

# THE RESIDENCES AT 89 SOUTH

*by Berkshire Place*

## Residence Agreement

The Residences at 89 South  
89 South Care Support, Inc.  
89 South Street  
Pittsfield, MA 01201  
[www.berkshireplace.com](http://www.berkshireplace.com)  
413-445-4056

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**89 SOUTH CARE SUPPORT, INC.  
THE RESIDENCES AT 89 SOUTH  
89 SOUTH STREET  
PITTSFIELD, MA 01201**

**Residence Agreement**

**I. PARTIES**

Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between 89 South Care Support, Inc., a non-profit Massachusetts corporation, which owns and operates a continuing care retirement community (CCRC) known as the Residences at 89 South, in Pittsfield, Massachusetts (hereinafter called the “Community”) and \_\_\_\_\_ (hereinafter called the “Resident”).)

If two persons desiring to share a living unit enter into this Agreement, the term “Resident” shall apply to them jointly and severally, and to the survivor.

The Community is a 501(c)(3) Massachusetts non-profit organization and provides equal access and treatment without regard to race, color, sex, religion, sexual orientation, disability, familial status or nation origin. The Community will make reasonable accommodations including unit adaptations to address Resident disability. The Community is sponsored by and affiliated with Berkshire Retirement Home, Inc., a not-for-profit corporation which operates a skilled nursing facility known as Berkshire Place, located at 290 South Street, Pittsfield, Massachusetts, and which is licensed to provide nursing care and outpatient rehabilitation services.

**II. REQUIREMENTS AND CONDITIONS FOR RESIDENCY**

Resident is required to meet the following requirements and conditions to the satisfaction of the Community for residency acceptance:

**A. Age Requirements**

Resident must be at least 62 years of age on the Occupancy Date (as hereinafter defined). In the case of joint residency, both Residents must be at least 62 years of age on the Occupancy Date.

## **B. Medical Evaluation**

Resident is required to have a completed physical examination by a licensed physician or by the Community's Medical Director (or his/her designee) at the time of application for admission, which must be conducted within 90 days of the Resident's Occupancy Date. On the date of the examination, Resident must be in an acceptable state of health and well-being to be able to live independently, with reasonable accommodation, if appropriate.

A written evaluation shall include health history and physical results, diagnoses, current medications, cognitive testing, and emergency contact information acceptable to the Community (see attached Medical Evaluation Form to be completed (Exhibit 1)).

In the event that there is a material change in the Resident's health or functional status before Resident occupies the Living Unit, the Resident shall notify the Community immediately, in writing for medical evaluation review, which may require a reassessment.

Resident acknowledges that the Community relies upon this medical information in entering into this Agreement for residency and that all information has been disclosed, and is true, accurate and not misleading.

Resident also agrees to a medical evaluation update at least annually, after Resident may become hospitalized, or whenever requested by the Community if it believes the Resident may have had a change in health or functional status. Any medical evaluation under this section shall be conducted by the Community's Medical Director or by a physician of Resident's own choosing.

## **C. Financial Evaluation**

Resident has completed a confidential Financial Application (Exhibit 2) and which is made a part of this Agreement to demonstrate Resident has the financial ability to pay the Entrance Fee, the Monthly Service Fee, additional care and service charges, and personal living expenses during the term of this Agreement.

Resident acknowledges that the Community relies upon the information disclosed in the Financial Application in entering into this Agreement with Resident, and that the Resident warrants that all statements Resident has made in the Financial Application are true, complete, and not misleading.

In the event that there is any material change in Resident's financial condition before Resident occupies the Living Unit, the Resident shall notify the Community, in writing for financial evaluation reassessment.

If another person is handling the Resident's financial affairs and paying the Resident's bills, Resident will provide the Community with that person's name, address, email, and telephone number. That person may be a relative, attorney, trust officer, or another individual appointed by Resident.

### **III. DATE OF OCCUPANCY**

The Occupancy Date shall be the date which is SIXTY (60) days from the date of this Agreement or the date on which the Resident moves into the Living Unit, whichever shall occur FIRST. On or before the Occupancy Date, the Resident shall pay the balance of the Entrance Fee that is due to the Community. The Resident's obligation to pay the Monthly Service Fee shall begin on the Occupancy Date. From, and after the Occupancy Date, Resident shall have the right to occupy the Living Unit and to receive the services described in this Agreement.

### **IV. FACILITIES PROVIDED BY THE COMMUNITY**

#### **A. Living Unit**

##### **1. Selected Unit**

Resident has selected and the Community shall provide to Resident the Living Unit at 89 South described as #\_\_\_\_\_ (the "Living Unit"). Beginning on the Occupancy Date, Resident shall have the exclusive nontransferable right to occupy and use the Living Unit, subject to the terms and conditions of this Agreement.

##### **2. Appliances**

The Community shall provide a microwave, refrigerator/freezer, cooktop, and clothes washer/dryer in the Living Unit. These appliances are the property of the Community and shall be maintained by the Community. All other appliances shall be provided by Resident, subject to the condition that no appliance shall be permitted to interfere with the health, safety, and well-being of other Community residents or increase the cost of the Community's insurance premium. The Community shall determine in its sole discretion if particular appliances comply with this provision.

### **3. Fixtures and Furnishings**

The Community will furnish lighting fixtures and window shades for the Living Unit. All other fixtures and furnishings including furniture for the Living Unit shall be provided by Resident, subject to the condition that no fixtures/furnishings/furniture shall be permitted to interfere with the health, safety, and well-being of other Community residents or to increase the insurance premium for the Community. The Community shall determine in its sole discretion if particular fixtures/furnishings/furniture comply with this provision.

### **4. Changes to Unit.**

Requests for any redecoration or changes to the Living Unit, in addition to or other than that scheduled by the Community, shall be in writing by the Resident and require written approval of the Executive Director. Changes must be made by installers or workers approved by the Community. If approved, any redecoration will be at Resident's expense. No refunds for alterations will be made. Resident will be responsible for the cost of restoring the unit to its original condition upon termination of this Agreement, unless otherwise agreed to in writing.

