

**RESIDENCE AND CARE
AGREEMENT**



KIMBALL FARMS
At
LENOX

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**KIMBALL FARMS
RESIDENCE AND CARE AGREEMENT**

This Agreement is made as of this _____ day of _____ 19____ between BERKSHIRE RETIREMENT COMMUNITY, INC., a Massachusetts charitable corporation, d/b/a KIMBALL FARMS ("KIMBALL FARMS") and _____ And _____ Of _____ (individually, the "RESIDENT" and collectively, the "RESIDENT", where context permits, or the "RESIDENT COUPLE").

PRELIMINARY STATEMENT

KIMBALL FARMS owns and operates, on a not-for-profit basis, a continuing care retirement facility in Lenox, Massachusetts. KIMBALL FARMS seeks to provide, for the individual and collective benefit of the residents of the KIMBALL FARMS community (a) comfortable living accommodations and associated facilities, services and amenities, together with certain medical and nursing care services. In order to provide such accommodations, services, and amenities at a reasonable cost, KIMBALL FARMS requires that new residents meet certain financial and health status criteria as a condition of admission to the KIMBALL FARMS community. RESIDENT has submitted to KIMBALL FARMS a Confidential Data Application and medical examination form to establish that RESIDENT meets KIMBALL FARMS' admission criteria. On the basis of (a) the information supplied by RESIDENT in the Confidential Data Application and medical examination form and (b) RESIDENTS agreement to the terms and conditions set forth in this Agreement, KIMBALL FARMS has accepted RESIDENT for admission to KIMBALL FARMS on the terms and conditions set forth herein.

IT IS THEREFORE AGREED AS FOLLOWS:

I. PROVISION OF ACCOMMODATIONS, SERVICES AND AMENITIES

A. In consideration of the payment of the fees and other charges set forth in Article VI, and the other obligations assumed by RESIDENT under this Agreement, KIMBALL FARMS shall, from the Closing Date (as adjusted, if necessary) to the termination of this Agreement, provide to RESIDENT the accommodations, services and amenities set out in Article II, Article IV and Article V and shall make available for an additional charge or charges, the additional services described in Article III hereof.

B. KIMBALL FARMS has assigned to RESIDENT the residential unit identified on Schedule A attached hereto, with the expectation that the assigned unit will be ready for occupancy on or about the date, or upon the occurrence of the conditions, identified on Schedule A attached hereto (the "Anticipated Availability Date"). KIMBALL FARMS shall notify RESIDENT in writing at least thirty days before the assigned unit will be ready for actual occupancy by RESIDENT and KIMBALL FARMS and RESIDENT shall agree upon a mutually convenient date for closing the transaction (the "Closing Date") to allow for actual occupancy of the unit by the RESIDENT.

KIMBALL FARMS and RESIDENT agree that, to the extent permitted by law and except to the extent the parties otherwise agree in writing, unless the period between the Anticipated Availability Date and the Closing Date exceeds 120 days or the Closing Date requires further adjustment by a period of more than 21 days, this Agreement shall not be cancelled and such delay in actual availability of the assigned unit shall not be a basis for termination of the Agreement.

C. RESIDENT'S right to occupy the unit and make use of the other facilities, services and amenities set forth in this Agreement shall commence as of the Closing Date (as adjusted, if necessary, pursuant to Section B hereof and whether or not RESIDENT takes actual occupancy on that date). RESIDENT'S obligation to pay the Monthly Service Fee, described in Article VI, Section A(2) hereof shall commence upon the Closing Date (as adjusted, if necessary pursuant to Section B hereof) and RESIDENT'S obligation to have paid in full the Entrance Fee described in Article VI, Section A(1) hereof on such Closing Date (as adjusted, if necessary).

D. As part of RESIDENTS application for admission to the KIMBALL FARMS community and, in any event, unless waived or modified in writing by the Board of Trustees of KIMBALL FARMS, as a pre-condition of the effectiveness of this Agreement, RESIDENT shall:

1. be at least 65 years of age (or in the case of a RESIDENT COUPLE, at least one member of such RESIDENT COUPLE is at least 65 years of age);

2. have submitted, on a form to be provided by KIMBALL FARMS, information concerning the results of a medical examination of RESIDENT (including each member of a RESIDENT COUPLE) by a licensed physician of RESIDENT'S choice, which examination shall have occurred within 60 days of RESIDENT'S application, have been at RESIDENT'S expense, and have demonstrated, as disclosed on the medical examination form and certified to by the examining physician, that RESIDENT (including each member of a RESIDENT COUPLE) was, on the date of the examination, in a status of health adequate to reside in the KIMBALL FARMS community and be self-maintaining in his or her residence; and

3. have demonstrated on a Confidential Data Application and as otherwise required by the Executive Director that RESIDENT has the financial ability to

pay the Entrance Fee, the Monthly Service Fees, extra meal charges, charges for additional services and personal living expenses.

II. ACCOMMODATIONS AND FACILITIES

A. Accommodations

1. RESIDENT, having been accepted for admission to KIMBALL FARMS, has been assigned the residential unit identified on Schedule A attached hereto. RESIDENT shall have the right to occupy and use the assigned unit subject to KIMBALL FARMS' right to reassign RESIDENT as expressly provided in this Agreement. KIMBALL FARMS shall furnish the assigned unit with floor coverings, window coverings and fixtures. RESIDENT shall have the right to request substitution of other floor coverings, window coverings or fixtures, provided that such requests are submitted in writing to the Executive Director for approval. Approved substitutions shall be at the expense of RESIDENT.

2. In the event that RESIDENT shall make modifications, alterations or additions to the assigned unit or changes to or replacements of the furnishings or fixtures provided by KIMBALL FARMS, such modifications, alterations or additions or such changes or replacements shall become the property of KIMBALL FARMS unless otherwise agreed to in writing. In the event that RESIDENT shall desire to make or cause to be made structural changes to the assigned unit, RESIDENT shall submit such request in writing, together with such plans, specifications and assurances as the Executive Director shall request. Any such request for structural changes shall require the written approval of the Executive Director and if so approved, shall be at the RESIDENT'S expense (unless otherwise agreed in writing) and, in all cases, shall be carried out under the supervision of the Executive Director (or his or her designee) and by contractors approved by the Executive Director. Approval of any structural changes shall be conditioned upon the RESIDENTS undertaking, with assurances satisfactory to the Executive Director, to bear the cost of a later restoration of the assigned unit to its original condition.

3. KIMBALL FARMS shall provide and maintain a dishwasher, disposal, stove and refrigerator in the assigned unit. Any other appliance or item of household equipment shall be the sole responsibility of RESIDENT.

B. Other KIMBALL FARMS Facilities and Amenities

The RESIDENT shall have the right to use, in common with others, the dining rooms, lobbies, auditorium, library, social and recreational facilities (indoor and outdoor), craft facilities, laundry and other public rooms located at the KIMBALL FARMS facility.

C. Personal Service Facilities

KIMBALL FARMS shall provide automatic washers and dryers for personal laundry KIMBALL FARMS may, from time to time, arrange for other services at the KIMBALL FARMS facility to be provided by concessionaires at the expense of residents using such services.

D. Health Care Facility

KIMBALL FARMS shall provide such facilities as are necessary for KIMBALL FARMS to provide those nursing and other health care services described in Article V of this Agreement.

E. Storage

KIMBALL FARMS shall make available to RESIDENT storage space separate from the assigned unit for the storage of a reasonable quantity of personal belongings. All risk of loss or damage to any RESIDENT property stored in such facilities shall be borne solely by RESIDENT.

F. Parking Facilities

RESIDENT shall have access to the parking areas located at the KIMBALL FARMS facility at no additional charge. A limited number of parking garages are also available for use under a separate license agreement at an additional charge.

