

**CONTINUING CARE CONTRACT  
FOR THE COMMONS  
LINCOLN, MASSACHUSETTS**

# **CONTINUING CARE CONTRACT**

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## CONTINUING CARE CONTRACT

BSL/BN Commons CCRC LLC (“We” or “Us”), a Delaware limited liability company which operates the retirement community known as The Commons (the “Community”), located in Lincoln, Massachusetts, and \_\_\_\_\_ (“You”) have entered into this Continuing Care Contract (the “Contract”), effective on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“Effective Date”).

### YOU AND WE AGREE AS FOLLOWS:

#### ARTICLE I. GENERAL; DESCRIPTION OF THE COMMUNITY; REQUIREMENTS FOR ADMISSION

##### A. General

This Contract is a life care contract. It describes the accommodations and other benefits you will receive from us, and the payments you will be required to make.

For your convenience, all defined terms in this Contract are listed and cross-referenced in Exhibit A to this Contract.

##### B. Description of Community

The Community consists of Independent Living Units, Assisted Living Units, Dementia Care Assisted Living Units and Skilled Nursing Units, as well as independent rental units in the Flint Building. Newly opened in April 2016, the Community health center (“Health Center”) includes Assisted Living Units, Dementia Care Assisted Living Units and Skilled Nursing Units.

1. Independent Living Units. The Community has 168 independent living units, 100 of which are located in the Russell Building, 22 of which are in the Flint Building, 8 of which are apartments in the Flint Building designated for low and moderate income tenants and which do

not participate in the life care arrangements summarized in this Contract, and 38 of which are independent Cottages. Common areas include a dining room, café and pub area, full kitchen, lounges, fitness center, indoor swimming pool, card room, internet café, auditorium and administrative offices.

2. **Health Center.** The Health Center is the Community's on-site health care neighborhood, housing the Assisted Living Units, Dementia Care Assisted Living Units and the Skilled Nursing Units. Each distinct area within the Health Center (assisted living, dementia care and skilled nursing) includes a dining room, a resident lounge, activity rooms and bathing facilities.

- a. **Assisted Living Units.** The Health Center includes 40 Assisted Living Units, including studios, 1 bedroom and 2 bedroom units.

- b. **Dementia Care Units.** The Health Center includes 24 Dementia Care Units, include single and companion (shared) units.

- c. **Skilled Nursing Units.** The Health Center includes 26 Skilled Nursing Units, including studio and companion (shared) units with 32 skilled nursing beds in our skilled nursing facility (“SNF”).

## C. **Admission**

You acknowledge receipt of a disclosure statement regarding the Community and this Contract in accordance with M.G.L. Chapter 93, Section 76. As conditions precedent to the execution of this Contract by us and as a condition of your occupancy of a Living Accommodation, you shall meet the following requirements to our satisfaction, subject to such exceptions as we may approve in writing:

1. **Financial.** On or after you signed the Reservation Agreement and paid us the Reservation Deposit for The Living Accommodation, you furnished information to us in the form of Exhibit B to the Reservation Agreement with respect to your financial resources, demonstrating to our satisfaction that you have the financial ability to pay the Entrance Fee, the Monthly Fee, charges for Additional Services and for Additional

Health Center Fees, each as hereinafter defined, and personal living expenses during the term of the Contract. You shall submit updated financial information in a form satisfactory to us not less than sixty (60) days prior to occupancy. We reserve the right to declare this Contract null and void if, based upon any information submitted by you, we determine that you do not meet the financial criteria for residency established by us.

2. **Age.** You, or one of you in the case of two persons, must be at least sixty-two (62) years of age on the date that you initially occupy The Living Accommodation at the Community. We reserve the right to make changes as to whom may occupy the Living Accommodation at any time to meet requirement of the laws and regulations of the United States, The Commonwealth of Massachusetts or any political subdivision thereof.
3. **Health.** Within fifteen (15) days of the date of the Reservation Agreement, you (or both of you, in the case of two persons) completed a Pre-Residence Personal Medical History and Examination Form, attached as Exhibit A to the Reservation Agreement, which information is full, accurate and truthful. If our Medical Director determines that you have one or more Pre-Existing Conditions based on the criteria identified in Exhibit E to this Contract, a stay in the Health Center may be required to be paid for on a per diem basis, in accordance with Section V.D of this Contract. You (and both of you, in the case of two persons) must be able at all times to demonstrate to the Executive Director of the Community that you are capable of providing or arranging for your own health care and personal care needs while you reside at the Community. If you are unable or unwilling to accept necessary health and personal care, and/or pose a danger to yourself or others as determined pursuant to the procedures described in Section IV.C of this Contract, you shall not be admitted as a resident of the Community. We reserve the right to declare this Contract null and void if, based upon any information submitted by you, we determine that you do not meet the health criteria for residency established by us. This determination will be made by the Medical Director of the Health Center.

## ARTICLE II. ACCOMMODATIONS AND FACILITIES

Your Living Accommodation. You have selected:

Living Accommodation \_\_\_\_\_

Cottage \_\_\_\_\_  
(Circle and complete one)

You and we agree that your Living Accommodation will be available for occupancy by you on \_\_\_\_\_, 20\_\_, unless you and we agree in writing to a later date (such date, the “Occupancy Date”). On the Occupancy Date, you will be allowed access for belongings or to personally inhabit the Living Accommodations under this Contract. Our delivery of keys to you shall be evidence of the availability of the Living Accommodations for your occupancy.

You shall have a personal and non-assignable right to reside in your Living Accommodation, subject to the terms of this Contract and Community rules. Your Living Accommodation shall conform in all material respects to the plan furnished to you in the form attached hereto as Exhibit B. We reserve the right to make changes to The Living Accommodation at any time to meet requirements of law or the lawful order or direction of the Fire Marshal or other authorized public official. Any change to the Living Accommodation by us shall not be deemed a material change so long as any such change does not reduce the square footage of The Living Accommodation.

Your Living Accommodation will include a complete kitchen including self-cleaning oven, microwave, range, garbage disposal, refrigerator and dishwasher; fully equipped bathroom(s); washer and dryer; floor coverings; window blinds; an emergency call system with portable emergency call button; smoke alarms and individually controlled heating and air conditioning units. You may provide additional furnishings and small appliances, as long as their placement and use comply with the Community’s safety standards. You agree, at our request, to remove any furnishings or appliances from your Living Accommodation that do not meet the safety standards of the Community.

**A. Utilities.** Electricity, including heat and air conditioning, water, sewer and garbage collection are provided as part of your Monthly Fee benefits. You will

also be assessed a monthly Technology Fee specified on the Ancillary Charge Sheet attached hereto as Exhibit C, which covers wireless internet and basic telephone service (excluding international charges) within your Living Accommodation. The Living Accommodation is centrally wired for cable television, telephone and internet hook-up. You will be responsible to pay for cable television service, if desired. Installation of telephones will be your responsibility.

**B. Parking.** If you occupy a Living Accommodation within the Russell Building and you own and are licensed to operate a motor vehicle that is registered to you, then you shall have access to one (1) parking space solely for that registered motor vehicle in the parking garage at the Community at no additional charge. Space will not be available for recreational vehicles or vehicles that exceed the height limits of the parking garage. A single car garage is provided for each cottage home at the Community. No vehicle maintenance, including, but not limited to, the changing of oil or other fluids, shall be permitted on the Community's property.

**C. Modifications to your Living Accommodation.** You will not make any structural or physical changes to your Living Accommodation without the prior written consent of the Community's Executive Director. You will be responsible for the cost of materials and labor required to make such changes. All such changes must be in compliance with applicable governmental codes and regulations. Any contractor you select to perform the alterations must demonstrate to us that the contractor is licensed and properly insured and has obtained any and all necessary permits. For your safety, you agree not to add, replace or modify, at any time, any locking devices to the Living Accommodation. Any agreement regarding improvements and any charges relating to such changes shall be in writing and signed by the parties to this Contract.

You or your estate will also be responsible for restoring the Living Accommodation to its original configuration and condition, excepting normal wear and tear, when the Living Accommodation is vacated, unless we specifically grant you an exemption from this requirement in writing. Failure by you to so restore The Living Accommodation shall entitle the Community to undertake such restoration and to deduct the costs thereof from the refundable portion of your Entrance Fee.

**D. Community Facilities.** You are entitled, in common with and on the same terms as other Community residents, to use the Community's common grounds and facilities in accordance with Community rules. Community rules in effect at the

time of execution of this Contract are set forth in the Resident Handbook, a copy of which is provided to you when you sign this Contract. The Resident Handbook may be amended by us from time to time.

**E. Property Protection.** You agree to keep your Living Accommodation clean and orderly, to be conscientious about conserving energy and not to permit misuse of or damage to your Living Accommodation.

### **ARTICLE III. SERVICES**

During your occupancy of The Living Accommodation at the Community, we will provide you with the services described below in consideration of payment of the Monthly Fee.

**A. Meals.** You shall be entitled to dinner in the Community dining room or the Lemon Pippin Café for lighter fare (brunch on Sunday), subject to a total monthly meal cap per person equal to the number of days in the month (e.g. 31 meals in January; 30 meals in November). There shall be no credit for unused meals, except that unused meals for which you will not receive any credits pursuant to clauses (x) or (y) below may be used to cover meals for your guests during the same calendar month. However, (x) if you are to be absent from your Living Accommodation for more than fourteen (14) consecutive days, you will receive a credit against your Monthly Fee for meals after the fourteenth day of absence, in an amount set from time to time by the Executive Director, and (y) if you are to be absent from your Living Accommodation for more than thirty (30) consecutive days, you will receive a credit against your Monthly Fee for meals from day 15 through day 30 as specified in clause (x), above and thereafter, will receive a credit against your Monthly Fee for meals after the thirtieth day, in an amount set from time to time by the Executive Director, provided that in either case you first give written notice to the Executive Director at least five (5) days prior to your absence and provided further that in no case will the credits equal or exceed the portion of the Monthly Fee applicable to the meal plan.

