



OCCUPANCY AND SERVICES AGREEMENT

Dated: _____

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EXHIBITS

Exhibit A	Resident Guide
Exhibit B	Schedule of Optional Services and Fees
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Exhibit G	Disclosure Statement

THIS OCCUPANCY AND SERVICES AGREEMENT (the “Agreement”) is made as of _____, 20__ (the “Effective Date”) by and between GingerCare Living, Inc. d/b/a One Wingate East, a Massachusetts 501(c)(3) corporation, (the “Provider”), and _____ (“you” or “Resident”). (If more than one person is signing this Agreement as Resident, these terms refer to each of you individually, and to both of you together, and the rights and obligations of each of you are joint and several.)

Recitals

A. Provider will own and operate the property located at 589 Highland Avenue, Needham Massachusetts, as a continuing care retirement community known as One Wingate East (the “Community”), which will include 61 independent living units. Provider will offer residency and certain services at the Community to qualified persons. The Community will be operated on a nondiscriminatory basis and will afford equal treatment and access to these services to all eligible persons.

B. Provider will contract with Wingate Senior Living, LLC d/b/a Wingate Living, a Massachusetts limited liability company, for the overall and day-to-day management of the Community.

C. You have applied and have been accepted for residency in a Residence at the Community. This Agreement identifies your residence and sets forth the services that Provider will provide or make available to you and the legal obligations and rights that you and Provider have related thereto.

D. You acknowledge that you have received and agree to abide by the Community’s (i) Resident Guide, including Rules and Regulations and (ii) Schedule of Fees and Schedule of Optional Services and Fees, as set forth in **Exhibit A** and **Exhibit B**, attached hereto, which Provider may amend at any time and from time to time.

E. You acknowledge that you have received and reviewed a copy of the Community’s Disclosure Statements on or prior to the date that you deposited funds with the Community in connection with your application to become a resident of the Community. The Disclosure Statement is attached as **Exhibit G** and made part of this Agreement.

1. EFFECTIVE DATE AND TERM

1.1 Effective Date.

The Effective Date is _____. You agree to make Monthly Fees payments from and after the Effective Date, as applicable, so long as this Agreement is in force and effect.

1.2 Term of Agreement.

The term of this Agreement shall be from the Effective Date until the Agreement is terminated pursuant to the terminations provisions set forth herein.

2. FEES

2.1 Entrance Fee

Resident shall pay to the Community an Entrance Fee in the amount of \$_____ (the "Entrance Fee"), in accordance with the following schedule:

- (1) An amount equal to five percent (5%) of the Entrance Fee shall be paid in form of a Priority List Deposit, which you have previously paid pursuant to a Deposit Agreement;
- (2) An amount equal to an additional five percent (5%) of the Entrance Fee shall be paid upon the earlier of (a) your selection of a specific residence within the Community, or (B) at such time as the Provider and Community have initially received Priority List Deposits for at least fifty percent (50%) of the Residences at the Community.
- (3) The remaining ninety percent (90%) or remaining balance of the Entrance Fee shall be paid on or before the Occupancy Date.

2.2 Monthly Fees.

(a) ***Base Monthly Fee and Additional Monthly Fee.*** All occupancy fees and other recurring fees and charges due from you under this Agreement, which include the Base Monthly Fee and, if applicable, the Additional Monthly Fee, are collectively referenced as the "Monthly Fees." Subject to ***Section 2.2 (c)*** below, as of the Effective Date, the Base Monthly Fee applicable to your Residence (defined

below) is _____ Dollars (\$_____), which covers occupancy for your Residence and the Included Services described in **Section 5** below, notwithstanding the extent of your use (or non-use) of the Included Services. The Additional Monthly Fee covers any other recurring fees or charges due from you under this Agreement besides the Base Monthly Fee, including fees for the Optional Services described in **Section 5** below.

For a Schedule of Fees and a Schedule of Optional Services and Fees, please refer to **Exhibit B**.

(b) ***Payment Procedures.*** The first Monthly Fees will be prorated from the Effective Date. Thereafter, Provider will bill you in advance for the Monthly Fees. You will be obligated to make payment to Provider by the first (1st) day of the month for which the Monthly Fee is due. You will be billed for Additional Monthly Fees, if applicable, either when the Optional Services are rendered, or when you are billed for the Monthly Fee. Your continued residency at the Community is contingent upon your timely and full payment of the Monthly Fees and any other fees due under this Agreement. Provider shall charge interest at the rate of 12% per annum (or the maximum legal rate, if lower), plus a late charge of \$100.00 per month, to cover its administrative costs, on all accounts not current by the fifth (5th) day of each month, which interest charge shall be retroactive to the 1st day of the month until the date payment in full is received. Failure to pay the Monthly Fees when due may also result in the Termination of this Agreement by Provider.

(c) ***Adjustments.***

(1) ***Monthly Fees.*** Provider may increase or decrease your Monthly Fees, including the occupancy component of the Base Monthly Fee, upon giving you sixty (60) days' advance written notice, effective on the first day of the first month following such sixty (60) days.

(2) ***Services.*** Provider may change the nature, scope and/or frequency of services provided to you under this Agreement upon thirty (30) days' advance written notice to you, effective on the said thirtieth (30th) day.

2.3 Joint Responsibility for Fees.

If two of you are signing this Agreement, you shall be jointly and severally liable for all fees described in this Agreement.

2.4 Marriage or Other Joint Living Arrangement.

(a) Marriage or Other Joint Living Arrangement with an Existing Resident of the Community.

If Resident desires to live with another person who also resides at the Community, the Resident and Resident's co-habitant shall continue to pay the single person Monthly Service Fee for each unit until such time as the residency agreement for one unit is terminated, vacated, and the keys to that unit are returned to the Community. Thereafter the Residents will jointly pay a new Monthly Service Fee equal to the double occupancy rate for the Residence that the Residents jointly occupy.

(b) Marriage or Other Joint Living Arrangement with a Non-Resident of the Community.

If Resident desires to live with another person who is not a resident of the Community, provided he or she satisfies the requirements for acceptance as a resident of the Community, the non-resident may become a resident of the Community upon execution of a Residence and Services Agreement and payment of the applicable Entrance Fee. The Entrance Fee for such individual shall be an amount equal to the difference between the Entrance Fee paid pursuant to this Agreement and the then current Entrance Fee..

If Resident desires to live with a non-resident who the Community determines does not meet the requirements for acceptance as a resident of Community, Resident may terminate this Agreement in accordance with the provisions of Section 7.1 or 7.2, and shall be entitled to a refund of a portion of the Entrance Fee in accordance with Section 7.5.

2.5 Financial Inability to Pay.

(a) Community's Policy.

Without in any way limiting the Provider's right to terminate this Agreement in accordance with Section 7.2, it is the Provider's policy that if the sole reason for Resident's failure to pay the Monthly Fees or other amounts due to the Provider is based on insufficient funds due to circumstances beyond Resident's control, the matter will be reviewed by Provider with Resident or resident's designee.

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

All determinations made by the Provider to grant, continue, discontinue, 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 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) Resident's Responsibility.

