

FOUNTAINGATE GARDENS

MODIFIED CONTINUING CARE CONTRACT

50% REFUNDABLE ENTRANCE FEE



As approved by the
New York State Department of Health

_____, 20__

Required statement: This matter involves a substantial financial investment and a legally binding contract. In evaluating the disclosure statement and the contract prior to any commitment, FountainGate Gardens recommends that you consult with an attorney and financial advisor of your choice who can review these documents with you.

Notice of Right to Rescind

Date Rescission Period Begins

You may rescind and terminate this Contract, without penalty or forfeiture, within 3 days of the date on which you sign this Contract. The date you signed the Contract and the beginning of the rescission period is noted above. You are not allowed to move into the Community before the expiration of this 3 day period. No other agreement or statement you sign shall constitute a waiver of your right to rescind this Contract within the 3 day period. Refer to Section 19.01(a) (Automatic Right of Rescission) of this Contract for greater explanation of your right to rescind.

To rescind this Contract, mail or deliver a signed and dated copy of this notice, or any other dated written notice, letter or facsimile, stating your desire to rescind to: Fountaingate Gardens, _____, no later than midnight of _____.

Pursuant to this notice, I (we) hereby cancel my (our) Contract.

First Person Resident Signature		Date
First Person Resident Printed Name		Date
Second Person Resident Signature (if applicable)		Date
Second Person Resident Printed Name (if applicable)		Date

I/We wish to retain our position on the Priority Reservation List. I/We understand that my/our \$_____ Priority Reservation Deposit will not be refunded while we remain on the Priority Reservation List.]

First Person Resident Initials _____ Second Person Resident Initials _____

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ADDENDUM A – OPTIONAL SELECTIONS

FOUNTAINGATE GARDENS

**MODIFIED CONTINUING CARE CONTRACT
50% REFUNDABLE ENTRANCE FEE**

ARTICLE I. THIS CONTRACT

This Contract is made this ____ day of _____, 20__ by and between:

First Person Resident: _____

Second Person Resident (if any): _____

hereafter called the "**Resident**" and referred to by the words "you" and "your"

and

Fountaingate Gardens, Inc., a New York not-for-profit Corporation, hereafter called "**Fountaingate Gardens**" and referred to by the words "we", "us" and "our". Fountaingate Gardens owns and operates a continuing care retirement community known as Fountaingate Gardens in Commack, New York, hereafter called the "**Community**".

If two persons each sign this Contract as a Resident, the words "Resident", "you" and "your" shall apply to them jointly and severally, wherever the context permits. The word "us" in "one of us", "both of us", "either of us" and similar phrases shall apply to you and to Fountaingate Gardens jointly. When appropriate, the First Person Resident shall be referred to as the "First Person Resident" and the Second Person Resident shall be referred to as the "Second Person Resident".

Some of the services provided under this Contract, including under Article 46 of the Public Health Law, are regulated by the New York State Superintendent of the Department of Financial Services (the "Superintendent"). The following is a Required Statement:

No act, agreement or statement of any resident, or an individual purchasing care for a resident under any agreement to furnish care to the resident, shall constitute a valid waiver of any provision of Article 46 of the Public Health Law or of any rules and regulations enacted pursuant thereto intended for the benefit or protection of the resident or the individual purchasing care for the resident.

As you have applied for entry to the Community and we have accepted your application subject to the signing of this Contract, both of us agree as follows:

ARTICLE II. RESIDENCE

By entering this Contract, you have reserved residence # _____, which is a _____ style residence for ___ single ___ double [check appropriate box and strike out the other] occupancy (the "**Residence**").

Your initial Monthly Fee as of the ___ day of _____, \$_____. Your Monthly Fee may be amended from time to time as described in Section 3.04(c) (Monthly Fee).

Occupancy Date _____

The "Occupancy Date" is the date that you may move into the Residence, provided that you have already paid any outstanding amount of your Entrance Fee and the time in which you may rescind this Contract has passed. Your responsibility to pay the Monthly Fee commences on the Occupancy Date.

You have requested certain optional selections to be made to your Residence, which are described in Addendum A – Optional Selections. Addendum A is attached hereto and expressly made a part hereof. The optional selections shall be made at your sole expense, which expense is specified in both Addendum A – Optional Selections and Article III (Payments and Fees) below.

