AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: GVH Assisted Living Agreement

Action Requested: County Manager Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see attached agreement between Gunnison County and GVH re: the Assisted Living - Gunnison Living Community.

Fiscal Impact:

Submitted by: Liz Mense for CAO **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, no change in financial aspect of this agreement from previous one. The balloon payment on mortgage referenced in agreement is due in November 2020.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/4/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 4/3/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 4/3/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/5/2019

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 4/16/2019

Revised April 2015

AGREEMENT REGARDING ASSISTED LIVING
GUNNISON LIVING COMMUNITY

THIS AGREEMENT REGARDING ASSISTED LIVING GUNNISON LIVING COMMUNITY ("Agreement"), made effective the 16th day of April, 2019, is by and between the Board of County Commissioners of the County of Gunnison, Colorado, 200 East Virginia Avenue, Gunnison, CO 81230 ("BOCC"), and the Board of Trustees of the Gunnison Valley Hospital, 711 North Taylor, Gunnison, Colorado 81230 ("Board of Trustees"), (hereinafter collectively the "Parties").

RECITALS

WHEREAS, the Parties agree that the continuing, well supported operation of the Assisted Living Gunnison Living Community (hereinafter "Assisted Living") is important in the continuum of health care and residential living accommodations for the Gunnison Valley community; and

WHEREAS, the Parties agree that the Board of Trustees represents the best option for the continuing, well supported operation and governance of the Assisted Living and further that the Board of Trustees, as managers of the health care system in the Gunnison Valley, represent the best opportunity for successful operation of the Assisted Living within the continuum of health care;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONSIDERATION HEREIN, the Parties agree as follows:

1. TERM.

This Agreement shall expire on October 31, 2020, unless sooner terminated or replaced as mutually agreed by the parties.

2. BOARD OF TRUSTEES.

During the terms of this Agreement, the Board of Trustees shall have the authority, obligation, sole liability for, and accountability for the management and daily operations of Assisted Living. The Board of Trustees agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of the Board of Trustees or its employees, subcontractors or agents in connection with this Agreement. This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

3. ASSISTED LIVING MORTGAGE AND LEASE.

a. The BOCC shall continue to make the current mortgage payments on the Assisted Living property (the "Mortgage").

b. The BOCC shall lease to the Board of Trustees the Assisted Living property, both real and personal; the annual lease payment shall be in an amount equal to the annual debt service on the Mortgage.

4. ASSISTED LIVING CAPITAL IMPROVEMENTS.

The BOCC hereby commits twenty thousand dollars ($20,000) per year, for the term of this Agreement, to capital improvements at Assisted Living. This amount will be adjusted annually, beginning in 2019, by using the consumer price index, CPI-U (all cities). This commitment is subject to the BOCC making an annual budget appropriation in an amount sufficient to fund the commitment. If the BOCC fails or refuses to make such an appropriation, the Board of Trustees or the BOCC shall have the right to terminate this Agreement.

The parties agree that to the best of their knowledge, there are no pending or anticipated structural deficiencies related to the building that houses the Assisted Living program. Further, it is agreed that the appropriation for capital improvements, as defined above, shall be for the purpose of making plant equipment and service repairs, building improvements, equipment replacements, furnishing improvements and replacements, and grounds improvements or repairs, which are less in value of the amount of $20,000.

In the event that the Board of Trustees become aware of a major facility structural component or plant equipment operating system that requires repair or replacement and such or replacement is anticipated to exceed $20,000, the Board of Trustees shall give immediate notice of the existence of the facility problem to the BOCC and request a meeting for discussion of the situation. In the event of an unusual structural or physical plant equipment expense, the parties agree to share the cost of restoration that is in excess of the $20,000 annual commitment of the BOCC. However, in no event will the Board of Trustees be required to maintain the Assisted Living facilities in a condition that places at risk its regulatory compliance.

5. MEETINGS.

The BOCC and Board of Trustees will meet periodically, but no less than annually, to review the financial status of the Gunnison Living Center business units.

6. AUDIT.

An independent and mutually acceptable auditor may be engaged to perform a financial analysis of the Assisted Living program and the fees for such independent audit will be shared equally between the Board of Trustees and BOCC.

7. CONTINUED OPERATION OF THE ASSISTED LIVING.

The Board of Trustees shall fund, administer, govern and operate Assisted Living as an assisted living facility throughout the term of this Agreement. This provision shall be enforceable by the BOCC by any legal or equitable remedy including specific performance.

8. DELEGATION AND ASSIGNMENT.

The Parties shall not delegate or assign their duties under this Agreement without the prior written consent of the BOCC which consent the BOCC may withhold in its sole discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of any party.

9. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Board of County Commissioners
of Gunnison County, Colorado: County Manager
Gunnison County
200 E. Virginia Avenue
Gunnison, Colorado 81230
Phone: 970-641-0248

Board of Trustees of the
Gunnison Valley Hospital: Chairperson
Board of Trustees of the Gunnison Valley Hospital
711 North Taylor
Gunnison, CO 81230
Phone: 970-641-1456

Any party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

10. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder,

including but not limited to the Agreement Regarding Gunnison Valley Health Assisted Living dated February 21, 2014, the Management Agreement between Gunnison Home Association, Inc. and Board of Trustees of the Gunnison Valley Hospital dated October 6, 2000, the Lease Agreement between Gunnison County Housing Authority and the Gunnison Home Association, Inc. dated October 11, 2000 and the Memorandums of Agreement between the Board of the Gunnison County Housing Authority, Gunnison County, Colorado and the Board of Trustees of the Gunnison Valley Hospital dated July 31, 2000 and October 11, 2000 respectively.

11. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by the BOCC of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

12. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the State of Colorado District Court in Gunnison, Colorado.

13. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below to be effective as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy Clerk

BOARD OF TRUSTEES OF THE
GUNNISON VALLEY HOSPITAL

By: _____
Chairperson

ATTEST:

_____
Secretary