Resident shall not make any structural changes to the Living Unit (e.g. electrical, plumbing, removal/addition of walls, etc.).

Notwithstanding any other provision in this Agreement, the Community may make alterations to Resident's Living Unit to meet the requirements of any applicable statute, law, or regulation of the federal, state, or municipal government. Moreover, the Community reserves the right to build additional units and to alter, reconfigure and remove existing units, including the right to: 1) make changes to Resident's Unit, and 2) relocate Resident to another apartment both temporarily and permanently in furtherance thereof. The Community shall use reasonable efforts to minimize disruption to Resident in the exercise of its rights.

### **B. Common Areas/Use of Grounds**

Resident may use, in common with others at 89 South, the dining room, cafe, reading lounge, wellness center, social and recreational areas (indoor and outdoor) and other public rooms at the Community.

### **C. Parking**

Resident shall have access to one designated parking space on the premises at no additional charge. Any loss or damage to a vehicle or a vehicle's contents shall be strictly borne by Resident.

## **V. SERVICES PROVIDED BY THE COMMUNITY**

The services described in this section are included in the Monthly Service Fee, unless otherwise specified.

### **A. Living Unit Accommodations**

Payment of the monthly service fee entitles the Resident to occupy the designated Living Unit subject to the terms and conditions of this Agreement.

### **B. Resident Meals**

#### **1. Meal Service**

Payment of the Monthly Service Fee entitles Resident to receive all meal services provided by the Community in the common dining areas, usually three (3) meals per day, but the Community shall have the right, in its sole discretion, to reduce the number of meals to two (2) to accommodate weekend brunches, holidays, or other special activity circumstances. There is no meal credit for any missed meals or for any periods of absence from the Community.

#### **2. Room Service**

The Community will provide tray service to Resident in the Living Unit during minor, short-term periods of illnesses lasting no more than one week when ordered by the Resident Services Coordinator at no additional charge. For other tray service requests based upon preference, convenience, or for longer illness durations, tray room service delivery will be charged to Resident based upon the current rate schedule and will be billed to Resident on Resident's monthly statement.

### **C. Health and Wellness and Social Activity Programming**

The Community will provide health education and wellness programs to its residents as well as other social and activity programming. Those that are included and those that may be an additional charge are noted on the monthly activity schedule.

### **D. Housekeeping Services**

Resident is expected to maintain the Living Unit in a clean, safe, sanitary, and orderly condition and to be responsible for all light housekeeping tasks in the Living Unit. On a bi-weekly basis, the Community will furnish general housekeeping

services at no additional charge. Resident may also elect extra housekeeping services, which will be billed to the Resident on the Resident's monthly statement, based upon the current rate schedule.

If Resident does not maintain the Living Unit in a clean, safe, sanitary, and orderly condition, the Community, after written notice to Resident, will have the right to assume the responsibility for all necessary housekeeping services and to bill Resident for services rendered, which will be billed to the Resident on the Resident's monthly statement based upon the current rate schedule.

#### **E. Repair and Maintenance Services**

Repairs, maintenance and replacement of property and equipment owned by the Community in the Living Unit, which is deemed necessary by the Community due to normal wear and tear, will be performed by the Community at no additional charge to Resident.

Repairs, maintenance and replacement of Resident's personal property will be the Resident's responsibility.

Residents may also elect extra maintenance services, which will be billed to the Resident on the Resident's monthly statement based upon the current rate schedule.

All other repairs, maintenance, and replacements not specifically reserved to the Community hereunder shall be the sole responsibility of the Resident.

#### **F. Grounds**

The Community will furnish basic grounds keeping services such as lawn care, leaf-removal, landscaping, snowplowing, and snow shoveling services at no additional cost to Resident.

#### **G. Utilities**

The Community will provide for all utilities including heat, hot water, air conditioning, water/sewer, electric, and natural gas services at no additional charge to the Resident.

#### **H. Cable, Internet, and Telephone**

Basic cable television and basic Internet services are provided at no additional charge to Resident. If the Resident shall elect additional cable or Internet services, beyond the basic services provided, the Resident shall be responsible for dealing



directly with the service provider regarding installation, and for monthly services charges at their own expense for such services.

Each Resident's Living Unit is wired for telephone service, but the Resident shall be responsible for dealing directly with the service provider regarding installation of telephone service and for monthly service charges at their own expense for such service, if elected.

### **I. Trash Services**

The Community will provide for basic household trash removal services from the Community Trash Room at no additional charge, however, any additional disposal needs by Resident may incur an additional charge from the vendor, which will be billed to the Resident on the Resident's monthly statement.

**J. Safety and Security** – The premises are monitored by security cameras 24 hours per day/7 days per week for enhanced safety and security.

### **K. Local Transportation**

The Community will provide periodic scheduled local transportation for Resident to points of interest and to medical appointments at no additional charge. Emergency or additional transportation needs can be arranged at the Resident's own expense and will be billed to the Resident on the Resident's monthly statement, based upon the current rate schedule.

## **VI. CONTINUUM OF CARE SUPPORT SERVICES**

### **A. Home Care, Outpatient Rehabilitation Care and Nursing Care Services**

The Community shall provide for assistance with daily living, outpatient rehabilitation, or arrange for skilled nursing facility care services for Resident, should the need arise, when such services have been prescribed or approved by the Medical Director.

The Community reserves the right to determine the best setting for care and need for additional services on a temporary or permanent basis. Resident agrees to cooperate in performing any evaluation the Community shall reasonably request, at Resident's expense, including granting the Community permission to discuss health care issues with Resident's medical providers. Such evaluation may be requested at any time Community reasonably suspects by observation or otherwise that Resident's

physical, emotional or mental condition has changed such that Resident may require a change in services or setting for care.