ARTICLE III. PAYMENTS AND FEES

Section 3.01 Application Fee

You paid to us a one-time, non-refundable fee of \$250 when you applied to become a resident of the Community. The Application Fee shall be credited against your Entrance Fee upon execution of this Contract.

Section 3.02 Priority Reservation Fee

You paid to us a non-refundable Priority Reservation Fee of \$_____ to have your name placed on our Priority Reservation List. The Priority Reservation Fee shall be credited against your Entrance Fee upon execution of this Contract.

Section 3.03 Entrance Fee

You pay the Entrance Fee as a condition of entrance to the Community. The Entrance Fee you pay is based on the type of Residence you select. Your Entrance Fee guarantees for you the Residence described in Article II (Residence) and the services described in this Contract, including the health services described in Article XIV (Health Services) below.

(a) Entrance Fee Payment Schedule

On or before the Occupancy Date, you will pay us the applicable Monthly Fee and any additional fees specified in Article II (Residence) or described in Addendum A – Optional Selections. You must also pay us the Entrance Fee shown below, in accordance with the following schedule:

First Person Entrance Fee	\$ _____
Second Person Entrance Fee	\$ _____
Additional Funds for Optional Selections as set forth in Addendum C Attached Hereto (if any)	\$ _____
Total Entrance Fee	_____ \$ _____
<u>Less Prior Payments</u>	
10% of Total Entrance Fee (Deposit)	\$(_____)
Less Application Fee	(\$250.00)
Less Priority Reservation Fee	(_____)
This Amount is Due On Execution of Contract	\$ _____
This Amount Must Be Paid Prior to Occupancy	\$ _____

Unless stated otherwise, the term “Entrance Fee” shall include both the First Person Entrance Fee and Second Person Entrance Fee.

(b) Changes in the Entrance Fee

The Entrance Fee paid by you will not be increased during this Contract except on transfer to a different Residence under Article XV (Change of Accommodations) or on the entry of another person not already a Resident to share the Residence with you. Admission of another person will be subject to our admission policies in effect at that time. We will enter into an amendment to this Contract to complete Article II (Residence), Article III (Payments and Fees), and Article XIV (Health Services) with respect to the new person.

(c) Refunds of Entrance Fee

Refunds of the Entrance Fee shall be made in accordance with Article XIX (Rescission, Termination and Refunds).

(d) Escrow of Entrance Fees

For the period of time prior to the completion of construction of the Community, Entrance Fees received by us prior to the Occupancy Date shall be placed in an interest bearing entrance fee escrow account which has been established at BankUnited, N.A., 445 Broadhollow Road, Melville, NY 11747. The name of the account is Fountaingate Gardens Entrance Fee Escrow Account. All deposits shall be made payable to the escrow agent only, and shall remain your property until released to us. All interest accrued on any deposits you make are payable to you.

Section 3.04 Monthly Fee

From and after the Occupancy Date, you are required to pay a “Monthly Fee” as a condition of this Contract. We will bill the Monthly Fee in advance and it is payable in advance by you. The fee is based on the size of the Residence and the number of individuals occupying the Residence. Your initial Monthly Fee is set forth in Article II (Residence) above.

(a) Payment of the Monthly Fee

We will give you an itemized monthly statement including: (a) the Monthly Fee for the following month; (b) any credits including away allowance for meal and meal plan credits; (c) charges for extra meals and additional services rendered during the preceding month; and (d) any other amounts due us.

The Monthly Fee is due on the first and paid no later than the fifth of each month during the term of this Contract. A late payment service charge of 2% will be added to the Monthly Fee for each month such payment is not received when due. The Monthly Fee shall be prorated for any partial month in which you occupy a Residence.

(b) Fee Changes on Transfer

Unless stated otherwise herein, at all times during the term of this Contract, you must continue to pay the Monthly Fee. If you, or, in the case of double occupancy, both of you, are permanently transferred to the Fay J. Lindner Assisted Living Residences or the Gurwin Jewish Nursing and Rehabilitation Center, or other facility authorized under Article XIV (Health Services), you must vacate the Residence as required under Section 15.02 (Permanent Transfer), and your Monthly Fee remains the same as it was in your most recently occupied Residence.

