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**COUNSEL TO THE EDMERE  
 RESIDENTS TRUST**

**UNITED STATES BANKRUPTCY COURT  
 FOR THE NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION**

In re:	§	Chapter 11
Northwest Senior Housing Corporation, <i>et al.</i> , <sup>1</sup>	§	Case No. 22-30659 (MLV)
Debtors.	§	(Jointly Administered)

**DECLARATION OF JOHN FALLDINE, EXECUTIVE DIRECTOR OF DEBTOR IN  
 SUPPORT OF THE FIRST AMENDED APPLICATION OF  
THE EDMERE RESIDENTS TRUST**

I, John Falldine, former Executive Director of Northwest Senior Housing Corporation d/b/a Edgemere (“**Edgemere**” and “**Debtor**”), declare under penalty of perjury pursuant to 28 U.S.C § 1746:

1. I was the Executive Director of Edgemere, a debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”) from July 2021 to June 13, 2023.

<sup>1</sup> The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669) (together, the “**Debtors**”). The Debtors’ mailing address is 8523 Thackery Street, Dallas, Texas 75225.



2. I have over 25 years of experience in elder healthcare, including with continuing care retirement communities (“CCRCs”).

3. In my capacity as former Executive Director, I have personal knowledge of, and am familiar with, the business affairs and day-to-day operations of Edgemere. I submit this Declaration in support of the First Amended Application of the Edgemere Residents Trust to Resolve Conflicting Demands, For Interpretation of the Residency Agreements and to Ensure Distributions are Accomplished Pursuant to the Plan (the “**Application**”).

## I. COMPANY HISTORY AND OPERATIONS

### A. Company Structure and History

4. Northwest Senior Housing Corporation was formed for the purpose of developing, owning and operating a senior living community known as Edgemere.

5. Edgemere has been operating since December 2001 on an expansive 16.25-acre site located in Dallas, Texas.

6. The community consists of 304 independent living (“**IL**”) units. Residents who in occupied an IL unit in Edgemere were required to enter into a Life Care Agreement (a “**Residency Agreement**”) with Edgemere. The Residency Agreement attached hereto as Exhibit A is a true and correct copy of the form agreement used by Edgemere and its residents. The Addendum attached hereto as Exhibit B is a true and correct copy of the form Addendum used by Edgemere and its residents. Under a Residency Agreement, a resident paid a one-time entrance fee and fixed monthly fees (subject to periodic rate increases). Edgemere offered 90% refundable contracts, 70% refundable contracts, 50% refundable contracts, and 0% refundable contracts. Most were 90% refundable contracts.

7. As of January 1, 2022, the Entrance Fees ranges from \$345,000 for the smallest one-bedroom apartment to \$1,454,000 for the largest three-bedroom apartment.

**B. Double Occupancy Residency Agreements/Right of Survivorship**

8. Edgemere and the Residents intended, and in fact implemented the Residency Agreements treating the Residents under “Double Occupancy” Residency Agreements. as possessing a right of survivorship, with the last surviving resident becoming the sole owner of 100% of the right to receive the entrance fee refund. It was the normal course of conduct for Edgemere to pay 100% of the refunds due under Double Occupancy Residency Agreements to the last surviving resident, or his or her estate if the last surviving resident was deceased and if there was no addendum executed with instructions to pay the refund to a third party (an “Addendum Payee”).

**C. Addendums/P.O.D.**

9. It was the intent of Edgemere and the residents, and the normal course of conduct for Edgemere and the residents, to treat the Addendums as “pay on death” (“**P.O.D.**”) provisions to the contracts. Edgemere paid refunds when due to the residents, and not the Addendum Payees, if the refund became payable during the life of the Resident (or last surviving resident). Edgemere would allow the Residents to modify the Addendums, and to revoke or change the Addendum Payees, at any time prior to their deaths without the consent of the Addendum Payees.

**D. The Ventana Residency and Services Agreement**

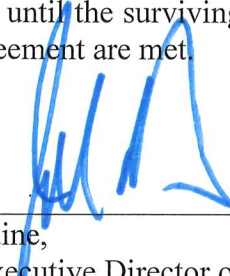
(i) The Ventana is a continuing care retirement community located within one (1) mile of Edgemere. I have reviewed the Ventana Residency and Services Agreement attached hereto as Exhibit C. The Ventana agreement expressly provides that the last surviving resident has a right of survivorship under its double occupancy agreements, and any designation of a beneficiary to

receive a refund will be payable only upon the death of the last surviving resident. The Ventana contract provides:

- a. If the Residency is initially occupied by two (2) Residents, the Entrance Deposit shall be paid jointly to each of you, if both are alive. If only one of you is alive, the amount due will be retained for the surviving Resident. If neither of you is alive, the refund will be paid in accordance with a Designation of Beneficiary of Entrance Deposit Refund executed by the Resident who last occupied the Residence, or if no Designation of Beneficiary has been executed, to the personal representative of your estate. (Emphasis added).
- b. If the Residence is initially occupied by one (1) Resident, the amount due will be paid to you, if alive. If you are not alive, the refund will be paid in accordance with the Designation of Beneficiary of Entrance Deposit Refund executed by you, or if not, to the personal representative of your estate. (Emphasis added).
- c. No refund of your Entrance Deposit will occur until the surviving Resident ceases to reside at Ventana, and all conditions of the Agreement are met.

See Ventana Agreement, §8.4 (a), (b), and (c).

Dated: September 11, 2023

By:   
John Falldine,  
Former Executive Director of Edgemere

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COUNSEL TO THE EDGEMERE  
RESIDENTS TRUST

# **Exhibit A**

**EDGEMERE**  
**LIFE CARE AGREEMENT**

EDGEMERE

LIFE CARE AGREEMENT

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ADDENDUM A – CONFIDENTIAL DATA PROFILE

## EDGEMERE

### LIFE CARE AGREEMENT

#### NOTICES

- A. You may cancel this contract at any time prior to midnight of the seventh day after the date on which you sign this contract (Rescission Period) or you receive the Edgemere Disclosure Statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice, and you will be entitled to receive a refund of all assets transferred (without interest), subject to the terms and conditions contained in this contract, other than the periodic charges applicable to your occupancy of a living unit.
- B. This document, if executed, constitutes a legal and binding contract between you and Northwest Senior Housing Corporation. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding. This Agreement provides certain rights of occupancy of a senior living community, hereinafter referred to as "Edgemere" located in Dallas, Texas.
- C. You shall not be required to move into Edgemere before the expiration of the seven (7) calendar day period (Rescission Period).

#### TERMS OF OCCUPANCY

This Life Care Agreement ("Agreement") is entered into by \_\_\_\_\_

(individually and/or collectively "you" or "Resident"), and Northwest Senior Housing Corporation d/b/a Edgemere, which owns and operates Edgemere located in Dallas, Texas. The term "Edgemere" is used throughout this Agreement to denote Northwest Senior Housing Corporation, or the senior living community. The terms "we", "our", or "NSHC" are also used in lieu of Northwest Senior Housing Corporation.

Edgemere seeks to provide quality residential housing for retirement age men and women along with an array of personal services and amenities outlined in this Agreement, including certain assisted living and nursing services. Subject to the conditions contained in this Agreement, we agree to make available to you, an unfurnished independent living unit ("Residence") in Edgemere and provide you with general services and amenities described in this Agreement. The Residence is described as follows:

RESIDENCE NUMBER: \_\_\_\_\_

RESIDENCE STYLE: \_\_\_\_\_



1. **RESERVATION OF RESIDENCE**

In connection with this Agreement, Resident made a deposit equal to ten percent (10%) of the Resident Deposit (hereinafter defined) or \$ 65,455 (the "Reservation Deposit") to reserve the Residence identified above located within Edgemere.

- 1.1 **Conditions of Occupancy.** Conditions of occupancy of the Residence are that Resident shall: (i) meet the health and financial conditions of acceptance into Edgemere; (ii) execute this Agreement; (iii) pay in full the remaining balance of the Resident Deposit ("Resident Deposit Balance") and (iv) pay the applicable ongoing Monthly Service Fee(s).
- 1.2 **Escrow of Reservation Deposit.** The Reservation Deposit shall be placed and maintained in an escrow account to the extent required by Texas law. The escrow agent is Regions Bank, 1717 St. James Place, Suite 500, Houston, TX 77056.
- 1.3 **Refund of Reservation Deposit for Involuntary Termination.** The Reservation Deposit shall be refunded in full to Resident within thirty (30) days of termination of this Agreement under the following circumstances: (i) Edgemere's failure to meet its obligations under this Agreement prior to occupancy of the Residence by Resident; or (ii) death, incapacity or serious illness of Resident prior to occupancy. If Resident's health status changes after Resident is accepted for Residency by Edgemere so that at the time of occupancy Resident is precluded from independent living for health reasons and certified by a licensed physician, the entire Reservation Deposit shall be refunded to Resident; provided, however, Resident may elect not to terminate this Agreement and may elect direct admission into Assisted Living (hereinafter defined) or the Health Center (hereinafter defined) at the appropriate level of care, as determined by Edgemere.
- 1.4 **Refund of Reservation Deposit for Voluntary Termination.** If Resident terminates this Agreement after seven (7) days from the date it is executed other than for reasons in Section 1.3, above, Edgemere shall refund the entire Reservation Deposit within thirty (30) days, less a processing fee of five hundred dollars (\$500.00).
- 1.5 **Disclosures.** Resident acknowledges that Resident has received a copy of the Disclosure Statement and other information which may be material to Resident's decision whether to occupy the Residence. Resident understands that Resident may not occupy the Residence and is not entitled to any services or benefits of the Life Care Agreement until the Resident Deposit has been paid in full.

2. **GENERAL SERVICES AND FACILITIES**

- 2.1 **Basic Agreement.** In consideration of payment of a Resident Deposit in the amount stated in Section 5.2 and payment of the applicable Monthly Service Fee, initially in the amount stated in Section 5.3, you will be entitled to occupy the Residence indicated above and to receive the services and use of the facilities described in this Agreement according to the provisions of this Agreement.

Your right to occupy the Residence or such other care accommodations to which you may be transferred in accordance with this Agreement shall continue for your lifetime unless sooner terminated as provided herein.

The right to occupy the Residence and receive services under this Agreement shall apply exclusively to the named Resident hereunder, and to no other individual(s). No person other than the Resident entering into this Agreement shall be permitted to occupy the Residence without the express written permission of Edgemere as hereinafter provided.

- 2.2 Residence Furnishings.** The Residence will be furnished at our expense with floor coverings, , self-defrosting refrigerator and freezer with ice maker, range and oven, dishwasher, microwave oven, garbage disposal, washer, dryer, an emergency alert system, fire sprinkler system and a telephone/data communications port and cable TV hookup.
- 2.3 Parking.** Surface parking areas will be provided for you and for guests of Edgemere as defined in the Resident Handbook. One secured underground parking space will be provided for each Residence at the request of the Resident and in conformance with our parking policy.
- 2.4 Community Common Areas.** You will have use of Edgemere community common areas in accordance with the policies and procedures of Edgemere, as modified and amended from time to time. Community common areas are non-smoking and may include:
- a. Formal & Casual Dining Rooms
  - b. Private Dining Room
  - c. Performing Arts Center
  - d. Outdoor Dining Terrace
  - e. Library
  - f. Conference Room
  - g. Game & Card Room
  - h. Creative Arts Center
  - i. Beauty & Barber Shop
  - j. Business Center
  - k. Wellness and Fitness Center
  - l. Convenience Store
  - m. Swimming Pool
  - n. Living Rooms
  - o. Guest Suites
- 2.5 Included General Services.** So long as you are in compliance with your obligations hereunder, we will provide you with the following services covered by the Monthly Service Fee and Resident Deposit:
- a. **Food Service.** Meals will be served on a daily basis in the main dining room. You are entitled to one meal credit per person for each day of the month (for example, 30 meal credits for June and 31 meal credits for July). You may purchase guest meals or use accumulated meal credits at any time during the month for meals for you and/or your guests. Any unused meal credits for any month will be forfeited and may not be applied as a credit against meal charges for any other period. If you are absent from Edgemere for more than fourteen (14) consecutive days, you will receive a meal credit allowance in conformance with our meal credit policy, provided you give Edgemere written notice of your intended absence at least two (2)

weeks in advance. For health-related absences, no prior notice is required. Additional meals are available upon request for an additional fee.