If, in the opinion of the Community, Resident's physical or mental condition precludes living independently, or is disruptive or threatening to the health, safety or well-being of Resident, other residents, staff, Resident's outside care providers, family members, or guests, the Community may transfer Resident to another level of care which best meets his or her needs. If Resident disagrees with the transfer decision, Resident or Resident's representative will follow 89 South's transfer appeal procedure as outlined in its Transfer Policy. The decision resulting from the appeal procedure as to the necessity and appropriateness of such transfer shall be final and binding on all parties. Failure of Resident to abide by any final transfer decision shall be deemed a breach of this Agreement and shall be grounds for termination under Section IX.B.

If Community determines that personal space, personal health, personal care or nutritional needs are not being met by Resident, Resident agrees to accept and pay for such additional services as Community determines are needed.

### **1. Home Care Services**

The Community shall arrange to provide assistance with daily living to Resident, should the need arise, when such services have been prescribed or approved by the Medical Director as medically necessary and appropriate. If approved, a program of assistance with daily living services will be implemented at no additional charge to Resident. This service shall be for up to one continuous hour (1) per day with a maximum total limit of 20 hours per month (excluding weekends and holidays) to assist Resident to continue to occupy the Living Unit in a supportive, safe, and healthy manner.

These services shall be for non-skilled personal care provided by arrangement with At Home with Berkshire Place. Additional home care services may be arranged to be provided by Resident, which are not covered by the Monthly Service Fee and at Resident's own expense either through At Home with Berkshire Place or through another approved provider by the Community.

### **2. Outpatient Rehabilitation Care Services**

In the event that Resident requires outpatient rehabilitation, the Community will assist the Resident in arranging for such services at Berkshire Place. There will be no additional charge for such care coordination by the Community, however, such

charges for rehabilitation services that are not covered by insurance or third-party payers, will be borne by the Resident and billed to the Resident directly by Berkshire Place.

If transportation is required and it is not during the periodic scheduled local transportation for Resident to medical appointments, transportation needs can be arranged at the Resident's own expense and will be billed to the Resident on the Resident's monthly statement based upon the current rate schedule or by the vendor directly if not paid for at the time of service.

### **3. Nursing Care Services**

In the event that Resident requires short-term skilled nursing facility or long-term care facility services, Community will arrange with the Nursing Care Center for Resident to receive priority admission for such Nursing Care Services to the extent permitted by Law, to the extent rooms are available, and to the extent Resident meets medical criteria for admission. As used herein "Nursing Care Center" means Berkshire Place, or any other skilled nursing facility owned by, affiliated or under contract with Community to provide nursing services to residents.

If there should be no availability at the Nursing Care Center in the time of need or if medical criteria for admission cannot be met, the Community will assist Resident in locating an alternative facility to be temporarily cared for, following consultation with the Resident (or Resident's representative), until such time space is available at Berkshire Place or Resident's medical condition improves for a transfer.

There will be no charge for the care coordination by the Community. The charges to the Resident for services by the Nursing Care Center, if not covered by insurance or a third-party payer, will be billed to the Resident by the Nursing Care Center, based upon the current rate schedule. If services are rendered at an alternate facility, that provider shall bill the Resident directly based upon their current rate schedule.

## **B. Physician Services**

### **1. Medical Director**

On a periodically scheduled basis, the Community shall make available to Resident the medical services of the Medical Director or his/her designee. The cost of such services shall be borne by Resident, if not covered by insurance or third-party payers and shall be billed by the Medical Director directly to the Resident.

## **2. Personal Physician**

Resident may, at Resident's own expense, engage the services of any physician of Resident's choosing. The services of Resident's personal physician are not Covered Services.

## **C. Exclusions from Covered Services**

Except as otherwise expressly provided in this Agreement, Resident shall be solely responsible for the cost of: physician services; inpatient and outpatient hospital services; sub-acute hospital care; skilled nursing care; non-skilled home care; laboratory and diagnostic services; prescription and non-prescription drugs; audiological tests and hearing aids; eye glasses and refractions; dentistry, dentures, dental inlays and oral surgery; orthopedic appliances and other durable medical equipment such as wheelchairs and walkers; physical, occupational, respiratory and speech therapy; podiatry; treatment for psychiatric disorders, mental illness, mental disease or loss of mental function; treatment for alcohol or drug abuse; and renal dialysis. The omission of a particular health care service from the foregoing list of specific exclusions does not indicate that the service is a Covered Service.

## **D. Insurance**

### **1. Health Insurance**

Resident shall obtain and maintain in force at Resident's own expense the maximum coverage available to Resident under the Federal Social Security programs commonly known as Medicare Part A, Medicare Part B and Medicare Part D, and any future program that may be offered by Medicare. Resident shall also be required to obtain and maintain maximum coverage for a Medicare Supplemental Insurance plan, or its equivalent, approved in writing by the Community. The Resident agrees to provide evidence of all such insurance upon admission and upon any change thereafter.

If Resident fails to secure and maintain such insurance, the Community may terminate this Agreement in accordance with Section IX, B. 1. Resident shall notify the Community promptly if any insurance coverage required under this Section expires, terminates, or is replaced or if there is a material change in the coverage under any health insurance that Resident has in effect.

## **2. Automobile Insurance**

If Resident owns, leases, or rents a motor vehicle, Resident shall maintain at Resident's own expense, insurance to cover medical and other costs resulting from automobile accidents causing injury to Resident or to others and/or property damage. In addition to being insured, all vehicles must remain registered and inspected.

If Resident fails to secure and maintain such insurance, the Community may terminate this Agreement in accordance with Section IX, B. 1. Resident shall notify the Community promptly if any insurance coverage required under this Section expires, terminates, or is replaced or if there is a material change in the coverage under any automobile insurance that Resident has in effect.

## **3. Renter's Insurance and Liability Insurance**

The Resident is encouraged to maintain, at Resident's own expense, a renter's insurance policy, to protect the Resident against loss or damage to, Resident's personal property and belongings. Residents are further encouraged to maintain liability insurance to protect against third-party liability claims.