(c) Changes in the Monthly Fee

We will adjust the Monthly Fee from time to time to reflect changes in the cost to us of achieving the Community’s charitable purposes and in accordance with the methodology approved by the Department of Financial Services. We will not change your Monthly Fee

without first providing you written notice at least sixty (60) days in advance of such change.

Section 3.05 Substitutions

Property may not be substituted as payment for either the Entrance Fee or the Monthly Fee.

ARTICLE IV. ADMISSION

With the execution of this Contract by both of us, you are guaranteed admission to the Community in accordance with, and subject to, the provisions of this Contract, including Article XIX (Rescission, Termination and Refunds), Section 19.01 (Prior to Occupancy).

From and after the Occupancy Date, we will furnish you with the Residence and the facilities and services specified herein, and you will become liable for payment of the Monthly Fee. These services will be provided for your life unless this Contract is terminated at some earlier date.

ARTICLE V. REPRESENTATION

You have the right to have both legal representation and any other representative designated by you in writing, such as a family member, physician, Resident Council representative, or friend present during any meetings with us.

ARTICLE VI. NON-TRANSFERABLE

Your rights and privileges under this Contract are personal to you and cannot be transferred or assigned by your act by any proceeding of law, or otherwise.

ARTICLE VII. MODIFICATION OF CONTRACT

No amendment or modification of this Contract shall be valid unless in writing executed by both of us. This provision is subject to Article VIII (Changes in Fees, Charges, or Scope of Care or Services) below, which permits us to make changes to the fees, charges, scope of care or services provided to you under this Contract in order to reflect changes to our costs in providing such services.

ARTICLE VIII. CHANGES IN FEES, CHARGES, OR SCOPE OF CARE OR SERVICES

In the event there is a change in a fee or charge, we will give you at least sixty (60) days advance written notice of changes to any fees or charges charged to you, or in the scope of care or services we provide. The Superintendent has regulatory authority over any change in fees, charges and scope of services.

ARTICLE IX. ENFORCEMENT

We shall have the right at all times to enforce the provisions of this Contract in strict accordance with its terms, notwithstanding any conduct or custom on our part in refraining from doing so at any time or times.

ARTICLE X. PRESERVATION OF RIGHTS

Nothing in this Contract shall in any way take away or diminish rights given to Residents, whether in their capacity as Residents or not, under New York law.

ARTICLE XI. YOUR RESIDENCE AND COMMUNITY

Section 11.01 Standard Residences

You have the right to occupy and use the Residence subject to provisions for changes in accommodations as provided below. We will furnish you: a complete kitchen with refrigerator; range with oven; any additional appliances as may be offered in the Residence selected; an emergency call system; a fire detector and sprinkler system; washer and dryer; flooring; and window coverings. You may request to substitute other floor coverings, window coverings and fixtures in writing. Any approved requests will be made solely at your expense and will be as specifically set forth in Addendum A – Optional Selections.

Section 11.02 Utilities

We will provide sewer, water, electricity, heat, basic cable television, internet, air-conditioning and trash removal to your Residence at no additional cost. You are responsible for the cost of telephone and premium television service in your Residence.

Section 11.03 Maintenance

We will repair and maintain furnishings, appliances and other property and equipment we supply to you. Repairs, maintenance and replacement of your personal property is your responsibility.

Section 11.04 Community Center

You may use the dining rooms, lounges, lobbies, library, social and recreational facilities, and other public areas of the Community Center, which are available for the use and enjoyment of all of the Residents. Your use is subject to reasonable rules which we shall establish and which shall apply to all Residents of the Community.

Section 11.05 Gardens

Residents who live on the ground floor may plant flowers, greenery and other non-wild, non-food bearing plants around their patio areas in areas approved by us. We will designate a portion of the campus for resident garden plots for the growing of vegetables

and flowers. You may reserve a garden plot at no additional charge. Maintenance of your garden plot is solely your responsibility.

Section 11.06 Storage Areas

We will provide you a storage area, capable of being locked, apart from your Residence. You will be solely responsible for bearing any loss or damage to stored property. You may not store items in the storage area that are combustible or in any way threaten the property or safety of others or of the Community.

Section 11.07 Salon Services

Salon services are available to you at an additional charge, which will be paid by you directly to the service provider.