- b. **Housekeeping.** Housekeeping of the Residence, including vacuuming, mopping, sweeping and changing of bed linens occurs on a weekly scheduled basis.
- c. **Utilities.** The costs of sewer, water, waste disposal, electricity, heat, air-conditioning, and basic cable television service are included in the Monthly Service Fee. The Residence will be centrally wired for cable television and telephone service, as well as a data communications port. You will be responsible for all telephone, premium cable television and internet service provider charges.
- d. **Security and Emergency Alert System.** Each Residence will be equipped with smoke detectors, a sprinkler system and an emergency alert system. Edgemere will monitor the emergency alert systems on a twenty-four hour basis and coordinate emergency responses as appropriate. Security personnel will be employed and exterior entrances will have secured access.
- e. **Laundry.** We will provide scheduled weekly laundry service of your personal bed linens.
- f. **Maintenance.** We will maintain all community common areas and grounds. Edgemere will be responsible for providing repair, maintenance and replacement of equipment and furnishings provided by Edgemere, provided that such repairs are not required as a result of your negligence. You are responsible for maintenance of your personal property and are encouraged to purchase a renter's insurance policy covering your personal property and personal liability.
- g. **Mail.** A U.S. mailbox will be provided to you in a central location.
- h. **Transportation.** We will provide local transportation to designated shopping, medical facilities, and other local destinations on a regularly scheduled basis.
- i. **Social and Recreational Programs.** A full-time Lifestyle Director will coordinate a variety of social, recreational, educational and cultural programs for those residents wishing to participate. Specific programs will be based on residents' interest.
- j. **Property Taxes and Insurance.** We will pay for real property taxes for the community, with the exception of those assessed on your personal property. We will also obtain property and casualty insurance coverage on the buildings and grounds. Such coverage will not insure against loss or damage to your personal property or damage or injury to others caused by you. Edgemere recommends that you purchase appropriate comprehensive insurance.
- k. **Storage Area.** An individual storage area located in Edgemere will be assigned and available for your use.

- l. **Wellness Programming.** We will coordinate educational and screening programs promoting wellness and preventive health maintenance. Participation in these activities is voluntary.
- m. **Medical Director.** We will retain the services of a qualified physician ("Medical Director") to be responsible for the appropriateness and quality of medical services and medically related activities provided by Edgemere. The Medical Director is not expected to provide medical services to Residents and will be retained as a consultant to Edgemere.
- n. **Life Care Benefit.** If it is determined that you require assisted living or nursing care in the future, we will provide you with assisted living services available in our assisted living center ("Assisted Living") or nursing services available in our nursing center ("Health Center"), as described below and subject to changes in law.
  - (i) **Admission.** When a determination is made by your physician and approved by the Medical Director that you need assisted living services or nursing care, then you will be transferred to Assisted Living or the Health Center as provided for in Section 4 of this Agreement. Transfers to Assisted Living or the Health Center will only occur after consultation with the Resident, the Resident's family, and a licensed physician.

In the event that space for you, for any reason, is not available in Assisted Living or the Health Center upon determination that a permanent transfer is required, Edgemere will arrange and pay for your care in your Residence by a certified home health care agency of Edgemere's choice, if reasonably possible, until space becomes available in Assisted Living or the Health Center. If home health care is not medically possible, Edgemere will arrange and pay for your care in another facility of Edgemere's choice that can provide the same care that would otherwise have been provided by Edgemere until space becomes available. Edgemere will pay for care in another facility to the same extent as if it were provided by Edgemere.

- (ii) **Assisted Living.** We will provide to you, in a Traditional Assisted Living Apartment, support services that are designed to assist you with activities of daily living in accordance with Texas law. Services may include assistance with dressing, bathing, grooming, medication administration, and ambulation. Additional services and ancillary products may also be provided for a specified charge identified in the resident handbook.
- (iii) **Nursing Care.** We will provide to you, in a Traditional Private Room, licensed nursing care services approved by our Medical Director ("Nursing Care"). The care provided will cover services included in the basic private nursing room published daily rate then in effect. Such care may include those services required by applicable law to be supervised or administered by a professional licensed nursing staff, e.g., medication administration, condition and behavior observation and assessment, creation and administration of a care plan, assistance with activities of daily living and communication with physicians and other care providers. You will be

responsible for charges for supplies and services above those included in the basic published daily rate.

- (iv) **Fees and Charges.** We will provide without charge basic Assisted Living or Nursing Care as defined in Section 2.5.n.(ii) and (iii), to the extent that it is not covered by your insurance, Medicare or any other governmental programs or entitlements which you are required to maintain under this Agreement, subject to:

**Effect on Monthly Service Fee.**

**a. Temporary Transfers.**

Should you have a temporary need for Assisted Living or Health Center services while you are still occupying your Residence, you will continue to pay both the then current Monthly Service Fee for your Residence and the then current applicable pro-rated monthly rate at Assisted Living or the then current daily rate at the Health Center. By "temporary" we mean a Temporary Transfer as defined in Section 4.3.

**b. Permanent Transfers.**

1. Single Occupancy. Should you have a permanent need for Assisted Living or Health Center services, you will be required to release your Residence as provided under Section 4.3. Your Monthly Service Fee will be adjusted to the then current Monthly Service Fee for a Two Bedroom Classic independent living residence. By "permanent" we mean a Permanent Transfer as defined in Section 4.3.
2. Double Occupancy. Should one Resident have a permanent need for Assisted Living or Health Center services, you will continue to pay the then current Monthly Service Fee for your residence, and the relocated Resident will pay the then current Monthly Service Fee for the Two Bedroom Classic independent living residence. Should both Residents have a permanent need for Assisted Living or Health Center services, the Residents will be required to release the Residence as provided under Section 4.3. The first Resident will be required to pay the then current Monthly Service Fee for the Two Bedroom Classic independent living residence. The second Resident will also be required to pay the then current Monthly Service Fee for the Two Bedroom Classic independent living residence. By "permanent" we mean a Permanent Transfer as defined in Section 4.3.

- o. Additional Charges.** Residents will be responsible for all costs and charges associated with Assisted Living or the Health Center which are not covered by the basic published market daily rates for such care then in effect as described in Section 2.5.n. (ii) and (iii). Additional charges apply in circumstances which include, but are not limited to, the following:



1. If you require Memory Support Deluxe Assisted Living you will be responsible for the difference between the then current Monthly Service Fee for a Traditional Assisted Living Apartment and the Memory Support Alcove Room.
2. If you require specialized memory support services at the Health Center, you will be responsible for the then current difference in daily rates between a Traditional Private Room in Nursing Care and a Memory Support Nursing Care Private Room.
3. In the event of a Temporary Transfer or Permanent Transfer, you will be responsible for all costs of relocation.

**2.6 Additional Services.** The following Additional Services may be available to Residents on a fee-for-service basis:

- a. Guest meals
- b. Catering for special occasions
- c. Barber and beauty services
- d. Tray service
- e. Additional resident meals
- f. Additional parking, subject to availability
- g. Additional housekeeping services
- h. Laundry services for personal items
- i. Usage of the guest suites

Charges for these Additional Services and others that may be offered will be made in accordance with the Resident Handbook then in effect and will be billed to you monthly.

**2.7 Alteration to Residence.** You may make alterations to your Residence at your cost, subject to Edgemere's policies and with Edgemere's prior written approval. Any approved alteration will be performed by our maintenance staff or by a contractor we approve. Any alterations of a permanent nature become the property of Edgemere. For your safety, you agree not to replace the existing locking device or add any locking devices to your Residence. Edgemere reserves the right to restore the apartment home to the pre-altered state upon vacancy of the apartment by Resident. The cost of the restoration is the responsibility of Resident and may be withheld from any refund due.

**2.8 Advance Notice for Changes in Scope of Services.** We will provide at least sixty (60) days advance notice before any change in the scope of care or services becomes effective unless an immediate transfer to Assisted Living or Health Center is deemed necessary as provided in Section 4 of this Agreement. This includes notification of any changes in charges for Additional Services.

3. **RESIDENT'S OBLIGATIONS**

3.1 **Health Insurance.** Edgemere will provide you with the services described in this Agreement, as appropriate. During the term of this Agreement, you shall obtain and maintain in force Medicare Parts A and B and any future program that may be offered by Medicare. You shall also maintain in effect supplemental Medicare insurance coverage acceptable to us, and furnish evidence of such insurance coverage upon our request. If you are not qualified for Medicare coverage, you will be required to maintain comprehensive health coverage satisfactory to us. You agree to provide evidence of such insurance to us upon request. You also agree to execute all necessary forms to obtain payment of benefits which are or may be payable in the future for health care services provided hereunder to you.

You will be responsible for paying separately for all health care services that are not covered by Edgemere, Medicare (or an equivalent substitute policy approved by Edgemere), or Medicare supplemental insurance, as set forth in this Agreement. If you have any questions about such coverage, Edgemere will assist you in obtaining answers.

3.2 **Power of Attorney, Guardianship.** You acknowledge that at some future time you may be unable by reason of mental or physical disability to properly handle your own affairs and that it may be in your best interest to have an attorney in fact or a guardian appointed to handle your affairs. Therefore, you agree to designate in writing, prior to or at the time of entrance, person(s) who will have authority to act on your behalf in the event you should at any time become unable to properly handle your own affairs. If you should thereafter become either physically or mentally unable to properly administer your own affairs, this designated person shall either commence handling your affairs pursuant to the terms of a durable power of attorney or file a petition in a court of competent jurisdiction to have a guardian or conservator appointed to handle your affairs. If the designated person(s) are unable or unwilling to file such a petition, we are empowered to do so at your expense.

3.3 **Home Health Care Services.** It is the intent of Edgemere to enable you to maintain the highest level of independence possible. As such, home health care services may be provided to you in your Residence at your expense by a certified home health care agency of your choosing. Such services are typically intermittent and short-term in nature, often rendered following an acute care illness. Any assistance by Edgemere in choosing an appropriate agency shall in no way be deemed an endorsement of a particular agency, and Edgemere shall in no way be deemed responsible for the acts or failure to act of any such agency. You are to notify Edgemere if you are receiving or intend to receive home health care services. If you choose to receive home health care services, you are obligated to retain an aide who is employed by a licensed home health agency in Texas and to report the home health agency's periods of visitation to Edgemere. You must also comply with the provisions outlined in the Residents Handbook for retaining Private Duty Aides. Residents who need assistance with the activities of daily living or nursing service on a continuing basis will transfer to Assisted Living or Health Center to receive such services, in accordance with the provisions in Section 2.5.n.

3.4 **Cost of Physicians, Medicines, Etc.** You acknowledge and agree that any and all expenses or charges which may be incurred by or on behalf of you for costs not covered by this

Agreement, including, but not limited to, physicians, therapists, podiatrists, diagnostic services, mental health, medicines, prescription drugs, medical supplies, vitamins, crutches, braces, walkers, wheelchairs, special duty nursing, hospitalization, care and treatment of eyes, ears and teeth, and any and all other personal medical expenses shall be your sole and exclusive responsibility. You shall be entitled to treatment by the physician of your choice at your expense.

- 3.5 **Resident Handbook.** We will establish and adopt policies and procedures (collectively "Policies") for the occupancy and orderly operation and management of Edgemere. These Policies will be drafted to provide for the safety, welfare, peace and comfort of all Residents consistent with the provisions of the Life Care Agreement. These Policies will be published in writing in the Resident Handbook, which will be provided to you on or before the date you move in and may be amended from time to time. You agree to abide by and observe such Policies and all amendments and additions thereto. These Policies, as amended from time to time, are hereby incorporated by reference. In the event that the terms of this Agreement conflict with the Policies, the terms of this Agreement shall control.
- 3.6 **Non-Impairment of Financial Responsibility.** After execution of this Agreement, you agree not to impair your ability to meet your financial obligations under this Agreement and cause any act such that you would no longer meet the financial qualifications as set by Edgemere for your Residence.

#### 4. TRANSFERS AND READMISSION

There may come a time when you must move to Assisted Living or Health Center or to another facility which provides services not available at Edgemere. Edgemere is aware that this is a critical transition and will follow the following procedures during any transfer or reassignment.

- 4.1 **Consultations.** Except in case of emergency, Edgemere agrees not to transfer you from your Residence to Assisted Living or Health Center, or to a care facility or hospital which is not on the campus of Edgemere, for health-related or other reasons unless it has consulted with you, your physician, your family and/or your designated representative, if applicable. Such a decision shall be made in the best interests of the Resident, and the decision of Edgemere shall be final and binding. In the case of an emergency transfer, Edgemere will schedule the consultations described above within seven (7) days after transfer.

Circumstances in which it is in the best interest of the Resident to be transferred include, but are not limited to, the following:

- a. A determination that the Resident can no longer function in an independent manner in a Residence, and the Resident requires additional assistance with activities of daily living or nursing care;
- b. A determination that the Resident is unable to remain ambulatory (for purposes of this document, the term "ambulatory" is used to describe a person who is capable of demonstrating the mental competence and physical ability to leave a building without human assistance or supervision in case of emergency); or,



- c. A determination that the continued residency of the Resident at Edgemere would be harmful to either the Resident, other Residents or staff of Edgemere.

If we determine, after consultation, that your health requires that you be transferred (a) from the Residence covered by this Agreement to Assisted Living or Health Center or (b) to a care facility or hospital which provides services which Edgemere does not provide or is not licensed to provide, you agree to be relocated in accordance with that decision.

