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**COUNSEL TO THE EDMERERE
RESIDENTS TRUST**

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

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

**FIRST AMENDED APPLICATION OF THE EDMERERE RESIDENTS TRUST TO
RESOLVE CONFLICTING DEMANDS, FOR INTERPRETATION OF
THE RESIDENCY AGREEMENTS, AND TO ENSURE DISTRIBUTIONS
ARE ACCOMPLISHED PURSUANT TO THE PLAN**

NOW COMES, Stephen A. McCartin, the Trustee of the Edgemere Residents Trust,² and files this *First Amended Application of the Edgemere Residents Trust to Resolve Conflicting Demands, For Interpretation of the Residency Agreements and to Ensure Distributions are Accomplished Pursuant to the Plan* (the “**Amended Application**”), and in support thereof would respectfully show the Court as follows:

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

² Capitalized terms not defined herein shall have the meaning ascribed in the Plan.



I.
PRELIMINARY STATEMENT

1. The Trustee of the Edgemere Residents Trust (the “**Trust**”) is responsible for the collection and distributions of Trust Assets (approximately \$145,000,000 from the Lifespace Settlement Agreement) to the holders of Trust Interests pursuant to the terms of the Plan and the Trust Agreement. The Trust has received the first Lifespace Settlement payment of \$52,460,094 and distributions to Former Residents with independent living units that have been previously released are due this month. The Trust Advisory Board has authorized the Trustee to defer those distributions pending a resolution of the issues outlined in this Amended Application.

2. The terms of the Plan and Trust Agreement were negotiated before the Committee had an opportunity to review the Residency Agreements. Upon review of the Residency Agreements, numerous issues regarding the ownership of the Trust Interests and Trust distributions have arisen. The Trustee therefore files this Amended Application requesting the Court to determine the ownership of Trust Interests and Trust distributions, for interpretation of the Residency Agreements, and to approve proposed amendments to the Trust Agreement to clarify the ownership of Trust Interests and therefore who is entitled to Trust distributions.

3. To understand these potentially conflicting claims, it is helpful to review how the Plan works:

- the Residency Agreements were rejected on the Effective Date of the Plan,
- many, but not all, of the rejected Residency Agreements contain Addendums in which the Residents instructed the Debtors to pay their refunds to third parties, usually trusts controlled by the Residents or outright to one or more of their children (the “**Addendum Payee**”),
- rejection of the Residency Agreements created a Refund Claim against the Debtors; if an Addendum was executed prior to the Effective Date of the Plan, the Trustee requests the Court to determine if the Resident or the Addendum Payee became the legal owner of the Refund Claim upon rejection, and

- the Refund Claims were satisfied in full in exchange for a Trust Interest in the Residents Trust pursuant to the Plan; accordingly, the owner of the Refund Claim became the owner of a Trust Interest.

4. For example, if a single occupancy Resident was alive on the Effective Date of the Plan, and had not executed an Addendum as of the Effective Date of the Plan (when the Trust Interest was provided in full satisfaction of the Refund Claim), the Resident owned the Refund Claim, and therefore became the owner of the Trust Interest exchanged for the Refund Claim. If, however, that Resident executed an Addendum before the Effective Date of the Plan designating an Addendum Payee to receive the refund, the Trustee needs to know if the Addendum payee or the Resident (or his or her estate, if deceased) became the legal owner of the Refund Claim on the Plan Effective Date and therefore the legal owner of the Trust Interest exchanged for the Refund Claim.

5. If the Addendums were simply “payable upon death” (“**POD**”) provisions, then on the effective date of the Plan (i) the living residents became the owners of the Trust Interest, and (ii) for a deceased resident, the designated beneficiary under the addendum (that is, the Addendum Payees) became the owners of the Trust Interests.

6. Additional Trust issues arise under Residency Agreements that were executed by two parties for double occupancy units. Absent a “right of survivorship”, the first deceased resident might own a 50% interest in the Refund Claim, payable to his or her estate or assignees, and not to the surviving resident. However, it seems clear from the contract language that the parties intended the surviving resident (the “**Last Surviving Resident**”) to become the owner of 100% of the refund claim upon the death of the first resident. The Trustee requests this Court find that, if one of the Residents in a double occupancy agreement died before the Effective Date of the Plan, 100% of the Refund Claim became the asset of the Last Surviving Residents pursuant to a “right

of survivorship” to the Refund Claim. If both Residents, or the Last Surviving Resident, did not execute an Addendum before the Effective Date of the Plan, the surviving Residents became the owner(s) of the Refund Claim and the Trust Interest exchanged for the Refund Claim. If both Residents while living, or the Last Surviving Resident after the death of the first Resident, executed an Addendum before the Plan Effective Date, the Trustee requests the Court determine if the Resident or the Addendum Payee became the owner of the Refund Claim and the Trust Interest exchanged for the Refund Claim (which will depend on whether the Addendum is a POD provision).