Section 11.08 Convenience Store

A convenience store will be available during scheduled hours of operation. Purchases will be an additional charge to you, which will be paid by you directly to the convenience store.

Section 11.09 Parking

Lighted and well-maintained parking areas are available at no additional charge. Each Residence will have one covered parking space. If you have a second car, that car must be parked in an above-ground parking lot.

Section 11.10 Grounds

We will furnish basic grounds keeping for all lawns and the common area gardens at no additional cost.

ARTICLE XII. GENERAL SERVICES

Section 12.01 Food Services

(a) Meal Services

The Community Center will make available three nutritionally balanced meals a day. Your Monthly Fee will include thirty (30) meals per month. You may elect to take additional meals in the Community Center at the prevailing charge which will be reflected on your monthly statement. If you are absent from the Community for a period of at least thirty (30) consecutive days, you may receive a meal credit equal to thirty (30) meals. You must provide us written notice at least one week in advance to receive the meal credit. The requirement to provide us written notice in advance does not apply if you are hospitalized.

(b) Tray Service

Tray service is available during minor short-term illnesses of fourteen (14) days or less to the Residence when approved by our Medical Director or his or her designee for an additional charge that will be reflected on your monthly statement.

(c) Private Dining Room

A private dining room is available to you for family gatherings or other special events subject to reservation and availability. Food service may be provided in the private dining room for an additional charge that will be reflected on your monthly statement.

(d) Guest Meals

Guest meals are available for your guests at an additional charge that will be reflected on your monthly statement.

Section 12.02 Other Services

(a) Housekeeping

We will provide light housekeeping services in your Residence bi-weekly at no additional charge. We will provide weekly linen changes at no additional charge. Once a year, we will provide heavy housekeeping services, which will include cleaning windows and moving furniture. You are responsible for maintaining your Residence in a clean and sanitary condition. Additional housekeeping services are available to you for an additional charge that will be reflected on your monthly statement.

(b) Local Transportation

We will provide you transportation to physicians, dentists, hospitals, shopping centers, banks and other points of common interest within ten (10) miles of our campus on a scheduled basis. For an additional charge that will be reflected on your monthly statement, if requested forty-eight (48) hours in advance, we will provide individual trips to physicians, dentists and hospitals located within ten (10) miles of our campus when scheduled and public transportation is not available.

(c) Activities

We will provide to all residents a planned schedule of social, cultural, educational, recreational and religious activities. We reserve the right to pass on to you the costs incurred in providing these programs, which may require special materials, admission fees, charter bus service or other outside expenses.

(d) Emergency Service

Each Residence includes an emergency call system which is monitored twenty-four (24) hours a day. We will promptly respond to any emergency call appropriately.

(e) Real Property Taxes

We will pay all real estate and other taxes assessed to the Community. We reserve the right to increase the Monthly Fee as a result of unexpected increases in real property taxes, subject to any required approvals of changes in the Monthly Fees or rating methodology by the Superintendent.

ARTICLE XIII. MEDICAL AND SURGICAL INSURANCE

Section 13.01 Your Obligation to Carry Health Insurance

You will maintain, at your own cost, Medicare Parts A and B and one supplemental health insurance policy that is approved by the Superintendent of the Department of Financial Services as Medicare Supplemental Insurance. You must furnish to us evidence of such coverage as we may from time to time request in order to ensure coverage for the cost of medical treatment for you and for medicine, drugs, prescribed therapy, co-payments, and the like.

Residents under the age of sixty-five (65) shall maintain, at their own cost, insurance coverage that is equivalent to Medicare and Medicare supplemental insurance and shall furnish to us evidence of such coverage as we may from time to time request. You are responsible to pay any costs of medicine, drugs, prescribed therapy, and copayments that are not covered by insurance. See Article XIV (Health Services) for greater detail.

Section 13.02 Violation of Your Obligation to Carry Health Insurance

If you do not maintain the required insurances, we shall acquire it on your behalf and charge you for the cost, which will be reflected on your monthly statement. You agree to reimburse us for the cost of such insurance. If we cannot purchase this insurance, we reserve the authority to adjust your Monthly Fee to fund the additional risk to the Community, subject to the approval of the Superintendent. If you fail to purchase or maintain the required insurances and we have not purchased such coverage, and we incur any expense which would have been covered by this insurance, we will charge the cost to you, which will be reflected on your monthly invoice.

