// OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION

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December 28, 2011

[redacted]

Re: Our file number LR-11-135
[redacted] – Supplemental Request

Dear [redacted]

This letter ruling is in response to your letter ruling request dated December 20, 2011, wherein you posed a series of ruling requests relating to the Rural Venture Capital Formation Incentive Act (68 O.S. §2357.70 et seq.). Following a verbatim restatement of the facts as outlined in your letter, are the specific rulings requested and our responses thereto.

> Our client, [redacted] (the "Hospital"), is an Oklahoma limited liability company that previously received letter rulings from the Oklahoma Tax Commission dated November 16, 2006, June 6, 2007, and September 4, 2008 (collectively, the "Prior Rulings") in regard to certain investment made in the Hospital through the Rural Venture Capital Formation Incentive Act, Tit. 68 O.S. §2357.71 et. seq. (the "RVCA"). As set forth in the Prior Rulings, the Hospital organized two Oklahoma limited liability companies, [redacted] ("MCHI") and [redacted] and together with MCHI, the "Funds"), for the purpose of allowing Oklahoma investors and lending institutions to make investments through the Funds into either (i) a "qualified rural small business capital company" as defined in Tit. 68 O.S. § 2357.72(8) (an "SBC"), which in turn invested such funds into the Hospital, or (ii) directly into the Hospital. Consequently, the investments made in the Funds qualified for the Oklahoma tax credits (the "Credits") provided in the RVCA.
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> The transactions described in the Prior Rulings with respect to MCHII and MCHI closed on July 19, 2007 and December 31, 2008, respectively, (each a "Prior Closing" and collectively, the "Prior Closings"), with total investment proceeds of $43,323,450 (the

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"2007 Tranche") and $17,600,000 (the "2008 Tranche"), respectively. All of the investment received by the Hospital in the Prior Closings was "qualified investment" in the form of "subordinated debt", as such terms are defined in Tit. 68 O.S. § 2357.72(7) and (9) (collectively, the "RVCA Loans"). Within 18 months of each Prior Closing, more than fifty percent (50%) of the RVCA Loans received by the Hospital in that Prior Closing had been expended by the Hospital on the acquisition of "tangible assets" or "intangible assets" used in the active conduct of the Hospital's business or as "working capital" for the active conduct of the Hospital's business, as such terms are defined in Tit. 68 O.S. § 2357.72(6)(f)). As of the end of June 2009, all investment proceeds received by the Hospital in the Prior Closings had been expended in furtherance of the active conduct of the Hospital's business.

Development and construction of the land and facilities for the Hospital were completed in March 2009 and the Hospital began business operations as a 48-bed acute care hospital in Muskogee, Oklahoma on March 23, 2009. The Hospital has continuously operated this business ever since. In addition to the investment proceeds received by the Hospital in the Prior Closings, the Hospital has obtained a significant amount of financing outside of the RVCA for the Hospital's development and continued operations. More specifically, the owners of the Hospital have made numerous capital contributions to the Hospital since its formation in the total aggregate amount of $10,700,000. In addition, the Hospital has secured, outside of the RVCA, loans from various financial institutions in the total aggregate amount of $6,400,000 (the "NonRVCA Loans").

The Hospital is now considering a transaction (the 'Transaction") whereby the Hospital will sell its business, including all receivables, cash and general intangible assets associated with the Hospital's operations (the "Purchased Assets"), to an unrelated third-party (the "Buyer") for a purchase price equal to the fair market value of the Purchased Assets (the "Purchase Price"). Payment of the Purchase Price will be made through Buyer's assumption or satisfaction of the current outstanding amount of the Non-RVCA Loans and, to the extent of any Purchase Price remaining, a cash payment to the Hospital (the "Net Cash Proceeds"). After closing of the Transaction, all RVCA Loans and the related tax-credit structures required under the RVCA with respect to the RVCA Loans will remain in place and unchanged. The Hospital will retain legal title to the land, improvements and equipment currently used in connection with the operation of the Hospital's business (collectively, the "Retained Assets"), and will lease those assets to the Buyer subject to the terms of a lease agreement with a term no shorter than 15 years. The Buyer will be required under the terms of the lease agreement to utilize the Retained Assets in connection with the ownership and operation of the Purchased Assets (i.e., the operation of a hospital). The Hospital will use the rent revenue received in connection with the lease of the Retained Assets to service the RVCA Loans.

Before proceeding with the Transaction, the Hospital respectfully requests a letter ruling from the Oklahoma Tax Commission pursuant to Rule 710: 1-3-73(e) that, under the specific facts indicated, the Transaction will not cause a recapture of the Credits due to (a) the change in the classification of the Hospital's business activity under the Standard Industrial Classification Manual, or (b) the Hospital's, and ultimately its equity investors', receipt of any Net Cash Proceeds that may result from the Transaction.

The Hospital represents and warrants to the Oklahoma Tax Commission that the facts set forth above are true and correct. As a supplement to the previously stated facts, the Hospital offers the following facts, which are true and correct in all regards:

1. At each of the Prior Closings, the Hospital had a principal place of business and conducted 100% of its operations within Oklahoma. The Hospital has since continuously maintained its principal place of business and conducted 100% of its operations within Oklahoma.