## **E. Right of Subrogation; Power of Attorney**

In case of injury to Resident caused by any act or omission of another person, the Community shall be subrogated and succeed to the right of recovery of Resident against such person and/or his or her insurer, for the value of any and all Covered Services provided by the Community with respect to any condition arising from such injury. Resident shall pay to the Community any sums recovered by Resident by suit, settlement or otherwise from such person or his or her insurer up to the value of the Covered Services provided by the Community under this Agreement. The Community shall also be entitled to reimbursement for all expenses incurred by Community in obtaining such recovery, but only to the extent the amount recovered exceeds the value of Covered Services thus provided. Resident shall furnish such information and assistance and execute such instruments as the Community may require to facilitate the exercise of its rights of subrogation hereunder.

In case of injury to Resident caused by any act or omission of another person, Resident shall not unreasonably refrain from asserting and prosecuting any claim Resident may have against such person for compensation for such injury. If Resident declines to prosecute any such claim for compensation, at the written request of Community, Resident shall execute a power of attorney to the Community authorizing it to take any and all actions which the Community deems necessary or

appropriate to assert and prosecute such claim on Resident's behalf. Resident shall furnish such information and assistance and execute such documents as the Community may reasonably request in order to assert and prosecute such claim. In addition to the value of any and all Covered Services provided by Community to Resident with respect to any condition arising from such injury, the Community shall also be entitled to reimbursement for all expenses incurred by Community in obtaining such recovery, but only to the extent the amount recovered exceeds the value of Covered Services thus provided.

## **VII. SERVICES AVAILABLE AT AN ADDITIONAL CHARGE**

### **A. Personal Facilities Services**

The Community, in its discretion, may arrange for services within the Community to be provided by independent contractors for use by Resident at Resident's expense. The providers and type of services may change from time to time at the discretion of the Community.

The following are the additional services which as of the date of this Agreement, the Community may make available to or arrange for the Resident for an additional charge:

- Dry Cleaning Services
- Personal Laundry Services
- Newspaper Subscription/Delivery
- Group Travel Trips
- Classes such as Art, Music, Lecture, and Educational Series
- Foot Care Services
- Transportation Services
- Personal Care/Homemaking Services
- Housekeeping Services
- Maintenance Services

### **B. Emergency Response System**

The Community shall make an emergency "call" alert system available to the Resident if requested at an additional charge. This charge may be billed to the Resident on the Resident's monthly statement based upon the current rate schedule or be billed directly to the Resident from the vendor.

### **C. Home Care**

The Community operates an independent home care program known as At Home with Berkshire Place with an office located at 89 South. At Home with Berkshire Place may provide personal care and services to residents in the Community, which will be at the Resident's own expense and billed to the Resident directly based upon the current rate schedule for such services, unless otherwise provided as a Covered Service as noted in Section VI. Continuum of Care Support Services.

### **D. Nursing Care Center and Outpatient Rehabilitation**

Berkshire Place may provide skilled nursing facility care or outpatient rehabilitation services for the Community, which will be at the Resident's own expense and billed to the Resident directly based upon the current rate schedule for such services, unless otherwise provided as a Covered Service as noted in Section VI. Continuum of Care Support Services. Notwithstanding the foregoing, the Resident may choose to have such skilled nursing care or outpatient rehabilitation services provided by another provider of his or her choosing and all costs associated therewith shall be borne by the Resident and shall be billed to the Resident directly by such service provider.

### **E. Supplemental Assistance in Daily Living Services**

#### **1. Availability and Approvals**

If Resident becomes in need of additional assistance with tasks of daily living in excess of such assistance as provided by the Community described in Section VI., A, 1, the Community will assist the Resident with additional home care services or with identifying an appropriate agency to be engaged by the Resident at the Resident's expense to provide such services. Residents may choose to have any additional home care provided either by the Community, by an approved provider, or by a licensed health care professional who meets applicable regulatory requirements. All outside providers of home care must meet the standard and requirements of the Community and further agree to abide by the policies and procedures established by the Community.

## **VIII. FINANCIAL CONDITIONS**

### **A. Disclosure Statement**

Resident hereby acknowledges they have received and reviewed a copy of the Community's Disclosure Statement on or prior to the date Resident deposited funds with the Community in connection with Resident's application to become a resident

of the Community. The Disclosure Statement is attached as Exhibit 3 and made a part of this Agreement.

## **B. Consideration for Obligations of the Community**

Unless specifically stated otherwise in this Agreement, Resident understands that all services are provided by the Community in consideration of Resident's timely payment of both the Entrance Fee and Monthly Service Fee, including additional service charges and payments to affiliates.

## **C. Fees**

For the right to reside at 89 South and to receive from the Community the services that are described in this Agreement as available to Resident without additional charge, Resident shall pay to the Community an Entrance Fee and a Monthly Service Fee in accordance with the following provisions:

### **1. Entrance Fee**

Resident shall pay the Community an Entrance Fee in the amount of \$\_\_\_\_\_ (herein called the "Entrance Fee") in accordance with the following schedule:

- a. Ten percent (10%) of the Entrance Fee shall be paid by Resident to the Community upon execution of this Agreement, less any 89 South Waitlist deposit. The receipt of such payment is hereby acknowledged by the Community.
- b. The remaining ninety percent (90%) of the Entrance Fee shall be paid by Resident to the Community no later than the Occupancy Date.

### **2. Monthly Service Fee**

#### **a. Payment of Monthly Service Fee & Determination of Amount**

Resident shall pay to the Community a monthly service fee in an amount determined by the Community based upon the selected Living Unit and the number of persons who reside in the Living Unit (herein called the "Monthly Service Fee"). Resident's initial Monthly Service Fee for the Living Unit shall be \$\_\_\_\_\_.

#### **b. Right to Adjust Monthly Service Fee**

From time to time, the Community may adjust the Monthly Service Fee, which may be necessary to cover operating expenses and for the Community to maintain a sound financial basis and/or to meet resident service expectations. No change in the



Monthly Service Fee shall be effective without sixty (60) days advance written notice to Resident.

**c. Monthly Statement**

On or about the first day of each calendar month, the Community will present to Resident a detailed monthly billing statement which will include:

- (1) The Monthly Service Fee for the current month;
- (2) Additional charges to Resident for services rendered during the preceding month; and
- (3) Any other amounts then due the Community under this Agreement.