Section 13.03 Our Right to Insurance Benefits

You agree to assign to us your right to benefits under the insurances you are required to maintain under this Contract and by New York State law. Such assignment allows us to be reimbursed for the cost of the covered services that we provide to you. If for any reason you do not effectively assign such benefits to us, we shall have the right to bill you the amount of the benefit we would have received had you effectively assigned such benefit to us.

ARTICLE XIV. HEALTH SERVICES

Section 14.01 Skilled Nursing and Assisted Living

The Community is associated with the Fay J. Lindner Residences, which is licensed to provide assisted living care, and the Gurwin Jewish Nursing and Rehabilitation Center, which is licensed to provide skilled nursing care.

Section 14.02 Physician

You have the right to be treated, at your option and your expense, by any physician you choose. Upon occupancy of a Residence, you must designate a physician of your choice as your attending physician. You must notify us of any change in the designation of your attending physician. The Medical Director of the Community is a physician licensed to practice medicine in the State of New York. At your own expense, you may engage the services of the Medical Director in the same manner that you would engage the services of any physician.

Section 14.03 Covered Continuing Care Services

(a) Assisted Living Care and Accommodations

In the event your physical or mental health changes so that, in the judgment of the Medical Director, you require placement in an assisted living residence, you are entitled to receive sixty (60) cumulative days of assisted living in, and agree to move to, the Fay J. Lindner Residences, without an increase in the then current Monthly Fee.

If you move to an assisted living facility other than the Fay J. Lindner Residences under circumstances not governed by Section 14.03(c) (Transfer to Another Institution) below, you are solely responsible for paying any costs or expenses associated with such facility.

After you have received the sixty (60) days of cumulative assisted living care you are entitled to under this Contract, you shall continue to pay your Monthly Fee to Fountaingate gardens and are responsible for paying the excess, if any, between the Monthly Fee and the private pay rate charged by Fay J. Lindner Residences.

(b) Skilled Nursing Care and Accommodations

In the event your physical or mental health requires skilled nursing care, you are entitled to receive sixty (60) cumulative days of skilled nursing care in, and agree to move to, the Gurwin Jewish Nursing and Rehabilitation Center, without an increase in the then current Monthly Fee. We are not responsible for any services rendered outside the Gurwin Jewish Nursing and Rehabilitation Center except as described below in 14.03(c) (Transfer to Another Institution).

Such nursing care accommodations shall be in a semi-private or a private room, depending upon availability, unless a private room is medically necessary. You must continue to pay the Monthly Fee while receiving the skilled nursing care provided under this Contract.

After you have received the sixty (60) days of cumulative skilled nursing care you are entitled to under this Contract, you shall continue to pay your Monthly Fee to Fountaingate gardens and are responsible for paying the excess, if any, between the Monthly Fee and the private pay rate charged by Gurwin Jewish Nursing and Rehabilitation Center.

(c) Transfer to Another Institution

If accommodations are not immediately available when needed, we will provide alternative accommodations to you at an off-site facility. You will be transferred back to the Fay J. Lindner Residences or Gurwin Jewish Nursing and Rehabilitation Center as soon as the needed accommodations become available.

It is possible that you may need specialized care which is beyond the capability of either the Fay J. Lindner Residences and the Gurwin Jewish Nursing and Rehabilitation Center. For example, such care would be required if you have been infected with a disease for which neither were licensed to provide care; you have become mentally or emotionally disturbed to the degree that your continued presence in the Community is either dangerous or detrimental to the health or safety of you or other residents; or your physical or mental condition materially changes so that you require services not regularly provided by either facility. If the Medical Director determines that your condition requires such specialized care, we may transfer you to an institution of our choosing in order to provide you such care.

While you are located in the off-site facility pursuant to the terms of this Section 14.03(c), your obligation to pay your Monthly Fee shall cease. Your obligation to pay your Monthly Fee shall recommence upon your transfer back to the Residence, or to the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center.

If you are located in an off-site facility, are receiving assisted living or skilled nursing care, and have not yet exhausted your sixty (60) cumulative days of such assisted living or skilled nursing care provided under this Contract, we will pay the excess, if any, between your then current Monthly Fee and the price of the care you receive at the off-site facility, until you have used all of the days of assisted living or skilled nursing care, as the case may be, you are entitled to under this Contract.