III. **SERVICES PROVIDED BY KIMBALL FARMS**

A. Food and Meals

KIMBALL FARMS shall publish a meal rate schedule from time to time, which schedule shall be the basis for establishing charges for any meals not included in the Monthly Service Fee, including additional meals for RESIDENT and any guest use of the dining facilities. Meal rates are subject to change by KIMBALL FARMS, at its sole discretion, upon 60 days advance written notice.

1. Dining Room and Health Care Center Service:

Two meals a day (three meals in the Health Care Center) will be available at the KIMBALL FARMS facility, one of which (designated by the RESIDENT) shall be included in the Monthly Service Fee.

2. Tray Service:

Tray service will be provided in the assigned unit during short-term illnesses when ordered by the Director of Health Services.

3. Other Service:

Meals containing substitute or alternative foods shall be provided without additional cost, subject to the approval of the MEDICAL DIRECTOR.

4. Meal Arrangements.

The basic Monthly Service Fee includes one meal per day and RESIDENT shall have the right to elect to take additional meals at the published meal rate as an extra charge.

B. Guest Meals

The charge for guest meals is not included in the Monthly Service Fee. Such charges will be billed on RESIDENT'S monthly statement.

C. Allowance During Resident's Absence

In the event that RESIDENT (a) is absent from the KIMBALL FARMS facility for a period of fourteen (14) consecutive days or more and (b) has given the Executive Director advance written notice of such absence, RESIDENT shall be entitled to a raw food credit reflective of KIMBALL FARMS' cost of purchasing food for RESIDENT for such period of absence. RESIDENT shall not be entitled to accumulate raw food credits, apply raw food credits to the cost of additional meals for RESIDENT or guests, or obtain raw food credits for periods of absence of less than fourteen (14) days or during hospitalization, or care at off-site facilities paid for, in whole or in part, by KIMBALL FARMS.

D. Housekeeping Services

RESIDENT shall maintain the assigned unit in a clean, sanitary, and orderly condition and shall be responsible for all usual light housekeeping tasks in the unit. Once a week, KIMBALL FARMS shall furnish other housekeeping services and laundering of linen and towels. If RESIDENT does not maintain the assigned unit in the manner required by this Section, KIMBALL FARMS, after notice to RESIDENT, shall have the right to assume the responsibility for housekeeping services and to bill the cost of such service to RESIDENT.

E. Maintenance and Repair Service

Repairs, maintenance, and replacement of property and equipment owned by KIMBALL FARMS shall be performed and provided by KIMBALL FARMS. Repairs, maintenance and replacement of personal property of RESIDENT shall be the sole responsibility of RESIDENT. In the event that RESIDENT desires redecoration of the assigned unit, in addition to or other than that scheduled by KIMBALL FARMS, RESIDENT shall make such request in writing, subject to the approval of the Executive Director. Such redecoration requested by RESIDENT shall be at RESIDENT'S expense.

F. Grounds

KIMBALL FARMS shall furnish basic grounds keeping care, including lawn service. RESIDENT may, with prior approval from the Executive Director and at his or her own expense, plant and maintain the area adjacent to RESIDENTS assigned unit. Any such planting shall become the property of KIMBALL FARMS, unless otherwise agreed to in writing.

G. Utilities

KIMBALL FARMS shall furnish water, sewage, trash collection, electricity, heat and wiring for telephone services. RESIDENT shall be solely responsible for monthly or other periodic charges for telephone service and for all installation and monthly service charges for cable television and computer network services.

H. Local Transportation

KIMBALL FARMS shall provide scheduled local transportation to certain shopping centers, banks and other points of common interest on a scheduled basis at no additional cost.

I. Taxes

All federal, state or local taxes assessed on the income, property or activity of KIMBALL FARMS (or payments to be made in lieu of such taxes) shall be the sole responsibility of KIMBALL FARMS. All federal, state or local taxes on the income, property or activity of RESIDENT shall be the sole responsibility of RESIDENT.

IV. ADDITIONAL SERVICES AVAILABLE AT AN ADDITIONAL CHARGE

The following is a listing of additional services which shall be available, from time to time, at additional charge to RESIDENT using the service.

**Gift Shop/Convenience
Store Banking Services
Laundry and Dry Cleaning Service
Barber and Beauty Shop
Non-Scheduled Transportation Service
Delivery of Local and Out-Of-Town Newspapers
Group Travel Trips
Secretarial and Notary Services
Classes, Art, Theatre, Orchestra, and Lecture Series
Guest Rooms**

V. MEDICAL SERVICES

A. General

1. Attending Physician

RESIDENT (including each member of a RESIDENT COUPLE) shall be required to select, before or as soon after admission to the KIMBALL FARMS community as is reasonably practicable, a physician to care for RESIDENTS personal medical needs, which physician shall be licensed in the Commonwealth of Massachusetts and available to routinely provide care for RESIDENT in the KIMBALL FARMS' Health Care Facility, in the event that RESIDENT'S health condition necessitates admission to the Health Care Facility (the "ATTENDING PHYSICIAN"). RESIDENT agrees to require any ATTENDING PHYSICIAN so employed by RESIDENT to supply KIMBALL FARMS' MEDICAL DIRECTOR in writing, in confidence and when requested, current information regarding RESIDENT'S diagnosis, medications, conditions and treatment. KIMBALL FARMS shall have the right to require any RESIDENT to reimburse it for KIMBALL FARMS' cost in providing ATTENDING PHYSICIAN or other services occasioned by the absence of RESIDENT'S ATTENDING PHYSICIAN or as a consequence of the acts or omissions of RESIDENT'S ATTENDING PHYSICIAN.

2. Covered Services

When prescribed or approved by the MEDICAL DIRECTOR, KIMBALL FARMS shall provide to, or arrange for the provision to, RESIDENT the following:

- a. assistance in obtaining necessary medical attention, and
- b. nursing care at the Health Care Facility, not including, however, services ancillary to nursing care, such as rehabilitation services, pharmacy services, certain medical supplies, nutritional supplements, oxygen and other ancillary supplies and services customarily billable under the federal Medicare program as separately billable covered ancillary services or supplies (whether or not such ancillary

services or supplies are, in fact, so billed or billable by or on behalf of RESIDENT) ("Supplemental Ancillary Services").

In the event an appropriate bed is not available at the Health Care Facility (although it is intended and expected that sufficient and appropriate beds shall be available to RESIDENT when needed in the Health Care Facility), KIMBALL FARMS shall arrange for the nursing care to be provided to RESIDENT in an appropriate alternative long term care facility. Such care shall be at KIMBALL FARMS' expense, except for those items which would be at RESIDENT'S expense if RESIDENT were in the Health Care Facility. RESIDENT shall be transferred to the Health Care Facility as soon as an appropriate bed becomes available there and RESIDENT shall have priority to occupy such bed over any non-KIMBALL FARMS resident.

3. Pre-Existing Conditions 3/99 Deleted

a. A pre-existing condition is a continuing or intermittent disease, illness, sickness or physical condition which RESIDENT shall have had within the 24 month period immediately preceding the Closing Date. The costs of care or treatment occasioned by a pre-existing condition or by diseases, illnesses, sicknesses or physical conditions as to which a pre-existing condition is a substantial contributing factor, as determined by the MEDICAL DIRECTOR, shall not be covered by the terms of this Agreement. RESIDENT shall be responsible for all cost and expenses related to care or treatment of a pre-existing condition or a disease, illness, sickness or physical condition as to which the pre-existing condition is a substantial contributing cause, but KIMBALL FARMS shall assist RESIDENT in obtaining the benefits of RESIDENT'S private or governmental health insurance coverage for care or treatment of such condition.

b. ~~KIMBALL FARMS' MEDICAL DIRECTOR~~ shall review the medical examination form submitted by RESIDENT pursuant to Article I, Section D of this Agreement and shall provisionally determine, in his or her sole discretion, whether RESIDENT has one or more pre-existing conditions. MEDICAL DIRECTOR shall note on Schedule B to this Agreement any pre-existing conditions identified from the medical examination form. Schedule B shall be amended at an time a pre-existing condition not disclosed on RESIDENT'S medical examination form is discovered. If deemed necessary by the MEDICAL DIRECTOR, RESIDENT shall, prior to the CLOSING DATE, or as soon thereafter as is reasonably practicable, submit on a form provided by KIMBALL FARMS the results of an updated medical examination by a licensed physician.

c. Payment of Health Care Costs

Provided that RESIDENT is in compliance with his or her obligations under this Agreement and is not in default in any material respect, KIMBALL FARMS shall indemnify RESIDENT and hold him or her harmless from all claims for payment for health care services, if KIMBALL FARMS is bound by this

Agreement to provide or arrange for the provision of such services without cost to RESIDENT other than to the Monthly Service Fees.