**B. Housekeeping.** On a weekly basis for residents of the Russell and Flint buildings, and twice a month for residents of the Cottages, we will perform light cleaning services in your Living Accommodation, including vacuuming; dusting; and cleaning the kitchen and bathroom. We will perform inside window washing; oven

cleaning; carpet shampooing, patio/balcony cleaning and other similar heavy cleaning once a year, or more frequently if necessary, as determined by the Executive Director.

**C. Linen Laundry.** We will launder your bed linens in accordance with the housekeeping schedule above.

**D. Maintenance and Repair.** We will perform necessary repairs, maintenance, and replacement of Community property and equipment located in your Living Accommodation. Except in an emergency, such services will be provided during normal working hours, Monday through Friday. We will have the right to charge you for any repairs, maintenance or replacement required as a result of the negligence or intentional acts of you or your agents, employees or guests. You are responsible for maintaining, repairing and replacing your personal property.

**E. Emergency Call Service.** Your Living Accommodation is equipped with an emergency call system by which you can contact Community personnel or our agents 24 hours a day, seven days a week. Through our concierge desk, we provide 24/7 personnel to assist in security response.

**F. Security.** Each building entrance has a security access system that is monitored by security personnel or by electronic devices.

**G. Buildings and Grounds.** We will maintain all Community buildings, common areas and grounds, including lawns, walkways, and driveways. Landscaping and decorative plantings will be provided and maintained by us as we deem appropriate.

**H. Transportation.** We will provide scheduled local transportation (Concord, Lexington and Lincoln) to designated shopping, banking, planned group events, medical facilities and other local destinations on a regularly scheduled basis. We will provide hourly shuttle service during the dinner hours for residents of the Cottages and the Flint building to the Russell building.

**I. Social and Recreational Programs.** We will coordinate a variety of on and off-campus social, recreational, educational and cultural programs.



**J. Fitness Center and Pool.** You shall be entitled to complete use of Fitness Center and Pool during posted hours of operation, subject to any restrictions placed on your usage by your personal physician.

**K. Additional Services.** The services listed above are included as benefits, with no additional charge except as noted, under this Contract. We may, in our sole discretion, provide or make available other services requested by you in the future. Additional services (“Additional Services”) for which there will be an additional fee (“Additional Fee”) are set forth in the Ancillary Charge Sheet attached as Exhibit C. Such Additional Fees may be increased and the nature and scope of any services may be adjusted from time to time by us.

## **ARTICLE IV. HEALTH CARE SERVICES**

### **A. Health Care Services**

1. **Wellness Center.** We will operate, or arrange for a third party to operate, a Wellness Center for our residents. During designated drop-in hours or at an appointment scheduled by you, the Wellness Center will provide a range of services, including:

- Vital sign checks for non-emergent situations;
- Provision of minor first-aid;
- Medication reminders up to twice per day;
- Nursing consultation on health issues and service coordination;
- Disease management education and information;
- Communication with your physician.

All services provided shall be on a fee-for-service basis (which may consist of a monthly fee), at rates established by the operator of the Wellness Center.

2. **Health Center.** The Health Center is staffed twenty-four (24) hours a day, seven (7) days a week and provides assisted living services, specialized dementia care assisted living services and skilled nursing services (collectively “Health Care Services”).

Health Care Services consist of a private studio assisted living unit or a semi-private dementia care unit or a semi-private skilled nursing care unit (as the case may be) and board; assisted living, dementia care assisted living or skilled nursing services (as the case may be); an emergency call system; and, in the skilled nursing center only, routine personal hygiene items, bedding and linens. Please note that Additional Health Center Fees may apply, depending on the level of assisted living and dementia care assisted living and the additional items specified in Section V.C.1 of this Contract.

3. **Physician Services.** Physician services are not provided by us. In addition, routine assisted living, memory care assisted living or nursing services do not include one-on-one care or companionship. You agree that any such care shall be provided at your expense.
4. **Addendum to Contract.** As part of the Health Center admissions process, you agree to sign a separate Assisted Living, Dementia Care Assisted Living or Skilled Nursing Facility Addendum to this Contract, as appropriate. The services you will receive in the Health Center and certain additional rights, obligations and charges will be set forth in such Addendum.
5. **Assisted Living Services in Your Living Accommodation.** Assisted living services are also available through a provider of your choice or one or more other licensed home health care agencies with which we have an arrangement and through our licensed Health Center personnel in your Living Accommodation for an additional charge. Assisted living services in your Living Accommodation are not part of the benefits you receive under this Contract. If you wish to receive these services, you will be asked and you agree to sign a separate contract with the third-party provider for such services and fees for such services or, if we provide such services, an Addendum to this Contract, regarding the services you will receive and the fees for those services.

**B. Unavailability of Health Center Bed Space.** If a bed in the Health Center is not available for you when needed, we will arrange for comparable health care services for you at an appropriate assisted living, dementia care assisted living, rehabilitation or skilled nursing care facility off of the Community Campus (“Off-Site”).

Facility”) determined by us. Your stay at such Off-Site Facility will be subject to the same payment rules as if you were being treated in the Health Center, including the Off-Site Facility’s seeking reimbursement from Medicare or any other third party payor. During your stay in the Off-Site Facility, you will pay us the same fees and any applicable Additional Fees and Additional Health Center Fees as you would have paid if you had been admitted to the Health Center. You shall have the right, on a priority basis, to return to the Health Center as soon as appropriate space is available; if you choose not to return, you shall thereafter be fully responsible for all costs associated with your stay at the Off-Site Facility, as well as your regular Monthly Fees for as long as you maintain your Living Accommodation at the Community.

**C. Moving Within the Community or to an Off-Site Facility Based on Care Needs.** You agree that you will move to the appropriate setting within the Community, including to the Health Center, upon 30 days’ written notice (or lesser notice in an emergency) and in accordance with procedures set forth under applicable Federal and state law, if your continued occupancy of your Living Accommodation or other accommodation within the Community is no longer appropriate for your care needs due to either improvement in or adverse changes to your mental or physical condition. As examples, your Living Accommodation is not appropriate for occupancy by you if you require 24-hour nursing care, assisted living services that include 24-hour assistance, transfers requiring the assistance of two persons or other personal or health care services ordinarily not available at home; if your behavior is disruptive to other residents; if you are confused and attempt to leave the Community without supervision; or are otherwise unable to care or have proper care provided for yourself. Please also review the sections of each of the Assisted Living, Dementia Care Assisted Living and Skilled Nursing Facility Addenda to this Contract regarding appropriateness for continued residence within each such level of care at the Community. You further agree that you will move, on a temporary or permanent basis, to an Off-Site Facility that provides treatment for mental disorders if the need for such transfer is certified by two physicians, or one physician and one psychologist. You will be responsible for all costs associated with your stay at such Off-Site Facility.

The Commons care team, led by the Executive Director, and (except in an emergency) in consultation with you, your family representative, if any, or your physician and in accordance with procedures set forth under applicable law, makes determinations based on its criteria for evaluation and placement about the following: (i) what level of care is most appropriate; (ii) whether such care will be provided in your Living Accommodation, the Assisted Living unit within the Health Center, the

Dementia Care Assisted Living unit within the Health Center, the Skilled Nursing Facility within the Health Care Center or away from the Community; and (iii) whether any relocation for such care is temporary or permanent. The decision of The Commons care team after any such consultation will be final.

You may make arrangements to have care provided in your Living Accommodation as discussed in Section IV.A.5 above, subject to our approval and the limitations described above.

Without limiting our rights under Section VI.B.1 of this Contract, you agree that, in an emergency, if your mental or physical condition presents a danger to you or to others, as determined by us in our sole discretion, we will arrange for private duty care in your Living Accommodation through third-party caregivers or our own caregivers at your expense until other appropriate arrangements can be made.

## **ARTICLE V. FINANCIAL ARRANGEMENTS**

### **A. ENTRANCE FEES**

1. **Amount of Entrance Fees.** The Primary Entrance Fee for your Living Accommodation is \$ \_\_\_\_\_ (“Primary Entrance Fee”). The Second Person Entrance Fee for your Living Accommodation is \$ \_\_\_\_\_ (“Second Person Entrance Fee”), if applicable. Your Total Entrance Fee is \$ \_\_\_\_\_ (“Total Entrance Fee”).
2. **Payment Schedule.** The Total Entrance Fee shall be paid in the following manner:
  - a) Prior to signing this Contract, pursuant to that certain Reservation Contract dated \_\_\_\_\_ you paid us a Reservation Deposit of 10% of the Primary Entrance Fee in the amount of:

\$ \_\_\_\_\_

This Reservation Deposit will be held in escrow and released to us when your Living Accommodation becomes available for occupancy by you.

- b) Prior to the Occupancy Date, you agree to pay us the remaining 90% of the total Entrance Fee, in the amount of:

\$\_\_\_\_\_

3. **Our Use of Funds.** Prior to the Occupancy Date, your Entrance Fee will be held in a segregated account and both your Entrance Fee and any interest thereon (less any costs incurred by us as specified in Section VI.A) shall be returned to you if this Contract is terminated pursuant to Section VI.A hereof. From and after the Occupancy Date, the Entrance Fee will not be held in segregated accounts and both your Entrance Fee and any interest earned thereon may be used by us for such purposes as we deem necessary or desirable. The funds will be invested and secured in a manner we deem appropriate to enable us to fully perform our obligations under continuing care contracts including this Contract to provide continuing care at the Community.
4. **Application of Funds.** Except as otherwise specifically provided in this Contract or by law, ten percent (10%) of the Primary Entrance Fee (\$\_\_\_\_\_), and the entire Second Person Entrance Fee shall be **NON-REFUNDABLE**. Ninety percent (90%) of the Primary Entrance Fee (\$\_\_\_\_\_ ) (or such larger percentage as specifically provided in this Contract or by law) shall be **REFUNDABLE** pursuant to Section VI. C of this Contract.

**NOTE:** If two persons are parties to this Contract, your right to a partial refund of the Entrance Fee occurs only when this Contract is terminated by both of you or upon the death of the second person and when the other conditions specified in Section VI.C. of this Contract has been met. If the refund is paid after the death of the second person, the refund will be paid to the second person's Estate or to any person(s) to whom you have assigned your right to a refund under the Contract. You may assign your right to a refund only with our written approval. Please take these requirements into account when making your personal financial and estate planning arrangements.