- 4.2 Consents.** When Edgemere determines, after consultations as described above, to transfer you to Assisted Living, Health Center, or to a suitable care facility or hospital for health care or other health-related services, Edgemere shall be authorized to transfer you without having to obtain your further consent.

Edgemere shall not be responsible for the cost of any services rendered to a Resident who is transferred from Edgemere to another facility, except as specifically provided otherwise hereunder.

- 4.3 Transfers.** Pursuant to Section 4.1 and 4.2, transfers are defined below as temporary and permanent.

- a. **Temporary Transfer.** A transfer is considered temporary when pursuant to Section 4.1 and 4.2 the determination is made that the condition that requires your transfer has the potential to be resolved in a manner which may allow you to return to your Residence within ninety (90) days. Your residence will be held for your return.
- b. **Permanent Transfer.** A transfer is considered permanent when pursuant to Section 4.1 and 4.2 the determination is made that the condition that requires your transfer will not allow you to return to your Residence within ninety (90) days.

In the event of a Permanent Transfer of one Resident in the case of single occupancy or of both Residents in the case of double occupancy, you shall release your Residence in order for Edgemere to make your Residence available to a new Resident. In such event, Edgemere may enter into a new Life Care Agreement for occupancy of the Residence with a new Resident. You grant Edgemere the right to remove your personal property from the Residence fifteen (15) days after a Permanent Transfer and to store it at your expense. If your Residence is reassigned and should you subsequently recover sufficiently to maintain yourself independently in a Residence, you shall receive the next available Residence similar to the one relinquished, at the then current Monthly Service Fee. While you are in Assisted Living or the Health Center, the Monthly Service Fee will continue to be due and payable as described in Section 2.5.n.

If the Residence is occupied by two (2) Residents, the Permanent Transfer of one (1) Resident does not affect the rights and privileges under this Agreement of the remaining Resident.

5. **RESIDENT DEPOSIT AND FEES**

- 5.1 **Occupancy Date.** The day you receive keys to your Residence is the occupancy date. You shall not be required to move into Edgemere before seven (7) days following the date you executed this Agreement and made the Reservation Deposit.

In the event you decide not to move into your Residence on the Occupancy Date, the obligation of Edgemere to provide care and services as provided hereunder shall not be effective until your Resident Deposit has been paid in full.

- 5.2 **Resident Deposit.** You agree to make a non-transferable, non-interest bearing Resident Deposit in the total amount of \$ 654,550. The Reservation Deposit of \$ 105,455 is due at the time you execute this Agreement. The remaining balance of your Resident Deposit, being \$ 589,095, is due on or before the Occupancy Date, unless otherwise previously agreed in writing. In the event the remaining balance of the Resident Deposit is not paid by the Occupancy Date, Edgemere in its sole discretion may terminate this Agreement and re-market your Residence to a new resident. Once paid, this Resident Deposit will not be increased or changed during the duration of this Agreement. The Resident Deposit shall in no way be considered or interpreted to be a security deposit.

The Resident Deposit shall be the property of Edgemere for use in accordance with the terms of this Agreement, and shall not be subject to the claims of creditors of the Resident. The Resident Deposit shall be refundable in accordance with Section 7.

- 5.3 **Monthly Service Fees and Changes in Fees.** Your Monthly Service Fee will be initially \$ 1250 per month for one person and an additional \$ 5690 per month for the second person. The Monthly Service Fee shall be due beginning on the Occupancy Date and will be prorated, if necessary, on a daily basis for the first and last months of occupancy. We may increase the Monthly Service Fee, upon sixty (60) days' written notice to you. It is our intention to make any adjustments to the Monthly Service Fee only once per year. The Monthly Service Fee, in addition to charges for additional services, shall be billed in advance to the Resident on or before the fifth business day of each month, and shall be paid on or before the fifteenth (15th) day of the month.

Fees for additional services will be charged in accordance with the Additional Services Fee Schedule we establish and will be on file in the management office.

- 5.4 **Late Fee.** We will reserve the right to assess you a late fee of five percent (5%) per month (or the maximum amount allowed by applicable law, if less) of the amount due if the Monthly Service Fee or Additional Services Fees are not paid in full on or before the twentieth day (20th) of the calendar month in which they are due.

- 5.5 **Changes in Occupancy.** If your Residence is occupied by two (2) Residents and one (1) Resident surrenders possession of the Residence to the other, other than by death or by a transfer covered by Section 4, the obligations of the Resident remaining in the Residence under this Agreement remain in legal force and effect, except that the Monthly Service Fee will be adjusted to reflect the single occupancy rate then in effect for the Residence. The Resident not remaining in the Residence will receive no services or benefits under this Agreement but will continue to be jointly and severally liable for the obligations of the

Resident remaining in the Residence. The remaining Resident may elect to relocate to a different Residence, if desired. The refund of the Resident Deposit will be made in accordance with Section 7.7 and once all conditions of Section 7.4 are met.

In the event the joint occupants of a Residence desire separate living accommodations at Edgemere, and one (1) Resident remains in the Residence designated hereunder, no refund of the Resident Deposit shall be made until the conditions of Section 7.4 are met and the Monthly Service Fee shall be adjusted to reflect the single occupancy rate then in effect for the Residence. Upon occupancy of the second Residence by the departing joint occupant, a new Life Care Agreement must be executed and submitted for approval by Edgemere, accompanied by the then current Resident Deposit, for the second living accommodations.

In the event of the marriage of a Resident to another Resident, they may: (a) continue to maintain two Residences and pay the applicable Monthly Service Fee for single occupancy then in effect; or (b) release either Residence occupied by them, and pay the applicable Monthly Service Fee for first and second person occupancy then in effect for the Residence retained. All benefits provided in each Life Care Agreement shall remain and continue in effect. There shall be no refund of the Resident Deposit to either Resident until both Residents leave and the conditions of Section 7.4 have been met.

If you and a non-Resident (including a new spouse) desire to share the Residence, the non-Resident may become a Resident and live in the Residence only if he/she meets the qualifications for entrance set forth in Section 6 and both persons execute a new Life Care Agreement. In such event, the Monthly Service Fee shall be adjusted to reflect the additional charge per month for a second person, and the non-Resident may be required to make a Resident Deposit in accordance with the then current policies established by Edgemere.

In the event you marry an individual while at Edgemere who does not meet the residency requirements for Edgemere, NSHC, at its sole discretion, may allow such person to reside at Edgemere. However, this person would not have any rights, privileges or protection under this Agreement.

**5.6 Liability for Charges.** Each person who is designated as Resident in this Agreement is jointly and severally liable for the payment of the Monthly Service Fee, Additional Service Fees and all other amounts required to be paid to Edgemere, pursuant to the provisions of this Agreement. In the event it is necessary for us to institute legal action or other proceedings to recover amounts payable to Edgemere under this Agreement, we also will be entitled to recover reasonable legal fees and costs incurred in connection with all such proceedings. This provision will survive any termination of this Agreement.

**5.7 Residents Who Become Unable to Pay.** It is Edgemere's policy that this Agreement will not be terminated solely because of your financial inability to continue to pay the Monthly Service Fee or other charges payable under the terms of this Agreement by reason of circumstances beyond your control; provided, however, this policy shall not be construed to qualify or limit Edgemere's right to terminate this Agreement in accordance with its terms. If you present facts which, in the opinion of Edgemere, justify special financial consideration, Edgemere will give careful consideration to subsidizing in part or in whole the Monthly Service Fee and other charges payable by you under the terms of this

Agreement so long as such subsidy can be made without impairing the ability of Edgemere to attain its objectives while operating on a sound financial basis. Any determination by Edgemere with regard to the granting of financial assistance shall be within the sole discretion of Edgemere, and any decision to provide such financial assistance shall continue in effect only so long as Edgemere, in its sole discretion, determines that it can continue to operate for the benefit of all residents on a sound basis.

In the event Edgemere determines to provide you with any financial assistance or subsidy, you agree we may charge such amounts, plus interest, against the refund of your Resident Deposit. Furthermore, we may require you to move to a smaller or less expensive Residence.

The cost of any such financial assistance provided shall be accrued and remain an obligation of the Resident and his or her estate.

6. **APPLICATION AND ACCEPTANCE FOR RESIDENCY.**

The obligations of Edgemere to provide services and facilities hereunder are conditioned upon acceptance of the Resident for residency at Edgemere in accordance with this paragraph. The decision to accept a Resident for residency at Edgemere shall be within the sole discretion of NSHC.

6.1 **Requirements for Acceptance for Residency.** We require that you be capable of independent living and have assets and income which are sufficient (under foreseeable circumstances and after provision for payment of your obligations hereunder) to meet ordinary and customary living expenses, after assuming occupancy. You hereby represent and warrant that you are capable of independent living and have assets and income which are sufficient to meet ordinary and customary living expenses after assuming occupancy.

6.1.1 **Confidential Data Profile.** You shall complete and submit a Confidential Data Profile provided by Edgemere prior to or concurrent with the execution of this Agreement. You hereby certify to Edgemere that all information reflected on such Confidential Data Profile, which is hereby incorporated by reference and made a part of this Agreement, including all personal financial data, is complete and accurate.

6.1.2 **Confidential Medical Profile Report.** In addition to the Confidential Data Profile you will be required to submit a Confidential Medical Profile completed by your physician within fifteen (15) days after the execution of this Agreement.

6.1.3 **Age.** To be accepted for admission at Edgemere, you must be at least sixty-two (62) years of age at or before the Occupancy Date.

6.2 **Notification of Decision.** Within thirty (30) days of satisfaction by you of all of the requirements set forth in Section 6.1, Edgemere shall notify you in writing of its decision concerning your acceptance to Edgemere. In the event you are not accepted for residency at Edgemere, your Reservation Deposit specified in Section 5 and tendered upon execution of this Agreement shall be refunded within ten (10) days of the date of the written notification



to you of non-acceptance for residency, and the parties shall have no further obligations to one another under this Agreement.

- 6.3 Acceptance for Residency Conditional Upon No Material Changes Prior to Occupancy.** Acceptance for residency to Edgemere shall be conditioned upon no material change in the matters covered by the Confidential Data Profile and Confidential Medical Profile prior to your Occupancy Date. In the event of any such material change prior to the Occupancy Date, Edgemere may request that additional information be provided. In the event of the existence of a material change in condition, Edgemere may revoke its acceptance of you for residency to Edgemere at any time prior to the Occupancy Date by written notification to you, and your Reservation Deposit as specified in Section 5 shall be refunded within ten (10) days of the date of such notification.
- 6.4 Duty of Resident to Notify Edgemere.** You acknowledge and agree that Edgemere has relied upon all of the information contained in your Confidential Data Profile and Confidential Medical Profile to make its decision regarding your acceptance for residency at Edgemere. Any misrepresentation or omission by you shall render this Agreement null and void at the option of Edgemere. You agree to notify Edgemere prior to the Occupancy Date of any material change in any of the matters covered by, or reflected on, the Confidential Data Profile or the Confidential Medical Profile.

**7. TERMINATION AND REFUNDS**

**7.1 Termination Prior to Occupancy.**

- a. You will be entitled to full reimbursement of any monies paid to us within thirty (30) days of our receiving your written termination of this Agreement and will be released from liability to pay to us any other amount under this Agreement under any one of the following conditions:
- (i) If you terminate this Agreement within seven (7) days from the date on which you signed this Agreement and paid the Reservation Deposit.
  - (ii) If you die before occupying your Residence at Edgemere, or if, because of illness, injury, or incapacity, you would be precluded from occupying your Residence consistent with the representations made by you in the Confidential Data Profile or the Confidential Medical Profile, this Agreement will be automatically canceled.

Interest on the Resident Deposit will NOT be due or payable.

- b. If you terminate this Agreement prior to the date you occupy your Residence for reasons or conditions other than those described above, you will be entitled to a reimbursement of any monies paid, less a processing fee of five hundred dollars (\$500.00). Interest on the Resident Deposit will NOT be due or payable. Thereupon, you shall be relieved of further liability to pay a Resident Deposit or Monthly Service Fees under this Agreement. In this circumstance, we will pay the refund due to you within thirty (30) days after the date we have received your written notice of termination of this Agreement.