Resident's acceptance as a resident at Community is based upon information Resident has furnished in Resident's Application. It shall be a condition of receiving a subsidy that Resident shall warrant and represent to the Community that Resident has not made any gift or transfer of real or personal property for less than fair market value, and/or has not made any imprudent investment in contemplation of the execution of this Agreement or subsequent to the submission of the Application. 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.

(c) 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 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 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 trust under the terms of this Agreement.

(d) 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 make 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.

2.6 Change of Living Unit.

(a) Transfer to a Smaller Residence.

If Resident should choose to move to a smaller residence, Resident will be permitted to do so, subject to availability and written amendment of this Agreement or execution of a new Occupancy and Services Agreement. Following the move, Resident will pay the Monthly Service Fee for the smaller residence. If applicable, Resident will pay an additional Entrance Fee in an amount equal to the difference between the Entrance Fee Resident has previously paid pursuant to this Agreement and the current Entrance Fee for the new residence. No refund of any portion of the Entrance Fee will be made at that time. Resident agrees to bear the cost of such a move, including returning the vacated Residence to its original condition.

(b) Transfer to a Same Size or Larger Residence.

If Resident should choose to move to an residence of the same size or to a larger residence, Resident will be permitted to do so, subject to availability and written amendment of this Agreement or execution of a new Occupancy and Services Agreement. If applicable, Resident will pay an additional Entrance Fee in an amount equal to the difference between the Entrance Fee Resident has previously paid pursuant to this Agreement and the current Entrance Fee for the new residence. No refund of any portion of the Entrance Fee will be made at that time. Following the move, Resident will pay the Monthly Service Fee which is applicable to the new residence. Resident agrees to bear the cost of such a move, including returning the vacated Residence to its original condition.

(c) Termination of Shared Living Arrangement.

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

(i) Retention of Same Residence.

One occupant may leave the Community and the other occupant may retain the Residence and pay the Monthly Fee for single occupancy. No refund of any portion of the Entrance Fee will be made at that time.

(ii) Transfer to Alternate Residence.

One occupant may move to another residence, subject to availability and execution of a new Occupancy and Services Agreement. Such occupant shall be required to pay an additional Entrance Fee in an amount equal to the then current Entrance Fee for the new residence less the portion of the Entrance Fee previously paid for the original Residence , if applicable, and shall pay the Monthly Fee for single occupancy of the new residence pursuant to the terms and conditions of the new Occupancy and Services Agreement. The other occupant may retain the original Residence and pay the Monthly Service Fee for single occupancy.

No refund of any portion of the original Entrance Fee shall be made at that time.

3. LIVING ACCOMMODATIONS

In consideration of the Monthly Fees and other fees payable by you under this Agreement, Provider will furnish you with the following accommodation and services, subject, however, to the terms of this Agreement and the Resident Guide.

3.1 Residence.

You have selected Residence # ____ to occupy (your “Residence ”) and have a personal and non-assignable right to occupy your Residence .

3.2 Amenities and Utilities

Residences are furnished with an electric stove, microwave oven, refrigerator, dishwasher, washer/dryer unit, smoke detectors, Lifeline emergency response system (at your option, for which service may be purchased separately), carpeting and blinds. The following utilities are included in the Base Monthly Fee: electric, water, sewer, and heat. The Base Monthly Fee also includes trash collection fees and real estate taxes (or payments in lieu of taxes) attributable to each Residence. The Base Monthly Fee does not include telephone service. Resident may separately enroll for cable and internet service through the Community's current provider, at Resident's expense.

3.3 Furnishings.

You may decorate your Residence in accordance with your preferences. However, decorations and all other modifications that would affect the exterior appearance of your Residence or materially alter the interior will require Provider's prior written approval. You may use your own furniture and special equipment, provided that the safety standards of the Community and the requirements of the Rules and Regulations and in the Resident Guide are met. You or your estate will be responsible for removing all such furniture and special equipment when your Residence is vacated. The blinds cannot be exchanged. The original blinds must be displayed at all times.

3.4 Alterations.

You may not make alterations, additions or modifications to your Residence without Provider's prior written approval.

3.5 Maintenance and Repairs.

You are responsible for maintaining your Residence in good repair and condition at all times, similar to its condition on the Effective Date except for normal wear and tear. Provider will be responsible for making all necessary repairs to your Residence infrastructure. However, you will be responsible for reimbursing Provider for the cost of any repairs to your Residence that are not the result of normal wear and tear. Refurbishment of your Residence may be performed from time to time in Provider's sole discretion.

3.6 Guests.

We welcome your guests into the Community as you did in your previous home. We do require that all incoming guests, vendors, or other private duty staff hired by residents sign in with the Concierge each time they visit the Community. Residents must take responsibility for their guests and must accompany them into the Common Areas, such as the dining room, fitness center, etc. Residents must also ensure their guest's compliance with the Community's dress code. Overnight guests are welcome to visit you and may stay in your Residence at no charge subject to the time limitations (See below). You will be charged for any meals they have. However, under normal circumstances, you should also be present in your Residence when guests are staying overnight. If you are in the hospital and an out-of-town family member needs to stay in your Residence, the General Manager should be contacted for prior approval. Such guests are requested to either eat in the Residence or to eat outside of the Community since you are not present to be with them in the dining room. One (1) week per year is the maximum stay for guests unless prior approval from the General Manager is obtained. Charges for special services or guest meals will be added to your monthly statement.

Any private duty aides providing services to you are not considered guests and are not entitled to the same privileges as guests.

4. COMMON AREAS

You will be entitled to share with all other residents the use of the grounds and Common Areas at the Community, subject to the Rules and Regulations of the Community as outlined in the Resident Guide. Additionally, you will be entitled to use certain Common Areas and amenities located at the adjacent One Wingate East at 235 Gould Street, Needham, Massachusetts, subject to the Rules and Regulations of the Community as outlined in the Resident Guide, for as long as One Wingate Way and One Wingate East each remain under the management of Wingate Living. Common Areas at One Wingate Way currently available to resident include the Aquatic Center and Dining Room. Common areas at One Wingate East currently include: a Beauty Salon/Barber Shop, Fitness Center, Dining Room, Bars, Card Room, Maker Space, Roof Terrace, Patio, Theatre, Library, and Sports Simulators. Provider may modify the Common Areas in its discretion.

5. SERVICES

The services described in *Section 5.1* below are referred to as “Included Services,” and are subject to *Section 2.2(C)(2)*. Provided that you are in compliance with this Agreement and the Resident Guide, the Included Services shall be provided for you as part of your Base Monthly Fee.

The services described in *Section 5.2* below, and set forth in **Exhibit B** are referred to as “Optional Services” and are subject to *Section 2.2(C)(2)*. Provided that you are in compliance with this Agreement and the Resident Guide, the Optional Services may be made available to you and, if requested or used by you, shall be included in your Additional Monthly Fee.

The services described in *Section 5.3*, and set forth in **Exhibit C**, are referred to as “Wellness Services.” Provider has arranged for the Wellness Services to be made available to you on campus, through third party providers, at your option.

5.1 Included Services.

(a) Meals.