**B. MONTHLY FEES**

1. **Amount of Monthly Fee.** You will pay us a monthly fee based on single occupancy of your Living Accommodation (“Primary Monthly Fee”) and an additional second person monthly fee if a second person also occupies your Living Accommodation (“Second Person Monthly Fee”).

Your Primary Monthly Fee shall be \_\_\_\_\_ Dollars (\$).

Your Second Person Monthly Fee shall be \_\_\_\_\_ Dollars (\$).

Your Total Monthly Fee shall be \_\_\_\_\_ Dollars (\$).

2. **Payment of Monthly Fee.** Commencing on the Occupancy Date, you will begin payment of the Total Monthly Fee (also referred to in this Contract as your Monthly Fee). The Monthly Fee shall be payable in advance on or before the first (1st) day of each month throughout the term of this Contract and will be deemed paid when received by us. The Monthly Fee for the first and last months of the Contract shall be prorated based upon the number of days in each month. The Monthly Fee is not rent but is consideration for services provided to you hereunder.
3. **Adjustments.**
  - a) We may adjust your Monthly Fee annually, on a predetermined date. Your Monthly Fee shall not be adjusted without at least thirty (30) days written notice to you, which notice shall include an explanation of such adjustments. Any increase in the Monthly Fee from year to year will be limited to an amount necessary, as determined by us in

our sole discretion, to maintain the financial stability and future viability of the Community.

- b) Upon at least thirty (30) days written notice to you, which notice shall include an explanation of such adjustments, we may make an additional adjustment to the Monthly Fees more than once per calendar year only if there is an aggregate projected increase in THE COMMONS' operating and capital requirements (including without limitation, water and sewer fees, rubbish removal, real estate assessments, betterments and improvement assessment, and property and liability insurance premiums) during the calendar year of more than five percent (5%).
  - c) A table showing the frequency and average dollar amount of each increase in the Monthly Fees at THE COMMONS for the previous two (2) years of operation is attached to this Contract as Exhibit D. You agree that in the event of a Monthly Fee adjustment, you will pay the adjusted Monthly Fee.
  - d) If two persons have entered into this Contract, your Total Monthly Fee shall be adjusted upon the death of one Resident to be equal to the Primary Monthly Fee, as adjusted pursuant to this Section V.B.3.
4. **Additional Services.** You will be billed for Additional Services either at the time they are rendered or at the time you are billed for your Monthly Fee. The payment procedure for Additional Fees shall be the same as for your Monthly Fee, including the imposition of late payment charges and interest on late payments.
5. **Penalty and Interest for Late Payment.** We reserve the right to impose a late payment charge and to assess interest at the rate of one and one-half percent (1 ½%) per month for all balances which remain unpaid thirty (30) days after the date on which they are due. Any account balances, including late payment charges and interest, that remain unpaid when this Contract is terminated, shall be deducted from any Entrance Fee Refund owed to you or your estate under this Contract and any remaining unpaid amount shall become a lien against your assets or estate.

C. **HEALTH CENTER FEES AND CHARGES**

1. **Additional Health Center Fees.** For purposes of this Contract, the term “Additional Health Center Fees” includes: charges for traditional assisted living services above Level I; any applicable charges for specialized dementia care above the Harbor Care Plan; Level II or III Medication Management charges in traditional assisted living; all applicable Medication Management charges in our dementia care assisted living; charges associated with continence management packages; charges for a private unit accommodation (or any accommodation other than a studio unit, in the case of assisted living); and other incidental fees listed in the Assisted Living, Dementia Care Assisted Living or Skilled Nursing Facility Addenda and Fee Schedules, as applicable.

Level I assisted living services include general supervision, cuing and reminders, and minimal physical assistance with activities of daily living (bathing, dressing, etc.). Harbor Care Plan dementia care assisted living services include general supervision, cuing and reminders, and minimal physical assistance with activities of daily living. For those residents in traditional assisted living, Level I Medication Management, includes assistance (such as reminders) for residents who are able to self-administer their prescription or over-the-counter medications, up to twice-daily.

Additional Health Center Fees may be increased at any time upon thirty (30) days written notice to you.

2. **Temporary Stay.** If you move from your Living Accommodations into the Health Center for less than thirty (30) days during any ninety (90) day period (“Temporary Stay”), you will continue to pay your Monthly Fee plus any other applicable Additional Fees and Additional Health Center Fees.
3. **Extended Stay.** If you reside in the Health Center for longer than a Temporary Stay (“Extended Stay”), the fees shall be as follows:
  - a) Single Resident Requiring Extended Stay.



If you move to the Health Center on an Extended Stay basis, your monthly charges will depend upon whether you choose to release your Living Accommodation:

- i) If you choose to release your Living Accommodation for occupancy by someone else, you will pay your Primary Monthly Fee, plus any applicable Additional Fees and Additional Health Center Fees.
- ii) If you choose not to release your Living Accommodation, you will pay two times the Primary Monthly Fee, plus any applicable Additional Fees and Additional Health Center Fees.

b) Extended Stays When There are Two Residents.

If there are two persons under this Contract, and one of you moves to the Health Center on an Extended Stay basis, you will pay the Monthly Fee plus any applicable Additional Fees, and any Additional Health Center Fees. This requirement also applies if a second person is occupying your Living Accommodation as a non-resident. If both of you under this Contract move to the Health Center on an Extended Stay basis, your monthly charges will depend upon whether you choose to release your Living Accommodation:

- i) If you choose to release your Living Accommodation for occupancy by someone else, you will pay your Monthly Fee plus any applicable Additional Fees and Additional Health Center Fees.
- ii) If you choose not to release your Living Accommodation, you will pay your Monthly Fee plus any applicable Additional Fees and Additional Health Center Fees as described in (i) above, plus an amount equal to the Primary Monthly Fee for your Living Accommodation.

**D. PRE-EXISTING CONDITIONS**

In the event (i) you are admitted to the Health Center as a result of one of the Pre-Existing Conditions identified in Exhibit E of this Contract, (ii) you have a Pre-Existing Condition designated as Category C and you are admitted to the Health

Center for any reason, or (iii) your Pre-Existing Condition(s) have not been under Continuous Treatment and Control and you are admitted to the Health Center for any reason, and as a result your stay is to be paid for on a per diem basis, your fees will be as follows:

1. **Single Resident.** In lieu of the Monthly Fee you shall pay the prevailing Health Center per diem rate established by the Executive Director (the “Per Diem”), plus any applicable Additional Fees and Additional Health Center Fees. If you reside in the Health Center on an Extended Stay basis and do not release your Living Accommodation, you will also pay the Primary Monthly Fee in addition to the other fees described in this Subsection V.D.1. If you are Financially Unable to Pay (as defined in Article V, Section H, of the Contract) the Per Diem, Primary Monthly Fee (if applicable) and associated Additional Fees and Additional Health Center fees, then any such unpaid fees shall be deferred and deducted from any refund owed to you or your estate under this Contract; provided, however, that any unpaid fees in excess of any such refund shall not be forgiven and shall permit us to terminate the Contract under Article VI, Section B.1., of the Contract.
2. **Two Residents.** If there are two of you under this Contract and one of you moves into the Health Center, you shall pay the Per Diem plus the Primary Monthly Fee, plus any Additional Health Center Fees and Additional Fees as applicable. This requirement also applies if a second person is occupying your Living Accommodation as a non-resident. If you are Financially Unable to Pay (as defined in Article V, Section H, of the Contract) the Per Diem, the Primary Monthly Fee, any Additional Health Center Fees and Additional Fees as applicable, then any such unpaid fees shall be deferred and deducted from any refund owed to you or your estate under this Contract; provided, however, that any unpaid Per Diem and associated Additional Fees and Additional Health Center fees in excess of any such refund shall not be forgiven and shall permit us to modify the Contract by terminating the Contract under Article VI, Section B.1., of the Contract with respect to the resident whose Pre-Existing Condition has given rise to Per Diem fees but not with respect to the other resident (provided that the modified Contract of the other resident shall expressly state that there is no entrance fee refund due thereunder, since it was used in full to subsidize unpaid fees).

(b) If both of you under this Contract move into the Health Center on a Temporary Stay basis, you shall pay two times the Per Diem, plus any applicable Additional Fees and Additional Health Center Fees. If both of you move into the Health Center on an Extended Stay basis and do not release your Living Accommodation, you will also pay the Primary Monthly Fee in addition to the other fees described in Article V, Section D.2, of the Contract. If you are Financially Unable to Pay (as defined in Article V, Section H, of the Contract) the Per Diem, Primary Monthly Fee (if applicable) and associated Additional Fees and Additional Health Center fees, then any such unpaid fees shall be deferred and deducted from any refund owed to you or your estate under this Contract; provided, however, that any unpaid fees in excess of any such refund shall not be forgiven and shall permit us to terminate the Contract under Article VI, Section B.1., of the Contract.

#### **E. MEDICAL INSURANCE/MEDICARE AND SUPPLEMENTAL COVERAGE**

If you are sixty-five (65) years of age or older, you will obtain and maintain in force at your cost Medicare Part A, Part B and Part D, or insurance coverage under a public or private insurance plan that we deem acceptable to us. In addition, by the Occupancy Date, you will obtain and thereafter maintain a supplemental insurance policy to pay Medicare co-insurance and deductible amounts. If you are less than sixty-five (65) years of age, you will obtain medical insurance coverage that we deem equivalent to the coverage described in this Section V.E. We maintain the right to request proof of coverage from time to time.

Should you fail to arrange for health insurance coverage and/or government program benefits, then after your receipt of written notification from us, you hereby authorize and appoint us, or our designee, as your attorney-in-fact with full powers of appointment, to make application but without the obligation to do so, for such health insurance and/or government program benefits on your behalf, to pay any premiums required to obtain such health insurance, and to bill the cost of such health insurance premiums and related fees to you on your monthly statement, and further agree to execute any necessary documents to effect any of the foregoing.