7. If both double occupancy Residents were alive on the Plan Effective Date, and no Addendum was executed, or the Addendum is a POD provision, they jointly became the owners of the Trust Interest. The Trustee requests the Court find that double occupancy Residents who became the owners of the Trust Interest jointly also own the Trust Interest with a “right of survivorship”.

8. There are numerous complex factual scenarios and results. The Trustee believes the following chart summarizes the various possible factual scenarios, and who is the legal holder of the Trust Interest under these facts depending on whether the Addendums are POD or not POD.

Proposed Contract Interpretation of Residents Trust

I. Residents Entering Community in Single Occupancy

As of Plan Effective Date	Addendum Executed Before Effective Date of Plan	Holder(s) of Trust Interest IF ADDENDUM IS <u>NOT</u> POD	Holder(s) of Trust Interest IF ADDENDUM IS <u>POD</u>
Resident Alive	No	Resident ¹	Resident ¹
Resident Deceased	No	Estate of Deceased	Estate of Deceased
Resident Alive	Yes	Addendum Payee(s) ²	Resident ¹
Resident Deceased	Yes	Addendum Payee(s) ²	Addendum Payee(s) ²

II. Residents Entering Community in Double Occupancy

As of Effective Date of Plan	Addendum Executed Before Effective Date of Plan	Holder(s) of Trust Interests IF ADDENDUM IS <u>NOT</u> POD	Holder(s) of Trust Interests IF ADDENDUM IS <u>POD</u>
Both Residents Alive	No	Both Residents jointly (with right of survivorship)	Both Residents jointly (with right of survivorship)
Both Residents Alive	Yes	Addendum Payee(s) ²	Both Residents jointly (with right of survivorship)
Both Residents Deceased	Yes	Addendum Payee(s) ²	Addendum Payee(s) ²
Both Residents Deceased	No	Estate of Last Surviving Resident	Estate of Last Surviving Resident
One Resident Deceased, One Alive	No	Last Surviving Resident ¹	Last Surviving Resident ¹
One Resident Deceased, One Alive	Yes	Addendum Payee(s) ²	Last Surviving Resident ¹

¹ After the Effective Date of Plan, Residents (but not Addendum Payees) who own Trust Interests may execute a one-time, effective upon death Trust Interest Assignment to a revocable trust pursuant to a proposed Trust Agreement amendment.

² Assumes Addendum Payees are “donee” beneficiaries. If there are multiple Addendum Payees, the Trustee proposes the Court find that they own the Trust Interests per stirpes, with no right of survivorship of other Addendum Payees.

II. **ISSUES PRESENTED**

9. The Plan rejects all Residency Agreements, which created Refund Claims against the Debtors. Refund Claims are defined as Rejection Claims of “both Former Residents and Current Residents”. Addendum Payees are not mentioned as holders of Refund Claims in the Plan. The Plan then provides that Participating Former and Current Residents shall receive Trust Interests in the Trust in full and final satisfaction of their Allowed Refund Claims. The Trust Agreement provides that the holders of Trust Interests (identified as both Participating Former and Current Residents) shall receive distributions from the Trust in an amount equal to their Allowed Refund Claims upon their Refund Trigger Date (defined in the Plan). Addendum Payees are not mentioned as potential holders of Trust Interests in the Trust Agreement.

10. Accordingly, the Trustee requests the Court determine the rights of the Residents and the Addendum Payees under the Residency Agreements, the Plan and the Trust Agreement.

Double Occupancy Issues

11. If an independent living unit was occupied by two (2) Residents, and one (1) died before the Plan Effective Date, did the surviving Resident have a “right of survivorship” and therefore became the owner of 100% of the Refund Claim under the Residency Agreement? If both double occupant Residents were alive on the Effective Date of the Plan, and they became the joint owners of the Trust Interests (depending on specific facts and determination of this Amended Application), do they each have a right of survivorship to the Trust Interests? The Trustee requests approval of amendments to the Trust Agreement to clarify that they do have a right of survivorship.

12. Does the Refund Trigger Date, which requires that the “Resident” vacate the Community as one condition to Trust distributions becoming due, mean that the Last Surviving Resident must vacate the Community under double occupancy agreements before Trust

distributions are due? The Trustee thinks so, and requests approval of amendments to the Trust Agreement to clarify that condition to Trust distributions for jointly owned Trust Interests.

III. JURISDICTION

13. The United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “**Court**”) has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing order of Reference from the United States District Court for the Northern District of Texas.

14. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The predicates for the relief requested herein are 11 U.S.C. §§ 105(a), the Confirmation Order and the Edgemere Trust Agreement.