Continental Breakfast will be available Monday through Saturday and is included in your Base Monthly Fee. Additionally, dinner will be available Monday through Saturday and is included in your Base Monthly Fee. Brunch will be available on Sunday and is included in your Base Monthly Fee. Dinners may be exchanged for

lunches at One Wingate Way, subject to available capacity and upon advance reservations. Additional lunches and dinners, including for guests, may be purchased as set forth in **Exhibit B**, subject to availability. Unused meals may not be carried over or credited, except in the Community's sole discretion for extraordinary circumstances (i.e., Resident is away from the Community for 30 consecutive days). Please consult the Resident Guide for detailed dining program information.

(b) Housekeeping Service.

Scheduled routine housekeeping services will be provided to your Residence once per week. Trash rooms are located on every floor and will be accessible at all times to dispose of your daily trash needs. Additional housekeeping services may be purchased as set forth in **Exhibit B**.

(c) Maintenance of Common Area and Grounds.

Provider will maintain all Community buildings, Common Areas and grounds.

(d) Certain Activities.

Provider will arrange various planned social and recreational activities both at and away from the Community. Provider also will assist interested groups in planning additional activities. There may be an additional charge for some of these activities.

(e) Scheduled Transportation.

Scheduled transportation will be provided regularly.

(f) Parking.

Your use of one (1) parking space per resident is included in the Base Monthly Fee, on a first come, first served basis. Your guests may self-park only in designated visitor parking areas. Recreational vehicle parking will not be available. You may not use your parking space to park automobiles that do not belong to you. You will be required to provide evidence of current insurance and registration for any vehicle you wish to park in the Community.

5.2 Optional Services.

The Optional Services, as well as other services not specified in this Agreement, may be made available to you at the discretion of Provider, and you may use such services for an extra charge as may be set forth in the Schedule of Optional Services and Fees in **Exhibit B**. All such charges shall be included in the Additional Monthly Fee billed to and due from you, or paid for at the time that the Optional Service is rendered. The schedule and the availability of Optional Services may be changed from time to time in Provider's discretion.

a) Additional Maintenance.

Provider or its agents may perform maintenance and repairs in your Residence beyond those which Provider is obligated to do by the express terms of this Agreement or applicable law, at your request.

b) Certain Activities.

As referenced above, Provider will arrange various planned social and recreational activities both at and away from the Community. Depending on the activity, there may be an additional charge if you request to participate.

5.3 Wellness Services.

You will have on campus access to a variety of Wellness Services, offered by Wingate-affiliated and third-party service providers. A description of the Wellness Services is set forth in the Wellness Program Overview in **Exhibit C**. The services and service providers may be changed from time to time in Provider's discretion. If you choose to use any onsite Wellness Services, you will coordinate the use of, and payment for, such services directly with the service provider.

6. TRANSFERS FROM RESIDENCE

6.1 Your Capacity for Independent Residential Living.

a) Independent Living Limitations.

Your Residence is designed for persons who are capable of undertaking their own activities of daily living and personal care needs. THE RESIDENCE IS NOT LICENSED TO OFFER, AND DOES NOT OFFER, ASSISTANCE WITH

MEDICATIONS, BATHING, DRESSING, MOBILITY NEEDS, OR OTHER PERSONAL OR HEALTH CARE ACTIVITIES. YOU REPRESENT TO THE PROVIDER THAT YOU ARE CAPABLE OF PROVIDING FOR YOUR OWN HEALTH CARE AND PERSONAL CARE NEEDS (INCLUDING WITHOUT LIMITATION, THOSE ACTIVITIES OF DAILY LIVING AND PERSONAL CARE NEEDS STATED ABOVE) AND WILL PROVIDE FOR ALL SUCH NEEDS SO LONG AS YOU RESIDE IN YOUR RESIDENCE. If you utilize any private duty caregivers or companions while at the Community, you agree to comply with the Community's applicable policies for such personnel as set forth in the Resident Guide.

b) Assessment of Independent Living Appropriateness

Prior to your taking occupancy of a Residence, the Community shall have the right to conduct a pre-occupancy health and functional assessment. The assessment may be conducted by the Community or by a clinical professional designated by the Community. Additionally, Community, at its sole discretion, shall have the right to conduct post-hospitalization and ongoing assessments ,as needed.

6.2 Transfer Due to Care Needs.

If at any time you become incapable of providing or fail to provide for your health care or personal care needs, or if you develop a physical or mental condition that creates a danger to yourself or others, you agree to promptly move out of your Residence and into an appropriate outside accommodation of your choice, inside or outside of the Community. Any determination that you are required to move for the reasons set forth in this paragraph shall be made in Provider's sole reasonable judgment.

6.3 Release of Provider from Responsibility for Your Care.

It is your responsibility, and not the responsibility of the Provider, to provide for your own health care and personal care needs so long as you reside at the Community. You hereby indemnify, hold harmless and release Provider and its affiliates, directors, agents and employees, from any and all liability, loss, cost, and responsibility for injury and damage, including attorneys' fees, arising from your failure to obtain, or from the failure of others (other than the Provider) to furnish, appropriate health care or personal care services, and from all injury and damage which could have been avoided or reduced if such services had been obtained or

furnished by you.

6.4 Voluntary Residence Change.

Your request for a change of residence may be granted in the Provider's discretion. You will pay the applicable Monthly Fees for the new residence beginning on your first day of occupancy. If you move on a day other than the first day of the month, any difference in rates between your current Residence and the new residence will be credited or debited to your account, as the case may be, on a pro rata basis. You will be responsible for all costs associated with the move.

6.5 Priority Access to Assisted Living and Memory Care.

As long as you are not in default under this Agreement, you will have priority access for admission at all assisted living and memory care communities managed by Wingate Living, which currently includes the adjacent Wingate Residences at Needham, located at 235 Gould Street, Needham, Massachusetts, subject to availability and your meeting the eligibility requirements for admission.

7. TERMINATION AND REFUNDS

7.1 Terminations on or Before the Occupancy Date.

(a) Termination Due to Death, Illness, or Financial Condition.

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

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

If the Provider 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 Provider agrees in writing to extend the Occupancy Date.

(b) Termination by Resident.

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

Resident's failure to pay the balance of the Entrance Fee and begin paying the Monthly Fees on or before the Occupancy Date shall be deemed a termination of this Agreement by Resident pursuant to this Section 7.1(b), unless an extension of the Occupancy Date has been agreed to in writing by Resident and Provider.

(c) Refunds Upon Termination on or Before the Occupancy Date.

Within ninety (90) days after the termination of this Agreement under this Section 7.1, the Provider will refund to Resident or Resident's legal representative all amounts paid to the Provider by Resident, less (a) those costs specifically incurred by Provider at the request of Resident as set out in this Agreement or other written instrument between Provider and Resident, and (b) a service charge equal to one percent (1%) of the Entrance Fee.

7.2 Terminations After the Occupancy Date.

(a) Termination by Resident.

Resident may terminate this Agreement at any time for any reason by providing written notice of termination to Provider, specifying an effective date of termination which shall be not less than sixty (60) nor more than one hundred-twenty (120) days from the date notice is given. Termination shall not be effective until you have vacated the Residence and returned all keys to the Provider.