B. Types of Health Care Services

KIMBALL FARMS shall make available to RESIDENT the following types of medical and nursing services:

1. Nursing Care

KIMBALL FARMS shall provide covered nursing care in a semi-private room at the Health Care Center for RESIDENT, consistent with the Health Care Center licensed level of care and when ordered by the MEDICAL DIRECTOR, the cost of which, to the extent such nursing care services are not otherwise excluded by this Agreement, shall be included in the Monthly Service Fee or, if RESIDENT has permanently transferred to the Health Care Facility, at the Monthly Service Fee RESIDENT would have paid had RESIDENT remained in his or her assigned unit.

2. Community Care Program.

In the event that the MEDICAL DIRECTOR, EXECUTIVE DIRECTOR and Director of Health services determine that RESIDENT would benefit from assistance in living services, KIMBALL FARMS shall make available to RESIDENT, on a short term (not to exceed 30 days), brief duration (not more than one and a half hours daily) basis and for non-chronic conditions and circumstances, such nursing and assistance services as (i) wound treatment, (ii) bathing and grooming and (iii) assistance with meals and medications. Such services, described more fully in the KIMBALL FARMS Residents Handbook, shall be provided under the case management of the KIMBALL FARMS Assistance-in-Living Department and without additional cost to RESIDENT. Assistance-in-Living services in addition to those included in KIMBALL FARMS basic Assistance-in-Living program shall be provided, to the extent reasonably practicable, to RESIDENT at an additional charge.

C. Medical Director

KIMBALL FARMS shall appoint a MEDICAL DIRECTOR who shall, to the extent determined by the Executive Director, have general administrative but not clinical oversight of the medical care of RESIDENT, including office visits, prescription of medicine, medical reviews, attendance of health facility patients, hospital attendance, and referral of RESIDENT to specialists. Except to the extent that RESIDENT has specifically engaged the MEDICAL DIRECTOR as his or her ATTENDING PHYSICIAN, the MEDICAL DIRECTOR does not serve as an ATTENDING PHYSICIAN.

D. Hospitalization

If it is determined that RESIDENT requires hospitalization in an acute care facility, KIMBALL FARMS shall arrange for transfer of RESIDENT to such facility. All costs of hospitalization shall be paid for by RESIDENT and are not covered by this Agreement. RESIDENT may elect but shall not be required, to take advantage, of KIMBALL FARMS' association with Berkshire Medical Center, Inc. for hospital care.

E. Medical, Surgical and Automobile Insurance

1. Resident's Obligation

a. RESIDENT shall obtain and maintain in force, at his or her own expense, maximum coverages available to such RESIDENT for hospital, nursing care center and in-home services under any available program of federal government health insurance, particularly Medicare Parts A and B and any similar or successor programs as may be available in the future, and under Blue Cross/Blue Shield Medicare Supplemental Insurance (MEDEX GOLD) or an equivalent plan approved in writing by KIMBALL FARMS.

b. In the event that RESIDENT shall fail or neglect to arrange for such insurance coverage, RESIDENT hereby authorizes KIMBALL FARMS to make application on his or her behalf, to pay for such RESIDENT, as RESIDENT'S agent, any premiums in connection with such insurance, and to bill such costs to RESIDENT on the Monthly Service Fee statement, together with the costs of any medical, nursing or related services, supplies or expenses incurred or paid by KIMBALL FARMS, which would have been paid or reimbursed by such insurance plans or programs had RESIDENT had such insurance in place.

2. Excess Costs

KIMBALL FARMS shall be liable, but only to the extent that RESIDENT would otherwise be liable, for the costs of general medical and nursing care to the extent that KIMBALL FARMS is required to provide or arrange for the provision of, such services under this Agreement at no additional cost to RESIDENT and fails to provide or arrange for the provision of such services, but KIMBALL FARMS shall be entitled to any insurance or other benefit available to RESIDENT for payment of the costs of such care or services.

3. Payments of Benefits

To the extent that KIMBALL FARMS provides medical or nursing care or services under this Agreement, KIMBALL FARMS shall be entitled to the benefit of the proceeds of RESIDENT'S insurance or the benefit of any managed care program of which RESIDENT is a member, including but not limited to Medicare Parts A or B, Blue

Cross/Blue Shield Medical Supplemental insurance, any commercial insurance or successor program or plan to the extent that such insurance, programs or plans cover such care or service. RESIDENT hereby authorizes KIMBALL FARMS to make any and all claims to such insurance benefits and proceeds, agrees to execute any and all documents necessary to enable to process, collect, or enforce such claims and assigns such benefits and proceeds to KIMBALL FARMS.

Any such benefits for KIMBALL FARMS covered services received from any source shall be paid by RESIDENT to KIMBALL FARMS as reimbursement for any and all costs incurred by KIMBALL FARMS in providing covered services and other medical care to RESIDENT.

4. Automobile Insurance

Notwithstanding any other provisions of this Agreement, KIMBALL FARMS shall not be responsible for any costs of medical care resulting from injuries sustained while RESIDENT is operating a motor vehicle. If RESIDENT owns or is licensed to drive motor vehicles, he or she is expected to maintain his or her own insurance to cover medical and other costs resulting from accidents causing injury to himself or herself or to others and/or property damage in accordance with uniform coverage limits established by KIMBALL FARMS.

5. Illness or Accident Away From KIMBALL FARMS

If RESIDENT is involved in an accident or suffers an illness while away from KIMBALL FARMS, KIMBALL FARMS shall have no responsibility to pay for RESIDENT'S care resulting therefrom until RESIDENT returns to KIMBALL FARMS and the active care of the ATTENDING PHYSICIAN and supervision of the MEDICAL DIRECTOR.

F. Right of Subrogation

1. Effective only upon the occurrence of accident or injury to RESIDENT caused by third parties, RESIDENT hereby grants a power of attorney, coupled with an interest, to KIMBALL FARMS, which power shall not be affected by the subsequent disability or incapacity of the RESIDENT, to bring, at the option of KIMBALL FARMS, any claims or initiate any legal action against the person or entity causing the injury to RESIDENT for compensation for the injury or expenses caused thereby. RESIDENT agrees to execute such further authorization as shall be necessary to prosecute such claims or causes of action. KIMBALL FARMS, at its option, shall have the right to initiate any legal action under the power granted in this section in the name of RESIDENT or in KIMBALL FARMS' own name.

2. After reimbursement of all costs incurred by KIMBALL FARMS, including reasonable costs of care furnished to RESIDENT by KIMBALL FARMS

because of such accident or injury and all costs incurred in prosecuting such claim, including reasonable attorneys' fees, the balance of any proceeds of such action shall be credited to RESIDENTS account, or in the event of the death of RESIDENT, shall be paid to RESIDENT'S estate.