**7.2 Termination of Residency After Occupancy.** After you have assumed occupancy of your Residence, this Agreement is subject to termination as follows:

- a. By you at any time upon thirty (30) days prior written notice to Edgemere.
- b. Edgemere may terminate this Agreement after the Occupancy Date for the following nonmedical reasons:
  - (i) A material misrepresentation or omission by you in the Confidential Data Profile, Confidential Medical Profile, or related materials, which, if such information had been accurately provided, would have been material to the decision whether or not to accept the Resident for residency;
  - (ii) If you fail to comply with the policies and procedures of Edgemere or create a situation detrimental to the health, safety or quiet enjoyment of the community by other Residents or the staff;
  - (iii) If you fail to pay the Monthly Service Fee or other amounts due us when due unless other mutually satisfactory arrangements have been made, provided however, it is our policy that this Agreement shall not be terminated solely because of your financial inability to pay the fees to the extent that: (1) your inability to pay is not the result of your willful action; and (2) in the judgment of NSHC, the ability of Edgemere to operate on a sound financial basis will not be impaired.
  - (iv) Material breach by you of the terms and conditions of this Agreement; and,
  - (v) The Residence is no longer fit for occupancy and Edgemere elects not to restore the Residence to habitable condition.
- c. Edgemere may terminate this Agreement subsequent to Occupancy Date for medical reasons. If it is determined by the Medical Director (after consultation "to the extent feasible" with you, your personal physician, and your family and/or designated representative) that:
  - (i) You have developed a dangerous or contagious disease or mental illness;
  - (ii) You are in need of drug or alcoholic rehabilitation or any other condition for which we are not licensed or for which care cannot be provided by us without a significant and unique expenditure; or,
  - (iii) You are or have become mentally or emotionally disturbed to a degree that your continued presence at Edgemere is determined to be detrimental to the health, safety and welfare of other Residents or staff.

Therefore, should any of these situations occur, we are expressly authorized (after consultation with the Medical Director, your personal physician and your family

and/or your designated representative to the extent feasible) to transfer you, at your expense, to an appropriate hospital facility or alternative care facility.

If Edgemere seeks to terminate this Agreement and your occupancy, Edgemere shall give you sixty (60) days' prior written notice of termination which shall reasonably describe the conduct alleged to warrant the termination of this Agreement and shall set the time, place and date for a meeting between you and Edgemere's representative(s), which shall not be earlier than thirty (30) days nor later than forty-five (45) days after the notice of termination. At this meeting you may avoid termination upon your showing to Edgemere's reasonable satisfaction that you have cured the conduct alleged to warrant the termination.

- 7.3 Effect of Double Occupancy.** If your Residence is occupied by two (2) Residents and one (1) Resident dies, this Agreement will continue in full legal force and effect as to the surviving Resident, except the Monthly Service Fee will be adjusted to reflect the then applicable single occupancy rate payable for the type of Residence occupied. No refund of the Resident Deposit will occur until the surviving Resident leaves and all conditions of Section 7.4 are met.
- 7.4 Refund of Resident Deposit.** After termination of this Agreement in accordance with Section 7.2 or in the event of your death, or in the case of double occupancy, both occupants' deaths, we will refund ninety percent (90%) of the Resident Deposit (without interest) that you paid for your Residence at Edgemere. Except as provided in the next paragraph, the refund will be paid on the later of: (i) ten (10) days after a new resident deposit has been received from a new resident and the new resident has taken occupancy of your former Residence, or (ii) termination of this Agreement.
- 7.5 Use of Resident Deposit.** The purpose of the Resident Deposit is to generate investment income to contribute to the operating income of Edgemere and to help fund operating and capital costs. As such, interest income generated from the investment of the Resident Deposit will be paid to Edgemere. In addition, at the sole discretion of NSHC, Resident Deposits may also be used to pay for project development costs, start-up deficits, debt service, retirement of debt, costs of future capital expenditures, resident refunds and other purposes deemed appropriate by NSHC. No reserve funding will be established pertaining to the refund of the Resident Deposit. In order to obtain permanent financing and to secure the lender or other party or parties who provide financing, NSHC pledged the gross receipts and revenues of Edgemere including Resident Deposits to the extent allowable by Texas law.
- 7.6 Right of Off-Set; Other Rights.** We reserve the right to off-set against the refund of the Resident Deposit any fees or amounts payable to us under this Agreement including any charges deferred or unpaid. Termination of this Agreement for any reason will not affect or impair the exercise of any right or remedy granted to us or you under this Agreement for any claim or cause of action occurring prior to the date of such termination.
- 7.7 Relocation.** You may elect to move to another Residence, subject to availability. An administrative fee of \$500 will be applied to your account in the event of a relocation to a different residence. In such event, this Agreement will be amended to reflect the change in Residence status.

- a. **Relocation to a less expensive Residence.** You will receive a refund of the refundable portion of the Resident Deposit in excess of the refundable portion of the Resident Deposit then in effect for the new Residence in accordance with Section 7.4. No additional ten percent (10%) non refundable portion will be required. You will pay the then current Monthly Service Fee for the new Residence. All moving costs will be at your expense.
- b. **Relocation to a more expensive Residence.** You will be required to pay the difference between the initial Resident Deposit and the Resident Deposit then in effect for the new Residence selected. A portion of the additional Resident Deposit will be nonrefundable. You will pay the then current Monthly Service Fee for the new Residence. All moving costs will be at your expense.

8. **MISCELLANEOUS**

- 8.1 **Resident's Interest.** You do not have any proprietary interest in Edgemere, its assets or properties by virtue of this Agreement. While Edgemere is interested in Resident's input and comments, this Agreement does not give you the right to participate in management or policy making decisions of Edgemere or related properties.
- 8.2 **Responsibility for Protection of Resident's Property.** We shall not be responsible for damage or loss to any personal property belonging to you caused by fire, flooding or other casualty, or by leaking of water, bursting of pipes, theft or any other cause. You shall be solely responsible, at your own expense, for insuring against property damage or loss and personal liability to others. In the event of your death or transfer from Edgemere, we will exercise ordinary care in temporarily safekeeping your personal property. If such property is not removed from Edgemere premises within sixty (60) days after termination of this Agreement, we reserve the right to have such property placed in a commercial bonded warehouse at the expense and risk of you or your estate.
- 8.3 **Injury or Accident While Away from Edgemere.** If the Resident is injured in an accident or becomes ill while away from Edgemere, the Resident shall make every reasonable effort to notify Edgemere as soon as possible, and the Resident shall arrange to return to Edgemere as soon as reasonably possible if continued medical care is required. Edgemere shall not be responsible for or assume the cost of medical care for illness or injury incurred by the Resident while away from Edgemere. At such time as the Resident returns to Edgemere, Edgemere shall assume the responsibility for Assisted Living or Health Center services thereafter rendered as provided in this Agreement.
- 8.4 **Injury Caused by Third Party.** In the event of an accident or injury to you caused by a third party, for which such third party may be liable for the cost of any medical, surgical, nursing or additional care for you resulting therefrom, you or your designated representative shall notify Edgemere promptly and you or your designated representative shall pursue diligently any claim for damages which may be due from such third party for the injury. Edgemere is not required to bear the cost of care to you for which a third party is liable. You agree to indemnify NSHC for any expenses incurred by Edgemere in providing care to you for which a third party is liable.



NSHC may limit its actions as provided above to claims for recovery of the costs and expenses incurred by it, and in such event, NSHC shall not be obliged to assert any claim on behalf of you arising out of such accident or injury beyond the costs and expenses incurred by Edgemere.

- 8.5 **INDEMNIFICATION FOR NEGLIGENCE.** YOU HEREBY AGREE TO INDEMNIFY, PROTECT AND HOLD US HARMLESS FROM ANY LOSS, DAMAGE, INJURY OR EXPENSE INCURRED BY EDMERE AS A RESULT OF YOUR NEGLIGENT OR WILLFUL ACTS OR THE ACTS OF YOUR INVITEES OR GUESTS.
- 8.6 **Right of Entry.** You hereby authorize our employees and agents to enter your Residence to provide services, repairs, maintenance, alterations, pest control and inspection, and to respond to perceived medical or other emergency. Non-emergency or non-medical services will be scheduled in advance with Resident.
- 8.7 **Guests.** Occupancy of the Residence and use of Edgemere common areas and grounds is limited to you and your guests. Guests may not occupy your Residence for more than fourteen (14) days without the prior written approval of Edgemere. You will be responsible for the conduct of your guests and for payment of any charges incurred by your guests.
- 8.8 **Absence from Edgemere.** You agree to notify Edgemere in advance of any contemplated absence that is anticipated to exceed twenty-four (24) hours.
- 8.9 **Damage to Residence.** Resident is responsible for excessive wear or damage to the Residence caused by Resident action or neglect. The cost of repair due to damage or neglect is the responsibility of the Resident and may be withheld from any refund due.
- If your Residence is damaged by fire, flood, storm or other casualty or cause and we elect not to terminate this Agreement, we will, at our expense, proceed diligently to repair and restore your Residence. If your Residence is uninhabitable during the repair, we will relocate you to a comparable type Residence at Edgemere, if available, or, if not, we will try to relocate you temporarily to any other available Residence at Edgemere and the Monthly Service Fee will be adjusted for the type of Residence you temporarily occupy, but in no event shall be more than your Residence.
- 8.10 **Entire Agreement.** This Agreement constitutes the entire Agreement between you and NSHC with regard to your residence and care. We will not be liable for, or bound by, any statements, representations or promises made to you by any person representing or purporting to represent Edgemere unless such statements, representations or promises are expressly set forth and endorsed by both parties in writing, and attached to this Agreement.
- 8.11 **Binding Effect.** This Agreement is binding upon our successors and assigns and your heirs and personal representatives. The provisions of this Agreement are not assignable or transferable in whole or in part by you, and you will have no right to sublet the Residence.
- 8.12 **Severability.** Each provision of this Agreement will be deemed separate from each other provision and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the balance of the Agreement.

- 8.13 Subordination.** Your rights under this Agreement will be subordinate to any mortgage, security interest, pledge, or other lien that now encumbers all or any part of Edgemere's assets and shall be further subordinate to any mortgage, security interest, pledge, or other lien hereafter placed on all or any part of Edgemere's assets, and you agree to execute, acknowledge and deliver such subordination agreements as any lender or future lender shall reasonably require in order to establish the priority of any such lien.
- 8.14 Nondiscrimination.** Edgemere will be operated on a non-discriminatory basis, and will provide the facilities and services described in this Agreement to individuals regardless of race, color, sex, marital status, religion, creed, handicap or national origin.
- 8.15 Notices.** Any notice to Edgemere by you will be given in writing and mailed or delivered to Edgemere at the administrative office or at such other address as we may designate in writing. Any notice to you by us will be given in writing and mailed or delivered to your Residence or at such other address as you may designate to Edgemere in writing.
- 8.16 Potential Tax Benefit.** You may be eligible for a one-time medical expense tax deduction for a portion of the Resident Deposit (in the first year of occupancy) and annually for a portion of the Monthly Service Fee paid to Edgemere in that tax year. Edgemere will provide a statement prepared by its auditors each year for your use in tax preparation. Edgemere makes no representations regarding the availability of any tax deduction relating to your residency and care at Edgemere. You are advised to seek tax advice on this issue from your tax advisor.
- 8.17 Choice of Law.** This Agreement will be interpreted according to the laws of the State of Texas without regard to conflict of law principles.
- 8.18 Change of Condition.** You agree to notify us of any material change in any of your physical, financial or mental conditions prior to residency.
- 8.19 Authorized Agent Signature.** This Agreement has been executed on behalf of Edgemere by its duly authorized agent and no officer, director, agent or employee of Edgemere shall have any personal liability hereunder to you under any circumstances.
- 8.20 No Third Party Rights.** No other persons or entities other than Edgemere and the Resident have any rights or obligations under this Agreement.
- 8.21 Failure to Act.** Failure or delay of any party to exercise any right, power, or privilege under this Agreement will not operate as a waiver of such right, power, or privilege.
- 8.22 Right of Subrogation.** If you are injured by a third party and such injury requires Edgemere to provide health care services under this Agreement, Edgemere shall be subrogated, to the extent allowed by Texas law, to your rights against such third party to the extent necessary to reimburse Edgemere for the costs incurred in providing services under this Agreement. To the extent allowed under Texas law, this right of subrogation authorizes Edgemere to institute legal action in your name; provided, however, that such action shall not cause or result in a compromise, waiver or release of any causes of action that you may have against such third party for such injuries.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, NORTHWEST SENIOR HOUSING CORPORATION  
and the Resident(s) have signed this Agreement on this 22 day of May, 2014.

RESIDENT(S):

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

NORTHWEST SENIOR HOUSING CORPORATION,  
a Texas nonprofit corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

MARABON6 DINECOR

Vanessa Cortez  
Edgemere Marketing Representative

## **Exhibit B**

***Addendum to the Lifecare Agreement between  
[Residents]  
and Northwest Senior Housing Corporation***

**I (we) direct the refundable portion of the resident deposit to be refunded to:**

**The Estate of \_\_\_\_\_ ( )  
or**

**Contact person and mailing address for refund:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF, THE NORTHWEST SENIOR HOUSING CORPORATION and  
the Resident have signed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.**

**RESIDENT(S):**

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

Northwest Senior Housing Corporation,  
a Texas Not-For-Profit Corporation

\_\_\_\_\_  
Edgemere Representative

\_\_\_\_\_  
Title

## **Exhibit C**

# RESIDENCE AND SERVICES AGREEMENT

## **CHARTER MEMBER – 95% REFUND PLAN**

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### NOTICES

You may cancel this Agreement at any time prior to midnight of the seventh (7<sup>th</sup>) calendar day after the date on which you sign this Agreement (Rescission Period) or you receive the Ventana by Buckner Disclosure Statement, whichever occurs later. If you elect to cancel the Agreement, you must do so by written notice. You will be entitled to receive a refund of all assets transferred (without interest), subject to the terms and conditions of this Agreement.