The Monthly Fee is charged for all services provided pursuant to this Contract and is not in lieu of health insurance benefits (including benefits which may be

available from Medicare or other third party payor). Any amounts paid or owing to you from Medicare, federal, state, municipal, private, or supplemental insurance plans for services rendered to you by us shall be paid to us. You will seek diligently to obtain all reimbursements, payments, proceeds or other benefits available under such plans or programs and authorize us to take such action as may be required to obtain and recover same. Our receipt of such amounts shall not reduce your obligation to pay all applicable Monthly Fees, Additional Fees and Additional Health Center Fees to us hereunder.

**F. RELEASE OF LIVING ACCOMMODATION**

In the event, you release your Living Accommodation because of a move to the Health Center, we shall have the right to make your Living Accommodation available to another prospective resident of the Community.

**G. RESIDENT'S FINANCIAL SCREENS**

You have participated in our financial screening process. As part of that process you provided a list of your total assets and all sources of income, which is attached to this Contract as Exhibit F. You agree that as a condition of residency in the Community, you will provide on an annual basis an update of all financial information contained in Exhibit F on forms to be provided by us. You further agree not to intentionally transfer or deplete your assets to an extent which will render you unable to pay all amounts due under this Contract.

**H. INABILITY TO PAY FEES DUE TO FINANCIAL DIFFICULTY**

Without in any way limiting our right to terminate this Contract in accordance with Article VI, Section B.1, your Contract will not be terminated solely by reason of your financial inability to pay the fees required under this Contract, so long as you establish facts to justify deferment of such fees and when deferment of such fees can, in the our sole discretion, be granted without impairing our ability to operate the Community on a sound financial basis for the benefit of all residents (financial inability, subject to such limitations, "Financially Unable to Pay"). Notwithstanding the foregoing, if you are Financially Unable to Pay the Per Diem, Additional Fees and

Additional Health Center Fees associated with a Per Diem stay in the Health Center (and the Primary Monthly Fee, under the circumstances set forth in Article V, Sections D.1 and D.2(b), of the Contract), then you will have the rights specified in Article V, Section D, of the Contract but we will have the right to terminate the Contract pursuant to Article VI, Section B.1, if the Per Diem and associated Additional Fees and Additional Health Center Fees (and the Primary Monthly Fee, under Article V, Sections D.1 and D.2(b), of the Contract) deferred on your behalf exceed the refund due to you or your estate under the Contract. In determining whether you establish facts to justify deferment of fees, we will consider factors such as and including, but not limited to, whether you submitted accurate and complete financial information upon application to the Community; whether you made gifts of your property after the date of this Contract which impaired your ability to meet your financial obligations and whether you have breached any of your other obligations to us. Any fees that are deferred if you are Financially Unable to Pay or that are paid on your behalf from any source that we may establish for this purpose in our sole discretion, and any applicable late fees and interest, shall be deducted from any refund owed to you or your estate under this Contract and (except for any and all Fees associated with a move into the Health Center on a Per Diem basis, as further described in Article V, Section D, of this Contract) shall be forgiven to the extent that they exceed such refund.

## **I. TEMPORARY ABSENCES**

If you are temporarily absent from the Community for any reason, including for medical reasons such as hospitalization or transfer to an Off-Site Facility, your right to occupy the Living Accommodation will continue, and your payment obligations under this Contract will continue to apply.

## **ARTICLE VI. TERMINATION OF CONTRACT**

### **A. Prior to Occupancy**

#### **1. Termination due to Death, Illness, Financial Condition or Unavailability.**

- a) If you die (or if there are two Residents who are parties to this Contract and both die) prior to assuming occupancy of The Living Accommodation or due to illness you cannot live independently and do not assume occupancy, then this Contract shall automatically terminate. If Resident is two (2) persons, and only one (1) person dies, the other person shall have the right to terminate this Contract without penalty.
- b) If your financial condition changes prior to assuming occupancy to the extent that, in our opinion, you will be unable to meet your financial obligations under this Contract, then we may terminate this Contract by written notice to you.
- c) If the Living Accommodation is not available for occupancy on the Occupancy Date, the Contract shall be deemed automatically canceled unless otherwise agreed upon in writing by you and us. If the Living Accommodation is ready pending additional modifications that you have requested, the Living Accommodation is deemed “available” as it relates to this section.
- d) Within thirty (30) days after termination of this Contract pursuant to sections a., b. or c. directly above, we shall refund to you or your Legal Representative all amounts paid to us by you, plus any applicable interest, less any costs specifically incurred by us at your written request and set forth in a written addendum to this Contract signed by you.

## 2. **Termination by Resident**

- a) At any time prior to assuming occupancy of the Living Accommodation, you may terminate this Contract without cause, upon written notice to us.
- b) If the Living Accommodation is available for occupancy on the Occupancy Date, your failure to occupy the Living Accommodation on the Occupancy Date may be deemed a termination of this Contract by you unless an extension of the Occupancy Date has been agreed to in writing by you and us.
- c) Within thirty (30) days after your termination of this Contract, pursuant to this part 2.a. and b., we will refund to you or your Legal

Representative, all amounts you have paid to us, plus any applicable interest, less: (i) any costs specifically incurred by us at your written request and set forth in a written addendum to this Contract signed by you and (ii) an administrative charge of one percent (1%) of the Total Entrance Fee.

3. **Occupancy.** For purposes of subsections A. and B. of this Article VI, the terms “occupancy” and “assuming occupancy” shall include (i) you are personally inhabiting the Living Accommodation or (ii) your acceptance of the keys to the Living Accommodation and taking any actions to evidence possession thereof, including moving your belongings into the unit or accessing your unit (either directly or by your agents) to evaluate, decorate, renovate or customize your Living Accommodation.

**B. After Occupancy.**

1. **Termination by Us.** We may terminate the Contract at any time after you assume occupancy of your Living Accommodation for good and sufficient cause. Good and sufficient cause shall include, but not be limited to, any of the following:
  - a) Subject to Article V, Section H, of the Contract, failure to pay when due, any fees or charges due under this Contract.
  - b) Conduct by you that constitutes a danger to yourself or others.
  - c) A material breach of the terms and conditions of this Contract.
  - d) Failure or refusal to move to the Health Center or to an appropriate Off-Site Facility in accordance with Section IV. C. of this Contract.
  - e) Intentional transfer or depletion of assets to an extent that will render you unable to meet your financial obligations under this Contract.
  - f) Repeated conduct by you that interferes with the quiet enjoyment of the Community by other residents.

g) Failure or refusal to comply with Community rules set forth in the Resident Handbook, as it may be amended from time to time.

In the event of termination under this Section VI.B.1, items b – g above, except as provided below, we will give you written notice of the cause of termination and you will have thirty (30) days thereafter within which to correct the problem. If the problem is corrected within such time, this Contract shall not then be terminated. If the problem is not corrected within the thirty (30) day period, this Contract will be terminated sixty (60) days after the original notice of termination. However, if we determine that either the giving of notice or the lapse of time as above provided might be detrimental to you or other residents or staff of the Community, or if we determine that the problem constituting cause for termination cannot be cured, then any notice and/or waiting period prior to termination shall not be required.

In the event of termination for non-payment, you will be given thirty (30) days written notice of termination and you will have thirty (30) days from the date of the notice to bring your account current.

On or before the date of termination, you shall move from THE COMMONS and vacate the Living Accommodation. You shall remain obligated to pay the Monthly Fee until you have vacated the Living Accommodation and removed your personal property from the Living Accommodation.

If this Contract is terminated by us pursuant to this Section VI.B.1, you shall be entitled to receive a refund of a portion of the Entrance Fee in accordance with Section VI.C below.

2. **Termination by Resident.** You have the right at any time after assuming occupancy of The Living Accommodation to terminate this Contract by delivering to us a written notice of termination. The written notice need not cite any reason for the termination but shall specify a date of termination which shall not be less than sixty (60) days after the date the notice is given.



On or before the date of termination, you shall move from THE COMMONS and vacate your Living Accommodation. Following the termination date, you shall remain obligated to pay the Monthly Fee until (x) you have vacated the Living Accommodation and removed all of your personal property from it, or (y) the date specified in your written notice of termination, whichever is later. If you terminate this Contract pursuant to this provision, you shall be entitled to a refund of a portion of the Entrance Fee in accordance with Section VI.C below.

3. **Termination by Death.** This Contract shall terminate upon your death, or, if there are two Residents who are parties to this Contract, upon the death of the surviving Resident.

If this Contract is terminated by your death, your estate shall be entitled to a refund of a portion of the Entrance Fee in accordance with Section VI.C below.

C. **Refund.** Upon termination of this Contract, after occupancy of the Living Accommodation as provided in this Section B, we and our parent company, BSL/BN Commons JV Company LLC, jointly and severally, agree to pay you or your estate a refund of a portion of the Entrance Fee in an amount and at the time(s) set forth below:

If the Contract is terminated for any reason (whether by you, by us or upon your death in accordance with Section VI.B.3) at any time after you assume occupancy of The Living Accommodation, we shall refund a portion of your Entrance Fee equal to (x) the Total Entrance Fee less one percent (1%) of the Total Entrance Fee for each month of occupancy, if termination of this Contract occurs within the first ten months following your occupancy of The Living Accommodation and (y) thereafter, an amount that equals 90% of the Primary Entrance Fee plus the positive difference, if any, between (i) the Total Entrance Fee less one percent (1%) of the Total Entrance Fee for each month of occupancy and (ii) ninety percent (90%) of the Primary Entrance Fee, in each case less any deductions permitted by this Contract that have not been separately paid (the “Entrance Fee Refund”). Any Entrance Fee Refund shall be paid within 60 days after fulfillment of the following conditions: (a) you have vacated and you or your Legal Representative or family have removed all possessions from The Living Accommodation and paid all outstanding fees and charges; and (b) a new resident has signed a Residency Contract for The

Living Accommodation, has paid the entrance fee therefor and has commenced occupancy of The Living Accommodation (a “Qualified Resale”). If there has not been a Qualified Resale of your Living Accommodation within a reasonable period of time, in our sole discretion, then we will so notify you or your Legal Representative. You or your Legal Representative may then either (i) direct us to continue marketing The Living Accommodation, in which case you shall receive the Entrance Fee Refund only at such time as there is a Qualified Resale of The Living Accommodation, or (ii) agree to accept in lieu of the Entrance Fee Refund specified above an amount that equals the Entrance Fee less one percent (1%) of the Entrance Fee for each month of occupancy by you (the “Alternative Refund Amount”), which amount shall be paid within 30 days of such election. If you or your Legal Representative request that we continue marketing the Living Accommodation under clause (i) above, you (or your Legal Representative) and we shall review progress on an annual basis thereafter (or more frequently, as mutually agreed) and you or your Legal Representative may elect the Alternative Refund Amount at any such review. Notwithstanding anything in this Section VI.C. to the contrary, either the Entrance Fee Refund or the Alternative Refund Amount, as applicable, shall in all events be paid to you or your estate or assignee by no later than the tenth anniversary of the date of termination of the Contract.