3. KIMBALL FARMS shall have the right, at its election, to limit its subrogation rights to claims for recovery of the costs incurred by it, and in such event, KIMBALL FARMS shall give notice to RESIDENT to join in the claim and KIMBALL FARMS shall, thereafter, not be obligated to assert any claim of RESIDENT arising out of such accident or injury except for claims for costs incurred by KIMBALL FARMS.

G. Mental Illness, Dangerous Diseases, and Drug or Alcohol Abuse

1. The KIMBALL FARMS facility is not designed to care for persons who are afflicted with mental illness, contagious disease or drug or alcohol abuse. In the event that KIMBALL FARMS determines that any physical or mental illness of RESIDENT or that RESIDENT'S condition as a result of drug or alcohol abuse is such that the RESIDENT'S continued presence in the KIMBALL FARMS community or Health Care Facility is in the sole judgment of KIMBALL FARMS, either dangerous or detrimental to the life, health, safety or peace of RESIDENT or other residents, then KIMBALL FARMS may transfer RESIDENT to an appropriate institution of KIMBALL FARMS' choosing.

2. RESIDENT shall continue to pay the Monthly Service Fee applicable to the assigned unit occupied by RESIDENT prior to the transfer and KIMBALL FARMS shall pay the cost of RESIDENT'S care in such institution to the extent of the average nursing care per diem cost (exclusive of Supplemental Ancillary Services) at the Health Care Facility.

H. Exclusions

In addition to the costs for which RESIDENT and not KIMBALL FARMS is responsible as set forth elsewhere in this Agreement, a RESIDENT shall, in all events, be solely responsible for payments for the following services and supplies: surgery; prescriptions and over-the-counter medications; audiological tests and hearing aids; eye glasses and refractions, dentistry; dentures; dental inlays; organ transplants; orthopedic appliances; physical therapy when not medically necessary; podiatry; hospitalization; professional care for psychiatric disorders; treatment for alcohol or drug abuse and renal dialysis.

I. Transfer to Health Care Facility

Except in the case of an emergency, all decisions involving transfer of RESIDENT to the Health Care Facility shall be made by a committee consisting of the MEDICAL DIRECTOR, a representative of the Health Care Facility staff, and the

Executive Director. Whenever practical, the committee will consult with the RESIDENT or his personal representative. All decisions by the committee shall be binding.

VI. FINANCIAL CONDITIONS

A. Fees

RESIDENT shall pay an Entrance Fee to KIMBALL FARMS in accordance with the schedule set out in this Section. All Entrance Fees received prior to the Closing Date shall be placed in an operating reserve fund (the "Operating Reserve Fund") to be held by State Street Bank and Trust Company, as trustee (the "Trustee") under a Mortgage and Indenture of Trust and Agreement (the "Indenture") among the Massachusetts Industrial Finance Agency ("MIFA") and the Trustee until such time as the Operating Reserve Fund equals at least twenty-five percent of KIMBALL FARMS budgeted annual operating expenses (the "Required Balance"). The Operating Reserve Fund is pledged as additional security for the bonds issued through MIFA (the "Bonds").

Funds held in the Operating Reserve Fund (including Gross Revenues) may be applied (so long as no default exists under the Indenture):

- (1) to pay refunds to residents upon cancellation of Residence and Care Agreements ;
- (2) to pay certain approved operating expenses and capital costs; and
- (3) to repay the Bonds and any Additional Bonds in accordance with the priorities set forth in the Indenture .

Funds in the Operating Reserve Fund will be invested by the Trustee pursuant to the direction of KIMBALL FARMS (subject to certain restrictions on investments contained in the Indenture), and interest received upon such investment shall be for the benefit of KIMBALL FARMS . In the event that the Operating Reserve Fund exceeds the Required Balance, KIMBALL FARMS has the right to invest such excess in accordance with the KIMBALL FARMS Board of Trustees investment policy.

1. Entrance Fee

In partial consideration of KIMBALL FARMS' provision of the accommodations, facilities, amenities and services described in this Agreement, RESIDENT shall pay KIMBALL. FARMS an Entrance Fee as follows:

SCHEDULE OF PAYMENT

| | |
|--|----------|
| Total Entrance Fee | \$ _____ |
| (a) 10% of Entrance Fee less Priority Agreement Deposit, payable at application by Resident (\$_____ received on _____ | _____ |
| (b) 90% of Entrance Fee payable by certified or bank check on or before the CLOSING DATE | \$ _____ |

2. Monthly Service Fee

In partial consideration of KIMBALL FARMS' provision of the accommodations, facilities, amenities, and services, described in this Agreement, RESIDENT shall pay to KIMBALL FARMS the Monthly Service Fee as follows:

a. Payment of Monthly Service Fee and Determination of Amount of Fee

A Monthly Service Fee shall be due on the first (1st) day of each month by RESIDENT in such amounts as shall be determined by KIMBALL FARMS. The obligation to pay the Monthly Service Fee shall begin at the Closing Date and shall be determined on a pro-rata basis to the first (1st) day of the following month.

The Monthly Service Fee related to any assigned unit will vary with the size of the assigned unit and the number of occupants thereof .

b. Monthly Statement

KIMBALL FARMS shall present to RESIDENT a detailed monthly statement on or about the first (1st) day of each month which statement shall include:

- (1) The Monthly Service Fee for the current month;
- (2) Any credits including meal (raw food costs) allowances for the preceding month;

(3) Charges for additional services rendered during the preceding month;

(4) Any other amounts due KIMBALL FARMS from RESIDENT.

If RESIDENT fails to pay the Monthly Service Fee within 10 days after KIMBALL FARMS submits a detailed monthly statement, KIMBALL FARMS shall have the right to terminate this Agreement pursuant to Article VII. Section (B) (1) hereof.

c. Right to Adjust Monthly Service Fee

From time to time the Monthly Service Fee may be adjusted to permit KIMBALL FARMS to maintain the highest quality of service to its residents. KIMBALL FARMS shall make reasonable efforts to maintain the Monthly Service Fee at the lowest practical amount consistent with operating the KIMBALL FARMS facility on a sound financial basis, and will endeavor, to the extent financially feasible, to adjust the Monthly Service Fee no more often than once in each calendar year. No change in the Monthly Service Fee shall be effective until RESIDENT shall have received not less than sixty (60) days advance notice of such change, unless such change is necessitated by a change in state or federal rules or regulations making such notice financially impractical for KIMBALL FARMS.

d. Adjustment on Account of Marriage or Other Joint Living Arrangement

(1) Marriage or Other Joint Living Arrangement by One Resident with Another RESIDENT: In the event that RESIDENT marries or chooses to live with another resident of KIMBALL FARMS and RESIDENT vacates his or her assigned unit, RESIDENT's obligation to pay the Monthly Service Fee shall be adjusted to the double occupancy rate applicable to the unit into which RESIDENT is relocating. There will, however, be no refund of the Entrance Fee paid by RESIDENT with respect to the vacated unit until that RESIDENT actually departs the KIMBALL FARMS community .

(2) Marriage or Other Joint Living Arrangement by a Resident with a Non-Resident: In the event that RESIDENT marries or chooses to live with a non-resident, the non-resident may, provided that he or she satisfies the then applicable admission requirements (with the exception of position on the priority list, which shall be waived), enter the KIMBALL FARMS community upon execution of a Residence and Care Agreement and payment of an adjusted Entrance Fee, calculated at the difference between the then current Entrance Fee for single occupancy and the then current Entrance Fee for double occupancy of the unit the non-resident intends to occupy with said RESIDENT

In the event that the non-resident does not qualify for admission to the KIMBALL FARMS community or declines to execute a Residence and Care Agreement, the non-resident may, nevertheless, occupy RESIDENT'S assigned unit, provided that RESIDENT has executed an amendment to his or her Residence and Care Agreement (a) obligating RESIDENT to be jointly and severally liable with the non-resident for an additional monthly service fee as determined by KIMBALL FARMS and (b) acknowledging the limited services to which the non-resident is entitled while at KIMBALL FARMS.

e. Adjustment on Account of Financial Inability to Pay

(I) KIMBALL FARMS' Policy: Without in any way qualifying the right of KIMBALL FARMS to terminate this Agreement, the KIMBALL FARMS' policy is that if the sole reason for non-payment of the financial obligations of RESIDENT to KIMBALL FARMS is insufficient funds, beyond the control of RESIDENT or his or her representatives or relatives, the matter will be reviewed by the Executive Director with the RESIDENT.