If this Agreement is terminated pursuant to this Section 7.2(a), you shall be entitled to a portion of the Entrance Fee pursuant to Section 7.5.

(b) Termination by Death.

If this Agreement is for single occupancy of the Residence, then this Agreement shall terminate upon the later of (a) 30 days after the death of the Resident, or (b) upon the removal of all of Resident's personal property from the Residence and the return of all keys to the Provider. Resident's family or estate may be responsible for the removal and storage of Resident's personal property in accordance with the terms of this Agreement.

If this Agreement is for single occupancy of the Residence, your estate shall be entitled to a refund of a portion of the Entrance fee pursuant to Section 7.5

If this Agreement is for double occupancy of the Residence, then upon the death of one Resident, this Agreement shall remain in effect as to the other Resident. There shall be no refund of any portion of the Entrance Fee. The Monthly Fees hereunder shall be adjusted base on single occupancy of the Residence.

(c) Termination by Provider.

Provider may terminate this Agreement, without the requirement of making any entry, by delivering to you a ten (10) day written notice to vacate your Residence upon your non-payment in full of any Monthly Fees, as and when due.

Provider may also terminate this Agreement for Good and Sufficient Cause by giving you thirty (30) days' written notice to vacate your Residence (unless both parties agree in writing to a shorter notice period). Good and sufficient Cause shall include, but shall not be limited to, the following:

- a) Breach of Agreement.** You fail to perform your obligations under this Agreement other than your obligation to pay Monthly Fees on a timely basis;
- b) Needs Beyond Provider's Capacity.** You need services or care that Provider is not licensed to provide or does not routinely provide;
- c) Violation of Community Rules and Regulations.** You or your guest fail to abide by Provider's Rules and Regulations, or such other restrictions as may be communicated to you;
- d) Nuisance.** You or your guest create a disturbance within the Community or engage in conduct that is disruptive or detrimental to the health or safety of others

or their peaceful enjoyment of the Community;

- e) **Misrepresentation.** You make a material omission or misstatement in your application for residency or in verbal representations made to Provider;
- f) **Failure to Make Financial Disclosure.** You fail to disclose information about your financial condition after being asked to do so; or
- g) **Permanent Transfer.** You permanently transfer (or you both permanently transfer, if you are a couple) from the Community.

Upon termination, you shall immediately vacate your Residence or be subject to eviction proceedings. Provider shall also be entitled to all other remedies provided by law, and all of Provider's remedies shall be cumulative and not exclusive. This Agreement shall not be considered terminated until your Residence has been vacated and all keys have been returned to the Provider.

Upon termination of this Agreement by the Provider, you shall be entitled to receive a refund of a portion of the Entrance Fee pursuant to Section 7.5.

7.3 Monthly Fees Obligation; Unpaid Fees

You shall pay Monthly Fees throughout any and all notice periods described in this **Section 7** and until your Residence is "made available" to Provider; that is, you have vacated your Residence, removed all your belongings from it and returned the Residence to Provider in its original, undamaged condition, normal wear and tear excepted. In addition to the provisions in **Section 2.3**, Provider shall deduct from any Entrance Fee refund owed to you: (1) all unpaid Monthly Fees and other charges; and (2) the cost (if any) of restoring your Residence to its original, clean condition (excluding normal wear and tear).

7.4 Keys and Locks.

Upon the expiration or termination of this Agreement, you shall deliver the keys to your Residence and any other Community facility to Provider. Delivery of keys to Provider or its agent, or abandonment of the Residence, shall not constitute a surrender or acceptance of surrender of your Residence unless agreed to in writing by Provider. You shall not change the locks to your Residence without Provider's prior written permission, and at all times Provider shall have a duplicate set of keys therefor for use pursuant to *Section 10.2* below.

7.5 Refunds Upon Termination After Occupancy Date.

Upon termination of this Agreement pursuant to Section 7.2 of this Agreement, you or your estate shall be entitled to a refund of a portion of the Entrance Fee as follows:

(a) Termination Within the First Fifteen (15) Months of Occupancy.

If termination occurs prior to the expiration of the first fifteen (15) months following the Occupancy Date, Resident shall be entitled to receive a refund of the Entrance Fee in the amount of the Entrance Fee, less one percent (1%) of the amount of the Entrance fee per month of occupancy at the Community. Provider may deduct from this refund any outstanding Monthly Fees or other obligations due from you to the Provider. Provider shall issue the refund within ninety (90) days following the date of termination.

(b) Termination After the Fifteenth (15th) Month of Occupancy.

(i) Immediate Refund

If termination occurs upon or after the expiration of the first fifteen (15) months following the Occupancy Date, Resident shall receive a refund of the Entrance Fee, less one percent (1%) of the Entrance Fee per month of occupancy at the Community (the "Immediate Refund"). Upon termination, Provider may deduct from the Immediate Refund any outstanding Monthly Fees or other amounts due from you to the Provider. Provider shall issue the refund within ninety (90) days following the date of termination.

(ii) Deferred Refund

Resident, in his or her sole discretion, may elect to notify the Provider that Resident elects to postpone receiving the Minimum Refund until the Provider has (a) executed a new Residency Agreement with a successor resident for the same Residence, and (b) such successor resident has paid a new entrance fee, and (c) such Resident has taken occupancy of the Residence. If Resident elects to postpone receiving the Immediate Refund, then Resident shall receive a refund of eighty-five percent (85%) of the Entrance Fee, payable within thirty (30) days of satisfaction of the conditions set forth in this Section 7.5(b)(ii) (the “Deferred Refund”). Upon termination, Provider may deduct from the Deferred Refund any outstanding Monthly Fees or other amounts due from you to the Provider.

Resident (or in the event of Resident’s death or incapacitation, Resident’s authorized representative) shall provide written notice to the Provider of its election to receive the Deferred Refund within thirty (30) days of termination. If Resident (or Resident’s authorized representative) does not provide notice of an election, then Resident will receive the Immediate Refund as set forth in Section 7.5(b)(i).

7.6 Release of Provider.

Upon the termination of this Agreement, Provider and Community, together with all parents, subsidiaries, affiliates, officers, directors, employees, and agents acting on their behalf, shall be released from all obligations and liabilities to Resident except for the obligation to refund any portion of the Entrance Fee and, if applicable, to use good faith, reasonable, efforts to re-rent the Residence to a new resident.

8. RESIDENT RIGHTS

8.1 No Real Property or Trust Interest.

This Agreement entitles you to occupy your Residence and to obtain the services specified in this Agreement. You shall have no estate leasehold, or other real property interest in your Residence or in the Community or any ownership or managerial interest in Provider. You may not lease your Residence to any other person or allow any person to occupy it in your place, except on a temporary basis as set forth in **Section 3.6**. All Monthly Fees paid by you to Provider shall become

the sole property of Provider and are not held in trust.

8.2 No Interest in Financial or Other Assistance.

Provider reserves the right to apply for and receive all financial and other aid from federal, state, or municipal sources to which it may legally be entitled, and to apply for and receive aid or donations, by will, deed, or otherwise, from any source. You shall have no interest in any such financial aid or assistance received by Provider, and no right to demand an accounting for such aid or assistance.