**D. Release of The Commons.** Upon the termination of this Contract, we and all of our affiliates will be released from any and all obligations to you except for the obligation to pay any Entrance Fee Refund due hereunder.

**E. Removal of Resident’s Property Upon Termination.** In the case of your death, we shall release all your property to the person(s) designated by you in writing to receive it, or if no such person(s) shall have been designated, then to your executor or administrator, or if no executor or administrator qualifies within thirty (30) days of your death, then to your next of kin.

Your personal property shall be removed from your Living Accommodation on or before the termination date; provided that in the case of your death (or if there are two Residents who are parties to this Contract, upon the death of the surviving Resident), the persons specified in the previous paragraph must remove all personal property from the Living Accommodation, within one month of death, unless special arrangements are made with us in writing. If you are residing in the Health Center at the time of your death, your personal property must be removed within seven (7) days after your death.

If your personal property is not removed as provided above, we have the right to remove and store it at your expense for up to six (6) months, after which time it may be sold and the proceeds (less expenses) credited to your account.

Payment of your Monthly Fee shall continue to be due on a prorated basis until your property is removed from your Living Accommodation or the Health Center.

## **ARTICLE VII. OTHER CONSIDERATIONS**

**A. Notices.** All notices required by this Contract shall be in writing and mailed, via registered or certified mail return receipt requested, delivered by nationally recognized overnight delivery service or hand delivered (i) to us at our address as shown below, and (ii) to you at the address shown below, or after your occupancy date, by depositing the notice in your Community mail box.

**BSL/BN Commons CCRC LLC to:**

**The Commons In Lincoln  
1 Harvest Circle  
Lincoln, MA 01773**

**Attn: Executive Director**

**Resident to:**

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The address to which notice must be delivered may be changed from time to time by either party by written notice to the other party. A notice sent in compliance with the

provisions of this section shall be deemed given on (i) the date of delivery, if given by personal delivery (which includes personal delivery to you in your Community mail box), (ii) five business days after mailing, if mailed by U.S. postal service certified or registered mail or (iii) the next business day after the notice is received by the overnight courier service.

**B. Resident's Covenant of Performance.** You agree to pay promptly all fees and charges required by this Contract, and otherwise to comply fully with all of your other obligations set forth in this Contract.

**C. Attorney's Fees.** In the event that we take action to collect amounts due under or otherwise enforce the terms of this Contract, you are liable for reasonable attorney's fees and/or costs of collection incurred in connection with such action.

**D. Pets.** You may maintain a dog, cat or other small and orderly pet upon the approval of and on terms prescribed by the Executive Director. No such approval shall be necessary for fish or small birds which are kept in appropriate containers. You will be responsible for ensuring that any pet is properly cared for and that your pet does not create any disturbance or otherwise constitute a nuisance. You agree to comply with pet rules established by us as set forth in the Resident Handbook, which may be amended from time to time, and pay a Pet Fee.

**E. Additional Occupants**

1. **Guests.** Any guest staying overnight must first register with the Community. Prior approval must be obtained from the Executive Director if a guest is to stay for more than seven (7) nights in any thirty (30) day period. Guests shall acquire no rights or privileges under this Contract.
2. **Other Parties.** A person who does not or cannot become a party to this Contract, may live with you in your Living Accommodation on a non-resident basis with the prior written permission of the Executive Director. If approved, the Monthly Fee shall be adjusted to reflect double occupancy. In addition, if the non-resident second person moves to the Health Center, he or she will be charged the Per Diem plus applicable Additional Fees and Additional Health Center Fees as described in Section V.D.2 of this Contract.

3. **Live-in Caregiver.** If you have a live-in private duty caregiver, you will pay a daily Live-in Caregiver Fee, as set forth on the Ancillary Charge Sheet attached hereto as Exhibit C.

**F. Marriage or Joint Living Arrangements**

1. **Two Residents.** If two residents marry or desire to live together, either resident may terminate his or her Continuing Care Contract under Section VI.B.2 hereof, release his or her Living Accommodation and be entitled to a refund pursuant to Section VI.C.. The terminating resident may then become a party to the other resident's Continuing Care Contract and become a second occupant in the occupied Living Accommodation. The two residents shall thereafter be jointly and severally liable for and pay a new Monthly Fee equal to the Monthly Fee that applies to double occupancy of the occupied Living Accommodation.
2. **Resident and Non-Resident.** If you marry or wish to live with a non-resident, who meets the Community's entrance requirements, the non-resident may become a resident of the Community and may become a party to this Contract. In such event, you will pay the prevailing Second Person Entrance Fee and the prevailing Second Person Monthly Fee, in addition to the Primary Entrance Fee and Primary Monthly Fee. If the non-resident does not or cannot become a party to this Contract, he or she may occupy your Living Accommodation with you on a non-resident basis as provided under Section VII.E.2. of this Contract.

**G. Termination of Shared Living Arrangement.** If two Residents sharing a Living Accommodation desire to separate, they may by mutual agreement choose among the following options:

1. **Retention of the Same Living Accommodation.** One Resident may leave The Commons and the other Resident may retain the Living Accommodation and pay the Monthly Fee for single occupancy. No refund of any portion of either of their Entrance Fees will be made at that time.
2. **Transfer to an Alternate Living Accommodation.** One Resident may move to another Living Accommodation, if and when available. Upon

move-in, such Resident shall be required to pay an additional Entrance Fee, in an amount equal to the then current Entrance Fee for the new Living Accommodation, less the portion of the Second Person Entrance Fee previously paid for the original Living Accommodation. Such Resident shall also pay the Primary Monthly Fee for single occupancy of the new Living Accommodation. The Resident staying in the original Living Accommodation shall pay the Primary Monthly Fee for that Living Accommodation and shall be entitled to a refund of the Primary Entrance Fee upon termination of the Contract pursuant to Section VI.C of this Contract.

**H. Change of Living Accommodation.** You shall be entitled to move to a different Living Accommodation subject to availability and to our determination that your financial situation is such that you will be able to pay all Fees due to us hereunder. If you move to a Living Accommodation requiring a higher Entrance Fee, you shall pay us an additional Entrance Fee equal to the difference between the original Entrance Fee paid and the Total Entrance Fee (based on single or double occupancy, as applicable) then in effect for the new Living Accommodation. If you move to a Living Accommodation requiring a lower Entrance Fee, you shall be entitled to receive an amount equal to ninety percent (90%) of the differential between the original Primary Entrance Fee and the Primary Entrance Fee for the new Living Accommodation, less any deductions permitted by this Contract relating to the condition of your original living accommodation, within 60 days after a Qualified Resale of the previous living accommodation, and your Entrance Fee Refund on termination of the Contract shall be determined based on the Entrance Fee for the new Living Accommodation.

**I. Arrangements for Guardianship or Conservatorship.** If your mental condition changes so that you are not able to care properly for yourself or your property, and if you have made no other designation of a person or legal entity to serve as guardian or conservator, we may apply to a court of law to appoint a legal guardian or conservator.

**J. Arrangements in Event of Death.** Funeral arrangements are the responsibility of your family or estate and we have no obligation to make such arrangements or provide such services, except where your family or estate fail to do so. Any expenses advanced by us relating to the funeral or burial shall become a debt of your estate.

## **K. Property Rights**

1. **Right of Entry.** You agree that we and our employees and agents shall have the right, at all reasonable times, to enter your Living Accommodation for purposes of management, housekeeping, maintenance, enforcement of applicable laws and regulations, emergency purposes or any other reasonable purpose. Advance notice will be given except in an emergency.

2. **Ownership Rights.** This Contract is a continuing care contract governed by Massachusetts General Laws Chapter 93, Section 76. In exchange for your payment of the Entrance Fee and Monthly Fee, we agree to provide accommodations and benefits as set forth in this Contract. You have no ownership interest or proprietary rights in your Living Accommodation or the property, grounds, land, buildings, improvements or other Community facilities. This Contract shall not be construed to be a lease or to confer any rights of tenancy or ownership to you. Your rights under this Contract are subject to all terms and conditions of this Contract and subordinate to any mortgage, financing deed, deed of trust, or other financing on the Community, and you agree to execute and deliver any document which is required to this effect, upon our request. Upon request, you agree to execute and deliver any instrument requested by us to effect the sale, assignment, or conveyance of the Community, provided that by so doing you shall not be required to prejudice your rights under this Contract. Any refunds to which you are entitled under this Contract shall not be affected by this section.

3. **Residential Purposes.** Your Living Accommodation is to be used for residential purposes only. Use for any other purpose requires approval of the Executive Director.

4. **Responsibility for Damages.** You will be responsible for any loss or damage to our property caused by your negligence or intentional act or that of your guests or invitees. If the negligence or intentional act of a person who is not our employee or agent results in injury, illness or damage to you or your property, or to others or their property, we assume no responsibility therefor and you release and discharge us from all liability and responsibility for same. You agree to provide adequate personal property and liability insurance for you and for your property, with a minimum of \$500,000 liability coverage to cover any incidents that may occur inside the Living Accommodation. We maintain the right to request proof of coverage from time to time.

**L. Rules.** We shall have the right to adopt or amend, either alone or with or through a residents' association, such reasonable rules and regulations as we deem necessary or desirable for the proper management and operation of the Community and for the safety, health and comfort of the residents. The rules and regulations in effect at the time of execution of this Contract are set forth in the Resident Handbook. You agree to abide by such rules and regulations, as they may be amended from time to time. The Resident Handbook includes procedures for you to address any concerns or complaints you may have during your residency.