If RESIDENT presents to KIMBALL FARMS facts which, in the Executive Director's opinion, justify special financial consideration, KIMBALL FARMS may partly or wholly subsidize RESIDENT'S Monthly Service Fee provided that such subsidy can be granted or continued without impairing the ability of KIMBALL FARMS to attain its objectives while operating on a sound financial basis. If the subsidy is granted, KIMBALL FARMS may, in its sole discretion, reassign RESIDENT to a different assigned unit.

All determinations made by the Executive Director concerning the granting or continuation of special financial consideration shall be final and binding upon RESIDENT, and any such determination shall be regarded as a confidential transaction between the Executive Director and RESIDENT, except for reports required to be made to the KIMBALL FARMS Board of Trustees, to financial institutions lending monies to KIMBALL FARMS and to regulatory or other governmental authorities.

(2) RESIDENT'S responsibility: It shall be a condition of receiving any subsidy that RESIDENT shall represent that he or she has not made or permitted from his or her assets any gift of real or personal property or imprudent investment in contemplation of the execution of this Agreement or application for the subsidy. RESIDENT agrees that he or she will make or permit to be made from his or her assets no such gift or investment subsequent to that execution which would impair RESIDENT'S ability, or the ability of his or her estate, to satisfy the financial obligations under this Agreement.

If RESIDENTS sources of income are inadequate to meet his or her financial responsibilities to KIMBALL FARMS, RESIDENT shall make every

reasonable effort to obtain assistance elsewhere and if RESIDENT can qualify, will take the necessary steps to obtain local, county, state or federal aid or assistance. A resident whose Monthly Service Fee is subsidized wholly or partly by KIMBALL FARMS shall from time to time, at the request of KIMBALL FARMS, provide KIMBALL FARMS with financial statements and copies of tax returns.

(3) Recovery of KIMBALL FARMS Subsidy: Upon the death of RESIDENT, if RESIDENT'S Monthly Service Fee has been subsidized wholly or partly by KIMBALL FARMS, or when such RESIDENT'S Residence and Care Agreement is terminated for any other reason, RESIDENT or RESIDENT'S estate shall be liable to KIMBALL FARMS for the full amount of the subsidy received by RESIDENT plus interest at the State Street Bank & Trust Company prime rate of interest.

f. Adjustment on Account of Change of assigned Unit

(1) Relocation By KIMBALL FARMS Community :
KIMBALL FARMS may relocate RESIDENT to another assigned unit if it determines, in its sole discretion, that such a reassignment should be made for the benefit of RESIDENT or for the proper operation of KIMBALL FARMS, or otherwise to meet any legal requirement.

(2) Permanent Transfer to a Health Center or Hospital:
When a RESIDENT has been transferred permanently to a hospital or to a health center (whether or not owned by KIMBALL FARMS), KIMBALL FARMS shall have the right to deem RESIDENT'S assigned unit vacant (unless it continues to be occupied by another member of a RESIDENT COUPLE). In the event that the assigned unit is so deemed vacant, RESIDENT or representative shall make arrangements to remove RESIDENT'S personal belongings from the assigned unit within 15 days or from a room at the Health Care Facility within 48 hours, after it has been determined by KIMBALL FARMS that the transfer will be of a permanent nature. Following such removal, RESIDENT shall be charged the then current Monthly Service Fee attributable to the vacated unit and no refund of any portion of the Entrance Fee will be made as a result of the transfer unless RESIDENT elects to terminate this Agreement.

(3) Transfer of One of Two Residents Sharing a Living Accommodation: In the event that a RESIDENT COUPLE occupies an assigned unit and one member of RESIDENT COUPLE is permanently transferred to hospital or health facility, RESIDENT COUPLE will be charged the Monthly Service Fee they would have been charged had both of them remained in their assigned unit. In the event of such a transfer, the transferred RESIDENT will continue to remain a member of the KIMBALL FARMS community and be entitled to the benefits described in this Agreement. Neither member of RESIDENT COUPLE shall receive a refund of any portion of his Entrance Fee as a result of the transfer, unless RESIDENT COUPLE elects to terminate the Agreement.

(4) Transfer to a Different Living Accommodation: In the event that RESIDENT or a RESIDENT COUPLE desires to move to a different assigned unit, RESIDENT or RESIDENT COUPLE shall be permitted to do so, ~~subject~~ to approval by KIMBALL FARMS and upon payment of a transfer fee, to be determined by KIMBALL FARMS, to cover costs of such transfer including materials and restoration expenses. After the relocation to the different unit, RESIDENT or RESIDENT COUPLE shall pay the Monthly Service Fee for the different unit, but RESIDENT shall be obligated to pay, upon such transfer, the amount by which the then current Entrance Fee for the unit to be occupied by RESIDENT exceeds the amount paid as the Entrance Fee for the unit being vacated by RESIDENT. In the event that the Entrance Fee paid by RESIDENT for the unit being vacated exceeds the then current Entrance Fee for the unit to be occupied by RESIDENT, RESIDENT shall be entitled to a refund of the difference, payable when the unit to be vacated has been reoccupied and a new Entrance Fee has been fully paid with respect to that vacated unit.

VII. TERMINATION AND REFUNDS

A. Prior to Occupancy

I. By Community Due to Death, Illness or Financial Condition:

a. In the event that a single RESIDENT dies or if both members of a RESIDENT COUPLE die prior to their assuming occupancy of the assigned unit, this Residence and Care Agreement shall be automatically terminated. In the event that the mental condition or health status of a single RESIDENT deteriorates or the mental condition or health status of both members of a RESIDENT COUPLE deteriorates prior to their assuming occupancy and in the opinion of the Executive Director in consultation with the MEDICAL DIRECTOR, RESIDENT or RESIDENT COUPLE will be incapable of self-maintenance as of the CLOSING DATE then this Agreement shall be terminated upon written notice by KIMBALL FARMS.

b. In the event that the financial condition of a RESIDENT changes to the extent that, in the sole judgment of the Executive Director, RESIDENT will be unable to meet the financial requirements of this Agreement, then this Agreement shall be terminated upon written notice by KIMBALL FARMS.

c. Except as otherwise provided in this Agreement or by other written agreement of the parties, in the event that the assigned unit is not available for occupancy on the CLOSING DATE, this Agreement shall be automatically cancelled.

d. In the event that the Agreement is terminated or cancelled for any reason set forth in this Article VI, Section A, KIMBALL FARMS shall within a reasonable period after the date of death or notice of termination provide a refund to RESIDENT or his legal representative.

KIMBALL FARMS shall refund all amounts paid to KIMBALL FARMS by RESIDENT to RESIDENT or his legally designated representative, less any costs specified on RESIDENT'S amenities package addendum (if any) signed by RESIDENT and any other costs specifically incurred by KIMBALL FARMS at the request of RESIDENT for any other purpose and specified in an addendum to this Agreement signed by RESIDENT.