8.3 No Security Interest.

This Agreement does not grant to you or to anyone else any security interest in any land, buildings, or other property owned or managed by Provider, whether at the Community or elsewhere. Your rights under this Agreement are and shall be subordinate to the rights of a secured lender under any mortgage or other senior security interest that is placed on Provider's property, now or in the future. You agree that you will execute, upon request, any document required to implement or serve as evidence of such subordination.

8.4 Rules and Regulations.

You agree to be bound by all the policies and Rules and Regulations of the Community, as set forth in the Resident Guide.

8.5 Assignment.

Your rights and privileges to use and enjoy the living accommodations, facilities and services of the Community are personal, and may not be transferred or assigned by you, or by any proceeding at law or otherwise. Provider reserves the right to assign this Agreement to any successor-in-interest it selects.

9. RESIDENT REPRESENTATIONS

9.1 Application Documents.

As part of your application to the Community, you have submitted an application for residency, which is incorporated by reference into this Agreement and made an express part of it. You warrant that all information supplied by you in connection with your application is true and correct, and you understand that Provider has relied

on this information in accepting you for residency in the Community.

10. OTHER MATTERS

10.1 Liability and Property Matters.

a) ***Liability in General.*** You accept full responsibility for any injury or damage caused to others, or suffered by you, as a result of your own acts or omissions, and those of your guests or invitees, and you hereby indemnify and hold harmless Provider and its respective directors, agents, and employees from any and all liability for such injury or damage, including reasonable attorneys' fees. You agree to maintain general liability insurance in an amount and in a form satisfactory to Provider to cover such liability.

b) ***Property Damage.*** Unless caused by Provider's gross negligence or intentional misconduct, Provider shall not be responsible for the loss of or damage to any property belonging to you due to theft, fire, water or any cause beyond the reasonable control of Provider. You are required to obtain insurance protection to cover the full replacement value of all your personal property at the Community, and to furnish Provider with evidence of such protection upon request. You shall also be responsible for any loss or damage that you or your guests cause to the property of the Community that is not the result of ordinary wear and tear.

c) ***Property Removal and Storage.*** Provider shall have the right to promptly remove and store all property from your Residence, at your expense, when you abandon or vacate your Residence on a permanent basis (e.g., upon termination of this Agreement, permanent medical transfer, or death), and Provider shall have no responsibility for any loss of or damage to such property. Alternatively, Provider shall have the right, in its sole discretion, to release all of your property to any person(s) designated by you in writing, or, upon your death, to your executor or administrator. If no executor or administrator qualifies within thirty (30) days of Resident's death, then to your next of kin, as defined by Massachusetts Law. The Provider will hold such property for not more than thirty (30) days following your death at the risk of your estate or of the persons entitled to receive the property. You hereby grant to the Provider a limited power of attorney to hold and deliver your property as provided herein, including the authority to store it away from the Community in a commercial warehouse at the your expense.

d) ***Right of Subrogation; Power of Attorney.*** In case of injury to you caused by any act or omission of another person, the Provider 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 Provider with respect to any condition arising from such injury. Resident shall pay to the Provider 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 Provider under this Agreement. The Provider shall also be entitled to reimbursement for all expenses incurred by Provider 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 Provider 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 Provider, Resident shall execute a power of attorney to the Provider authorizing it to take any and all actions which the Provider 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 Provider may reasonably request in order to assert and prosecute such claim. In addition to the value of any and all Covered Services provided by Provider to Resident with respect to any condition arising from such injury, the Provider shall also be entitled to reimbursement for all expenses incurred by Provider in obtaining such recovery, but only to the extent the amount recovered exceeds the value of Covered Services thus provided.

10.2 Right of Entry.

You agree that any authorized employee or agent of Provider shall have the right to enter your Residence, but only under the following circumstances: (i) it appears to be abandoned; (ii) Provider, acting reasonably, determines that entry is necessary for management, housekeeping, enforcement of applicable laws and regulations or the terms of this Agreement, or responding to emergencies; or (iii) for showing the Residence to prospective mortgagees, or to prospective residents if within a termination period under this Agreement or reasonably close to the end of its term.

10.3 Smoking Prohibited.

You acknowledge and agree that the Community has been designated as a smoke-free living environment. Accordingly, smoking of any tobacco product or similar

lighted product is not permitted in your Residence or in any Common Area of the Community. You agree to inform your guests of the Community's smoke-free policy. Notwithstanding the foregoing, and the right of Provider to enforce this covenant and Community non-smoking policy generally, you acknowledge and agree that Provider does not guarantee a smoke-free environment.

10.4 Relationships Between Residents and Staff.

Provider instructs the Community's staff to be cordial and helpful to residents. The relationship between residents and staff should remain professional and at arm's length. Employees must not be delayed or deterred by residents in the performance of their duties. The Community's employees shall be supervised solely by Provider's management staff and not by residents. Any complaints about employees or requests for special assistance must be made to the appropriate supervisor or to the General Manager or designee. Giving gratuities or bequests to employees or employee's families is not permitted under any circumstances. You agree not to hire Provider's employees or solicit such employees to resign, to work for you without the prior written consent of Provider to such arrangement. You agree not to hire any former Community employee until six months have elapsed since termination of their employment.

10.5 Pets.

Non-exotic domestic house pets are allowed in the Community, subject to the Community's Pet Policy as set forth in the Resident Guide.

10.6 Private Duty Aides.

Generally, you may employ private duty aides, provided that they agree in writing to comply and actually do comply with the Provider's private duty aide policies as set forth in the Resident Guide.

10.7 Notices.

All notices given under this Agreement shall be in writing and shall be addressed to Provider at 589 Highland Avenue, Needham, MA 02494, care of the General Manager or designee, or to you at your Residence. Such notices shall be effective when personally delivered to your Residence, placed in your Community mailbox, or when deposited in the mail, provided they were properly addressed with postage fully prepaid.

10.8 Entire Agreement

This Agreement which incorporates the Resident Guide, the Rules and Regulations, and the Schedule of Optional Services and Fees as if fully set forth herein (including amendments and restatements thereof as may be issued by Provider from time to time) is the entire agreement between you and Provider. The Resident Guide and Schedule of Optional Services and Fees may be modified by the Provider only upon reasonable notice to the Resident. This Agreement supersedes any promotional materials or other information given to you by Provider or any other entity. The invalidity or amendment of any restriction, condition, or other provision of this Agreement shall not impair or affect in any way the validity, enforceability or effect of the rest of this Agreement. In interpreting this Agreement, the singular shall mean the plural, and the masculine shall mean feminine or neuter, as the context requires.

10.9 Waiver of Breach.

The failure of Provider in any instance to require your full performance or observance of, or compliance with, any of the terms or provisions of this Agreement, shall not be construed to be a waiver or relinquishment of its right to require your full compliance with all of the terms and provisions of this Agreement. Provider's acceptance of your Monthly Fees or other charges due under this Agreement shall not constitute a waiver of the right to require your full performance of all terms of this Agreement, nor shall it waive Provider's right to terminate this Agreement for any breach previously committed by you.

10.10 Governing Law.

This Agreement is executed as a sealed instrument and shall be governed by Massachusetts law.