Please note that firearms are not permitted anywhere on The Commons campus and smoking is not permitted in any common areas or the Health Center. Certain conditions apply to smoking in your Living Accommodations, as explained in the Resident Handbook.

**M. Private Duty Care.** Private duty care is available through third party providers and may, in the future, be available through Health Center personnel. If you choose to make other arrangements, you will be responsible for arranging for, supervising and compensating any private duty personnel providing care or companionship services to you and agree to comply with the rules governing private duty personnel, set forth in the Resident Handbook, as it may be amended from time to time. The terms "private duty personnel," "private duty caregivers" and similar terms do not include care provided by our Health Center personnel or program established in the future. A fee is charged for orientation and safety training for all private duty personnel other than personnel of home health agencies with which we have a relationship; an additional daily charge also applies if you have live-in private duty caregivers (which does not include any meals).

**N. Power of Attorney and Health Care Proxy.** You will provide copies of all current durable powers of attorney and health care proxies to us upon request.

**O. Non-Discrimination.** We admit person to the Community without regard to gender, handicaps, race, color, national origin, sexual orientation or religious affiliation.

**P. Compliance with Laws.** Residents of the Community will be afforded all rights and privileges under Massachusetts General Laws Chapter 93, Section 76, and all other applicable laws. We will comply with all municipal, state and federal



laws and regulations regarding consumer protection and protection from financial exploitation.

**Q. Circumstances Excusing Performance.** In the event that we, notwithstanding our diligent and good faith efforts, are prevented from the performance of any act required hereunder by reason of strikes, lockouts or labor troubles, epidemic, failure of power, fire, winds, acts of God, riots, insurrections or war, then performance of such obligations shall be excused while such circumstance continues, and the period for the performance of any such obligations shall be extended for a fair and equitable period relative to the impact of such event.

**R. Accuracy of Information.** You represent and warrant that all information that has been or will be submitted to us by you as required in making application and providing any updates to the Community is and will be true and complete. You understand and acknowledge that we are relying on such information.

**S. Confidentiality of Your Information.** We acknowledge that your personal and medical information are confidential. We shall maintain the confidentiality of such information in compliance with Federal and state laws and regulations.

**T. Personal Obligations of Residents.** We will not be liable or responsible for any expenses, debts, or obligations incurred by you on your own account, nor shall we be obligated to furnish, supply, or give you any support, maintenance, board or lodging while you are absent from the Community except as may be provided in this Contract.

**U. Waiver.** Our failure in any one or more instances to insist upon strict compliance by you with any of the terms of this Contract shall not be construed to be a waiver by us of such term(s) or of the right to insist upon strict compliance by you with any of the other terms of this Contract.

**V. Assignment.** Your rights under this Contract are personal to you and cannot be transferred or assigned by any act of you, or by any proceeding at law, or otherwise. The Contract shall bind and inure to the benefit of our successors and assigns and shall bind and inure to the benefit of your heirs, executors and administrators in accordance with its terms. If we or any of our successors or assigns,

notify you that any or all of our rights, duties and obligations under this Contract have been assigned to a new person or entity registered as a continuing care provider under the laws of The Commonwealth of Massachusetts to provide services at the Community, you agree to recognize such new person or entity as the operator of the Community in our place under this Contract, to the extent of the assignment.

**W. Entire Contract.** This Contract, including all exhibits, constitutes the entire Contract between us and you. We are not liable for nor bound in any manner by any statements, representations or promises made by any person representing or proposing to represent us unless such statements, representations, or promises are set forth in the Contract. Any modification of the Contract must be in writing and signed by us and by you.

**X. Partial Illegality.** This Contract shall be construed in accordance with the laws of the Commonwealth of Massachusetts. If any portion of this Contract shall be determined to be illegal or not in conformity with applicable laws and regulations, such portion shall be deleted and the validity of the balance of this Contract shall not be affected.

**Y. Complaints.** Any concerns or complaints regarding services or any other matter should be addressed first to the appropriate Department (for example, Dining, Facilities) and, if satisfaction is not obtained, then to the Executive Director.

**Z. Construction.** Words of either gender used in this Contract shall be deemed to include the other gender and words in the singular shall be deemed to include the plural, when the sense requires.

**AA. Joint and Several Obligations.** If two parties execute this Contract as residents, the term “Resident” or “you” as used in the Contract, shall apply to both and the provisions of this Contract shall apply to them jointly and severally.

**BB. Non-Residents.** Under certain circumstances, a second person may occupy your Living Accommodation as a non-resident. See Sections VII. E. 2 and F.2 of this Contract. Any non-resident is not a party to and has no rights under this Contract and the non-resident will enter into his or her own contract with the Community. You and the non-resident will agree to pay the Second Person Monthly

Fee for the non-resident and any Health Center charges that may be incurred by him or her.

**CC. Management Agent.** We reserve the sole right to provide management of the Community in the best interests of all residents and reserve the right to manage and make all decisions concerning the admission, terms of admission and continued residence of all residents consistent with law. Benchmark Senior Living has the authority to act on our behalf with regard to all matters pertaining to us and to the Community.

**DD. ARBITRATION AGREEMENT.** Arbitration is a fair and often quick way to resolve a dispute without involving the court system. You are encouraged to read Exhibit G carefully, to ask any questions you have, and to consult with your attorney, family, or friends before choosing to accept the terms and conditions of the agreement to arbitrate. If you choose to accept the agreements to arbitrate found in Exhibit G, all disputes arising out of or relating in any way to this Residency Agreement or to any of the Resident's stays at the Community **SHALL BE RESOLVED BY BINDING ARBITRATION AND NOT BY A JUDGE OR JURY** as more fully detailed in Exhibit G.

**IN WITNESS WHEREOF**, the parties hereto have executed the Contract, as of the date and year first above written.

**RESIDENT**

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Representative<sup>1</sup> (if applicable)

**RESIDENT**

\_\_\_\_\_  
Resident

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Representative (if applicable)

**BSL/BN Commons CCRC LLC**  
By Its Agent, Benchmark Senior Living LLC

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

\_\_\_\_\_  
Date

Title: \_\_\_\_\_

\_\_\_\_\_

<sup>1</sup> The Legal Representative is a person authorized by the Resident and/or applicable law to make health care and contract decisions on the Resident's behalf in connection with his or her residency at the Community. The Resident must have a Legal Representative if the Resident does not wish to, or is not capable of making, health care or contracting decisions on his or her own behalf.

The undersigned BSL/BN Commons JV Company LLC hereby agrees to be bound by Section VI. C of this Contract and to be jointly and severally liable with BSL/BN Commons CCRC LLC to pay a refund of a portion of the Entrance Fee pursuant thereto.

BSL/BN Commons JV Company LLC

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

\_\_\_\_\_  
Date

Title:\_\_\_\_\_

## **EXHIBIT A**

### **DEFINITIONS**

Additional Fees	III.K
Additional Services	III.K
Additional Health Center Fees	V.C.1
Alternative Refund Amount	VI.C.
Community	Introductory Paragraph
Effective Date	Introductory Paragraph
Entrance Fee Refund	VI.C.
Extended Stay	V.C.3
Health Care Services	IV.A.2
Health Center	I.B
Monthly Fee	V.B.2
Off-Site Facility	IV.B
Occupancy Date	Article II
Per Diem	V.D.1
Primary Entrance Fee	V.A.1
Primary Monthly Fee	V.B.1
Qualified Resale	VI.C.
Second Person Entrance Fee	V.A.1
Second Person Monthly Fee	V.B.1
SNF	I.B.2
Total Entrance Fee	V.A.1
Temporary Stay	V.C.2

**EXHIBIT B**

**FLOOR PLAN OF LIVING ACCOMMODATION**

**EXHIBIT C**

**ANCILLARY CHARGE SHEET**



## **EXHIBIT D**

### **HISTORICAL MONTHLY FEES**

Historical Overview of Changes in Monthly Fees

(FY 2011-2015)

<b>YEAR</b>	<b>MONTHLY SERVICE FEE</b>	
	<b>INTERNAL</b>	<b>EXTERNAL</b>
<b>2011*</b>	4.00%	4.00%
<b>2012*</b>	4.00%	4.00%
<b>2013**</b>	***	****
<b>2014</b>	0.00%	0.00%
<b>2015</b>	4.5%	0.00%

\* Benchmark was not the Community operator during this timeframe.

\*\*Benchmark became the operator in June 2013.

\*\*\*Benchmark increased internal monthly fees in an amount of up to \$500 per unit per month and an additional second person charge of up to \$100 per month in connection with the addition of a meal plan, housekeeping and bed linen services at the community, effective upon its purchase of the community. As part of their monthly fees, qualifying residents as of June 2013 were also provided the full life care continuum upon completion of the Health Center.

\*\*\*\*External Monthly service fees increased in June 2013 to reflect a shift from the previous a la carte residency model under the predecessor's ownership to a full Type A life care model under the terms specified in the accompanying agreement.

**EXHIBIT E**

**PRE-EXISTING CONDITIONS**

**(NOTE: ONE PER PERSON, IF TWO PERSONS ARE PARTY TO THE  
CONTRACT)**

**[TO BE COMPLETED BY MEDICAL DIRECTOR BASED ON PRE-  
RESIDENCE PERSONAL MEDICAL HISTORY AND EXAMINATION]**

Resident:

1. Pre-Existing Condition: \_\_\_\_\_

Category: \_\_\_\_\_

Date of Last Confinement in Hospital,

Nursing Facility or Assisted Living Facility: \_\_\_\_\_

*(Circle One)*

Not covered Under Monthly Fee	Covered Under Monthly Fee	Deferred Coverage Under Monthly Fee*	Review Date for Coverage Under Monthly Fee*: _____, 20__
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2. Pre-Existing Condition: \_\_\_\_\_

Category: \_\_\_\_\_

Date of Last Confinement in Hospital,

Nursing Facility or Assisted Living Facility:\_\_\_\_\_

*(Circle One)*

Not covered Under Monthly Fee	Covered Under Monthly Fee	Deferred Coverage Under Monthly Fee*	Review Date for Coverage Under Monthly Fee*: _____, 20__
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The foregoing has been reviewed and agreed to by the undersigned Resident.