2. By Resident:

a. At any time prior to assuming occupancy of the assigned unit, RESIDENT shall have the right to rescind this Agreement for any reason upon written notice to KIMBALL FARMS.

b. RESIDENT'S failure to occupy the designated living accommodation on the CLOSING DATE shall, if the assigned unit is available for occupancy on such date, be deemed a cancellation under this Section unless an extension of the CLOSING DATE has been agreed to in writing by RESIDENT and KIMBALL FARMS.

c. In the event that this agreement is terminated or canceled for any reason set forth in this Article VI, section A(2), KIMBALL FARMS will refund all amounts paid to KIMBALL FARMS by RESIDENT to RESIDENT or his legally designated representative less the sum of (a) a service charge equal to one percent (1%) of the entrance fee plus, (b) any costs specified on RESIDENT's amenities package addendum (if any) signed by RESIDENT and (c) any other costs specifically incurred by KIMBALL FARMS at the request of RESIDENT for any other purpose and specified in an addendum to this agreement signed by RESIDENT.

B. After Occupancy

1. Termination by Community:

KIMBALL FARMS shall have the right to terminate this Agreement for any just cause, including but not limited to the following: failure on the part of RESIDENT to abide by the rules adopted by KIMBALL FARMS; the making of any material misrepresentation or omission in connection with documents submitted in connection with application for admission; a breach by RESIDENT of any other terms of this Agreement; RESIDENT'S continued presence becoming seriously (a) disruptive or (b) threatening to the safety of other residents or of RESIDENT himself or herself.

In any such case, KIMBALL FARMS shall deliver to RESIDENT a written notice of termination specifying an effective date not less than thirty (30) days

or more than 120 days after the date of such notice. On or before the effective date of any such notice, RESIDENT shall move from and vacate his or her assigned unit.

2. By Resident:

RESIDENT shall have the right at any time after assuming occupancy of the assigned unit to terminate this Agreement by delivering to KIMBALL FARMS written notice of his intent to do so. The written notice need not cite any reason(s) for the termination but shall state a date when the termination is to become effective, which shall be not less than 60 or more than 120 days from the date of delivery of the notice.

3. Termination by Death:

This Agreement shall terminate at the death of RESIDENT, whereupon all obligations of KIMBALL FARMS under this Agreement shall cease, other than those relating to the removal of the personal property and payment of refunds, if any. The obligation to pay the Monthly Service Fee charges as provided in this Agreement shall continue until the assigned unit has been vacated by the family or by the estate of the deceased RESIDENT, or by KIMBALL FARMS.

4. Upon the effective date of any termination described in Section B (1), Section B (2) or Section B (3), hereof (or expiration of required notice period), RESIDENTS obligation to pay the Monthly Service Fee shall cease and RESIDENT (or legal representative) shall be entitled to receive a refund (the "Entrance Fee Refund"), which shall be either:

a. If termination occurs during the first nine (9) months of occupancy, RESIDENT (or legal representative) shall receive, when he or she vacates KIMBALL FARMS, a refund of the entrance fee paid to by RESIDENT, less an amount equal to one percent (1%) of the amount of such entrance fee paid by or due from RESIDENT multiplied by the number of months of actual occupancy of the assigned unit by RESIDENT.

b. If termination occurs after the ninth month of occupancy, RESIDENT shall be entitled to receive a refund of ninety percent (90%) of the amount of the entrance fee paid by RESIDENT. Payment of the amount of the refund equal to the entrance fee less an amount equal to one percent (1%) of the amount of entrance fee paid by or due from RESIDENT multiplied by the number of months of actual occupancy shall be made when resident leaves KIMBALL FARMS (or, in the case of death, as soon thereafter as is reasonably practicable following appointment of a legal representative of resident's estate), the balance of the amount of the entrance fee to be refunded shall be paid when KIMBALL FARMS has accepted and entered into a residence and care agreement with a new resident who has been assigned the same assigned unit.

Notwithstanding any other provisions hereof, if the Entrance Fee has been paid by or on behalf of a RESIDENT COUPLE, then in the event of death of one member of RESIDENT COUPLE, the Entrance Fee so paid shall be deemed to have been paid on behalf of the surviving RESIDENT, and no refund will be paid on account of said death until the death or removal from the KIMBALL FARMS community of the surviving RESIDENT.

5. Release of KIMBALL FARMS:

Upon termination of this Agreement, KIMBALL FARMS shall be released from any further obligations to RESIDENT except for payment of any refund due hereunder.

C. Termination of Shared Residence and Care Arrangement

In the event that one member of a RESIDENT COUPLE dies or permanently departs from KIMBALL FARMS (at which time the Residence and Care Agreement shall terminate as to that member of RESIDENT COUPLE), the remaining member of RESIDENT COUPLE shall, upon the approval of KIMBALL FARMS, have the right to elect one of the following options:

1. Retention of Same Assigned Unit

Remaining member of RESIDENT COUPLE shall be entitled to retain the same assigned unit and pay the Monthly Service Fee for single occupancy thereof, or

2. Transfer to Alternate Assigned Unit

Remaining member of RESIDENT COUPLE shall have the right to elect to move to another assigned unit, if and when available, and upon moving, to pay the appropriate Entrance Fee upward adjustment (if applicable) and Monthly Service Fee for single occupancy thereof.

3. Refund of Entrance Fee

Neither the departed member nor the remaining member of RESIDENT COUPLE shall be entitled to a refund of any portion of the original Entrance Fee paid by RESIDENT COUPLE until such time as the remaining member of RESIDENT COUPLE dies or permanently departs from KIMBALL FARMS.

D. Power of Attorney and Guardianship

All RESIDENTS shall maintain a current power of attorney in favor of KIMBALL FARMS in a form acceptable to it.

KIMBALL FARMS shall have the right to institute guardianship or conservatory proceedings if RESIDENT is unable to care for his or her person or property and has not designated someone to do so. RESIDENT or his estate shall be responsible for the cost of any guardianship or conservatorship proceedings.

VIII. **MISCELLANEOUS RIGHTS, OBLIGATIONS AND REPRESENTATION AND WARRANTIES OF RESIDENT**

A. Right of Privacy

RESIDENT recognizes and accepts the right of KIMBALL FARMS to enter RESIDENT'S accommodation in order to carry out the purpose and intent of this Agreement. Such right of entrance shall be for the purpose of:

1. Performance of scheduled housekeeping duties;
2. Response to the medical alert system;
3. Response to the fire alert system;
4. Entrance if RESIDENT is reported missing or as not having responded to calls;
5. Scheduled or emergency maintenance;
6. For the purpose of showing the accommodation to a prospective resident but only during normal daytime hours and after a notice of termination has been given affecting that accommodation.

KIMBALL FARMS recognizes RESIDENT'S right to privacy and its responsibility to limit entrance to the accommodation to legitimate emergencies and performance of work scheduled in advance.

B. Responsibility for Damages.

Any loss or damage to the real or personal property owned by KIMBALL FARMS caused by the negligence of RESIDENT will be charged to and paid for by RESIDENT. If any negligence of anyone other than KIMBALL FARMS or its personnel results in injury, illness, or damage to RESIDENT or to RESIDENT'S personal property,

RESIDENT hereby releases and discharges KIMBALL FARMS from all liability or responsibility for such injury or damage to RESIDENT or to RESIDENT'S personal property. RESIDENT shall have the responsibility of providing any insurance desired to protect against such loss.

C. Representation and Warranty

1. RESIDENT represents and warrants that all information disclosed on the Confidential Data Application and any other material submitted to KIMBALL FARMS was true and accurate when given, is true and accurate as of the date hereof and shall be true and accurate (or shall be supplemented to be true and accurate) as of the CLOSING DATE. RESIDENT acknowledges and agrees that KIMBALL FARMS shall have the right to terminate this Agreement in accordance with the provisions of Article VII hereof in the event that RESIDENT'S financial condition or health status changes between the date of delivery of the Confidential Data Application and the CLOSING DATE such that, as of the CLOSING DATE, the financial condition or health status of RESIDENT does not meet the financial or health status criteria established by KIMBALL FARMS.