2. The Hospital is a special purpose entity that has, since its inception, continuously owned and operated a 48-bed acute care hospital. The Hospital is currently engaged, and since its inception has been continuously engaged, in business activity classified under Industry Group Number 8062 or 8069 appearing under Major Group Number 80 of Division I of the Standard Industrial Classification Manual.

3. The Hospital had as of each of the Prior Closings, and has since continuously had, at least 50% of its employees or assets located in Oklahoma.

4. The Hospital qualified as of each of the Prior Closings, and has since continuously qualified, as a "small business" as defined by the federal Small Business Administration. Furthermore, within 18 months after receipt of funding from the 2007 Tranche and the 2008 Tranche, the Hospital expended at least 50% of the funding received through the respective Tranche for the acquisition of "tangible assets" or "intangible assets" used in the active conduct of the Hospital's business or as "working capital" for the active conduct of the Hospital's business, as such terms are defined in Tit. 68 O.S. § 2357.72(6)(f)). More specifically, the Hospital used the proceeds of (a) the 2007 Tranche to acquire the real property for, and construct, the Hospital's medical facility, and (b) the 2008 Tranche to purchase, and not lease, fixtures and equipment to be used in connection with the operation of the Hospital's business and to provide immediate working capital therefore.

5. As of the end of June 2009, the Hospital had expended all investment proceeds received by the Hospital in the Prior Closings and such expenditures were made in furtherance of the active conduct of the Hospital's business (i.e., the operation of a Hospital).

6. Pursuant to the Transaction, the Buyer will pay the Purchase Price to the Hospital in exchange for the Purchased Assets. The Purchase Price will not be distributed to or otherwise used to repay any loan or investment made by the Funds or any SBC in the Hospital including, but not limited to, the RVCA Loans. A portion of the Purchase Price will be used to satisfy or assume the Hospital's Non-RYCA Loans and any Purchase Price remaining, or the Net Cash Proceeds, will be distributed to the Hospital's equity owners.

7. After closing the Transaction, albeit that it will have sold the Hospital's current business, the Hospital will continue to own the Retained Assets and will lease the Retained Assets to the Buyer in connection with the Buyer's operation of the Purchased

Assets. The Buyer will be required under the terms of the lease agreement to utilize the Retained Assets in connection with the ownership and operation of the Purchased Assets (i.e., the operation of a hospital).

8. After closing of the Transaction, all RVCA Loans and the related tax-credit structures required under the RVCA with respect to the RVCA Loans will remain in place and unchanged.

9. The Hospital will use the rental payments it receives from the Buyer for the lease of the Retained Assets to service the RVCA Loans in accordance with their existing terms, pay real estate taxes, pay for casualty insurance and satisfy other incidental expenses associated with its leasing business.

10. As a result of the Transaction, the Hospital will shift its business from an owner and operator of an acute care hospital to a real estate holding company, which is a business activity classified under Industry Group Number 6512 and 6519 appearing under Major Group Number 65 of Division H of the Standard Industrial Classification Manual Rulings Requested:

Based on these facts, the Hospital respectfully requests a letter ruling from the Tax Policy and Research Division of the Oklahoma Tax Commission that:

1. By engaging in the Transaction, which will cause the Hospital to transition from an entity engaged in a business that satisfies the Standard Industrial Classification for an "Oklahoma rural business venture" required under Tit. 68 O.S. § 2357.72(6) (the "SIC Requirement') to a business that does not satisfy the SIC Requirement, the Hospital will not trigger a "recapture event" under Tit. 68 O.S. § 2357.74B(A) or otherwise cause a recapture of the Credits, because the Hospital will have satisfied the SIC Requirement upon each Prior Closing and during the period in which the Hospital expended, in furtherance of the qualifying business activity, all investment proceeds received from the Prior Closings.

Based upon the facts and other assertions contained in your December 20 request and the attached exhibits, the Transaction will not cause a recapture of the Credits due to the change in the classification of the Hospital's business activity under the Standard Industrial Classification Manual. If at the time the SBC or Fund made qualified investments in the Hospital the Hospital met the definition of an "Oklahoma rural business venture" under Tit. 68 O.S. § 2357.72(6), and if the Hospital expended all investment proceeds received by the Hospital in the Prior Closings and such expenditures were made in furtherance of the active conduct of the Hospital's business, the subsequent change from an owner and operator of an acute care hospital to a real estate holding company will not cause a recapture of the Credits.

2. The Hospital's, and ultimately its equity investors', receipt of any Net Cash Proceeds from the sale of the Purchased Assets will not constitute a "recapture event" under Tit. 68 O.S. § 2357.74B(A) or otherwise cause a recapture of the Credits, because the Hospital's RVCA tax credit structure described in the Prior Rulings will remain in place following the closing of the Transaction and the Transaction will not result in the transfer, withdrawal or return of any "qualified investment" made by the Funds or any SBC in the Hospital.

Based upon the facts and other assertions contained in your December 20 request and the attached exhibits, the equity investors' receipt of any Net Cash Proceeds from the sale of the Purchased Assets will not constitute a "recapture event" under Tit. 68 O.S. § 2357.74B(A).

This response applies only to the circumstances set out in your request dated December 20, 2011. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon only by the entity to whom it is issued and its investors, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

Sincerely,

Oklahoma Tax Commission

Lisa Haws

Lisa Haws
Tax Policy & Research Division