**d. Payment Terms.**

The amount due from Resident to the Community as reflected in the monthly statement shall be due and payable by Resident upon receipt of the monthly statement. If Resident fails to pay the amount due within ten (10) days of receipt of the monthly statement, the Community shall have the right to terminate this Agreement in accordance with Section IX, B. 1. of this Agreement. Fees not paid when due shall be late payments and shall be subject to delinquency charges in the amount of 1.5% per month.

Payments properly made by Resident to Community are not refundable except that, in the event of Resident's death or transfer or discharge, Community will refund the appropriate prorated portion of any advance payment made by Resident or on Resident's behalf.

Resident shall indemnify and hold the Community harmless from and against all costs, losses, damages, liabilities and expenses (including reasonable attorney's fees) based upon:

- (a) Resident's residing in the Facility;
- (b) Damage to the Facility or injury to person occurring on or about the premises caused by Resident or Resident's invitees; and
- (c) Repair or maintenance work required to be performed by Community as a result of Resident's acts or omissions; or
- (d) Breach of default by the Resident of any provision of this Agreement.

**e. Effect of Hospitalization, Transfer to Nursing Care Center or Non-Medical Leave of Absence**

Resident shall be obligated to pay the Monthly Service Fee each month during the term of this Agreement even if Resident is transferred, on a temporary, long-term, or permanent basis, to a hospital or nursing care facility, including the Nursing Care Center, or to any other facility or for a non-medical leave of absence.

**f. Proration of Fee**

If the Occupancy Date is a date other than the first day of the month, or if the date this Agreement terminates is a date other than the last day of the month, the Monthly Service Fee due for the first or last month under this Agreement shall be adjusted pro rata, provided that no personal items or belongings of the Resident have been moved into the Living Unit or remain in the Living Unit.

**D. Fee Adjustments for Changes in Circumstances**

**1. Marriage or other Joint Living Arrangement**

**a. Marriage or other Joint Living Arrangement with a Resident**

If Resident desires to live with another person who also resides at 89 South, the Resident and Resident's co-habitant shall continue to pay the single person Monthly Service Fee for each Living Unit until such time as one Living Unit is Vacated. Thereafter the Residents will jointly pay a new Monthly Service Fee equal to the Double Occupancy Rate for the Living Unit Residents jointly occupy. There will be a refund of the Entrance Fee paid to Resident of the Vacated Unit at such time as the Resident begins a joint living arrangement with another resident.

As used hereinafter "Vacated" shall mean the time when all personal property has been removed from the Living Unit, the Living Unit has been returned to such condition as prescribed under this Agreement and the keys to the Living Unit are returned to the Community.

**b. Marriage or Other Joint Living Arrangement with a Non-Resident**

If Resident desires to live with another person who is not a resident of 89 South, provided he or she satisfies the requirements for acceptance as a resident of 89 South, the non-resident may become a resident of 89 South upon execution of an addendum to the Residence and Care Agreement and payment of the applicable Entrance and Monthly Service Fees for Double Occupancy.

## **2. Financial Inability to Pay (Scholarship)**

### **a. Community's Policy**

Without in any way limiting the Community's right to terminate this Agreement in accordance with Section IX, B. 1., it is the Community's policy that if the sole reason for Resident's failure to pay the Monthly Service Fee or other amounts due to the Community shall be insufficient funds due to circumstances beyond Resident's control, the matter will be reviewed by the Executive Director with Resident or Resident's designee.

If Resident presents to the Community facts which, in the Executive Director's opinion, justify special financial consideration, the Community may, at its option, partly or wholly subsidize Resident's Monthly Service Fee; provided, however, that such subsidy shall be granted and continued only on the condition that, in the Executive Director's sole discretion, such subsidy will not impair the ability of the Community to attain its objectives while operating on a sound financial basis.

All determinations made by the Executive Director to grant, continue, or deny special financial consideration shall be final and binding upon Resident. Any such determination shall be treated as a confidential matter by the Community, its Board of Directors, and Resident and shall not be disclosed except as required by financial institutions lending monies to the Community, by regulatory or other governmental bodies, or otherwise by law.

### **b. Recovery of Community Subsidy**

Upon termination of this Agreement, the Community shall have the right to recover from Resident or Resident's estate, trust, assignee or successor in interest the aggregate amount of Monthly Service Fees and other amounts due from Resident to the Community that have been subsidized by the Community, together with interest on the amount of the subsidy at an annual rate equal to the U.S. prime rate published by "The Wall Street Journal"(or its successor) on the effective date of termination of this Agreement plus one percent (1%). Such amount may be deducted by the Community from the amount of any refund of the Entrance Fee that may be payable to Resident or to Resident's estate or Designee under the terms of this Agreement or to Affiliates.

### **c. Maintenance of Resources**

Subsequent to executing this Agreement, Resident shall not make any gift or transfer for less than fair market value of real or personal property or any investment that

may materially impair Resident's ability, or the ability of Resident's estate or trust, to satisfy Resident's financial obligations under this Agreement. Resident shall also, from time to time as requested by the Community, provide the Community with personal financial statements and copies of Resident's income, gift, estate and any other tax returns.

### **3. Change of Living Unit**

#### **a. Transfer to a Less Expensive Living Unit**

If Resident should choose to move to a less expensive Living Unit, Resident will be permitted to do so, subject to availability. Following the move, Resident will pay the Monthly Service Fee for the less expensive Living Unit. If the Entrance Fee for the new living unit is less than the refundable balance of the original Entrance Fee, Resident will receive a refund equal to the difference between the new Entrance Fee and the refundable balance of the original Entrance Fee, if any. Resident agrees to bear the cost of such a move, including returning the Living Unit to its original condition before it is Vacated.

#### **b. Transfer to a Same Cost or More Expensive Living Unit**

If Resident should choose to move to a Living Unit of the same cost or to a more expensive Living Unit, Resident will be permitted to do so, subject to availability. Resident will pay an additional Entrance Fee in an amount equal to the difference between the Entrance Fee Resident has previously paid and the current Entrance Fee for the new Living Unit. Following the move, Resident will pay the Monthly Service Fee applicable to the new Living Unit. The increased portion of the Entrance Fee shall be amortized in accordance with Section IX.B 5. Resident agrees to bear the cost of such a move, including returning the Living Unit to its original condition before it is Vacated.