2. RESIDENT acknowledges that RESIDENT has received from KIMBALL FARMS a disclosure statement setting forth the following:

a. the name and business address of KIMBALL FARMS, a Massachusetts charitable corporation, exempt from federal income taxation under Internal Revenue Code Section 501(c)(3);

b. the names of the officers and trustees of KIMBALL FARMS and their roles at KIMBALL FARMS;

c. a description of the business experience of KIMBALL FARMS and of BHS Management Services, Inc., which provides management services to KIMBALL FARMS;

d. a description of the physical properties of the facility and its location; and

e. the most recently available certified financial statements of KIMBALL FARMS and if such statements are for a period ending more than 90 days prior to the date of RESIDENT'S application, interim financial statements for the period ending not more than 90 days prior to the date of RESIDENT'S application.

D. KIMBALL FARMS' Responsibility for Protection of RESIDENT'S Property

I. If RESIDENT is no longer able to occupy the accommodation or after notice to do so fails to vacate, KIMBALL FARMS shall after thirty (30) days, or 48 hours if RESIDENT was occupying a room at the Health Care Facility, of receipt of notice to vacate, have the right to remove RESIDENTS property from the accommodation and to store it at KIMBALL FARMS or in a commercial warehouse at RESIDENT'S expense. After storing the property in a commercial warehouse and notice to RESIDENT thereof, KIMBALL FARMS shall have no further responsibility for it.

2. In the case of RESIDENT'S death, KIMBALL FARMS shall release all property in RESIDENTS assigned unit or other accommodation to the person(s) designated by RESIDENT in writing to receive it, or if no such person(s) shall have been designated, then to RESIDENTS executor or administrator, or if no executor or administrator qualifies within thirty (30) days of RESIDENT'S death, then to RESIDENT'S next-of-kin.

3. KIMBALL FARMS shall not be required to hold such property for more than thirty (30) days following RESIDENT'S death and such storage shall be at the risk of RESIDENT'S estate or of the persons entitled to receive such property. KIMBALL FARMS shall exercise ordinary care in safe guarding the property during the 30 day period; RESIDENT hereby grants to KIMBALL FARMS a limited power of attorney to hold and delivered RESIDENT'S property as provided herein.

IX. OTHER CONDITIONS

A. Delegation by Executive Director or Medical Director

It is understood that any authority or responsibility given by this Agreement to KIMBALL FARMS' Executive Director or MEDICAL DIRECTOR may be delegated by him or her to any other members (one or more) of KIMBALL FARMS' staff.

B. Guest Policies

No one other than RESIDENT named in this Agreement shall have the right of occupancy in the living accommodation without the consent of the Executive Director, unless otherwise permitted pursuant to guest policies established by KIMBALL FARMS. The intent of such policies shall be to permit stays of short duration by guests of RESIDENTS where such stays shall not, in the sole opinion of the Executive Director, adversely affect the operation of KIMBALL FARMS or be inconsistent with the welfare of the residents.

C. Resident's Obligations to KIMBALL FARMS for Arrangements at Death

RESIDENT shall provide KIMBALL FARMS with the following information on or before the CLOSING DATE at the time of occupancy: Name and address of funeral director (prior arrangements are encouraged); location of will; name and address of attorney and executor, names and addresses of all banks and trust officers; information necessary to complete a death certificate; persons to be notified of RESIDENT'S death; and persons designated to receive RESIDENT'S personal property following death.

D. Rules Adopted by KIMBALL FARMS

KIMBALL FARMS shall reserve the right to adopt policies, procedures and rules regarding residence not inconsistent with the provisions of this Agreement. RESIDENT agrees to observe the rules and regulations adopted by KIMBALL FARMS.

E. Non-Discrimination

It is understood and agreed that except for the minimum age limitation, KIMBALL FARMS admits persons to KIMBALL FARMS facilities and services without regard to sex, race, color, national origin, and religious affiliation.

F. Sole Responsibility

All legal and financial obligations assumed by KIMBALL FARMS in this Agreement are solely the responsibility of the BERKSHIRE RETIREMENT COMMUNITY, INC.

G. Entire Agreement

This Agreement, which incorporates by reference RESIDENT'S application for residency, RESIDENT'S financial statement and medical records, and any addenda specified below, constitutes the entire Agreement between RESIDENT and KIMBALL FARMS. RESIDENT warrants that all facts set forth in RESIDENT'S application for residency, financial statement and personal history are true and correct. COMMUNITY is not liable for, nor bound in any manner by any statements, representations or promises made by any person representing or purporting to represent KIMBALL FARMS unless set forth in this Agreement, including any addenda.

H. Notices

Notices when required by the terms of this Agreement shall be given in writing to KIMBALL FARMS at the address of its Administrative Office given below and, as to RESIDENT, at the address given below until RESIDENT enters KIMBALL FARMS,

and thereafter at RESIDENT'S KIMBALL FARMS address. A change in address may be affected by prior written notice given by one party to the other.

I. Non-Transferability

The rights and privileges of RESIDENT under this Agreement to living accommodations, facilities and services by COMMUNITY and medical services are personal to RESIDENT and cannot be transferred or assigned by act of RESIDENT, or by any preceding at law, or otherwise. If any person, other than the person who has signed this Agreement, commences to live in RESIDENT'S Living Accommodation without following the proper procedure established by BERKSHIRE RETIREMENT COMMUNITY, INC. and exercised by the Executive Director, BERKSHIRE RETIREMENT COMMUNITY, INC. shall have the right to terminate this Agreement.

J. Oral Modification

No amendment to this Agreement shall be valid unless in writing executed by COMMUNITY and RESIDENT.

K. Joint and Several Liability

When RESIDENT consists of more than one person, the rights and obligations of each are joint and several except as the context otherwise requires.

L. Severability

If any provision of this Agreement shall be deemed invalid or unenforceable, the balance of this Agreement shall remain in effect, and if any provision is deemed inapplicable to any person or circumstances, it shall nevertheless be construed to apply to all other persons and circumstances.

X. DEFINITIONS

EXECUTIVE DIRECTOR: The chief administrative officer of COMMUNITY appointed by the Board of Trustees of Berkshire Retirement Community, Inc.

MEDICAL DIRECTOR: The person serving as a chief physician of COMMUNITY.

AGREEMENT: This Residence and Care Agreement and any duly executed written amendments thereto

By my (our) signature(s) below, I (we) acknowledge that I (we) have read the foregoing and understand that this constitutes the Residence and Care Agreement.

Witness

Resident

Address

Date: _____

Witness

Resident

Date: _____

BERKSHIRE RETIREMENT COMMUNITY,
INC., Kimball Farms
235 Walker Street, Lenox, MA 01240;
413-637-4684

By: _____

Its Executive Director

Date: _____

BB2#9799
Superseded by #28383

ADDENDUM TO
RESIDENCE AND CARE
AGREEMENT

ADDENDUM TO RESIDENCE AND CARE AGREEMENT ("Residence and Care Agreement") dated (date of Original Agreement) between BERKSHIRE RETIREMENT COMMUNITY, INC. d/b/a KIMBALL FARMS ("Kimball Farms") and ("Resident").

Kimball Farms has constructed an assisted living facility (the "Assisted Living Center") on the campus of Kimball Farms, and offers assisted living services at the Assisted Living Center. Resident and Kimball Farms desire to **add** to the Residence and Care Agreement an option for the Resident to avail himself or herself of accommodations and assisted living services at the Assisted Living Center. This Addendum sets forth the terms on which Resident shall be entitled to such accommodation and assisted living services at the Assisted Living Center.