(d) No Substitution of Care

If you have exhausted your days of assisted living care provided under this Contract and continue to need such care, you may not substitute unused days of skilled nursing care. Similarly, if you have exhausted your days of skilled nursing care provided under this

Contract and continue to need such care, you may not substitute unused days of assisted living care.

Section 14.04 Hospital and Surgical Care

You may receive hospital and surgical services on an inpatient or outpatient basis at any facility of your choice and at your expense. If you are a resident of the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center, the decision of whether you must be transferred to a hospital shall be made by the Medical Director.

Section 14.05 Illness or Accident Away from Community

If you suffer an accident or become ill while away from the Community and you therefore require assisted living or skilled nursing care from another facility, you are responsible for the costs of such care and accommodations. After you return to the Community, we shall assume responsibility for providing you the assisted living or skilled nursing services required under the Contract as deemed necessary by the Medical Director. You are responsible for paying the Monthly Fee at all times, regardless of whether you are at another facility. You are solely responsible for transportation costs incurred in returning to the Community.

Section 14.06 Exclusions

In addition to the other costs to be paid by you under this Contract, you are solely responsible for payment for all prescription and non-prescription drugs, physician services (including your attending physician), use of physician specialists, hospitalizations, surgical services, refractions, eye glasses, contact lenses, hearing aids, dentistry, dentures, dental inlays, incontinence supplies, orthopedic appliances, podiatry, chiropractic services, treatment for alcohol or drug abuse, private duty nursing, durable medical equipment, physical, occupational and speech therapy, and diagnosis and therapy for psychiatric disorders. You are required to pay for these items regardless of whether they are covered by insurances you maintain. The items listed here are meant to serve as examples and are not an exhaustive list of exclusions.

ARTICLE XV. CHANGE OF ACCOMMODATION

Section 15.01 Change of Accommodation

If you desire to move to another Residence, you will be permitted to do so, subject to availability. If the Entrance Fee for the new Residence is greater than the Entrance Fee you have already paid, you must pay an additional Entrance Fee equal to the difference. No refund of any portion of the Entrance Fee will be given as a result of the transfer. Following the move, you will pay the then current Monthly Fee for the new Residence.

Section 15.02 Permanent Transfer

- (a) Decision to Permanently Transfer

When your health conditions require either permanent assisted living or skilled nursing care services, you will transfer to the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center or another facility if necessary. The Medical Director will make transfer decisions after assessing your physical and mental health or other conditions and consulting with you, your representative and your physician.

(b) Vacancy of your Residence

If two residents occupy a Residence and one of them is transferred to the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center or another facility, the remaining resident may continue to live in the Residence.

If two residents occupy a Residence and both are permanently transferred to the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center or another facility, we will make the Residence available for occupancy by others and your property shall be removed in accordance with Section 16.02 (Storage and Removal of Personal Property).

At all times, you are responsible for continuing to pay the Monthly Fee until such time as the Contract is rescinded or terminated under Article XIX (Rescission, Termination and Refunds). Neither resident will receive a refund of any portion of the Entrance Fee at the time of transfer.

(c) Reversal of Decision to Permanently Transfer

If you should recover and become able to live independently in the Community following a decision to permanently transfer you to the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center, you agree to assume residency in a Residence equivalent to the last Residence occupied, as soon as one becomes available. You shall be charged the then current Monthly Fee for the Residence previously vacated or the Monthly Fee for the new Living Accommodation, whichever is less. If you desire a different type of Residence, the terms of Section 15.01 (Change of Accommodation) apply.

Section 15.03 Changes in Occupancy

(a) Single Occupancy to Double Occupancy – Residents

If two Residents each occupying separate Residences request a transfer into one of the two Residences, the relocating Resident shall receive a refund for voluntary termination as set forth in Article XIX (Rescissions, Terminations and Refunds) and will be required to pay the Second Person Entrance Fee in effect on the date his or her original residency commenced. The Monthly Fee associated with the Residence will increase to account for double occupancy.