This document, if executed, constitutes a legal and binding Agreement between you and Buckner Senior Living, Inc., d/b/a/ Ventana by Buckner. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this Agreement binding. This Agreement provides certain rights of occupancy in a senior living community, hereinafter referred to as "Ventana" located in Dallas, Texas.

You shall not be required to move into Ventana by Buckner before the expiration of the seven-calendar (7) day Rescission Period.

### TERMS OF OCCUPANCY

This Residence and Services Agreement ("Agreement") is entered into by \_\_\_\_\_ (individually and/or if applicable, your spouse collectively "you" or "Resident(s)") and Buckner Senior Living, Inc., d/b/a/ Ventana by Buckner ("Ventana") a Texas a not-for-profit corporation, which owns and operates the Continuing Care Retirement Community doing business as Ventana by Buckner ("Ventana") located in Dallas, Texas. The terms "we", "our", or "Community" are also used in lieu of "Ventana." The terms "you" and "Resident" may be used interchangeably.

## 1.0 BASIC AGREEMENT - APPLICATIONS AND ACCEPTANCE FOR ADMISSION

1.1 General. Ventana seeks to provide quality residential housing for seniors sixty-two (62) years of age and older along with an array of services and amenities outlined in this Agreement, including certain health care services. In consideration of the payment of the Entrance Deposit and applicable Monthly Service Fee described in .0 2 and subject to the conditions contained in this Agreement, we agree to make available to you, an unfurnished independent living apartment home ("Residence") in Ventana. The Residence is described as follows:

Residence Number: 3902

Residence Style: Amber

1.2 Acceptance for Admission. The obligations of Ventana to provide services and facilities hereunder are conditioned upon your acceptance for admission to Ventana in accordance with this Section 1.0. The decision to accept a Resident for admission to Ventana shall be at the sole discretion of Ventana.

1.3 Requirements for Acceptance for Residency. Ventana requires that you are capable of independent living and have assets and income, which are sufficient (under foreseeable circumstances and after provision for payment of your obligations hereunder) to meet ordinary and customary living expenses after assuming occupancy. You hereby represent and warrant that you are capable of independent living and have assets and income, which are sufficient to meet ordinary and customary living expenses after assuming occupancy.

1.4 Application. You shall complete and submit an Application for Residency provided by Ventana prior to or concurrent with the execution of this Agreement (Addendum "A"), which is hereby incorporated by reference and made a part of this Agreement. You hereby certify to Ventana that all information reflected on such Application for Residency, including all personal, financial and medical data, is complete and accurate.

1.5 Age. To be accepted for admission at Ventana, applicants must be at least sixty-two (62) years of age at time of Occupancy.

1.6 Meeting. You agree to meet with representatives of Ventana in connection with an assessment of your qualification for acceptance for Residency.

1.7 Notification of Decision. Within thirty (30) days of completion by you of all of the requirements set forth in this Section 1.0, Ventana shall notify you in writing of its decision concerning your acceptance to Ventana. In the event you are not accepted for Residency at Ventana, your Entrance Deposit tendered upon execution of the Reservation Agreement shall be refunded within ten (10) days of the date of the written notification to you of non-acceptance for admission and the parties shall have no further obligations to one another under this Agreement.

1.8 Acceptance for Admission Conditional Upon No Material Changes Prior to Occupancy. Acceptance of a Resident for admission to Ventana shall be conditioned upon no material change in the matters covered by the Application for Residency (including the Confidential Medical Profile) prior to your Occupancy Date (defined in Section 2.2). In the event of any such material change prior to the Occupancy Date, Ventana may request additional information to be provided including but not limited to a medical examination by a physician approved by Ventana. In the event of the existence of a material change in condition, Ventana may revoke its acceptance of Resident for admission to Ventana at any time prior to the Occupancy Date by written notification.

1.9 Duty of Resident to Notify Ventana. You acknowledge and agree that Ventana has relied upon all of the information contained in Resident's Application for Residency to make its decision regarding acceptance of Resident for admission to Ventana. Any misrepresentation or omission by you shall render this Agreement null and void at the option of Ventana. You agree to notify Ventana prior to the Occupancy Date of any material change in any of the matters covered by or reflected in the Application for Residency including but not limited to the Confidential Medical Profile.

## **2.0 ENTRANCE DEPOSIT AND FEES**

2.1 Entrance Deposit. You agree to make a non-transferable, non-interest bearing Entrance Deposit in the total amount of \$ 4,110,800.-. The ten percent (10%) Reservation Deposit of \$ 411,080.- is due at the time you execute the Reservation Agreement. The remaining balance of your Entrance Deposit, being \$ 999,810.-, is due on or before the Occupancy Date, unless otherwise previously agreed in writing. In the event the remaining balance of the Entrance Deposit is not paid by the

Occupancy Date, Ventana, in its sole discretion, may terminate this Agreement and remarket your Residence. Once paid, this Entrance Deposit will not be increased or changed during the duration of this Agreement unless a different Residence is selected or becomes necessary as described in this Agreement. The Entrance Deposit shall in no way be considered or interpreted to be a security deposit. The Entrance Deposit shall be the property of Ventana for use in accordance with the terms of this Agreement and shall not be subject to the claims of creditors of the Resident. The Entrance Deposit shall be refundable in accordance with Section 8.0, Section 8.4.

2.2 Occupancy Date. You will receive a sixty (60) day advance written notice of the date we anticipate your Residence and the material common areas will be ready for occupancy, which is referred to as the "Residence Availability Date." This date will occur after the temporary Certificate of Occupancy has been issued. The "Occupancy Date" is the earlier of: a) the agreed upon date of move in or, (b) a date no later than forty-five (45) days after the Residence Availability Date. In the event you decide not to move into your Residence on the Occupancy Date, the obligation of Ventana to provide care and services as provided hereunder shall not be effective until your Entrance Deposit has been paid in full and you occupy the Residence.

2.3 Monthly Service Fees and Changes in Fees. Your Monthly Service Fee initially will be \$ 7710.- per month for one person and an additional \$ 1,200.- per month for the second person. The Monthly Service Fee shall be due beginning on the Occupancy Date and will be prorated, if necessary, on a daily basis for the first and last months of occupancy. We may increase the Monthly Service Fee, upon thirty-days (30) written notice to you. It is our intention to make any adjustments to the Monthly Service Fee only once per year. The Monthly Service Fee, in addition to charges for additional services, shall be billed in advance to the Resident on or before the fifth (5<sup>th</sup>) business day of each month, and shall be paid on or before the fifteenth (15<sup>th</sup>) day of the month.

2.4 Fees for Additional Services. Fees for additional services will be charged in accordance with the Additional Services Fee Schedule we establish and will be on file in the management office.

2.5 Late Fee. We will reserve the right to assess a late fee of five percent (5%) (or the maximum amount allowed by applicable law, if less) of the amount due if the Monthly Service Fee or additional services fees are not paid in full on or before the twentieth day (20<sup>th</sup>) of the calendar month in which they are due.

2.6 Changes in Occupancy.

- a. If your Residence is occupied by two (2) Residents and one (1) Resident surrenders possession of the Residence to the other, other than by death or by a transfer covered by Section 6.0, your obligations if you remain in the Residence under this Agreement remain in legal force and effect, except that the Monthly Service Fee will be adjusted to reflect the single occupancy rate then in effect for the Residence. The Resident not remaining in the Residence will receive no services or benefits under this Agreement but will continue to be jointly and severally liable for the obligations of the Resident remaining in the Residence. The refund of the Entrance Deposit will be made in accordance with this Agreement once all conditions of Section 8.0 Section 8.4 are met.
- b. In the event the joint occupants of a Residence desire separate living accommodations at Ventana and one (1) Resident remains in the Residence designated hereunder, no refund of the Entrance Deposit shall be made until the conditions of Section 8.4 are met. The Monthly Service Fee shall be adjusted to reflect the single occupancy rate then in effect for the Residence. Prior to occupancy of the second Residence by the departing joint occupant, a new Agreement must be executed and submitted for approval by Ventana, accompanied by the then current Entrance Deposit for the second living accommodations.
- c. In the event of the marriage of a Resident to another Resident of Ventana, they may:
  - i. Continue to maintain two (2) Residences and pay the applicable Monthly Service Fee for each single occupancy Residence then in effect; or
  - ii. Release either Residence and pay the applicable Monthly Service Fee for first and second person occupancy then in effect for the Residence jointly occupied by them. The releasing Resident will not receive a refund of any Entrance Deposit at this time. Such Entrance Deposit will be refunded in accordance with Section 8.4 (c) of this Agreement. Alternately, both Residences can be released and a new Resident Agreement executed. The then applicable Entrance Deposit and Monthly Service Fee for first and

second person occupancy then in effect must be paid for the Residence jointly occupied by them.

d. If you and a non-Resident (including a new spouse) desire to share the Residence, the non-Resident may become a Resident and live in the Residence only if he or she meets the qualifications for entrance set forth in Section 1.0 and both persons execute a new Agreement. In such event, the Monthly Service Fee shall be adjusted to reflect the additional charge per month for a second person, and the non-Resident may be required to make an Entrance Deposit in accordance with the then current policies established by Ventana.

e. In the event you marry an individual while at Ventana who does not meet the Residency requirements for Ventana, then Ventana, in its sole discretion, may allow such person to reside at Ventana. However, this person will not have any rights, privileges or protection under this Agreement, including but not limited to the Life Care Benefit. Such person must execute all documents required by Ventana.

2.7 Liability for Charges. Each person who is designated as Resident in this Agreement is jointly and severally liable for the payment of the Monthly Service Fee, Additional Service Fees and all other amounts required to be paid to Ventana, pursuant to the provisions of this Agreement. In the event it is necessary for Ventana to institute legal action or other proceedings to recover amounts payable to Ventana under this Agreement, we will also be entitled to recover legal fees and costs incurred in connection with all such proceedings. This provision will survive any termination of this Agreement.

### **3.0 LIFE CARE BENEFIT**

3.1 General. Subject to the terms of this Agreement and upon qualification, your right to occupy the Residence and to receive basic Assisted Living, Memory Support and Nursing Services, as needed, shall continue for your lifetime unless sooner terminated as provided herein.

3.2 Assisted Living or Memory Support. Subject to availability and our ability to meet your health care needs, we will provide to you, in the private Assisted Living suite or the private Memory Support suite, services which are designed to assist with the activities of daily living in accordance with applicable laws. Services included are: assistance with dressing, eating, bathing, toileting, ambulating and medication management. You are responsible for the entire



cost of services and supplies provided less any applicable Life Care Benefit as provided in Section 3.9 below.

**3.3 Nursing Services.** Nursing Services are provided in Ventana's Health Center subject to availability and our ability to meet your health care needs. We will provide to you, in a private room, licensed Nursing Services approved by our Medical Director. The care provided will cover services included in the basic private nursing room published daily rate then in effect. Such care may include those services required by applicable law to be supervised or administered by a professional licensed nursing staff, medication administration, condition and behavior observation and assessment, creation and administration of a care plan, assistance with activities of daily living and communication with physicians and other care providers. You will be responsible for cost of services and supplies less any applicable Life Care Benefit as provided in Section 3.9 below.

**3.4 Priority Admission.** If it is determined that you need Assisted Living or Nursing Services, you will be given priority admission to Assisted Living or the Health Center, to the extent allowed by licensure, law, availability of space and Ventana's ability to meet your health care needs. If necessary, you agree to make a temporary or permanent transfer (as defined herein) to the appropriate level of care in the event you are unable to live independently in your Residence. All determinations concerning temporary or permanent transfer will be made to the extent feasible in consultation with you, your family members or representatives, your primary care physician and the Ventana staff as provided in Section 6.0. We reserve the right to make the final determination regarding the necessity of a transfer when safety or security is of concern.

**3.5 Home Health Care and Temporary Transfers to Other Facilities.** In the event that space for you, for any reason, is not available in Assisted Living or the Health Center upon determination that a temporary or permanent transfer is required, subject to our approval and if reasonably possible, we will arrange for your temporary care in your Residence by a certified home health agency of your choice until space becomes available in Assisted Living or the Health Center. If home health care is not reasonably possible, we will attempt to arrange for your temporary care in another facility of our choice that can provide the same care that would otherwise have been provided by Ventana until space becomes available. If you qualify for the Life Care Benefit, these costs will be addressed as provided in Section 3.8 below. If you do not qualify for the Life Care Benefit, any costs of care associated with a home health agency or care in another facility are your responsibility.