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

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

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

\* Availability of coverage will be determined by Medical Director's assessment of pre-existing condition's continuous treatment and control and compliance with the test set forth in Section III.A. of "Identification of Pre-Existing Conditions" as of review date (in addition to the Date of Covered Confinement, if any).

## **Identification of Pre-Existing Conditions**

### **I. Definitions**

A. “Continuous Treatment and Control” - Under “Continuous Treatment and Control” means that the resident is under the care of a physician for the noted condition, and that the condition is being controlled by diet, medication or other prescribed medical treatment. Continuous Treatment and Control requires the resident’s compliance with course of treatment and monitoring prescribed by the personal physician, and can be required to be periodically verified by the resident’s personal physician and/or the Community Medical Director. Deterioration in a resident’s condition despite compliance with the prescribed treatment and monitoring does not violate the requirement for Continuous Treatment and Control.

B. “Date of Covered Confinement” - The date that a resident is admitted to the Community’s Health Center.

C. “Operative Date” - The date on which the Continuing Care Contract is fully executed by resident and the Provider.

D. “Residency Date” - The date on which the resident takes up residency in the Community.

### **II. Categories of Pre-Existing Condition**

Categories of pre-existing conditions are listed on the attached document entitled current or concomitant conditions.

### **III. Payment Obligations**

If a resident has a pre-existing condition, Health Center stays may either be included in the Monthly Fee or be charged for on a per diem basis depending on the following requirements:

A. A resident must be able to demonstrate any period of 12 months (for Category A pre-existing conditions) or 24 months (for Category B pre-existing conditions), surrounding the Operative Date during which the resident has not been confined in a hospital, nursing facility or assisted living facility as a result of the pre-existing condition. If there has been such a confinement then any Health Center stay due to the pre-existing condition, at any time during residency in the Community, shall be on a per diem basis.

B. A resident who has a Category A or B pre-existing condition that is not under Continuous Treatment and Control as of the Residency Date, shall pay for all Health Center stays during residency in the Community, regardless of the condition giving rise to the admission, on a per diem basis.

C. A confinement to the Health Center as a result of a Category A or B pre-existing condition that is under Continuous Treatment and Control as of the Residency Date, shall be covered under the Monthly Fee provided that the pre-existing condition continues to be under Continuous Treatment and Control until the Date of Covered Confinement, and that payment on a per diem basis is not otherwise required under Paragraph A above.

D. A resident who has a Category C pre-existing condition shall pay for all Health Center stays during residency in the Community, regardless of the condition giving rise to the admission, on a per diem basis.

## **CURRENT OR CONCOMITANT CONDITIONS**

### **Category A**

a. Endocrine disorders

\_\_\_Diabetes

\_\_\_Thyroid disease

\_\_\_Adrenal disorder

\_\_\_Pituitary disorder

\_\_\_Other (specify)\_\_\_\_\_

b. Stable rheumatologic disease

\_\_\_Rheumatoid arthritis

\_\_\_Osteoarthritis

\_\_\_Gout

\_\_\_Other (specify) \_\_\_\_\_

c. Gastrointestinal disease

\_\_\_Peptic ulcer disease

\_\_\_Diverticular disease

\_\_\_Inflammatory bowel disease

\_\_\_Other (specify) \_\_\_\_\_

d. Stable heart disease

\_\_\_Congestive heart disease

\_\_\_S/P therapy for CAD

\_\_\_Treated cardiac arrhythms

\_\_\_Hypertension

\_\_\_Post pacemaker insertion

\_\_\_Post myocardial infarction

\_\_\_Other (specify) \_\_\_\_\_

e. Stable or reversible neurologic disease

\_\_\_Post stroke or post stroke syndrome

\_\_\_Myasthenia gravis

\_\_\_Other (specify) \_\_\_\_\_

f. \_\_\_Alcoholism



Category B

a. Chronic lung disease

\_\_\_Emphysema

\_\_\_Bronchiectasis

\_\_\_Toxic lung disease

\_\_\_Lung disease secondary to lupus

\_\_\_Erythematosis or amyloidosis

\_\_\_Environmental lung disease

\_\_\_Bronchitis

\_\_\_Other (specify) \_\_\_\_\_

b. Chronic renal disease

\_\_\_Amyloidosis

\_\_\_Chronic glomerulonephritis

\_\_\_Chronic urerria

\_\_\_Chronic pyelonephritis

\_\_\_Chronic renal failure

\_\_\_Other (specify) \_\_\_\_\_

c. Active malignant diseases. Specify \_\_\_\_\_

d. Progressive neurologic disease

\_\_\_Amyotrophic lateral sclerosis

\_\_\_Parkinson's disease

\_\_\_Myopathies/neuropathies

\_\_\_Multiple sclerosis

\_\_\_Huntington's chorea

\_\_\_Other (specify) \_\_\_\_\_

### Category C

a. Chronic brain disease (dementia)

\_\_\_Chronic dementias

\_\_\_Alcoholic psychoses

\_\_\_Organic Brain syndrome associated with using drugs

\_\_\_Korsakoff's syndrome

\_\_\_Alzheimer's disease

\_\_\_Short term memory loss

\_\_\_Other (specify) \_\_\_\_\_

## EXHIBIT F

### CONFIDENTIAL FINANCIAL STATEMENT

Applicants Name(s): \_\_\_\_\_

Desired Living Accommodation: \_\_\_\_\_

Commons Representative: \_\_\_\_\_

Disclosure of your financial status and income to evidence your financial qualification is a requirement of The Commons in Lincoln. Please complete this statement and return it to the Marketing Office at your earliest convenience. You may include attachments, if this form does not have adequate space. If you have any difficulty completing the form we suggest that you seek assistance from your investment counselor, banker, or other financial advisor.

All information contained herein shall be maintained in complete confidence.

Dates(s) of Birth: A. \_\_\_\_\_ B. \_\_\_\_\_

I receive Social Security: Yes \_\_\_\_\_ No \_\_\_\_\_

S.S. Numbers: A. \_\_\_\_\_ B. \_\_\_\_\_

I am enrolled in Social Security Medical Insurance Part B: Yes \_\_\_\_\_ No \_\_\_\_\_

Medicare Numbers(s) A. \_\_\_\_\_ B. \_\_\_\_\_

List of other medical insurance: Insurance Company, Policy Number and type of Policy:

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

#### CURRENT ANNUAL INCOME

#### APPLICANT OR JOINT (circle one)

#### SPOUSE / CO- APPLICANT

Salary or Wages

Social Security

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

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

Supplemental Security Income (SSI)	_____	_____
Pension Amount	_____	_____
Pension Terms	_____	_____
Benefit % payable to survivor	_____	_____
Rental Income / Mortgage Income	_____	_____
Trust Income	_____	_____
Annuity Income	_____	_____
Adjustment	_____	_____
Expiration Date	_____	_____
Frequency	_____	_____
Other _____	_____	_____
Other _____	_____	_____
Other _____	_____	_____
<b>Total Annual Income:</b>	_____	_____

**CURRENT ANNUAL OBLIGATIONS**

**APPLICANT OR JOINT (circle one)**

**SPOUSE / CO-APPLICANT**

Medical Insurance (cost & type)	_____	_____
Other Insurance (i.e. auto)	_____	_____
Mortgage or Rent Premiums	_____	_____
Medical Expense (MD visits, supplies)	_____	_____
Home Care	_____	_____
Long-term Care Insurance Premium	_____	_____
Maximum benefits (\$) or period (years)	_____	_____
Daily Benefit Amount	_____	_____
Elimination / Waiting Period (days)	_____	_____
Inflation Factor, if any	_____	_____
Real Estate Taxes	_____	_____
Other _____	_____	_____
<b>Total Annual Obligations:</b>	_____	_____

**CAPITAL ASSETS**

**(Approximate Value)**

**APPLICANT OR JOINT (circle one)**

**SPOUSE / CO-APPLICANT**

Personal Residence (house or condo)*	_____	_____
Real Estate / Land*	_____	_____
Description	_____	_____
Intention to sell?	_____	_____
Savings Account (interest % and income)	_____	_____
Checking Account	_____	_____
Mutual Funds	_____	_____

Certificate of Deposit (interest % and income)	_____	_____
Stocks (attach documentation)	_____	_____
Bonds (attach documentation)	_____	_____
Trust (describe type, and attach documentation**)	_____	_____
Life Insurance (cash value)	_____	_____
Interest bearing loans and notes (total principal and annual interest)	_____	_____
Deferred Annuities & Terms	_____	_____
Other_____	_____	_____
<b>Total Assets:</b>	_____	_____

# **LIABILITIES**

**APPLICANT OR  
JOINT (circle one)**

**SPOUSE / CO-  
APPLICANT**

Accounts or Notes Payable	_____	_____
Due date & Terms	_____	_____
Mortgage payable on Real Estate	_____	_____
Due Date & Terms	_____	_____
Other_____	_____	_____
<b>Total :</b>	_____	_____

\*Please submit the following to verify the information provided above:

- a written verification of the real estate value from a real estate or banking institution or a property tax valuation, as well as verification of any materials mortgages or liens on the property;
- written evidence of income and assets, including brokerage statements, bank statements, letter from former employers regarding pension benefits, etc.;
- Federal tax returns for the most recent two years for which you have filed returns.

\*\* Please provide details regarding right to withdraw from Trust or revoke it, if needed to cover fees under the Contract.

Please contact your Commons representative with any questions regarding this requirement.

The following are my advisors and their firms, with names and addresses. I hereby authorize a representative of The Commons to consult with such persons regarding my admission to The Commons and the information I have provided herein and authorize such person to provide answers to any such questions:

Banker

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Attorney

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Broker

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Insurance Agent

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Other

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\*\*\*\*\*

Sixty days prior to your move to The Commons in Lincoln, you will be asked to update this information and to provide updated copies of your tax returns and other documentation as required. The Commons in Lincoln may also ask you to re-file this Financial Statement from time-to-time during your residency. If there is any other information that has not been listed on the preceding pages, or if you currently anticipate any significant increase or decrease in your income, expenses or net worth in the foreseeable future, please explain:

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## CERTIFICATION AND AUTHORIZATION

I / We certify that all information provided in the Confidential Financial Statement is accurate to the best of my / our knowledge and belief. I / we agree to notify The Commons in Lincoln immediately of any significant changes in my financial condition should they occur. I am / We are aware that any material misrepresentation or omission shall be cause for involuntary termination of my agreement with The Commons in Lincoln.