(b) Single Occupancy to Double Occupancy – Non-Residents

If you wish to have a non-resident move into your Residence, such non-resident may apply to become a Resident. Upon acceptance into the Community, the non-resident must pay the then current Second Person Entrance Fee and the Monthly Fee for the Residence shall increase to account for double occupancy.

If the non-resident does not meet the residency requirements then in effect, or does not apply to become a Resident, such non-resident may live in the Residence, subject to our prior approval and in accordance with our policies, and the Monthly Fee for the Residence shall increase to account for double occupancy. The non-resident is not entitled to receive any health services.

An occupying non-resident's compliance with the requirements imposed under this Section 15.03, Sections 3.04 and 19.02, and Articles VI (Non-Transferable), IX (Enforcement), XI (Your Residence and Community), XII (General Services), XVI (Rights and Obligations Concerning Property), XX (Your Inability to Pay), and XXII (Miscellaneous), and Resident's compliance with this Contract are each separate and necessary conditions of the right to occupy the Residence granted under this Section 15.03(b).

If the Resident dies or transfers to the Fay J. Lindner Residences or the Gurwin Jewish Nursing and Rehabilitation Center, a non-resident may either apply to become a Resident within sixty (60) days of such event or vacate the Residence in accordance with Section 16.02 (Removal and Storage of Property). A non-resident spouse may continue to live in the Residence until the Resident's Contract terminates in accordance with Article XIX (Rescission, Termination and Refunds). At that time, the non-resident spouse must vacate the Residence in accordance with Section 16.02 (Removal and Storage of Property).

(c) Double Occupancy to Single Occupancy

(i) If two Residents divorce or elect to separate, the following options are available:

- 1) If both residents choose to remain as Residents of the Community, one may remain in the Residence. No refund will be given to either Resident. The Resident remaining in the Residence shall pay the single occupancy Monthly Fee. The relocating Resident must execute a new Contract and pay the then current First Person Entrance Fee, less the Second Person Entrance Fee previously paid. The relocating Resident shall pay the single occupancy Monthly Fee for the new Residence.
- 2) If one Resident desires to terminate his or her Contract and leave the Community, the refund provisions of Article XIX (Rescissions, Terminations and Refunds) shall apply for both Residents and the Contract shall terminate. The remaining Resident may execute a new Contract and pay the single person

Entrance Fee in effect at the time of the original Contract. Such remaining Resident shall not be required to meet the then applicable admission criteria at the time such new Contract is executed.

- 3) If both Residents choose to terminate their Contract, the refund provisions stated in Article XIX (Rescissions, Terminations and Refunds) shall apply.
- (ii) If one of the two Residents of a Residence die, there will be no change in the remaining occupant's Residence and the Monthly Fee shall be reduced for single occupancy. No refund of any portion of the Entrance Fee will be made as a result of the demise of one of the occupants in a Residence with double occupancy.

ARTICLE XVI. RIGHTS AND OBLIGATIONS CONCERNING PROPERTY

Section 16.01 Insurance

You shall maintain automobile liability insurance in the amount of \$100,000/\$300,000 and uninsured motorist insurance in the amount of \$300,000 as long as you own or operate a motor vehicle. You shall also maintain tenant coverage in an amount sufficient to cover your personal property.

Section 16.02 Removal and Storage of Property

You or your estate will be responsible for promptly removing all of your furniture, possessions and property from the Residence upon your permanent transfer (see Section 15.02) or termination of the Contract. If removal of your property is not accomplished within sixty (60) days after termination of the Contract for any reason, we shall have the right, at your cost, to remove promptly all your property from the Residence and to store it on or off-site in our sole discretion. We shall be required to exercise only ordinary care to protect such property against theft or other loss. If the property is stored in a commercial warehouse we shall have no responsibility for it (including costs of storage) after storage has been accomplished. You will be responsible for all costs we incur under this provision. You will be responsible for paying the Monthly Fee during the time that your personal property remains in the Residence.

Section 16.03 Responsibility for Protection of Your Property

- (a) We shall not be responsible for the loss of any property belonging to you due to theft, fire, mysterious disappearance or any other cause, unless the care of such property is specifically accepted in writing by us. You shall have the responsibility, at your own expense, of providing any insurance you desire to protect against any such loss.
- (b) Furnishings within the Residence shall be provided by you, except as stated in Article XI (Your Residence and Community). Your furnishings and personal property shall not interfere with the health, safety and general welfare of the Community.