#### **c. Transfer to a Hospital, Nursing Care Center, or Alternative Care Facility**

The Resident may be transferred and admitted to a hospital, to the Nursing Care Center, or to an alternative care facility in accordance with Section VI. Continuum of Care Support Services. If, after consultation with Resident (or, if Resident is not competent, Resident's representative), and Resident's physician, and it is the opinion that Resident requires permanent or long-term care in a hospital, at the Nursing Care Center, or an alternative care facility, the Executive Director may require Resident to vacate Resident's Living Unit.

In such case, Resident (or Resident's representative) shall make arrangements to remove Resident's personal belongings from the Living Unit within thirty (30) days of such written notice and Resident shall continue to pay the then current Monthly Service Fee until for the Living Unit is Vacated.

**d. Transfer of One of Two Residents Sharing a Living Accommodation to a Hospital, Nursing Care Center or Alternative Care Facility**

If two people occupy the Living Unit and one Resident is transferred to a hospital, the Nursing Care Center, or an alternative care facility for long-term permanent placement, the other Resident shall continue to pay the then current Monthly Service Fee for the Living Unit for single occupancy.

**e. Termination of Shared Living Arrangement**

If two Residents who share a Living Unit desire to separate, they may, by mutual agreement, choose between the following options:

**(i) Retention of Same Living Unit**

One occupant may leave 89 South and the other occupant may retain the Living Unit and pay the Monthly Service Fee for Single Occupancy.

**(ii) Transfer to Alternate Living Unit**

One occupant may move to another Living Unit, subject to availability. Such occupant shall be required to pay an additional Entrance Fee in an amount equal to the then current Entrance Fee for the new Living Unit less the portion of the Entrance Fee previously paid for the original Living Unit for Double versus Single Occupancy of that Living Unit and shall pay the applicable Monthly Service Fee for the new Living Unit. The other occupant may retain the original Living Unit and pay the Monthly Service Fee for Single Occupancy. Amortization of the new Entrance Fee shall be calculated in accordance with Section IX.B.5.

**IX. TERMINATION AND REFUNDS**

**A. Terminations on or before the Occupancy Date**

**1. Termination Due to Death, Illness or Financial Condition**

If Resident dies (or in the case of a couple, both Residents die) on or before the Occupancy Date, then this Agreement shall automatically terminate.

Each Resident is required to have a physical examination within ninety (90) days prior to the Resident's Occupancy Date. If Resident's physical or mental condition deteriorates (or if two people have executed this Agreement, the physical or mental condition of either deteriorates) on or before the Occupancy Date to the extent that, after consultation with the Medical Director, the Executive Director determines that Resident (or one of Residents) will be incapable of living independently even with reasonable accommodation (including but not limited to engagement of additional homecare services) in the Living Unit on the Occupancy Date, then this Agreement may be terminated by the Community by written notice to Resident.

If Resident's financial condition changes prior to the Occupancy Date to the extent that, in the opinion of the Executive Director, Resident will be unable to meet Resident's financial obligations under this Agreement, then this Agreement may be terminated by the Community by written notice to Resident.

If the Community fails to make the Living Unit available for occupancy by Resident on the Occupancy Date, this Agreement shall be deemed automatically terminated as of the Occupancy Date, unless Resident and the Community agree in writing to extend the Occupancy Date.

## **2. Termination by Resident**

At any time on or before the Occupancy Date, this Agreement may be terminated by Resident without cause upon written notice to the Community.

Resident's failure to pay the balance of the Entrance Fee and begin paying the Monthly Service Fee on or before the Occupancy Date shall be deemed a termination of this Agreement by Resident unless an extension of the Occupancy Date has been agreed to in writing by Resident and the Community.

## **3. Refunds Upon Termination on or before the Occupancy Date**

Within ninety (90) days after the termination of this Agreement, the Community will refund to Resident or Resident's legal representative all amounts paid to the Community by Resident, less a service charge equal to one percent (1%) of the Entrance Fee.

## **B. After the Occupancy Date**

### **1. Termination by the Community**

The Community reserves the right to terminate this Agreement at any time after the Occupancy Date for good cause, including but not limited to: a breach by Resident of Resident's obligations under this Agreement including failure to pay the full statement balance, including all monthly fees due the Community for any month on or before the tenth (10<sup>th</sup>) day of the month; failure by Resident to abide by the rules adopted by the Community referenced in the Resident Handbook as modified from time to time; any material misrepresentation or omission by Resident in connection with Resident's Financial Application or Medical Information for residency at 89 South; failure to disclose to Community any material change in Resident's medical condition or in Resident's financial condition after the date of Resident's application for residency at 89 South and prior to the Occupancy Date; Resident abandons Living Unit by being absent from the Community for at least thirty (30) consecutive days without notice to Community of Resident's intention to return; Resident's failure to maintain health or automobile insurance; or in the Community's judgment, Resident's continued residence at 89 South is disruptive or threatening to the health, safety or well-being of Resident or to other residents or staff or from Resident's outside care providers, family members, or guests.

If there is good cause for termination, the Community may terminate this Agreement by written notice of termination to Resident specifying an effective date of termination not less than thirty (30) days after the date notice is given. On or before the effective date of termination, Resident shall move from 89 South and have Vacated the Living Unit.

### **2. Termination by Resident**

Resident has the right at any time after the Occupancy Date to terminate this Agreement by delivering to the Community a written notice of termination. The written notice need not cite any reason for the termination, but shall specify an effective date of termination, which shall be not less than thirty (30) days after the date notice is given.

### **3. Termination by Death**

If Resident refers to one individual, this Agreement shall terminate automatically upon Resident's death. Resident's obligation to pay the Monthly Service Fee shall continue after the date of death and until Resident's personal property has been removed from the Living Unit and the keys have been returned to the Community

by Resident's family, or Resident's estate. Resident's family or Resident's estate will also be responsible for the removal and storage of Resident's personal belongings.

