m. (Toronto time) on a day that the offices of the Government of Ontario are open for regular business (a "**Business Day**") is deemed to be received by the addressee on that day. If the Notice is so sent or delivered after 5:00p.m. on a Business Day or on a day other than a Business Day, then it is deemed to be received by the addressee on the next following Business Day. A Notice sent by prepaid, registered mail is deemed to be received by the addressee on the fourth Business Day following the date when it is mailed. Notices will be sent as follows:

(a) if to the Minister:

Ministry of Health and Long-Term Care
Health System Accountability and Performance Division
Performance Improvement and Compliance Branch
1075 Bay Street, 11th Floor
Toronto ON M5S 2B1

Attention: Nancy Lytle, Director, Performance Improvement and Compliance

Phone No.: (416) 212-2362

Facsimile No.: (416) 327-7603

(b) if to the Licensee:

The City of London
Office of the City Clerk
300 Dufferin Avenue
London ON N6A 4L9

Attention: City Clerk
Fax: (519) 661-4892

(c) if to the Manager:

Extendicare (Canada) Inc.
3000 Steeles Avenue East, Suite 700
Markham ON L3R 9W2

Attention: Paul Tuttle, President
Fax: (905) 470-5588

Any party may from time to time change its address under this Section by Notice to the other party given in manner provided in this Section.

14. **Assurances.** Each party agrees that it will execute, do or cause to be done, executed and delivered all such further acts, documents and things as may be reasonably requested by any other party for purposes of giving effect to this Agreement.

15. **Assignment.** Neither the Licensee nor the Manager may assign any obligations or rights under this Agreement to another person.

16. **Successors and Assigns.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and permitted assigns, subject to Applicable Law.
17. **Counterparts.** This Agreement may be executed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument.
18. **Conflicts.** In the event that there are any conflicts between the terms of
- (a) Applicable Law
 - (b) the body of this Agreement
 - (c) the Management Contract
- the terms of the law or document that is higher on this list takes precedence.
19. **Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

IN WITNESS WHEREOF the parties hereto have executed this Approval of Management Contract Agreement as of the date first written above.

Her Majesty the Queen in right of Ontario, as Represented by the Minister of Health and Long-Term Care

_____ Date By: _____
 Nancy Lytle
 Director, Performance Improvement and Compliance Branch
 Director under s.110 of *Long-Term Care Homes Act, 2007*

The Corporation of the City of London

_____ Date By: _____
 Matt Brown, Mayor
 I have authority to bind the corporation.

_____ Date By: _____
 Cathy Saunders, City Clerks
 I have authority to bind the corporation.

Extendicare (Canada) Inc.

_____ Date By: _____
 Paul Tuttle, President
 I have authority to bind the corporation.

SCHEDULE "A"

[Management Contract and Amending Agreement (Re: accountability of Administrator)]