3.6 Temporary Transfer Costs. Should you have a temporary need for Assisted Living or Nursing Services during your occupancy of your Residence, you will be required to pay the then current Monthly Service Fee for your Residence and the then current Monthly Service Fee for Assisted Living or the applicable daily rate for service provided in the Health Center. "Temporary" is described in Section 6.4.

3.7 Permanent Transfers - Life Care Benefit. If you are a single Resident, upon permanent transfer to Assisted Living or the Health Center and release of your Residence, under Section 6.5 below, your Monthly Service Fee will be adjusted to the then current Monthly Service Fee for the Fuchsia style two-bedroom independent living apartment. In the case of double occupancy and only one of you permanently transfers from the Residence, the Monthly Service Fee for the Residence will remain the same less the second person fee and the transferred Resident will pay the charges applicable for the current second person fee. If both Residents permanently transfer and release the Residence under Section 6.5, the Monthly Service Fee will be adjusted to the then current Monthly Service Fee for the Fuchsia style two-bedroom independent living apartment plus the then current second person Monthly Service Fee. These rates represent a substantial discount from the usual and customary rates applicable to persons receiving care in Assisted Living and the Health Center who have not entered into a Residence and Services Agreement with Ventana.

3.8 Limitation on Benefits if Transferred Out of Ventana. Should you transfer to another facility, due to lack of availability of space or medical condition, as provided above, in no event shall the Life Care Benefit exceed that which would have been provided by Ventana in Assisted Living or the Health Center. In order to maintain your eligibility to receive the Life Care Benefit, you are required to return to Ventana within fourteen (14) calendar days of the date you are notified that space is available at Ventana.

3.9 Insurance Requirement and Entrance Deposit Draw Down. You are responsible for the entire cost of services provided in Assisted Living or the Health Center, or by a home health agency or another facility, subject to the following:

- a. All Assisted Living and Health Center benefits available to you under this Agreement are supplemental and secondary to all benefits to which you are entitled under private insurance, Medicare, or other governmental programs. We are not required to pay for any items or



services for which reimbursement is available. You agree to maintain Medicare Part A, Medicare Part B, and one supplemental health insurance policy or equivalent insurance coverage acceptable to Ventana. If you are not qualified for Medicare coverage you will be required to maintain comprehensive health coverage satisfactory to Ventana. If your costs of care are reimbursable under any Medicare or other public program or private insurance, you will be required to exhaust all Medicare benefits and any other public benefit or private insurance coverage for which you qualify before we are obligated to cover any costs of your care. After you have exhausted all benefits under those programs or coverage's, Ventana will provide the Assisted Living and the Health Center benefits described above based on the fees and charges described in the then current Fee Schedule. The Resident will also be responsible for all applicable charges for prescriptions, medications, special equipment and additional services unpaid by Medicare or private insurance and not included in the standard services or charges described in the then current Rate Sheet.

- b. For the duration of the period you are collecting benefits under this Life Care Benefit section, the Entrance Deposit must be maintained with Ventana and is not subject to refund. The Entrance Deposit is subject to draw down to pay for costs of care, if necessary.

#### **4.0 SERVICES AND AMENITIES**

4.1 Included General Services: So long as you are in compliance with your obligations hereunder, we will provide you with the following services covered by the Monthly Service Fee and Entrance Deposit:

- a. Flexible Dining Plan. Meals will be served on a daily basis in multiple dining venues. A dining credit of Four Hundred (\$400) Dollars per month is included in Resident's Monthly Service Fee. An additional dining credit of Four Hundred (\$400) Dollars is included in the 2nd person fee if there are two Residents in the Apartment. Resident may use the dining credits at any of the dining venues in the Community. The cost of meals purchased in excess of the Four Hundred (\$400) Dollars dining credit will be included in Resident's monthly statement. Any remaining dining credit at the end of a month will not be carried over to a following month or refunded to Resident.

- b. Utilities. The costs of electricity, sewer, water, waste disposal, heat, air-conditioning, Wi-Fi and basic cable are included as part of the Monthly Service Fee.
- c. Security and Emergency Alert System. Each Residence will be equipped with smoke detectors, a sprinkler system and an emergency alert system. Ventana will monitor the emergency alert systems on a twenty-four (24) hour basis and coordinate emergency responses as appropriate.
- d. Housekeeping. Housekeeping of the Residence, including vacuuming, mopping, sweeping, wiping and dusting of flat surfaces and changing of flat bed linens occurs on a weekly scheduled basis in accordance with the Resident Handbook.
- e. Laundry. Ventana will perform scheduled weekly laundry service of your personal flat bed linens.
- f. Maintenance. Ventana will maintain all Community areas and grounds. Within the Residence, Ventana will be responsible for providing repair, maintenance, and replacement of equipment and furnishings provided by Ventana, provided that such repairs are not required as a result of your negligence. Residents are responsible for maintenance of personal property and are encouraged to purchase a renter's insurance policy covering personal property and personal liability.
- g. Mail. A U.S. mailbox will be provided for each Residence in a convenient location at Ventana.
- h. Transportation. Ventana will provide local transportation to designated shopping, medical facilities and other local destinations on a regularly scheduled basis. See also Resident Handbook and Disclosure Statement.
- i. Social and Recreational Programs. A full-time Life Enrichment Director will coordinate a variety of social, recreational, educational, and cultural programs for those Residents wishing to participate. Specific programs will be based on the Residents' interest.
- j. Property Taxes and Insurance. Ventana will pay for real property taxes for the Community as applicable, with the exception of those assessed

on the Resident's personal property. Ventana will also obtain property and casualty insurance coverage on the buildings and grounds. Such coverage will not insure against loss or damage to the Resident's personal property or damage or injury to others caused by the Resident. Ventana recommends that each Resident purchase appropriate comprehensive insurance.

- k. Wellness Programming. Ventana will coordinate educational and screening programs promoting wellness and preventive health maintenance. Participation in those services is voluntary.
- l. Parking. Ventana will provide one parking space per Residence. For an additional charge, a Residence with two occupants may be provided with one additional parking space provided that each Resident owns, operates and parks a separate vehicle at the Community.
- m. Life Care Benefit. Basic Assisted Living and Health Center (nursing) services, as needed, will be provided for the Resident's lifetime after Permanent Assignment, as defined in Section 6.0, to Assisted Living or the Health Center. Assisted Living services included are assistance with dressing, eating, bathing, toileting, ambulating, and medication management. Health Center care will be provided as needed and will cover services included in the basic private nursing room daily rate then in effect. Residents will be responsible for all applicable charges for prescription, medications, special equipment and additional services unpaid by Medicare or private insurance and not included in the standard services or charges described in the then current Rate Sheet.

All Assisted Living and Health Center care benefits available to the Resident under this Agreement are supplemental and secondary to all benefits to which he or she is entitled under insurance, Medicare or other governmental programs. Ventana is not required to pay for any items or services for which reimbursement is available under those programs. The Resident shall agree to exhaust all Medicare benefits and any other public benefit or private insurance coverage for which he or she qualifies before Ventana is obligated to cover any costs of the Resident's care that are reimbursable under any such programs.

4.2 Community Common Areas. You will have use of Community areas in accordance with the rules and policies of Ventana. Community common areas may include:

- a. Formal and Casual Dining Rooms
- b. Private Dining Room
- c. Casual Bistro
- d. Outdoor Dining Terrace
- e. Library Area
- f. Conference Room
- g. Game and Card Room
- h. Creative Arts Studio
- i. Beauty and Barber Shop
- j. Postal Area
- k. Spa and Fitness Center
- l. Grand Hall
- m. Indoor, Heated Swimming Pool

4.3 Additional Services. The following Additional Services will be available on a fee-for-service basis:

- a. Guest Meals
- b. Catering for Special Occasions
- c. Salon Services
- d. Room Service
- e. Resident Meals in Excess of Meal Credit
- f. Parking in Excess of Allotted Parking
- g. Additional Transportation (See Resident Handbook)
- h. Such other Services as may be listed from time to time

Charges for these Additional Services and others that may be offered will be made in accordance with our Additional Services Fee Schedule then in effect and will be billed to you monthly.

4.4 Advance Notice for Changes in Scope of Services. Ventana will provide at least sixty (60) days advance notice before any change in the scope of care or services becomes effective unless an immediate transfer to Assisted Living or the Health Center is deemed necessary as provided in Section 3 of this Agreement. This includes notifications of any changes in charges for Additional Services. See Customization Addendum for more details.

4.5 Customization of Residence. You may make customizations to your Residence at your expense, subject to Ventana's policies and with Ventana's prior written approval. Any approved Customizations of a Residence will be performed by our maintenance staff or by a contractor we approve. Any customizations of a Residence of a permanent nature become the property of Ventana. Ventana reserves the right to restore the Residence to its pre-altered state upon vacancy of the Residence by Resident. The cost of restoration, as determined by Ventana, is the responsibility of the Resident and may be withheld from any Entrance Deposit refund due.

For your safety, you agree not to replace or add any locking devices to your Residence.

## **5.0 RESIDENT OBLIGATIONS**

5.1 Health Insurance. Subject to your obtaining medical insurance as described in Section 3.9 a. Ventana will provide you with the services described in this Agreement, as appropriate. You agree to provide evidence of all required insurance upon request. You also agree to execute all necessary documents to obtain payment of benefits, which are, or may be payable in the future for health care services provided hereunder to you.

If you have any questions about insurance coverage, Ventana will assist you in obtaining answers.

5.2 Power of Attorney Guardianship. You acknowledge that at some future time you may be unable by reason of mental or physical disability to properly handle your own affairs and that it may be in your best interest to have an attorney in fact or a guardian appointed to handle your affairs. Therefore, you agree to designate in writing, prior to or at the time of your Date of Occupancy, a person or persons who will have authority to act on your behalf in the event you should at any time become unable to properly handle your affairs. If you should thereafter become either physically or mentally unable to properly administer your own affairs, this designated person shall either commence handling your affairs pursuant to the terms of a durable power of attorney or file a petition in a court of competent jurisdiction to have a guardian or conservator appointed to handle your affairs. If the designated person(s) are unable or unwilling to file such a petition, Ventana is empowered to do so at your expense.

5.3 Home Health Care Services. It is the intent of Ventana to enable you to maintain the highest level of independence possible. As such, home health care services may be obtained by you in your Residence at your expense by a certified home health care agency of your choosing. Such services are typically intermittent and short-term in nature, often rendered following an acute illness. Any assistance by Ventana in choosing an appropriate agency shall in no way be deemed an endorsement of a particular agency and Ventana shall in no way be deemed responsible for the acts or failures to act of any such agency. You must also comply with the provisions outlined in your Resident Handbook for retaining Private Duty Personnel. Residents who need assistance with the activities of daily living or Nursing Services on a continuing basis will transfer, if necessary, to Assisted Living or the Health Center to receive such services, in accordance with the provisions of Section 6.0.

5.4 Cost of Physicians, Medicines, Etc. You acknowledge and agree that any and all expenses or charges which may be incurred by or on behalf of you for costs not covered by this Agreement, including, but not limited to, physicians, therapists, podiatrists, diagnostic services, mental health, medicines, prescription drugs, medical supplies, vitamins, crutches, braces, walkers, wheelchairs, special duty nursing, hospitalization, care and treatment of eyes, ears and teeth, and any and all other personal medical expenses shall be your sole and exclusive responsibility. You shall be entitled to treatment by the physician of your choice at your expense.

5.5 Resident Handbook. Ventana will establish and adopt policies and procedures (collectively "Policies") for the occupancy and orderly operation and management of Ventana. These Policies will be drafted to provide for the safety, welfare, peace, and comfort of all Residents, consistent with the provisions of this Agreement. These Policies will be published in writing in the Resident Handbook, which will be provided to you on or before the date you move in and may be amended from time to time at the sole discretion of Ventana. You agree to abide by and observe such Policies and all amendments and additions thereto. These Policies are hereby incorporated by reference. In the event that the terms of this Agreement conflict with the Policies, the terms of this Agreement shall control.

5.6 Non-Impairment of Financial Responsibility. After execution of this Agreement, you agree not to impair your ability to meet your financial obligations under this Agreement or to cause or fail to cause any act that will render you unable to meet the financial qualifications for Residency as established by Ventana. You may undertake or execute any financial transaction you choose, without approval, as long as the transaction does

not compromise your ability to meet the financial obligations related to your Residence at Ventana. You also agree to prevent others from impairing your ability to meet your financial obligations related to your Residence at Ventana.

## **6.0 TRANSFERS TO OTHER LEVELS OF CARE**

6.1 Transfers, Reassignments and Readmissions. If there comes a time when you need to move to Assisted Living or the Health Center or to another health care facility, which provides services not available at Ventana, Ventana is aware that this is a critical transition and will follow the following procedures during any transfers, reassignment or readmissions.