16. The Plan provides:

SECTION 11. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and this Plan, including without limitation, jurisdiction to:

...
(d) ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

...
(n) adjudicate any and all disputes arising from or relating to Distributions under this Plan;

...
(r) hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

IV. STATEMENT OF FACTS

a) The Residency Agreements

17. A true and correct form of the Residency Agreement used by Lifespace and the Debtors (the “**Residency Agreements**”) is attached as **Exhibit A**. The Residency Agreements

provide, in summary:

- the Residents were required to make a “non-transferable” Deposit (§5.7),
- the Agreement is the entire agreement unless additional terms are in writing and signed by both parties (§8.10),
- the Agreement provides there are no third-party rights created under the Agreement (§8.20),
- some, but not all, of the Agreements have Addendums, which are in writing and signed by both parties, and which provide that the Deposit shall be paid to “the Estate of _____” X (the “**Addendum Payee**”), usually to trusts or children (an example Addendum is attached hereto as **Exhibit B**).

18. The Residency Agreements between the Debtors and the residents were rejected in the Plan.

b) Double Occupancy Agreements

19. The Residency Agreements provide in relevant part as follows:

Effect of Double Occupancy. If your Residence is occupied by two (2) Residents and one (1) Resident dies, this Agreement will continue in full legal force and effect as to the surviving Resident, except the Monthly Service Fee will be adjusted to reflect the then applicable single occupancy rate payable for the type of Residence occupied. No refund of the Resident Deposit will occur until the surviving Resident leaves and all conditions of Section 7.4 are met.

Refund of Resident Deposit. After termination of the Agreement in accordance with Section 7.2 or in the event of your death, or in the case of double occupancy, both occupants’ deaths, we will refund ninety percent (90%) of the Resident Deposit (without interest) that you paid for your Residence at Edgemere. Except as provided in the next paragraph, the refund will be paid on the later of: (i) ten (10) days after a new resident deposit has been received from a new resident and the new resident has taken occupancy of your former Residence, or (ii) termination of this Agreement.

20. The Residency Agreements expressly provide that the Deposit will be refunded to “you” (defined as individually or collectively, the Residents). Page 1, Residency Agreement.

c) Addendum Payees

21. Many, but not all, of the rejected Residency Agreements contain an Addendum in

which the applicable Resident instructed the Debtors to pay his or her refund to third parties, usually trusts controlled by the Resident or to one or more of their children (the “**Addendum Payees**”). A true and correct copy of the form Addendum used by Lifespace and the Debtors is attached as **Exhibit B**. The Residency Agreements, along with their Addendums, were rejected pursuant to the Plan, which created Allowed Refund Claims, which were then satisfied in full in exchange for Trust Interests in the Trust. Holders of Trust Interests in the Trust are defined in the Plan as Former Residents and Current Residents, and not the third-party Addendum Payees.

22. The Residency Agreements provide that rights created under the Agreement are non-transferable:

8.20 No Third-Party Rights. No other persons or entities other than Edgemere and the Residents have any rights or obligations under this Agreement.

d) The Plan

23. The Plan defines Rejected Refund Claims as the claims of Former Residents and Current Residents (not Addendum Payees), and provides:

1.130 *“Refund Claims”* means Rejected Claims of both Former Residents and Current Residents against Edgemere in the amount of the contractual refund obligations of Edgemere under the rejected Residency Agreements. (Emphasis added).

24. The Plan places Former Resident Refund Claims and Current Resident Refund Claims in Classes 5 and 6, and provides:

3.2.5 Class 5 – Participating Former Resident Refund Claims. Class 5 is Impaired and entitled to vote on this Plan. This Class consists of the Refund Claims of Participating Former Residents, who, for the avoidance of doubt, no longer reside at Edgemere as of the Voting Record Date. The Residency Agreements of Former Residents shall be rejected, and the holders of Allowed Class 5 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim in an amount equal to their Refund Claim. Former Residents who do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan (i.e., Participating Former Residents) shall receive payment in an amount equal to their Refund Claim no later than sixty (60) days after the Refund Trigger Date. (Emphasis added).

3.2.6 Class 6 – Participating Current Resident Refund Claims. Class 6 is Impaired and entitled to vote on this Plan. This Class consists of the Refund Claim of Participating Current Residents, who, for the avoidance of doubt, reside at Edgemere, as of the Voting Record Date. The Residency Agreements of Current Residents shall be rejected, and the holders of Allowed Class 6 Claims who OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan shall receive a Class 4 General Unsecured Claim in an amount equal to their Refund Claim. Current Residents who do not OPT OUT of the Lifespace Settlement and the releases under Section 8 of this Plan (i.e., Participating Current Residents) shall receive Cash from the Residents Trust with sixty (60) days of the Refund Trigger Date in an amount equal to the Refund Claim.” (Emphasis added)

25. The Plan then creates the Edgemere Residents Trust and provides for Participating Former and Current Residents (and not Addendum Payees) to receive Trust Interests in full and final satisfaction of their Allowed Refund Claims. The Plan expressly provides:

Holders of Resident Trust Interests shall consist of Participating Former Residents and Participating Current Residents. (Emphasis added). *See* Section 4.3.1 of the Plan.

26. The Plan does not mention that Addendum Payees may be the legal owners of certain Allowed Refund Claims and therefore issued Trust Interests in satisfaction of the Allowed Refund Claims.