If Resident refers to two persons who have entered into this Agreement as joint residents, upon the death of one Resident, this Agreement shall remain in effect as to the survivor and there shall be no refund of any portion of the Entrance Fee at that time. The surviving Resident shall thereafter pay an adjusted Monthly Service Fee based upon single occupancy of the Living Unit.

#### **4. Resident Duties Upon Termination**

If the Living Unit is not Vacated, then the Community shall have the right to remove and store Resident's personal property at Resident's sole cost and expense. Community shall only be liable for loss or damage thereto as a result of gross negligence or willful misconduct.

#### **5. Refunds upon Termination after Occupancy Date**

Upon termination of this Agreement under any of the provisions 1 through 3 above Resident (or Resident's estate) shall be entitled to a refund of a portion of the Entrance Fee as follows:

##### **a. Termination Before the One Hundredth (100th) Month of Occupancy**

If termination occurs prior to the expiration of the first hundred (100th) months following the Occupancy Date, Resident shall be entitled to receive a refund of the Entrance Fee paid to the Community by Resident less one percent (1%) of the amount of the Entrance Fee per month of occupancy at 89 South. The refund shall be paid by the Community within ninety (90) days of the effective date of termination.

##### **b. Termination After the One Hundredth (100th) Month of Occupancy**

If termination occurs upon or after the expiration of the first one hundred (100) months following the Occupancy Date, Resident shall receive no refund of the Entrance Fee paid by Resident.

##### **c. Termination on Death**

In the event of the death of a Resident, the refund shall be paid to his/her estate except, with the prior approval of Community, a Resident may, in writing on a form provided by Community, signed, dated, and delivered by Resident to Community, designate an individual, trust, or other entity to receive the refund ("Resident's



Designee"), subject to the claims for unpaid amounts then due Community. Resident's estate and/or Designee indemnifies Community for payment made in accordance with such designation.

### **C. Release of the Community**

Upon termination of this Agreement, as herein above provided, neither party shall have any further obligation hereunder except:

- (1) Obligations occurring prior to the date of termination; and,
- (2) Obligations contained herein which are expressly made to extend beyond the term of this Agreement.

## **X. RESIDENT'S RIGHTS AND OBLIGATIONS**

### **A. Right of Privacy**

Subject to the provisions of this Agreement, Resident shall have the exclusive right to occupy the Living Unit. The Community recognizes Resident's right to privacy and its responsibility to limit entrance to the Living Unit. The Resident recognizes and accepts the right of the Community to enter the Living Unit in order to carry out the purposes of this Agreement. The Community may enter your Living Unit with notice to you, at reasonable times and for reasonable purposes or for such emergency needs including, but not limited to the following:

1. Performance of scheduled housekeeping;
2. Response to fire alarm system;
3. Response to an emergency call alert system;
4. Scheduled or emergency maintenance or repair;
5. If Resident is reported missing or has not responded to calls or shown up for scheduled meals/activities;
6. For personal care and other health services;
7. For showing the Living Unit to a prospective resident, but only during normal day time hours and only after notice of termination of this Agreement has been given or Resident has been required to vacate the Living Unit in accordance with the provisions of this Agreement.

### **B. Responsibility for Damages**

The Community shall not be liable for any claims, damages, or expenses, including attorneys' fees and court costs, resulting from any injury or death to persons or any

damage to property arising from the negligent or intentional act or omission of either Resident or Resident's guests, employees or agents.

Resident shall be solely responsible for any loss or damage to the real or personal property of the Community and/or personal injury caused by the negligent or wrongful acts or omissions of either Resident or Resident's guests, employees, or agents, which will be charged to and paid for by Resident.

### **C. The Community's Responsibility for Protection of Resident's Property Upon Resident's Death**

In the case of Resident's death, the Community shall release all of Resident's property to Resident's duly appointed personal representative or Designee (if applicable). shall be held harmless in following said written instructions by the estate of the Resident and the recipient.

### **D. Release from Liability**

Resident agrees to release the Community and its affiliates from any claim for damages Resident may suffer as a result of the negligence or wrongful conduct of any provider of any other services engaged by Resident, or any failure by such providers to provide the services Resident has engaged them to provide.

### **E. Authorization of Periodic Medical Evaluations**

As a condition for approving an arrangement of assistance with daily living services or other care services, the Community may require that Resident receive periodic medical examinations by the Community's Medical Director (or his/her designee) to assess Resident's ability to continue to occupy the Living Unit in a safe and healthy manner. At Resident's election, the examinations may be performed by Resident's personal physician, provided that all information from the examination is supplied directly by Resident's personal physician to the Medical Director (or to his/her designee). Upon request of the Community, Resident agrees to execute a HIPAA compliant authorization for release of health information to Medical Director (or his or her designee).

## **XI. OTHER CONDITIONS**

### **A. Power of Attorney and Guardianship**

Resident will maintain a current durable power of attorney authorizing one or more named individuals to act for Resident and on Resident's behalf in all matters related to Resident's person and property and will provide a copy to the Community. The

Community strongly encourages Resident to execute a Health Care Proxy designating one or more individuals to act for Resident in making decisions with respect to Resident's health care in the event Resident should become incapable of making such decisions, and requests that Resident provide a copy of Resident's Health Care Proxy to the Community. The Community retains the right to institute proceedings for the appointment of a guardian and/or conservator if Resident becomes incompetent to care for him/herself or Resident's property. Resident will be responsible for the cost of these proceedings.

#### **B. Delegation by Executive Director or Medical Director**

Any authority or responsibility given by this Agreement to the Executive Director or Medical Director may be delegated by him or her to any one or more other members of the Community's staff.

#### **C. Guest Policies**

No one other than Resident shall have the right to occupy the Living Unit without the consent of the Executive Director, unless otherwise permitted pursuant to guest policies established by the Community. The intent of such policies shall be to permit stays of short duration by Resident's guests, where such stays will not, in the opinion of the Executive Director, adversely affect the operation of 89 South or the health, safety and well-being of Resident or others.