6.2 Consultations. Except in case of emergency, Ventana agrees not to transfer you from your Residence to Assisted Living or the Health Center, or to a care facility or hospital which is not on the campus of Ventana, for health-related or other reasons unless it has consulted with you, your physician, your family, and/or your designated representative, if applicable. Such a decision shall be made in the best interests of the Resident, and the decision of Ventana shall be final and binding. In the case of an emergency transfer, the consultations described above will be scheduled by Ventana within seven (7) days after the transfer, whenever feasible. Circumstances in which it is in the best interest of you to be transferred include, but are not limited to, the following:

- a. A determination by Ventana that you can no longer function in an independent manner in a Residence, and you require additional assistance with activities of daily living or nursing services;
- b. A determination by Ventana that you are unable to remain ambulatory (for purposes of this Agreement, "ambulatory" is used to describe a person who is capable of demonstrating the mental competence and physical ability to leave a building without human assistance or supervision in case of an emergency); or
- c. A determination by Ventana that your continued Residency at Ventana would be harmful to you and/or other Residents or staff.

If Ventana determines, after considering your views, that your health requires that you be transferred (i) from the Residence covered by this Agreement to Assisted Living or the Health Center or (ii) to a care facility or hospital which

provides services which Ventana does not provide or is not licensed to provide, you agree to be relocated in accordance with such decision.

6.3 Consents. When it has been determined, after consultations as described above (or in an emergency situation), to transfer you to Assisted Living, the Health Center, or to a suitable care facility or hospital for health care or other health-related services, Ventana shall be authorized to transfer you without having to obtain your further consent.

6.4 Temporary Transfers. A transfer is considered temporary when the determination is made that the condition that requires your transfer has the potential to be resolved in a manner, which may allow you to return to your Residence within ninety (90) days. Your Residence will be held for your return. You will be responsible for your Residence Monthly Service Fee during this period. Temporary Transfers are not eligible for the Life Care Benefit described in Section 3.0.

6.5 Permanent Transfers. A transfer is considered permanent when the determination is made by Ventana that the condition that requires your transfer will not allow you to return to your Residence within ninety (90) days.

- a. In the event of a Permanent Transfer, you shall release your Residence in order for Ventana to make your Residence available to a new Resident. In such event, Ventana may enter into a new Residence and Services Agreement for occupancy of the Residence with a new Resident. You grant Ventana the right to remove your personal property from the Residence thirty (30) days after a Permanent Transfer and to store it at your expense.
- b. If the Residence is occupied by two (2) Residents, the Permanent Transfer of one (1) Resident does not affect the rights and privileges under this Agreement of the Resident remaining in the Residence provided that the Monthly Service Fee will be adjusted such that the second person monthly charge then in effect will not apply to the remaining Resident. The transferring Resident will be subject to the fees as described in Section 3.7.

6.6 Resumption of Residence. If your Residence is reassigned and you subsequently recover sufficiently to maintain yourself independently in a Residence, you will be given priority access status for the next available Residence similar to the one relinquished, at the then current Monthly Service Fee.



## **7.0 INABILITY TO PAY**

7.1 Residents Who Become Unable to Pay. It is Ventana's policy that this Agreement will not be terminated solely because of your financial inability to continue to pay the Monthly Service Fee or other charges payable under the terms of this Agreement by reason of circumstances beyond your control; provided, however, this policy shall not be construed to qualify or limit Ventana's rights to terminate this Agreement in accordance with its terms including but not limited to Section 8.2 b (iii). If you present facts which, in the opinion of Ventana, justify special financial considerations, Ventana will give careful consideration to subsidizing, in part or in whole, the Monthly Service Fee and other charges payable by you under the terms of this Agreement so long as such subsidy can be made without impairing the ability of Ventana to attain its objectives while operating on a sound financial basis. Any determination by Ventana with regard to granting financial assistance shall be at the sole discretion of Ventana and any decision to provide such financial assistance shall continue in effect only so long as Ventana, in its sole discretion, determines that it can continue to operate for the benefit of all Residents on a sound financial basis.

- a. In the event Ventana decides to provide you with any financial assistance or a subsidy, deferral of charges or other assistance, you agree that Ventana may charge such amounts, plus interest, against the refund of your Entrance Deposit. Furthermore, we may require you to move to a smaller or less expensive Residence. You agree to cooperate with any application for public assistance and other requests for cooperation by Ventana management.
- b. The cost of any such financial assistance provided to you shall be accrued and remain an obligation the Resident and the Resident's estate.

## **8.0 TERMINATIONS AND REFUNDS**

8.1 Termination Prior to Occupancy. You will be entitled to full reimbursement of any monies paid to Ventana within thirty (30) days of our receiving your written termination of this Agreement and will be released from liability to pay Ventana any other amount under this Agreement under any one of the following conditions:

## RESIDENCE AND SERVICES AGREEMENT

- a. You terminate this Agreement within seven (7) days from the date on which you signed this Agreement and paid the Entrance Deposit; or
- b. If you pass away before occupying your Residence at Ventana, or if, because of illness, injury, or incapacity, you would be precluded from occupying your Residence consistent with the representations made by you in the Application, including the Confidential Medical Profile, this Agreement will be canceled.

Interest on your Entrance Deposit will NOT be due or payable.

- c. If you terminate this Agreement prior to the date you occupy your Residence for reasons or conditions other than those described above, you will be entitled to a reimbursement of any monies paid. If you have not paid an Entrance Deposit, you shall be relieved of further liability to pay. If an Entrance Deposit has been paid, it will be refunded to you without interest. In this circumstance, we will pay any refund due to you under this Section (c) within thirty-days (30) after the date we have received your written notice of termination of this Agreement.

8.2 Termination of Residency After Occupancy. After you have assumed occupancy of your Residence, this Agreement is subject to termination as follows:

- a. By you at any time upon sixty (60) days prior written notice to Ventana, unless emergency circumstances preclude such notice.
- b. Ventana may terminate this Agreement after the Occupancy Date for:
  - i. A material misrepresentation or omission by you in the Application for Residency, Confidential Medical Profile, or related materials, which, if such information had been accurately provided, would have been material to the decision whether or not to accept you for Residency;
  - ii. If you fail to comply with the rules and regulations of Ventana or create a situation detrimental to the health, safety or quiet enjoyment of the facility by or for yourself or other Residents or the staff;

## RESIDENT AND SERVICE AGREEMENT

- iii. If you fail to pay the Monthly Service Fee or other amounts due Ventana when due unless other mutually satisfactory arrangements have been made. However, it is our policy that this Agreement shall not be terminated solely because of your financial inability to pay Monthly Service Fees, additional service fees and other fees and charges due to Ventana to the extent that, in the sole judgment of Ventana (1) your ability to pay is not the result of your willful or unreasonable action; and (2) in the judgment of Ventana, the ability of Ventana to operate on a sound financial basis will not be impaired;
  - iv. Material breach by you of the terms and conditions of this Agreement; or
  - v. The Residence is no longer fit for occupancy and Ventana elects not to restore the Residence to habitable condition.
- c. Ventana may also terminate this Agreement subsequent to Resident's Occupancy Date for medical reasons, if it is determined by Ventana (after consultation, to the extent feasible, with you, your personal physician, and your family and/or designated representative) that:
- i. You have developed a dangerous or contagious disease or mental illness;
  - ii. You are in need of drug or alcohol rehabilitation or any other condition for which Ventana is not licensed or you require care which cannot be provided by Ventana without significant and unique expenditure; or
  - iii. You are or have become mentally or emotionally disturbed to a degree that your continued presence at Ventana is determined to be detrimental to the health, safety and welfare of yourself or other Residents or staff.

Should any of these situations occur, we are expressly authorized (after, to the extent feasible, consultation with your personal physician and your family and/or your representative) to transfer you, at your expense, to an appropriate hospital facility or alternative care facility.

Barring emergency circumstances, if Ventana seeks to terminate this Agreement and your occupancy, Ventana shall give you sixty (60) days prior

## RESIDENCE AND SERVICES AGREEMENT

written notice of termination, which notice shall reasonably describe the conduct, situation, or condition alleged to warrant the termination of the Agreement and shall set the time, place, and date for a meeting between you and Ventana's representative(s). Such meeting shall not be earlier than thirty (30) days or later than forty-five (45) days after the date of the notice of termination. At this meeting you may avoid termination upon your proof to Ventana's reasonable satisfaction that you have cured the conduct, situation or condition alleged to warrant the termination.

8.3 Effect of Double Occupancy. If your Residence is occupied by two (2) Residents and one (1) passes away, this Agreement will continue in full legal force and effect as to the surviving Resident, except that the Monthly Service Fee will be adjusted to reflect the then applicable single occupancy rate payable for the type of Residence occupied by Resident.

8.4 Refund of Entrance Deposit. After termination of this Agreement in accordance with this Section 8.0 as applicable, or in the event of your death, or, in the case of double occupancy, both Residents' deaths, we will refund ninety-five percent (95%) of your Entrance Deposit (without interest) that you paid in connection with your Residence at Ventana less applicable fees and charges provided for in this Agreement. Except as provided below, the refund will be paid on the later of: (i) ten (10) days after receipt of sufficient proceeds to fully fund the refund obligation from the re-sale and occupancy of any Residence at Ventana, or (ii) termination of this Agreement. In the event Ventana terminates this Agreement for cause in accordance with Section 8.2 (b) or 8.2 (c) of this Agreement, Ventana shall pay to you, within forty-five (45) days of your vacating the Residence, any refund due, less a reasonable amount to cover the anticipated cost of utilities, telephone and other applicable obligations, fees and charges as provided for in this Agreement. The refund of your Entrance Deposit shall be payable as follows:

- a. If the Residence is initially occupied by one (1) Resident, the amount due will be paid to you, if alive. If you are not alive, the refund will be paid in accordance with the Designation of Beneficiary of Entrance Deposit Refund executed by you, or if none, to the personal representative of your estate.
- b. If the Residence is initially occupied by two (2) Residents, the Entrance Deposit shall be paid jointly to each of you, if both are alive. If only one of you is alive, the amount due will be retained for the surviving Resident. If neither of you is alive, the refund will be paid in accordance with a Designation of Beneficiary of Entrance Deposit Refund

executed by the Resident who last occupied the Residence, or if no Designation of Beneficiary has been executed, to the personal representative of your estate.

- c. No refund of your Entrance Deposit will occur until the surviving Resident ceases reside at Ventana and all conditions of this Agreement are met.

**8.5 Use of Entrance Deposit.** The purpose of your Entrance Deposit is to generate investment income to contribute to the operating income of Ventana and to help pay for operating expenses and capital costs. As such, interest income generated from the investment of your Entrance Deposit will be paid to Ventana. In addition, at the sole discretion of Ventana, Entrance Deposits may also be used to pay for project development costs, start-up deficits, debt service, early retirement of debt, costs of future expansions and other purposes deemed appropriate by Ventana. No reserve funding will be established pertaining to your Entrance Deposit. In order to obtain permanent financing and to secure the lender and other party or parties who provide financing, Ventana has pledged the receipts and revenues of Ventana, including your Entrance Deposits to the extent allowable by Texas law.

**8.6 Right of Off-Set; Other Rights.** We reserve the right to off-set against the refund of your Entrance Deposit any fees or amounts payable to Ventana under this Agreement including any charges deferred or unpaid or the amount of any financial assistance provided under Section 7.0. Termination of this Agreement for whatever reason will not affect or impair the exercise of any right or remedy granted to Ventana or you under this Agreement for any claim or cause of action occurring prior to the date of such termination.

**8.7 Relocation.** You may elect to move to another Residence, subject to availability. In such event, the Agreement will be amended to reflect the change in Residence status and/or location.

- a. Relocation to a less expensive Residence. You will receive a refund of the refundable portion of the Entrance Deposit in excess of the refundable portion of the Entrance Deposit then in effect for the new Residence. No additional five percent (5%) nonrefundable portion will be required. You will pay the then-current Monthly Service Fee for the new Residence. All moving costs will be at your expense.

- b. Relocation to a more expensive Residence. You will be required to pay the difference between the initial Entrance Deposit and the Entrance Deposit then in effect for the new Residence selected. A portion of the additional Entrance Deposit will be nonrefundable (see Section 8.4). You will pay the then current Monthly Service Fee for the new Residence. All moving costs will be at your expense.

## 9.0 MISCELLANEOUS

9.1 Right to Occupy Residence. The right to occupy the Residence and receive services under this Agreement shall apply exclusively to the named Resident(s) hereunder, and to no other individual(s). No person other than the Resident(s) entering into this Agreement shall be permitted to occupy the Residence without the express written permission of Ventana as herein provided.