27. The Plan discharges the Allowed Refund Claims against the Debtors in exchange for the Trust Interests, which “shall be in full and final satisfaction ... of all Claims ...” *See* Section 8.5 of the Plan.

e) **The Trust Agreement**

28. The Trust Agreement provides:

The Residents Trust is being created on behalf of, and for the benefit of, the Residents Trust Beneficiaries, who are Participating Former Residents and Participating Current Residents of Edgemere that hold Allowed Class 5 and Class 6 Refund Claims under the Plan, and who shall hold beneficial interests in the Residents Trust (“Residents Trust Interests”). (Emphasis added).

29. The Trust Agreement also provides that the Trust Interests are not transferable or

assignable except by will, intestate succession, or operation of law. *See* Section 2.4(a) of the Trust Agreement.

30. The Trust Agreement provides that the Bankruptcy Court shall have exclusive jurisdiction to determine conflicting claims or demands to distributions from the Trust:

Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to a Class 5 or Class 6 Claim, or to a Residents Trust Interest or a distribution to a Residents Trust Beneficiary, the Trustee shall be entitled, at the direction and with the approval of the Residents Trust Advisory Board, to refuse to comply with any such conflicting claims or demands. In so refusing, the Trustee, at the direction and with the approval of the Residents Trust Advisory Board, may elect to make no payment or distribution with respect to the Residents Trust Interest subject to the claims or demands involved, or any part thereof, and the Trustee shall refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. In so doing, the Trustee shall not be or become liable to any party for its refusal to comply with any of such conflicting claims or demands. The Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court (or such other court of proper jurisdiction) or (ii) all differences have been resolved by a written agreement among all of such parties and the Trustee, which agreement shall (x) include a complete release of the Residents Trust and the Trustee, and (y) be subject to the approval of the Residents Trust Advisory Board if the proposed agreement results in a Class 5 or Class 6 Claim Allowed Claim equal to or in excess of \$100,000 (the occurrence of either (i) or (ii) of this Section 2.1 being referred to as a “Dispute Resolution”). Promptly after a Dispute Resolution is reached, the Trustee shall transfer the payments and distributions, in accordance with the terms of such Dispute Resolution, the Plan and this Trust Agreement. (Emphasis added).

V. LEGAL ANALYSIS

a) Does the Resident or Addendum Payee own the Trust Interest?

31. If a Former or Current Residents did not execute an Addendum, the owner of the Refund Claim and the holder of the Trust Interest exchanged for the Refund Claim is clearly the Former or Current Resident, or his or her estate if deceased.

32. If the Resident executed an Addendum, the Trustee requests a judicial determination of the rights of the Resident (or his or her estate) versus the Addendum Payees in

the Trust Interests on the Effective Date of the Plan.

33. If the Addendum was a POD provision, the Addendum Payees do not acquire any interest in the Refund Claim until the death of the Resident. Accordingly, if this Court determines the Addendum to constitute a POD provision, the Current and Former Residents living on the Effective Date of the Plan owned the Refund Claim and therefore the Trust Interest exchanged for the Refund Claim.

34. If the Addendum was effective during the life of the Residents, and the Addendum Payee is a “donee beneficiary” (see below), then the Addendum Payee owned the Refund Claim and the Trust Interest exchanged for the Refund Claim on the Effective Date of the Plan, irrespective of whether the Residents were alive or deceased on the Plan Effective Date.

b) Is the Addendum a POD or Lifetime Transfer Provision?

35. The Addendums do not expressly provide that they are payable only upon death, but the Residency Agreement does contain provisions which indicate an intent for the Addendum to be POD. These include:

- (i) the Addendum form provides for refunds to be paid to “The Estate of _____” or “_____” which indicates a POD intent since an estate is only created upon death of the Resident;
- (ii) the deposit is “a non-transferable” (section 5.7);
- (iii) there are no third-party rights under the Agreement (section 8.20); and
- (iv) Current and Former Residents were allowed to vote for or against the Plan, and not the Addendum Payees, indicating they owned the Refund Claims before their deaths.

36. Basic principles of contract interpretation are stated as follows:

“In construing a written contract, the primary concern of the court is to ascertain the true intentions of the parties as expressed in the instrument.” *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). When discerning the contracting parties’ intent, courts must examine the entire agreement in an effort to harmonize and give effect to each provision so that none is

rendered meaningless. *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex. 2006). “No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument.” *Coker*, 650 S.W.2d at 393.04-10-00620-CV

37. If the Addendum is determined to be a POD provision, that provision is in harmony with, and does not render the other provisions meaningless. A POD provision does not contradict the “no third party rights” provision of section 8.20, nor the “non-transferable deposit” provision of section 5.2 of the Residency Agreement.