#### **D. Resident's Obligation to the Community for Arrangements at Death**

Resident agrees to provide the Community with the following information at the time of occupancy: name and address of funeral director (prior arrangements are encouraged); name and address of attorney and executor; persons to be notified of Resident's death and person designated to receive Resident's personal property following death.

#### **E. Rules Adopted by the Community**

The Community reserves the right to adopt policies, procedures and rules regarding residency at 89 South consistent with the provisions of this Agreement. Resident agrees to observe the rules and regulations adopted by the Community.

#### **F. Sole Responsibility**

All legal and financial obligations assumed by the Community in this Agreement are solely the responsibility of 89 South Care Support, Inc. All fees paid by the Resident to the Community, including the Entrance Fee, shall become the sole property of the Community, are deemed payment for the right of residency in the Community and

for services, and are not held in trust for the benefit of the Resident, nor held as reserves or security for the performance of the Community's obligations to the Resident.

### **G. Use of the Living Unit**

Resident's Living Unit shall be used only for residential purposes and shall not be used for business or professional purposes, nor in any manner in violation of applicable zoning ordinances and other laws. Resident understands that there is no subletting and that the Community is for Residents 62 years of age and older.

### **H. Interpretation**

The terms of this Agreement and any disputes arising hereunder shall be governed by and interpreted in accordance with Massachusetts law.

### **I. Entire Agreement**

This Agreement, which includes each of the Exhibits referenced in Section XII, constitutes the entire Agreement between Resident and the Community. The Community is not liable for nor bound in any manner by, any statement, representation or promise made by any person representing or purporting to represent the Community, unless set forth in this Agreement.

### **J. Notices**

Notices shall be given in writing to the Community at the address of its Administrative Office given below and to Resident at the address given below until Resident enters 89 South, and thereafter at Resident's 89 South address Living Unit number. A change in address may be affected by written notice given by one party to the other in accordance with this section.

#### **THE COMMUNITY:**

89 South Care Support, Inc.  
D/B/A The Residences at 89 South  
Attn: Executive Director  
89 South Street  
Pittsfield, MA 01201

**THE RESIDENT:** Addressed to the Resident at the Living Unit number occupied by the Resident.

**L. Non-Transferability**

Resident's rights and privileges under this Agreement are personal to Resident and cannot be transferred or assigned. Resident's right to occupy the Living Unit is not transferable by Resident to any other person. If any person, other than the person who has signed this Agreement, commences to live in Resident's Living Unit without following the procedures established by the Community, the Community shall have the right to terminate this Agreement.

**M. No Oral Modifications**

No amendment to this Agreement shall be valid unless in writing executed by the Community and Resident.

**N. Joint and Several Liability**

When two people have entered into this Agreement with the Community, the rights and obligations of each are joint and several and to the survivor, except as expressly provided otherwise in this Agreement.

**O. 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.

**P. Resident Association**

The Resident shall have the right to participate in a Resident Association as more particularly described in the Resident Handbook, as may be modified from time to time.

**Q. Grievance Procedure**

If Resident wishes to present a grievance or to appeal any decision of Community rendered according to this Agreement, other than matters regarding Transfers, he or she shall do so in accordance with the Grievance Procedure outlined below. The mere filing of a grievance by Resident shall not be the basis for adverse action by the Community.

Should Resident wish to express a grievance, or to dispute an action taken directly related to him/her, Resident shall:

1. Contact the Resident Services Coordinator.

2. Complete a written statement which describes as fully as possible the nature of the issue and the outcome desired.
3. The Resident Services Coordinator will work with Resident and other staff, residents, family and professionals who are involved, as appropriate, to address the grievance consistent with Community mission and its responsibility under this Agreement (the “Review Standard”). A written response to the grievance shall be delivered to Resident as soon as practicable (normally within 10 days).
4. If Resident is not satisfied with the response offered by the Resident Services Coordinator, Resident may submit the written grievance to the Executive Director.
5. The Executive Director will consider all relevant information regarding Resident’s grievance and, applying the Review Standard, will reach a determination.
6. The decision of the Executive Director is final and binding upon the Community and the Resident.
7. Failure by the Resident to accept the decision of the Executive Director shall constitute a voluntary termination of the Residency and Care Agreement.
8. Matters relating to Resident transfers including to the Nursing Care Center or another facility, and/or the need for additional services shall be addressed in accordance with the Community’s Transfer Policy and not by this Grievance Process.

#### **R. Reserve for Funding**

Community does not currently maintain reserve funding or security for its performance hereunder. Community shall have the right to establish such accounts in the future.

#### **S. Purpose of this Agreement**

This Agreement is primarily for the provision of housing and services on a contractual basis, and it does not represent a landlord-tenant relationship. Resident does not have any ownership interest in the Community, its property, or the Living Unit occupied by Resident.

#### **T. Trustee, Individual, and Related Entity Liability**

Neither Berkshire Retirement Home, Inc., 89 South Care Support, Inc., nor any trustee, director, or employee of either of the above-named or any trustee, director or employee of the Community shall be liable to Resident under this Agreement.

The Community shall be solely liable for performance hereunder as otherwise limited by this Agreement.

**XII. ATTACHMENTS INCLUDED MADE PART OF THIS AGREEMENT**

Exhibit 1 – Medical Evaluation Form

Exhibit 2 – Financial Application

Exhibit 3 – Community Disclosure Statement

Exhibit 4 – Resident Handbook

*[Remainder of this page is intentionally left blank; signature page to follow.]*

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

Resident #1 \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name  
Resident #1 \_\_\_\_\_  
Signature  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

Resident #2 \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name  
Resident #2 \_\_\_\_\_  
Signature  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

89 SOUTH CARE SUPPORT, INC.  
THE RESIDENCES AT 89 SOUTH  
89 SOUTH STREET  
PITTSFIELD, MA 01201

By: \_\_\_\_\_  
Executive Director (or other authorized signature)

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

04/2022