10.11 Arbitration of Disputes.

By entering into this Agreement, you agree that any claims and disputes arising from this Agreement or your residency shall be resolved by submission to neutral, binding arbitration, by execution of a Revocable Arbitration Agreement, as set forth as **Exhibit F**; provided that any claim or dispute involving eviction shall be subject to summary process in the Massachusetts Courts having jurisdiction thereof unless, to the extent permitted by Massachusetts law, both parties agree to arbitrate such proceedings. Otherwise, both parties relinquish their constitutional right to have any

such dispute decided in a court of law before a jury, and instead accept the use of arbitration. Such arbitration shall be conducted in Boston, by a single neutral arbitrator selected in accordance with the provisions of Massachusetts law, unless otherwise mutually agreed. In reaching a decision, the arbitrator shall prepare findings of fact and conclusions of law and the decision may be filed with a Massachusetts court. Each party shall bear its own costs and fees in connection with any legal proceeding (including arbitration) hereunder. This arbitration clause binds all parties to this Agreement and their spouse, heirs, representatives, executors, administrators, successors, and assigns, as applicable. After termination of this Agreement, this arbitration clause shall remain in effect for the resolution of all claims and disputes that are unresolved as of that date.

10.12 Actions Not Subject To Arbitration.

Any action arising out of or related to this Agreement that is brought by or against Provider for which arbitration is not allowed by law or that is excluded from arbitration under *Section 10.11*, above, shall be brought in the appropriate court before a judge. **THE PARTIES HEREBY EXPRESSLY WAIVE THEIR RIGHT TO BRING THE MATTER BEFORE A JURY.**

10.13 Binding Agreement.

This Agreement is a binding contract. You acknowledge that you have read this Agreement and understand its terms and your obligations hereunder. You acknowledge that you have had an opportunity to have this Agreement reviewed by the attorney or advisor of your choice.

RESIDENT(S):

Date *Resident*

Date *Resident*

PROVIDER:

GingerCare Living, Inc. d/b/a One Wingate East

By: _____
Name: _____
Title: _____

EXHIBIT A

RESIDENT GUIDE

EXHIBIT B

SCHEDULE OF FEES AND
SCHEDULE OF OPTIONAL SERVICES AND FEES

EXHIBIT D

STATEMENT OF CONDITION

One Wingate East
Statement of Condition on Move-In

Name	Residence	Date
------	-----------	------

Walls

Carpet

Kitchen/ Appliances

Bathroom

Status of Security Deposit

_____ Resident Signature	_____ Date
-----------------------------	---------------

_____ Wingate Signature	_____ Date
----------------------------	---------------

One Wingate East
Statement of Condition Checklist

Name	Residence	Move In Date	Move Out Date

Move In				Living Room		Move Out		
Comment	New	Good	Fair	Item	New	Good	Fair	Comment
				Windows				
				Draperies				
				Light Fixtures				
				TV Outlet				
				Walls				
				Ceilings				
				Floors				
				Carpeting				
				Woodwork				
				Thermostats				
				Sprinkler Head				
				Smoke Detector				
				ERS				
				Heat/AC				
				Electric Outlet				

Move In				Bedroom		Move Out		
Comment	New	Good	Fair	Item	New	Good	Fair	Comment
				Windows				
				Draperies				
				Light Fixtures				
				TV Outlet				
				Walls				
				Ceiling				
				Floor				
				Carpeting				
				Woodwork				
				Thermostats				
				Telephone Outlet				
				Doors				
				Clothes Bar				
				Shelving				
				Closet Doors				

Move In				Kitchen	Move Out			
Comment	New	Good	Fair	Item	New	Good	Fair	Comment
				Entrance Door				
				Woodwork				
				Light Fixtures				
				Flooring Tile				
				Microwave/Fridge				
				Ceilings				
				Floors				
				Carpeting				
				Counter Tops				
				Sink				
				Sink Stopper				
				Faucets				
				Walls				
				Wall Protectors				
				Electric Outlet				
Move In				Bathroom	Move Out			
Comment	New	Good	Fair	Item	New	Good	Fair	Comment
				Mirror and Cabinet				
				Faucet				
				Basin				
				Toilet				
				Towel Bar				
				Paper Holder				
				Shower Bar				
				Grab Bars				
				Walls				
				Floors				
				Ceilings				
				Doors				
				Woodwork				
				Wall Protectors				
				Electric Outlet				
				ERS Pendant				
Move In				Bathroom	Move Out			
Comment	New	Good	Fair	Item	New	Good	Fair	Comment

				Residence Key				
				Mail Box Key				
				Storage Key				

Duplicate Keys Given Out _____

Date _____

ERS Pendant _____

Date Recieved _____

Date Returned _____

Comments _____

Move-In

I have personally examined this **Residence** and its equipment prior to occupancy and do certify that it is in decent, safe and sanitary condition. Resident further states that he/she shall maintain the premises in a safe and proper condition

Date		Resident	
Date		Responsible Party	
Date		Wingate Representative	

Move-Out

I have personally examined this **Residence** and its equipment prior to vacating the premises and hereby agree that I am responsible and liable for the cost of repairs, and/or replacement necessary and specified above which are above and beyond normal wear and tear.

Date		Resident	
Date		Responsible Party	
Date		Wingate Representative	

EXHIBIT E

INDEPENDENT LIVING DISCLOSURE AND ACKNOWLEDGMENT

I understand that my Residence is an Independent Living Residence and, as such, I may not ask the certified staff of the adjacent Assisted Living Facility – the Wingate Residences at Needham – to assist me with personal care and services.

I understand that my emergency response system, if I elect to utilize one, is independently provided by Lifeline, which in the event of an emergency, will contact rescue professionals directly, on my behalf.

Resident

Signature:

Printed Name:

Date:

EXHIBIT F

REVOCABLE ARBITRATION AGREEMENT

REVOCABLE ARBITRATION AGREEMENT

This Revocable Arbitration Agreement (“Arbitration Agreement”) may be rescinded (i.e., canceled) by the Resident by providing written notice, sent certified mail, to the Facility within thirty (30) days from the date of the Resident’s admission. See below for more details.

Where the context requires, the capitalized terms in this Arbitration Agreement have the meaning ascribed to them in your Admission Agreement.

A. WHAT IS ARBITRATION?

Arbitration is a cost effective and time saving method of resolving disputes without involving the courts. In arbitration proceedings, the disputes are heard and decided by a private individual called an arbitrator. Neither the Facility nor the Resident is waiving their right to sue or obtain statutory and/or contractual remedies by agreeing to arbitrate disputes within the scope of this Arbitration Agreement. However, the dispute will not be heard or decided by a judge or jury, as both the Facility and the Resident desire and expressly agree that any dispute between them be resolved *outside* of the court system.

- 1. Waiver of Trial by Judge or Jury.** By entering into this Arbitration Agreement, the parties are giving up and waiving their right to have any claim decided in a court of law before a judge and/or jury.
- 2. Final Award with Limited Rights to Review (Appeal).** The arbitrator’s decision binds the parties and the parties have a limited right of review for only the express reasons as allowed under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 10(a)(1)- (2).
- 3. Right to Consult with Attorney.** Please read this Arbitration Agreement very carefully and ask any questions that you may have. You should also feel free to consult with an attorney of your choice before agreeing to the terms and conditions of the Residence and Services Agreement, including but not limited to the terms and conditions of this Arbitration Agreement (which are expressly incorporated into the body of the Residence and Services Agreement as if set forth fully therein).