38. Contract interpretation rules also dictate an ambiguous contract be interpreted in light of usage in the industry. Upon information and belief, the Ventana residency agreement (a CCRC down the street from Edgemere), for example, makes it clear that its “Designation of Beneficiaries of Entrance Deposit Refund” (the equivalent of our Addendum) is only effective upon the death of the Resident, or both Residents if double occupancy. The Ventana contract provides:

If the Residence is initially occupied by one (1) Resident, the amount due will be paid to you, if alive. If you are not alive, the refund will be paid in accordance with the Designation of Beneficiary of Entrance Deposit Refund execute by you, or if non, to the personal representative of your estate. (Emphasis added).

39. The Ventana contract may be an example of what parties to CCRC contracts normally intend for their refund assignments in CCRCs.

40. If the Addendum is effective when executed prior to the Plan Effective Date, the Court must determine if the Addendum Payees are “incidental” or “donee” third-party beneficiaries. If donee beneficiaries, the Addendum Payees acquired the Refund Claims and Trust Interests. If they are only incidental beneficiaries, they did not, and the Resident (or his or her estate) acquired the Refund Claims and Trust Interests. The Trustee believes they are donee beneficiaries.

c) Double Occupancy/Right of Survivorship

41. The Trustee requests the Court to find that the Last Surviving Spouse as of the Effective Date of the Plan in double occupancy agreements became the owner of the Refund Claim.

The Texas statutes applicable to the right of survivorship for double occupancy agreements are:

Texas Estates Code Sec. 111.001. RIGHT OF SURVIVORSHIP AGREEMENTS AUTHORIZED.

(a) Notwithstanding Section 101.002, two or more persons who hold an interest in property jointly may agree in writing that the interest of a joint owner who dies survives to the surviving joint owner or owners.

(b) An agreement described by Subsection (a) may not be inferred from the mere fact that property is held in joint ownership.

Texas Estates Code Sec. 111.002. AGREEMENTS CONCERNING COMMUNITY PROPERTY.

(a) Section 111.001 does not apply to an agreement between spouses regarding the spouses' community property.

(b) An agreement between spouses regarding a right of survivorship in community property is governed by Chapter 112.

Texas Estates Code Sec. 112.051. AGREEMENT FOR RIGHT OF SURVIVORSHIP IN COMMUNITY PROPERTY.

At any time, spouses may agree between themselves that all or part of their community property, then existing or to be acquired, becomes the property of the surviving spouse on the death of a spouse.

Texas Estates Code Sec. 112.052. FORM OF AGREEMENT.

(a) A community property survivorship agreement must be in writing and signed by both spouses.

(b) A written agreement signed by both spouses is sufficient to create a right of survivorship in the community property described in the agreement if the agreement includes any of the following phrases:

- (1) "with right of survivorship";
- (2) "will become the property of the survivor";
- (3) "will vest in and belong to the surviving spouse"; or
- (4) "shall pass to the surviving spouse."

(c) Notwithstanding Subsection (b), a community property survivorship agreement that otherwise meets the requirements of this chapter is effective without including any of the phrases listed in that subsection.

(d) A survivorship agreement may not be inferred from the mere fact that an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

Texas Estates Code Sec. 112.152. NONTESTAMENTARY NATURE OF TRANSFERS UNDER AGREEMENT.

(a) Transfers at death resulting from community property survivorship agreements made in accordance with this chapter are effective by reason of the agreements involved and are not testamentary transfers.

(b) Except as expressly provided otherwise by this title, transfers described by Subsection (a) are not subject to the provisions of this title applicable to testamentary transfers.

d) Analysis for Right of Survivorship

42. Under the Texas Estates Code, unmarried persons or married persons dealing with their separate property may agree in writing that the interest of a joint owner who dies survives to the surviving joint owner or owners. Married persons dealing with their community property may also agree between themselves that all or part of their community property becomes the property of the surviving spouse on the death of a spouse. The Texas Estates Code provides sample phrases that create a right of survivorship in community property, but stipulates that a community property survivorship agreement may be effective without including any of the sample phrases listed.

43. Regardless of whether joint occupants under the Residency Agreement are (i) unmarried, (ii) married persons dealing with their separate property, or (iii) married persons dealing with their community property, the Residency Agreement provides language indicating that the intent of the parties was to create a right of survivorship between the joint tenants. The Residency Agreement states that, “[i]f your Residence is occupied by two (2) Residents and one (1) Resident dies, this Agreement will continue in full legal force and effect as to the surviving Resident.” This language indicates a clear intent to create a survivorship right and to transfer all rights under the Residency Agreement to the surviving Resident, including the right to modify and/or add an Addendum Payee with respect to the refund of the Resident Deposit.

44. Upon information and belief, the Ventana form residency agreement makes it clear that the last surviving resident has a right of survivorship, and provides that the refund is only payable upon the death of the last surviving resident. The Ventana contract provides:

If the Residence is initially occupied by two (2) Residents, the Entrance Deposit shall be paid jointly to each of you, if both are alive. If only one of you is alive, the amount due will be retained for the surviving Resident. If neither of you is alive, the refund will be paid in accordance with a Designation of Beneficiary of Entrance Deposit Refund executed by the Resident who last occupied the Residence, or if no Designation of Beneficiary has been executed, to the personal representative of your estate. (Emphasis added).