AGREEMENT

IT IS THEREFOR AGREED AS FOLLOWS:

1. Capitalized Terms. Capitalized Terms used herein having the meanings provided in the Residence and Care Agreement, unless otherwise defined herein.
2. Accommodations. Two new paragraphs shall be deemed added as Paragraphs 4 and 5 to Article II (Accommodation and Facilities), Section A (Accommodations) as follows:
4. *Upon (a) the election of the RESIDENT to avail himself or herself of the assisted living accommodations at Kimball Farms (the "Assisted Living Center") and the assisted living services available in the Assisted Living Center (the "Assisted Living Resident Services") and (b) the determination by the Kimball Farms Assisted Living Services Committee (the MEDICAL DIRECTOR, EXECUTIVE DIRECTOR and director of health services) after consultation with RESIDENT and his or her legal representative (if the RESIDENT has one then known to KIMBALL FARMS), that RESIDENT is eligible, under the Kimball Farms Assisted Living Transfer Policy, to transfer to the Assisted Living Center and receive Assisted Living Resident Services, KIMBALL FARMS shall, subject to availability of a one-bedroom accommodation in the Assisted Living Center, provide RESIDENT with such accommodations (the "Assisted Living Resident Unit") upon execution by RESIDENT of the Kimball Farms Assisted Living Residence Agreement.*

5. *In the event that an appropriate Assisted Living Resident Unit is not available for RESIDENT in the Assisted Living Center at the time that the election and determination described in Paragraph 4 is made (although it is intended and expected that sufficient and appropriate units shall be available when needed in the Assisted Living Center), KIMBALL FARMS shall use reasonable efforts to arrange for assisted living accommodations and services for RESIDENT at an alternative assisted living facility until such time as an appropriate Assisted Living Resident Unit becomes available in the Assisted Living Center. Such alternative accommodations and services shall be at KIMBALL FARMS' expense, except to the extent that such costs are (a) for items of service that would be RESIDENT expenses if provided at the Assisted Living Center, or (b) exceed, in the aggregate, the cost of such accommodations and services if provided to RESIDENT at the Assisted Living Center. A RESIDENT who has been placed in an alternative assisted living facility shall have priority over any non-Kimball Farms resident to occupy any appropriate Assisted Living Resident Unit coming available.*

3. Food and Meals. A new paragraph shall be deemed added as Article III (Services Provided by Kimball Farms), Section A (Food and Meals), Paragraph 5, as follows:

5. *Assisted Living Meals*

In the event that RESIDENT is occupying an Assisted Living Resident Unit and receiving Assisted Living Resident Services, RESIDENT shall be entitled to the number of meals and meal arrangements provided for in the Kimball Farms Assisted Living Residence Agreement on the terms and at the cost provided for in that Kimball Farms Assisted Living Residence Agreement.

4. Services. A new paragraph shall be deemed added as Article III (Services Provided by Kimball Farms), Section J, as follows:

J. *During the period that RESIDENT occupies an Assisted Living Resident Unit under the terms of an Assisted Living Residence Agreement, KIMBALL FARMS shall provide to RESIDENT, under the terms of the Assisted Living Residence Agreement and to the extent required by the service plan developed and maintained for such RESIDENT, assistance with (a) activities of daily living, (b) instrumental activities of daily living, (c) self-administered medication management and (d) such other assisted living resident services as may be required by law or deemed appropriate by KIMBALL FARMS.*

5. Medical Services. Article V (Medical Services), Section G (Mental Illness, Dangerous Diseases, and Drug or Alcohol Abuse), Paragraph 1 is amended by the addition of the phrase "or Assisted Living Center" after the term "Health Care Facility".

6. Financial Conditions. Article VI (Financial Conditions), Section A (Fees), Paragraph (Adjustment on Account of Change of Assigned Unit), Subparagraph (2) shall be deemed amended by addition of the following language:

The term "Assisted Living Facility" is added before the term "Health Center" in the heading and the phrase "to a hospital or health center" in the first line is replaced with "to a hospital, an extended care nursing facility (whether or not owned by KIMBALL FARMS) or an assisted living facility" .

The phrase "or the Resident Unit at the Assisted Living Center" is added after the term "Health Care Facility" in the second sentence of this subparagraph.

A fourth sentence is added to this subparagraph as follows:

"In the event that RESIDENT transfers to the Assisted Living Center, RESIDENT shall, in addition to the Monthly Service Fee payable under this Agreement (which shall be payable in lieu of the "Monthly Fee " provided for in the Assisted Living Residence Agreement), be responsible for paying the "Additional Fees", if any, related to the additional services and amenities, as provided in the Assisted Living Residence Agreement. "

8. Financial Conditions. Article VI (Financial Conditions), Section A (Fees), Paragraph (Adjustment on Account of Change of Assigned Unit), Subparagraph (3) shall be deemed amended by addition of the following language:

The phrase "to a hospital or health facility " in the first sentence is replaced with "to a hospital, an extended care nursing facility (whether or not owned by KIMBALL FARMS) or an assisted living facility (whether or not owned by KIMBALL FARMS)".

A third sentence is added to this subparagraph as follows:

"In the event that a RESIDENT COUPLE (or either of them) transfers to the Assisted Living Center, the RESIDENT COUPLE shall, in addition to the Monthly Service Fee payable under this Agreement (which shall be payable in lieu of the "Monthly Fee " provided for in the Assisted Living Residence Agreement), be responsible for paying the "Additional Fees", if any, related to the additional services and amenities, as provided in the Assisted Living Residence Agreement. " In the event that both members of a RESIDENT COUPLE are transferred to the Assisted Living Center (whether or not at the same time), they shall be assigned to the same Assisted Living Resident Unit."

9. Termination and Refunds. A new paragraph shall be deemed added as Paragraph 3 to Article VII (Termination and Refunds), Section B (After Occupancy) (and the existing Paragraphs 3 through 5 renumbered accordingly), as follows:

Termination of Assisted Living Resident Agreement

In the event that RESIDENT (a) is a party to an Assisted Living Resident Agreement, (b) is occupying an Assisted Living Resident Unit, (c) elects to terminate or not renew the Assisted Living Resident Agreement and (d) either does not transfer to the Health Care Center or the regular Kimball Farms residential units, or is not deemed eligible, in the reasonable judgment of the Assisted Living Services Committee to transfer to either, this Agreement shall be deemed terminated 60 days thereafter.

10. Other Conditions. A new paragraph shall be deemed added as Article IX (Other Conditions), Section A (relettering the other sections accordingly), as follows:

A. *Transfer to Assisted Living Facility.*

All decisions involving the transfer of RESIDENT to the Assisted Living Center (including when, in light of RESIDENT's limitations and well-being, such transfer may occur or must occur) shall be made by the Kimball Farms Assisted Living Services Committee. Although the Assisted Living Services Committee shall consult with the RESIDENT and his or her legal representative (if the RESIDENT has one then known to KIMBALL FARMS) about such decisions, all decisions by the Assisted Living Services Committee shall be final. In the event that there is any inconsistency or conflict between the provisions of this Agreement and any Assisted Living Residence Agreement to which RESIDENT is a party, (a) the Assisted Living Residence Agreement shall prevail during periods of time that the Resident actually resides in the Assisted Living Center and (b) this Agreement shall prevail at all other times.

11. Other Conditions. A new paragraph shall be deemed added as Article IX (Other Conditions), Section B, (relettering the other sections accordingly), as follows:

B. *Collateral Assignment by Kimball Farms*

KIMBALL FARMS shall have the right to collaterally assign this Agreement and its rights hereunder, as security for its obligations to bondholders, commercial lenders, financing authorities or other lending institutions.

12. Governing Law: Effect. This Addendum shall be governed by and construed in accordance with the substantive law of the Commonwealth of Massachusetts, without giving effect to the conflicts or choice of law provisions of Massachusetts or any other jurisdiction, and shall have the effect of a sealed instrument.
13. Ratification. Except as modified hereby, the Residence and Care Agreement is hereby ratified and confirmed as if set forth in full herein.

Signed this day of _____

BERKSHIRE RETIREMENT
COMMUNITY, INC. d/b/a
KIMBALL FARMS

Witness

By: _____
Its:

RESIDENT:

Witness

1997-2000