4. **Binding on Parties and Others.** It is the intention of the Resident and the Facility that this Arbitration Agreement shall inure to the direct benefit of and bind the Resident (as defined herein), his/her successors, spouses, children, next of kin, guardians, conservators, administrators, legal representatives, responsible parties, assigns, agents, attorneys, health care proxies, health care surrogates, attorneys-in-fact, designees, third party beneficiaries, insurers, heirs, trustees and representatives, including the personal representative or executor of his/her estate, any person whose claim is derived through or on behalf of the Resident, any person who previously assumed responsibility for providing Resident with necessary services such as food, shelter, clothing, or medicine, etc., and any person who executed this Arbitration Agreement or the Admission Agreement and inure to the direct benefit of and bind the Facility, its parent, affiliates, and subsidiary companies, management companies, executive directors, owners, officers, partners, shareholders, representatives, directors, medical directors, employees, managers, nurses, nursing assistants, administrative staff, successors, assigns, agents, attorneys and insurers and any entity or person that provided any services, supplies, or equipment related to the Resident's stay at the Facility.
5. **Waiver of Claim.** Any claim shall be waived and forever barred if it arose prior to the date upon which the demand for arbitration is mailed and is not presented in the arbitration hearing.
6. **Survival and Integration Clause:** Except as noted below in Section B ("Right to Change your Mind") of this Agreement, the terms and conditions recited herein shall survive and remain in full force and effect notwithstanding the termination, cancellation or natural expiration of the Residence and Services Agreement or any other contract between the Resident and the Facility. However, in the event this Agreement is rescinded (i.e., cancelled) by the Resident (see Section B), then the Resident and the Facility agree, notwithstanding such rescission, that any legal action arising out of or related to the Residence and Services Agreement, or any other contract between the Resident and the Facility, shall be brought in the State or District court located in the county in which the Facility operates. The terms and conditions recited herein shall also survive and remain in full force and effect notwithstanding the death of the Resident or the discontinuation of operations at the Facility. This Agreement represents the parties' entire agreement regarding disputes, and

it may only be changed in a writing signed by both the Resident and the Facility.

B. RIGHT TO CHANGE YOUR MIND

This Arbitration Agreement may be rescinded (i.e., canceled) by the Resident by providing written notice, sent certified mail, to the Executive Director at the Facility within thirty (30) days from the date of the Resident's admission to this Facility. If alleged acts underlying a dispute governed by the Arbitration Agreement are committed prior to the revocation date, this Arbitration Agreement shall be binding with respect to said alleged act or acts. If the Resident revokes this Arbitration Agreement, he or she will still be allowed to live and receive services at the Facility pursuant to the terms and conditions of the Residence and Services Agreement.

C. AGREEMENT TO ARBITRATE

Any and all claims or controversies, except as provided in this Paragraph C below, arising out of or *in any way* relating to this Arbitration Agreement, the Residence and Services Agreement, and/or any of the Resident's stay(s) at the Facility, including disputes regarding the making, execution, validity, enforceability, voidability, unconscionability, severability, scope, arbitrability, interpretation, waiver, duress, preemption or any other defense to enforceability of this Arbitration Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages, tort or breach of statutory duties (including, without limitation, any claim based on Residents' Rights), irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted to binding arbitration.

Notwithstanding anything contained herein to the contrary, claims for unpaid Facility charges (including without limitation charges for room and board, medical care and treatment) and actions to obtain or to enforce liens or other security for the payment thereof, shall not be subject to this Arbitration Agreement.

D. ARBITRATION PROCESS

- 1. Demand for Arbitration** shall be made by the claimant ("Claimant") in writing and submitted to the other party ("Respondent") to this Arbitration Agreement via certified mail, return receipt requested.

2. **The Arbitration Hearing** shall take place within 100 miles of the Facility.
3. **Selection of Arbitrator/Arbitration Panel:** For a given Dispute, if the amount in controversy exceeds One-Hundred Thousand Dollars (\$100,000), then the parties agree that a panel of three (3) arbitrators (“Arbitration Panel”) shall preside over the Dispute. Each party shall select one arbitrator and then those two selected arbitrators shall choose the third arbitrator, thus comprising the Arbitration Panel. For Disputes where the amount in controversy does not exceed One-Hundred Thousand Dollars (\$100,000), then the parties agree that one (1) arbitrator (“Arbitrator”) shall serve as the sole arbitrator for the Dispute. If the parties cannot reach an agreement on the selection of the Arbitrator within 20 days after the Demand for Arbitration, then, on the 21st day after receipt of the demand, each party shall select one arbitrator and then those two selected arbitrators shall choose the ultimate arbitrator (“Arbitrator”) and he or she shall serve as the sole arbitrator for the Dispute.
4. **Arbitrator is Sole Decision Maker:** The Arbitrator and/or Arbitrational Panel is empowered to, and shall, resolve **all** disputes, including without limitation, any disputes regarding the making, execution, validity, enforceability, voidability, unconscionability, severability, scope, arbitrability, interpretation, waiver, duress, preemption or any other defense to enforceability of this Arbitration Agreement, as well as resolve the parties’ underlying disputes, as it is the parties’ intent to completely avoid involving the court system.
5. **Discovery** in the arbitration proceeding shall be governed by the National Arbitration Forum’s Code of Procedure (effective May 1, 2006) unless otherwise stated in this Arbitration Agreement. However, discovery shall be limited to the following methods:
 - (a) the Resident shall provide the Facility with all of the following documents within 20 days after Demand for Arbitration is submitted (and Facility shall reimburse Resident at the applicable state rate for copies):
 - (i) all nursing home, assisted living Facility, adult care home, home health, hospital, physician, ambulatory/EMS and/or State agency investigation records regarding the resident and within Resident’s possession or control, and concerning the time period

of the Resident's stay at the Facility and the ten (10) years prior and after;

- (ii) a list of all nursing homes, assisted living Facilities, adult care homes, hospitals, clinics, home health agencies, and physicians or other health care providers that have provided care or treatment to the Resident including an executed Medical Authorization allowing Facility to obtain copies of all such records, at Facility's expense (Facility shall provide resident with copies of all such records upon receipt of written request from resident, but Resident must reimburse Facility for the cost thereof);
- (iii) Resident's birth certificate;
- (iv) Resident's death certificate;
- (v) Resident's autopsy report, including pathology slides and photographs;
- (vi) any and all medical expenses which the Resident claims were incurred due to the legal fault of the Facility;
- (vii) all photographs and/or video tapes regarding the Resident which were taken or recorded during the Resident's stay at the Facility;
- (viii) all records, memos, outlines, diaries, letters, etc. drafted by the Resident during the Resident's stay at the Facility or drafted by the Resident's family or friends if such document concerns in any fashion the Resident's stay at the Facility;
- (ix) any sworn recorded statements to be relied upon at Hearing and included therewith the full name, title, address and phone number of the statement's declarant;