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

45. The Trust requests confirmation that the Residency Agreements do in fact provide for survivorship rights to the Last Surviving Resident, and that the Last Surviving Resident became the owner of the Refund Claim, and that the Last Surviving Resident was legally allowed to unilaterally control the disposition of the Refund Claim pursuant to any properly executed Addendum or modification of the Residency Agreement prior to the Effective Date of the Plan.

e) **Addendum Payees As Third-Party Beneficiaries**

46. If the Addendum is legally effective on the Plan Effective Date (for example, even if the Addendum is POD, it was effective for deceased Residents), the Court must determine that the Addendum Payees were donee beneficiaries in order to allow the Addendum Payees to own the Refund Claims and Trust Interests provided in satisfaction of the Refund Claims.

47. Generally, the benefits and burdens of a contract belong solely to the contracting parties. *First Bank v. Brumitt*, 519 S.W.3d 95, 102 (Tex. 2017). Third-party beneficiaries are an exception to that general rule. *Id.* Donee and creditor beneficiaries (both being third-party beneficiaries to a contract) may sue for breach of a contract to which they are not parties. *Id.*; *S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 306 (Tex. 2007). Unless a statute or other legal rule

provides otherwise, a person's status as a third-party beneficiary depends solely on the contracting parties' intent. *First Bank*, 519 S.W.3d at 102.

48. A donee beneficiary is an individual or entity named in a contract to receive a gift or benefit from one of the parties to the contract. *Lomas*, 223 S.W.3d at 306. A donee beneficiary, as a third-party beneficiary, is not a party to the contract itself but has a vested interest in the contract. *First Bank*, 519 S.W.3d at 102. Donee beneficiaries have the right to enforce the contract and seek legal remedies if the contracting parties fail to fulfill their obligations. *Id.*

49. In *Brunner v. Exxon Co., USA Div of Exxon*, 752 S.W.2d 679 (1988), the Court outlined third party beneficiary law in Texas as follows:

Beneficiaries, Claims & Enforcement

The general rule is that only the parties to a contract have the right to complain of a breach thereof; and if they are satisfied with the disposition which has been made of it and all claims under it, a third person has no right to insist that it has been broken. A well defined exception to the general rule is that one who is not in privity to the written agreement may demonstrate that the contract was actually made for his benefit and that the contracting parties intended that he benefit by it so that he becomes a third-party beneficiary and is eligible to bring an action on the agreement.

Types of Third Party Beneficiaries, Creditors

There are three types of third-party beneficiaries: done beneficiaries, creditor beneficiaries, and incidental beneficiaries. Only the first two may enforce contracts to which they are not parties. An incidental beneficiary, one who will be benefitted only incidentally by the performance of the contract, cannot maintain an action thereon; an incidental beneficiary acquires, by virtue of a promise, not right against the promisor of the promise.

Contracts Law, Contract Interpretation

Parties are presumed to contract for themselves and it follows that a contract will not be construed as having been made for the benefit of a third person unless it clearly appears that such was the intention of the contracting parties. Any doubt should be resolved against such an intent. The intent of the parties should be determined from the language used in the instrument itself, as disclosed within the four corners of the instrument.

...

A. Third-Party Beneficiaries

A third party may enforce a contract it did not sign when the parties to the contract entered the agreement with the clear and express intention [**12] of directly benefitting the third party. *MCI Telecomms. Corp V. Tex Utils. Elec. Co.*, 995 S.W.2d 647, 651 (Tex. 1999). When the contract confers only an indirect, incidental benefit, a third party cannot enforce the contract. ... (“An incidental beneficiary acquires no right either against the promisor or the promisee by virtue of the promise.”). Traditionally, Texas courts have maintained a presumption against third-party beneficiary agreements... Therefore, in the absence of a clear and unequivocal expression of the contracting parties’ intent to directly benefit a third party, courts will not confer third-party beneficiary status of implication. *MCI*, 995 S.W.2d at 651.

VI.

PROPOSED INTERPRETATION OF RESIDENCY AGREEMENTS AND TRUST AGREEMENT AMENDMENTS

a) Double Occupancy

50. The Trustee requests this Court review the double occupancy Residency Agreements and find that the Residents owned their interests under the Residency Agreements with a right of survivorship. Thus, if one resident died, the Last Surviving Resident became the 100% owner of the Refund Claim and had the legal authority to sign an Addendum covering 100% of the Refund Claim. In addition, The Trustee request that this Court review the double occupancy Residency Agreements and find that:

- if no Addendum was executed prior to the Effective Date of the Plan and
 - (i) both Residents were alive on the Effective Date of the Plan, then both Residents own the Trust Interest jointly (which was received in exchange for the Refund Claim) with a right of survivorship,
 - (ii) one Resident is deceased and the Surviving Resident was living on the Effective Date of the Plan, then the Surviving Resident owns 100% of the Trust Interest (which was received in exchange for the Refund Claim), or
 - (iii) the Surviving Resident was deceased on the Effective Date of the Plan, then the Estate of the Surviving Resident owns 100% of the Trust Interest (which was received in exchange for the Refund Claim);
- if an Addendum was executed prior to the Effective Date of the Plan by both Residents or the Surviving Resident only, and the Addendum is determined to be effective during

- life of both Residents or the Surviving Resident as of the Plan Effective Date, then the Addendum Payees own the Trust Interest; and
- if an Addendum was executed prior to the Effective Date of the Plan by both Residents or the Surviving Resident only, and the Addendum is determined to be a POD that is only effective at the death of the Surviving Resident, then:
 - both Residents own the Trust Interest jointly if both Residents were living on the Effective Date of the Plan,
 - the Surviving Resident owns 100% of the Trust Interest if the Surviving Resident was living on the Effective Date of the Plan, or
 - the Addendum Payees own the Trust Interest if the Surviving Resident died before the Effective Date of the Plan.
 - b) The Trustee requests that this Court review the single occupancy Residency Agreements and find that:
 - if no Addendum was executed prior to the Effective Date of the Plan, and
 - (i) the Resident was living on the Effective Date of the Plan, then the Resident owns the Trust Interest (which was received in exchange for the Refund Claim), or
 - (ii) the Resident was deceased on the Effective Date of the Plan, then the Estate of the Resident owns 100% of the Trust Interest (which was received in exchange for the Refund Claim);
 - if an Addendum was executed prior to the Effective Date of the Plan by the Resident, and the Addendum is determined to be effective during life of the Resident, then irrespective of whether the Resident is alive or deceased as of the Effective Date of the Plan, the Addendum Payee owns the Trust Interest; and
 - if an Addendum was executed prior to the Effective Date of the Plan by the Resident, and the Addendum is a POD (which is only effective at the death of the Resident), then:
 - the Resident owns the Trust Interest if the Resident was living on the Effective Date of the Plan, or
 - the Addendum Payee owns the Trust Interest if the Resident died before the Effective Date of the Plan.
 - c) **POD or Lifetime Transfers**
51. The Trustee requests this Court review and interpret the Residency Agreements and

the Addendums, and determine if the Addendums were POD only provisions or effective when executed during the life of the Resident. See chart on page 5 and 6 hereof for results if Addendums are POD or not POD provisions.

d) Donee Beneficiaries

52. The Trustee also requests this Court review and interpret the Residency Agreements and the Addendums, and to find that the Addendum Payees in Addendums executed prior to the Effective Date of the Plan are “donee beneficiaries”.

e) Trust Amendments

53. Trust Interests are currently not assignable under the terms of the Trust Agreement. In order to assist Residents who own Trust Interests to avoid probate for that asset, the Trustee requests the Court approve an amendment to the Trust Agreement which will allow the Resident holders of Trust Interests (and not the Addendum Payee holders) to execute one-time only, notarized “Trust Interest Assignments” assigning their Trust Interests to a revocable trust effective upon the death of the Resident. The proposed amendments to the Trust Agreement will not allow holders of Trust Interests to assign their Trust Interests to any other individuals or legal entities. The Trust Interest Assignment must be limited to a revocable trust of which the holder(s) of the Trust Interests (and their spouses, if applicable) are the current beneficiaries, as it would be too costly and burdensome for the Residents Trust Trustee to review and verify transfers and assignments of Trust Interests to potentially numerous assignees, potentially additional assignees of original assignees, or heirs of deceased assignees. Any Trust Interest assignments shall be effective only upon (i) delivery of the fully executed and notarized Trust Interest Assignment, and (ii) delivery of the revocable trust, and as amended from time to time, to the Residents Trust Trustee.

54. If the Trust Interest is determined to be owned by a Resident, and if the Resident does not execute and deliver a valid Trust Interest Assignment, before his or her Refund Trigger Date, all Trust distributions, shall be distributed to: (i) the Resident, or (ii) if the Resident (including Last Surviving Resident) is deceased on or before the applicable Refund Trigger Date, to the estate of the Resident (including Last Surviving Resident), c/o the executor or administrator of the estate upon receipt of Letters Testamentary, Letters of Administration, or other appropriate documentation.

VII.
RELIEF REQUESTED

55. The Trustee requests the Court resolve these potential conflicting demands, interpret the provisions of the Residency Agreements and Addendums as requested above, approve the proposed Trust amendments to ensure distributions are provided to the proper parties, and provide such other and further relief as is appropriate.