9.2 Resident's Interest. You do not have any proprietary interest in Ventana, its assets or properties by virtue of this Agreement. While Ventana is interested in Resident's input and comments, this Agreement does not give you the right to participate in management or policy making decisions of Ventana.

9.3 Responsibility for Protection of Resident's Property. We shall not be responsible for damage or loss to any personal property belonging to you caused by fire, flooding or other casualty, or by leaking water, bursting pipes, theft or any other cause. You shall be solely responsible, at your own expense, for insuring against property damage or loss and personal liability to others. In the event of your death or transfer from Ventana, we will exercise ordinary care in temporarily safekeeping your personal property. If such property is not removed from Ventana premises within thirty (30) days after termination of this Agreement, we reserve the right to have such property placed in a commercial, bonded warehouse at the expense and risk of you and your estate.

9.4 Injury or Accident While Away from Ventana. If you are injured in an accident or become ill while away from Ventana, you shall make every reasonable effort to notify Ventana as soon as possible and you shall arrange to return to Ventana as soon as reasonably possible if continued medical care is required. Ventana shall not be responsible for or assume the cost of medical care for illness or injury incurred by you for illness or injury occurring while away from Ventana. At such time as the Resident returns to Ventana, Ventana shall



assume the responsibility for Independent Living, Assisted Living and the Health Center services thereafter rendered as provided in this Agreement.

9.5 Injury Caused by Third Party. In the event of an accident or injury to you caused by a third party for which such third party may be liable, you or your designated representative shall notify Ventana promptly and you or your designated representative shall pursue diligently any claim for damages, which may be due from such third party. Ventana is not required to bear the cost of care or additional care provided to you for whom a third party is liable. You agree to compensate Ventana for any expenses incurred by Ventana in providing care to you for which a third party is liable. Ventana shall not be obliged to assert any claim on your behalf arising out of any accident or injury caused by a third party.

9.6 Right of Subrogation. If you are injured by a third party and such injury requires Ventana to provide health care services under this Agreement, Ventana shall be subrogated, to the maximum extent allowed by Texas law, to your rights against such other third party to the extent necessary to reimburse Ventana for the costs incurred in providing health care services under this Agreement. To the extent allowed under Texas law, this right of subrogation authorizes Ventana to institute legal action in your name; provided, however, that such action shall not cause or result in a compromise, waiver or release of any causes of action that you may have against such third-party for such injuries nor does this right require Ventana to pursue any claim against such third-party.

9.7 Indemnification for Negligence. You hereby agree to indemnify, protect, and hold Ventana harmless from any loss, damage, injury, or expense incurred as a result of your negligent or willful acts or the acts of your invitees or guests.

9.8 Right of Entry. You hereby authorize Ventana's employees and agents to enter your Residence to provide services, repairs, maintenance, alterations, and pest control, to conduct inspections and to respond to perceived medical or other emergencies. Non-emergency or non-medical services will be scheduled in advance with Resident.

9.9 Guests. Occupancy of the Residence and use of Ventana facilities is limited to you and your guests. Guests may not occupy your Residence for more than fourteen (14) days without prior written approval of Ventana. You will be responsible for the conduct of your guests and for payment of any charges incurred by your guests.

9.10 Absence from Ventana. You are requested to notify Ventana in advance of any contemplated absence that is anticipated to exceed twenty-four (24) hours.

9.11 Damage to Residence. Resident is responsible for excessive wear or damage to the Residence caused by Resident's action or neglect. The cost of repair due to damage or neglect is the responsibility of the Resident and may be withheld from any Entrance Deposit refund due. If your Residence is damaged by fire, flood, storm or other casualty or cause and we elect not to terminate this Agreement, we will, at our expense, proceed diligently to repair and restore your Residence. If your Residence is uninhabitable during the repair, we will relocate you to a comparable type of Residence at Ventana, if available, or, if not, we will try to relocate you temporarily to any other available Residence at Ventana and the Monthly Service Fee will be adjusted for the type of Residence you temporarily occupy. In no such event shall the Monthly Service Fee for the Residence to which you have been relocated be more than the Monthly Service Fee for your Residence.

9.12 Entire Agreement. This Agreement, including all Addenda hereto, constitutes the entire Agreement between Ventana and Resident with regard to your Residence and care. Ventana will not be liable for, or bound by, any statements, representations or promises made to you to by any person representing or purporting to represent Ventana unless such statements, representations, or promises are expressly set forth and endorsed by both parties in writing and attached to this Agreement.

9.13 Binding Effect. This Agreement is binding upon Ventana's successors and assigns and your heirs and personal representatives. The provisions of this Agreement are not assignable or transferrable in whole or in part by you and you have no right to sublet the Residence.

9.14 Severability. Each provision of this Agreement will be deemed separate from each other provision and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the balance of the Agreement.

9.15 Subordination. Your rights under this Agreement will be subordinate to any mortgage, security interest, pledge or other lien that now encumbers all or any part of Ventana's assets and shall be further subordinate to any mortgage, security interest, pledge or other lien hereafter placed on all or any part of Ventana's assets. You agree to execute, acknowledge and

deliver such subordination agreements as any lender or future lender shall reasonably require in order to establish the priority of any such lien.

9.16 Nondiscrimination. Ventana will be operated on a non-discriminatory basis and will provide the facilities and services described in this Agreement to individuals regardless of race, color, sex, marital status, religion, creed, handicap or national origin.

9.17 Notices. Any notice to Ventana by you must be given in writing and mailed or delivered to Ventana at the administrative office or at such other address as we may designate in writing. Any notice to you by Ventana will be given in writing and mailed or delivered to your Residence or at such other address as you may indicate in writing to Ventana.

9.18 Potential Tax Benefit. You may be eligible for a one-time medical expense tax deduction for a portion of the Entrance Deposit (in the first year of occupancy) and annually for a portion of the Monthly Service Fee paid to Ventana in that tax year. Ventana will provide a statement prepared by its auditors each year for your use in tax preparation. Ventana makes no representations regarding the availability of any tax deduction relating to your Residency and care at Ventana. You are advised to seek tax advice on this issue from your tax advisor.

9.19 Choice of Law. This Agreement will be interpreted according to laws of the State of Texas without regard to conflict of law principles and the exclusive venue of any proceeding under this Agreement shall be in Dallas, Dallas County, Texas.

9.20 Change of Condition. You agree to notify Ventana immediately of any change in circumstances that may affect your ability or qualifications to reside at Ventana or that could adversely affect other Residents, guests, or staff.

9.21 Authorized Agent Signature. This Agreement has been executed on behalf of Ventana by its duly authorized agent and no officer, director, agent, or employee of Ventana shall have any personal liability to you under any circumstances.

9.22 Third Party Rights. No other persons or entities other than Ventana and you have any rights or obligations under this Agreement.

9.23 Failure to Act. The failure or delay by any party to exercise any right, power or privilege under this Agreement will not operate as a waiver of such right, power or privilege.

9.24 Continuation of Representations as to Accuracy of Information. You agree that the information provided to Ventana in the Reservation Agreement including your Application for Residency, Confidential Financial Statement, and Medical Information remain true and correct.

## **10.0 DISPUTE RESOLUTION PROCEDURES**

10.1 THE FOLLOWING PROCEDURES SHALL APPLY TO THE RESOLUTION OF ALL DISPUTES, CLAIMS OR CONTROVERSIES OF ANY KIND BETWEEN YOU AND VENTANA ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO THIS AGREEMENT AND ANY AMENDMENT HEREOF, THE BREACH HEREOF OR SERVICES PROVIDED HEREUNDER.

10.2 YOU AND VENTANA AGREE TO ATTEMPT TO RESOLVE ALL SUCH DISPUTES, CLAIMS OR CONTROVERSIES BY CONSULTING AND NEGOTIATING WITH EACH OTHER IN GOOD FAITH IN AN EFFORT TO REACH A JUST, EQUITABLE AND MUTUALLY SATISFACTORY RESOLUTION. IF SUCH A RESOLUTION IS NOT REACHED WITHIN THIRTY (30) DAYS AFTER SUCH EFFORTS COMMENCE, THEN, UPON NOTICE BY EITHER PARTY TO THE OTHER, ALL SUCH DISPUTES, CLAIMS OR CONTROVERSIES SHALL BE SUBMITTED TO MEDIATION IN ACCORDANCE WITH THE SECTION 10.3 BELOW.

10.3 IF A RESOLUTION OF ANY SUCH DISPUTE, CLAIM OR CONTROVERSY IS NOT ACHIEVED BY NEGOTIATIONS CONDUCTED IN ACCORDANCE WITH THE SECTION 10.2 ABOVE, THEN EITHER PARTY MAY SUBMIT THE DISPUTE, CLAIM OR CONTROVERSY TO MEDIATION BY SUBMITTING A WRITTEN REQUEST FOR MEDIATION TO THE OTHER PARTY. THE MEDIATOR SHALL BE LOCATED IN DALLAS, DALLAS COUNTY, TEXAS AND SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES.

10.4 THE MEDIATION WILL BE CONDUCTED IN DALLAS, DALLAS COUNTY, TEXAS AND IN ACCORDANCE WITH THE RULES AND POLICIES ESTABLISHED BY THE MEDIATOR. ANY PART OF ANY DISPUTE, CLAIM OR CONTROVERSY THAT IT IS SUBMITTED TO MEDIATION UNDER THIS SECTION 10.4 BUT IS NOT RESOLVED BY MEDIATION MAY BE SUBMITTED TO BINDING ARBITRATION IN ACCORDANCE WITH SECTION 10.5 BELOW.

10.5 IF A RESOLUTION OF ANY PART OF SUCH DISPUTE, CLAIM, OR CONTROVERSY IS NOT ACHIEVED BY NEGOTIATIONS CONDUCTED IN ACCORDANCE WITH SECTION 10.2 ABOVE OR BY MEDIATION CONDUCTED IN ACCORDANCE WITH SECTIONS 10.3 AND 10.4 ABOVE, THEN, ALL PARTIES AGREE THAT, ANY UNRESOLVED PORTION OF SUCH DISPUTE, CLAIM OR CONTROVERSY MAY BE SUBMITTED TO BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. SUCH ARBITRATION SHALL BE CONDUCTED AS PROVIDED IN SECTION 10.6. COSTS OF ARBITRATION SHALL BE SHARED EQUALLY, WITH YOU PAYING ONE-HALF (1/2) OF SUCH COSTS AND VENTANA PAYING ONE-HALF (1/2) OF SUCH COSTS.

10.6 ANY ARBITRATION PROCEEDING COMMENCED IN ACCORDANCE WITH SECTIONS 10.5 AND 10.6 SHALL BE ADMINISTERED BY THE AMERICAN HEALTH LAWYERS ASSOCIATION (AHLA). WITHIN FIFTEEN (15) DAYS AFTER A DEMAND FOR ARBITRATION IS SERVED, THE RESIDENT OR RESIDENTS INVOLVED IN THE ARBITRATION AND VENTANA SHALL SELECT A NEUTRAL ARBITRATOR FROM A LIST OF ARBITRATORS PROVIDED BY THE AHLA. THE SELECTION SHALL OCCUR BY ALTERNATE STRIKES FROM THE PANEL PROVIDED BY THE AHLA UNLESS AN ALTERNATIVE METHOD IS AGREED UPON BY THE PARTIES. IN THE EVENT THE PARTIES DO NOT APPOINT AN ARBITRATOR, THE PARTIES OR THEIR ATTORNEYS MAY REQUEST THE AHLA TO APPOINT AN ARBITRATOR, PRIOR TO THE COMMENCEMENT OF HEARINGS, THE ARBITRATOR SHALL PROVIDE AN OATH OR UNDERTAKING OF IMPARTIALITY. ALL CLAIMS ARISING UNDER ANY STATUTE SHALL BE INCLUDED AS PART OF SUCH ARBITRATION AND THE ARBITRATOR SHALL HAVE FULL AUTHORITY TO CONSIDER ALL STATUTORY CLAIMS, AND PROVIDE ALL STATUTORY REMEDIES. UNLESS THEY ARE PART OF A STATUTORY REMEDY, THE ARBITRATOR SHALL HAVE NO AUTHORITY TO AWARD PUNITIVE DAMAGES. THE ARBITRATION SHALL BE CONDUCTED IN DALLAS, DALLAS COUNTY, TEXAS IN ACCORDANCE WITH PROCEDURES OF THE AHLA. JUDGMENT ON THE AWARD OF THE ARBITRATOR MAY BE ENTERED BY ANY COURT HAVING JURISDICTION THEREOF.

[SIGNATURE PAGE FOLLOWS]

RESIDENCE AND SERVICES AGREEMENT

IN WITNESS WHEREOF, VENTANA and the Resident(s) have signed this Agreement  
on this 3 day of September 2019

RESIDENT(S)

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

*Nancy May*  
Ventana Marketing Representative

Ventana by Buckner,  
A Texas Not-For-Profit Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_