(b) Facility shall provide the following to the Resident within 20 days after the Demand for Arbitration is received (and Resident shall reimburse the Facility for the cost thereof):

- (i) the Facility's chart regarding the Resident;
- (ii) the Facility's business office file regarding the Resident;
- (iii) the date and author of any Incident/Accident Report;
- (iv) any photographs taken of the Resident while at the Facility;
- (v) any sworn recorded statements to be relied upon at Hearing and included therewith the full name, title, address and phone number of the statement's declarant;

- (c) Each party to the arbitration proceeding may serve upon the other party a maximum of 30 interrogatories and 30 requests to produce, inclusive of subparts.
- (d) The following disclosures shall be served no later than one hundred twenty (120) days before the arbitration hearing by the Claimant, and ninety (90) days before the arbitration hearing by the Respondent: (a) list of witnesses to be called at the Hearing (full name, title, address and phone number if known) and an outline of each witnesses' intended testimony; (b) list of documents to be relied upon at Hearing; except documents to be used solely for impeachment purposes; (c) any sworn recorded statements to be relied upon at Hearing and included therewith the full name, title, address and phone number of the statement's declarant. The parties shall have a duty to supplement these disclosures per Fed. R. Civ. Proc. Rule 26 (e).
- (e) Each party is limited to no more than three (3) experts and no more than ten (10) lay witnesses for its witness list, as well as for the Hearing. Depositions of witnesses shall be limited to those people listed on the parties' witness lists.
- (f) Discovery shall be completed 45 days before the Hearing. The Hearing shall last in duration no longer than five (5) working days, and the time allowed shall be split on a pro rata basis subject to the arbitrator's discretion.
- (g) The Hearing shall be conducted no later than 365 days after Demand for Arbitration is submitted.
- (h) Any of the above discovery terms or deadlines may be modified by joint stipulation of the parties.

6. Rules: Procedural Rules and Substantive Law: The arbitrator shall apply NAF's Code of Procedure (effective May 1, 2006) unless otherwise stated in this Arbitration Agreement. A copy of NAF's Code of Procedure may be obtained from the Facility's Executive Director or from NAF, (877) 655-7755, www.adrforum.com. The Arbitrator shall apply the Federal Rules of Evidence except where otherwise stated in this Arbitration Agreement. Also, the arbitrator shall apply, and the arbitration award shall be consistent with, the State substantive law for the State in which the Facility is located, except as otherwise stated in this Arbitration Agreement or the parties' underlying

Residence and Services Agreement, or where preempted by the FAA. A claim that is not served and filed within the statute of limitations period that would apply to the same claim in a court of law sitting in the State wherein the Facility is located shall be waived and forever barred.

7. **Award:** The arbitration award shall be delivered to the parties no later than five (5) working days following the conclusion of the arbitration hearing. The award shall set forth in detail the arbitrator's findings of fact and conclusions of law, and shall be marked "confidential." If an arbitration panel decides a Dispute, the arbitration panel's decision must be unanimous.
8. **Fees and Costs:** The Arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties to this Arbitration Agreement and the parties shall bear their own attorneys' fees and costs in relation to preparation for and attendance at the arbitration hearing, unless the Arbitrator concludes that the law provides otherwise. To the extent permitted by law, any party who opposes arbitrating the parties' dispute and/or opposes enforcement of the terms of the Arbitration Agreement and unsuccessfully defends against its enforcement shall be required to pay the successful parties' attorney fees and costs incurred to enforce the arbitration agreement (i.e., Motion to Compel Arbitration or for any other means reasonably undertaken to enforce the Arbitration Agreement).
9. **Refusal to Arbitrate:** To the extent permitted by applicable law, any party to this Arbitration Agreement who refuses to go forward with arbitration hereby acknowledges that the arbitrator will go forward with the arbitration hearing and render a binding decision without the participation of the party opposing arbitration or despite their absence at the arbitration hearing.
10. **Confidentiality:** The arbitration proceeding shall remain confidential in all respects, including all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other materials provided by and exchanged between the parties and the Arbitrator's findings of fact, conclusions of law, and award. In addition, following receipt of the Arbitrator's award, each party agrees to return to the producing party within 30 days the original and all copies of documents exchanged in discovery and at the arbitration hearing.
11. **Severability Provision:** Any term, phrase, provision or part thereof contained herein is severable, and in the event any of them shall be found to

be void, invalid or unenforceable for any reason, this Arbitration Agreement shall be interpreted as if such term, phrase or provision were not contained herein, and the remaining provisions of this Arbitration Agreement shall not be affected by such determination and shall remain in full force and effect. This Arbitration Agreement shall not fail because any part or any clause hereof is found to be void, invalid or unenforceable. No part of the Arbitration Agreement will be construed against any party because that party wrote the Arbitration Agreement.

12. Waiver of Jury Trial: If this Arbitration Agreement is found to be void, invalid or unenforceable for any reason, then the parties hereby agree that they waive their right to a jury trial and agree to have their disputes resolved by a judge via a bench trial.

13. FAA: The parties hereby expressly agree that the Residence and Services Agreement, this Arbitration Agreement, and the Resident's stay at the Facility involve interstate commerce. The parties also stipulate that the Federal Arbitration Act ("FAA") shall apply to this Arbitration Agreement, and that the FAA shall preempt any inconsistent state law and shall not be reverse preempted.

14. Waiver of this Arbitration Agreement: Either party may file its dispute in a court of competent jurisdiction subject to the other party's approval, which approval shall be established by such party filing a response to the Complaint without simultaneously moving to enforce this Arbitration Agreement. However, should one of the parties to this Binding Arbitration Agreement breach its terms by initiating a lawsuit in the judicial forum, the parties expressly agree that participation in cooperative general discovery while a motion to compel arbitration is pending shall not constitute evidence of a waiver of the right to arbitrate.

PLEASE SIGN BELOW TO ACKNOWLEDGE THAT YOU HAVE READ ALL SIX (6) PAGES OF THIS ARBITRATION AGREEMENT AND UNDERSTAND THAT BY SIGNING THE ADMISSION AGREEMENT, THE RESIDENT AND THE FACILITY HAVE WAIVED HIS/HER OR ITS RIGHTS TO A TRIAL BEFORE A JUDGE AND/OR A JURY, AND THAT EACH OF THEM VOLUNTARILY CONSENTS TO ALL OF THE TERMS AND CONDITIONS OF THIS ARBITRATION AGREEMENT (WHICH IS PART OF THE ADMISSION AGREEMENT). YOUR

INITIALS BELOW ALSO SIGNIFY YOUR ACKNOWLEDGEMENT THAT THE RESIDENT MAY REVOKE THIS ARBITRATION AGREEMENT WITHIN 30 DAYS OF THE RESIDENT'S ADMISSION TO THE FACILITY, AS DESCRIBED IN THE BODY OF THIS ARBITRATION AGREEMENT.

Resident Signature

Date

Resident's Printed Name

Legal Representative

Date

Legal Representative's Printed Name

Legal Representative in his/her Individual Capacity

Admission Coordinator

EXHIBIT G

DISCLOSURES