I hereby further authorize Benchmark Senior Living LLC to conduct, on its own or with one or more credit reporting agencies (CRAs), an inquiry concerning my credit status and history, and state sex offender registries, as it deems necessary to process my application for residency. I understand that procurement of such reports may provide Benchmark with information as to my background, mode of living, character and personal reputation and release Benchmark Senior Living LLC and any affiliated organizations from any liability and responsibility for doing so.

I understand that if Benchmark takes any adverse action based on the credit report, including denying my application or requiring me to provide a guarantor, Benchmark will provide me with an adverse action notice which includes contact information of the CRA that provided the credit report. A written summary of my rights under the Federal Fair Credit Reporting Act, as amended, is attached to this authorization form.

Benchmark will review a report of the state sex offender registries with respect to all applicants for residency. Benchmark will not conduct such checks of existing residents, nor will it conduct general criminal background checks due to the inaccessibility of such data in some states. Further, not all states provide on-line sex offender registries and, as a result, our search may not provide complete information. Performance of such background checks is not intended as a guaranty of resident safety.



I acknowledge that I have received a copy of this notice and I authorize a copy of my credit report and sex offender registry report to be released to Benchmark Senior Living LLC and its affiliates.

---

Applicant Signature

Spouse / Co-Applicant Signature

Date

One Harvest Circle - Lincoln, MA 01773 (T)781.430.6000 (F)781.430.6008

## **ATTACHMENT G**

### **ARBITRATION AGREEMENT**

- A. Arbitration Agreement.** The Resident, Legal Representative and the Community (hereinafter “the Parties”) each agree that in the event of a Dispute (as defined below) such Dispute will be resolved exclusively and finally through binding arbitration as described in this Arbitration Agreement.
- B. Arbitration.** Any and all claims or controversies (hereinafter “Disputes”) arising out of or *in any way* relating to the Residency Agreement, this Arbitration Agreement and/or any of the Resident’s stay(s) at the Community, whether existing now or arising in the future, whether arising out of State or Federal law, whether for statutory, compensatory or punitive damages, or whether the Dispute sounds in contract, tort, common law or statute, shall be subject to binding arbitration.
- C. Expansive Authority of Arbitrator.** The Arbitrator 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 the court system.
- D. What is Arbitration?**
- 1. Waiver of Trial by Judge or Jury.** Arbitration is a method of resolving disputes without involving the courts. In arbitration, a dispute is heard and decided by a private, neutral individual called an Arbitrator. The Parties are **not** waiving their right to bring a claim by agreeing to arbitrate disputes. **However, by signing this Arbitration Agreement, the Parties are giving up and waiving their right to have any Dispute decided in a court of law before a judge and/or jury**, as the Parties desire and expressly agree that any Dispute between them be resolved *outside* the court system.
  - 2. Binding on Parties and Others.** It is the Parties’ intention that this Arbitration Agreement shall inure to the direct benefit of and bind the Community, its parent,

affiliates, and subsidiary companies, management companies, executive directors, owners, landlords, officers, partners, shareholders, representatives, directors, medical directors, employees, managers, successors, assigns, agents, attorneys and insurers and any entity or person that provided any services, supplies, or equipment related to the Resident's stay(s) at the Community; and shall inure to the direct benefit of and bind the Resident and 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, conservator or executor of the Resident's estate, any person whose claim is derived through or on behalf of the Resident, any person who previously assumed responsibility for providing the Resident with necessary services such as food, shelter, clothing, or medicine, and any person who executed this Arbitration Agreement. The Parties agree that all aspects of a controversy, including claims, cross-claims, and counterclaims, made by or against any person or entity bound by this Arbitration Agreement shall be included and exclusively adjudicated through Binding Arbitration, except as otherwise stated herein.

3. **Integration Clause.** This Arbitration Agreement represents the Parties' entire Agreement regarding Disputes, and it may only be changed in a writing signed by all Parties.

#### **E. Arbitration Procedures and Applicable Law.**

1. **Federal Arbitration Act.** The Parties expressly agree that the Residency Agreement, this Arbitration Agreement, and the Resident's stay(s) at the Community involve interstate commerce. The Parties also stipulate that the Federal Arbitration Act 9 U.S.C. §1-16 in effect as of July 1, 2013 ("FAA") shall apply to this Arbitration Agreement, and that the FAA shall preempt any inconsistent state law and shall not be reverse preempted.
2. **Arbitration Process.**
  - a. Demand for Arbitration shall be made by any persons asserting that a Dispute exists (the "Claimant" or "Claimants") in writing and served via certified mail, return-receipt requested upon the persons or entities against whom the Dispute is asserted (the "Respondent" or "Respondents").

- b. The Demand for Arbitration must contain a short statement of the nature of the Dispute and the relief sought by the Claimant or Claimants.
  - c. The arbitration panel shall be composed of one (1) arbitrator (“Arbitrator”). If there is no agreement on the selection of the Arbitrator within ninety (90) days after the Demand for Arbitration, then on the ninety-first (91<sup>st</sup>) day after the receipt of the Demand for Arbitration, the Claimants and Respondents shall each select one arbitrator, and those two arbitrators shall confer with each other in good faith to select the ultimate and sole Arbitrator to resolve the Dispute.
  - d. The Arbitrator shall decide the Dispute at the Arbitration Hearing through the issuance of an Arbitral Award that contains detailed findings of fact and conclusions of law that support the relief granted in the Arbitral Award.
  - e. The Arbitrator shall apply the Federal Rules of Evidence, except where otherwise stated in the Arbitration Agreement.
  - f. At the Arbitration Hearing, the Arbitrator shall apply, and the Arbitral Award shall be consistent with, the State substantive law for the State in which the Community is located.
  - g. A Demand for Arbitration or other claim that is not served within the statute of limitations period that would apply to the same claim in a court of law sitting in the State wherein the community is located shall be waived and forever barred.
3. **Arbitration Discovery.** The following reasonable limitations shall apply to discovery during the arbitration process unless the Arbitrator determines that different discovery limitations are appropriate in order to preserve due process and/or are necessary to issue a just Arbitral Award on the merits of the Dispute:
- a. Each side shall be allowed to take no more than ten depositions, not including expert witnesses;
  - b. Each side shall be allowed to have no more than two expert witnesses;
  - c. Each side shall be allowed to serve no more than 30 interrogatories; and,

- d. Each side shall be allowed to serve no more than 30 requests to produce documents.
4. **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.
  5. **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. 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).
  6. **Waiver of this Arbitration Agreement.** Any Claimant may file its Dispute in a court of competent jurisdiction subject to the Respondent's approval, which approval shall be established by Respondent's filing a response to the Complaint without simultaneously moving to enforce this Arbitration Agreement. Should one of the Parties to this Arbitration Agreement breach its terms by initiating a lawsuit in the court system, 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. Filing a Dispute in small claims court shall be considered a waiver of this Arbitration Agreement. However, a waiver of this Arbitration Agreement for one Dispute shall not constitute a waiver of this Arbitration Agreement for any other Dispute.
  7. **Survival Clause.** Except as noted below in Section F ("Right to Change your Mind") of this Arbitration Agreement, the terms and conditions recited herein shall survive and remain in full force and effect notwithstanding the death of the Resident, the discontinuation of operations at the Community, or the termination, cancellation or natural expiration of the Residency Agreement or any other contract between Parties.

8. **Severability.** Any clause, term, phrase, provision or part thereof contained in this Arbitration Agreement is severable, and in the event any of them shall be found to be invalid for any reason, this Arbitration Agreement shall be interpreted as if such invalid clause, term, phrase, provision or part thereof were not contained herein, and the remaining clauses, terms, phrases, provisions or parts thereof, 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 clause, term, phrase, provision, or part thereof shall be found void, invalid, or unenforceable. No part of this Arbitration Agreement will be construed against any Party because that Party wrote the Arbitration Agreement.

**F. Right to Change Your Mind.** This Arbitration Agreement may be revoked (i.e., rescinded or canceled) by written notice sent certified mail by any Party within thirty (30) days from the date the Resident moves in and takes occupancy of his/her Suite. However, if the alleged acts underlying or giving rise to a Dispute are committed prior to revocation as described above, the Dispute must be arbitrated as described in this Arbitration Agreement.

**G. Voluntary Agreement.** If you do not sign this Arbitration Agreement, you will still be allowed to live in and receive services in the Community.

**EACH OF THE UNDERSIGNED ACKNOWLEDGE THAT HE/SHE: (1) HAS READ AND FULLY UNDERSTANDS ALL FOUR (4) PAGES OF THIS ARBITRATION AGREEMENT; (2) UNDERSTANDS THAT BY SIGNING THIS ARBITRATION AGREEMENT, EACH HAS WAIVED HIS/HER OR ITS RIGHTS TO A TRIAL BEFORE A JUDGE AND/OR A JURY; (3) VOLUNTARILY CONSENTS TO ALL OF THE TERMS AND CONDITIONS OF THIS ARBITRATION AGREEMENT; AND (4) CERTIFIES THAT HE/SHE IS THE RESIDENT OR A PERSON AUTHORIZED BY THE RESIDENT OR OTHERWISE AUTHORIZED TO EXECUTE THIS ARBITRATION AGREEMENT.**

**RESIDENT OR LEGAL REPRESENTATIVE<sup>2</sup>:**

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

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

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

**BENCHMARK SENIOR LIVING LLC**

**ON BEHALF OF THE COMMUNITY**

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

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

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

\_\_\_\_\_

<sup>2</sup> The Legal Representative is a person authorized by the Resident and/or applicable law to make contract decisions on the Resident's behalf in connection with his or her residency at the Community. The Resident must have a Legal Representative if the Resident does not wish to, or is not capable of making contracting decisions on his or her own behalf.

Title: \_\_\_\_\_