Dated: August 16, 2023

Respectfully submitted,

/s/ Stephen A. McCartin

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**COUNSEL TO THE EDGEMERE
RESIDENTS TRUST**

Exhibit A

EDGEMERE
LIFE CARE AGREEMENT

EDGEMERE
LIFE CARE AGREEMENT

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ADDENDUM A – CONFIDENTIAL DATA PROFILE

EDGEMERE

LIFE CARE AGREEMENT

NOTICES

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

TERMS OF OCCUPANCY

This Life Care Agreement ("Agreement") is entered into by _____

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

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

RESIDENCE NUMBER: _____

RESIDENCE STYLE: _____

1. **RESERVATION OF RESIDENCE**

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

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

2. **GENERAL SERVICES AND FACILITIES**

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

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

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

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

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

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

- l. Wellness Programming.** We will coordinate educational and screening programs promoting wellness and preventive health maintenance. Participation in these activities is voluntary.
- m. Medical Director.** We will retain the services of a qualified physician ("Medical Director") to be responsible for the appropriateness and quality of medical services and medically related activities provided by Edgemere. The Medical Director is not expected to provide medical services to Residents and will be retained as a consultant to Edgemere.
- n. Life Care Benefit.** If it is determined that you require assisted living or nursing care in the future, we will provide you with assisted living services available in our assisted living center ("Assisted Living") or nursing services available in our nursing center ("Health Center"), as described below and subject to changes in law.

- (i) Admission.** When a determination is made by your physician and approved by the Medical Director that you need assisted living services or nursing care, then you will be transferred to Assisted Living or the Health Center as provided for in Section 4 of this Agreement. Transfers to Assisted Living or the Health Center will only occur after consultation with the Resident, the Resident's family, and a licensed physician.

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

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

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

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

Effect on Monthly Service Fee.

a. Temporary Transfers.

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

b. Permanent Transfers.

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

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

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

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

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

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

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

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

3. **RESIDENT'S OBLIGATIONS**

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

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

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

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

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

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

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

4. TRANSFERS AND READMISSION

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

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

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

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

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

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

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

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

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

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

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

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

5. **RESIDENT DEPOSIT AND FEES**

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

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

- 5.2 **Resident Deposit.** You agree to make a non-transferable, non-interest bearing Resident Deposit in the total amount of \$ 654,550. The Reservation Deposit of \$ 65,455 is due at the time you execute this Agreement. The remaining balance of your Resident Deposit, being \$ 589,095, is due on or before the Occupancy Date, unless otherwise previously agreed in writing. In the event the remaining balance of the Resident Deposit is not paid by the Occupancy Date, Edgemere in its sole discretion may terminate this Agreement and re-market your Residence to a new resident. Once paid, this Resident Deposit will not be increased or changed during the duration of this Agreement. The Resident Deposit shall in no way be considered or interpreted to be a security deposit.

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

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

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

- 5.4 **Late Fee.** We will reserve the right to assess you a late fee of five percent (5%) per month (or the maximum amount allowed by applicable law, if less) of the amount due if the Monthly Service Fee or Additional Services Fees are not paid in full on or before the twentieth day (20th) of the calendar month in which they are due.
- 5.5 **Changes in Occupancy.** If your Residence is occupied by two (2) Residents and one (1) Resident surrenders possession of the Residence to the other, other than by death or by a transfer covered by Section 4, the obligations of the Resident remaining in the Residence under this Agreement remain in legal force and effect, except that the Monthly Service Fee will be adjusted to reflect the single occupancy rate then in effect for the Residence. The Resident not remaining in the Residence will receive no services or benefits under this Agreement but will continue to be jointly and severally liable for the obligations of the

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

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

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

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

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

- 5.6 Liability for Charges.** Each person who is designated as Resident in this Agreement is jointly and severally liable for the payment of the Monthly Service Fee, Additional Service Fees and all other amounts required to be paid to Edgemere, pursuant to the provisions of this Agreement. In the event it is necessary for us to institute legal action or other proceedings to recover amounts payable to Edgemere under this Agreement, we also will be entitled to recover reasonable legal fees and costs incurred in connection with all such proceedings. This provision will survive any termination of this Agreement.
- 5.7 Residents Who Become Unable to Pay.** It is Edgemere's policy that this Agreement will not be terminated solely because of your financial inability to continue to pay the Monthly Service Fee or other charges payable under the terms of this Agreement by reason of circumstances beyond your control; provided, however, this policy shall not be construed to qualify or limit Edgemere's right to terminate this Agreement in accordance with its terms. If you present facts which, in the opinion of Edgemere, justify special financial consideration, Edgemere will give careful consideration to subsidizing in part or in whole the Monthly Service Fee and other charges payable by you under the terms of this

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

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

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

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

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

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

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

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

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

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

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

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

7. TERMINATION AND REFUNDS

7.1 Termination Prior to Occupancy.

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

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

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

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

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

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

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

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

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

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

8. **MISCELLANEOUS**

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

RESIDENT(S):

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

NORTHWEST SENIOR HOUSING CORPORATION,
a Texas nonprofit corporation

By: _____

Its: _____

MARION DINEEN

Jameson Curtiss
Edgemere Marketing Representative

Exhibit B

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

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

**The Estate of _____ ()
or**

Contact person and mailing address for refund:

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

RESIDENT(S):

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

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

Edgemere Representative

Title