Section 16.04 Rights to Property

The rights and privileges granted to you by this Contract do not include any right, title or interest in any part of the personal property, land, buildings, and improvements owned or administered by us. Your rights are for services, with a right of occupancy subject to all of the terms and conditions of this Contract.

Section 16.05 Our Right to Enter

You recognize and accept our right and responsibility to enter the Residence in order to carry out the purposes and intent of this Contract. The purposes for which such entry may be made include but are not limited to (a) response to the medical alert system, (b) response to the fire alarm system, (c) response to a report that you are missing or have not responded to a call, and (d) with your specific written permission, to perform scheduled housekeeping and maintenance tasks.

ARTICLE XVII. CONDITIONS OF RESIDENCE

Section 17.01 Designation of Legal Guardianship

You agree to appoint either a legal guardian or power of attorney, and health care proxy prior to signing this Contract. Your legal guardian or agent under the power of attorney should be specifically granted the authority to carry out the terms of this Contract on your behalf in the event of your incapacity.

We request that you provide us copies of these documents, together with the name and address of your attorney, executor, the individual designated as your personal representative and persons to be notified in case of an emergency on or before the Occupancy Date. In the event these documents are updated while in residence, you should provide copies to us at that time.

If you become unable to properly care for yourself or your property and your legal guardian or power of attorney is unavailable, is unwilling to serve or we cannot communicate with such person despite our good faith efforts, then you authorize us to initiate legal guardianship proceedings as provided by law at your expense. Your inability to care for yourself will be determined by the Medical Director after consultation with you, your representative and your physician.

No employee or board member of Fountaingate Gardens or an employee of any firm providing management services to us or a family member of any such employee or board member will be eligible to become an attorney-in-fact or legal guardian for you.

Section 17.02 Occupancy of Residence

No one other than the Resident named in this Contract shall have a right of occupancy in the Residence without our prior written consent, unless otherwise permitted pursuant to guest policies we promulgate from time to time.

Section 17.03 Responsibility to Maintain Residence

You agree to maintain the Residence in a clean, sanitary and orderly condition so that the Residence, when surrendered, shall be in as good a condition as at the commencement of occupancy, normal wear and tear accepted.

Section 17.04 Your Compliance with this Contract

By signing this Contract, you agree to comply with all of the terms in this Contract and all of the present and future rules, policies and procedures adopted by us to ensure the convenience, comfort and safety of the Community.

You agree to make all payments required under this Contract promptly and as required by this Contract.

You agree to cooperate with us by signing forms and providing information necessary for insurance, regulatory and other purposes. This may require you to disclose personal information about yourself.

Section 17.05 Financial Representations

The financial information provided in your application for admission, in documents subsequently requested by us, or with your request for financial assistance, must not contain any material misrepresentations or omissions. You warrant that the financial information you have submitted to us, and will resubmit upon request concerning your finances is true, correct, complete and accurate in all materials respects and that there are no material omissions.

By signing this Contract, you acknowledge that we have relied on your financial information in preparing this Contract and the services that we agree to provide to you. Any substantial transfer of your assets will jeopardize your ability to receive the care you need from us and the person to whom you transferred your assets may be subject to legal action.

Section 17.06 Mismanaging your Assets

You agree to not impair your ability to meet your financial obligations under this Contract by willfully mismanaging your assets. You represent and warrant that you have not, nor do you intend to, gift or loan your property in contemplation of this Contract and our obligations to you. You acknowledge that any substantial transfer of your assets without receiving adequate payment in exchange would be mismanagement of your assets. Any such transfers that render you unable to make the payments to us required under this

Contract or that disqualifies you for Medicaid or SSI status for any period of time will be considered fraudulent by us. You agree to pay reasonable collection and legal fees should it become necessary for us to enforce our legal rights against you, your representative or estate, or any person to whom you make a gift or transfer your assets under circumstances we deem fraudulent.

It is your responsibility, and the responsibility of those who help you, to use your assets and income to pay the costs for your residence and health care under this Contract. Misrepresentation of your ability to pay, your assets or debts, the misuse or diversion of your financial resources, or the transfer of your assets for inadequate consideration, that renders you unable to pay costs as they are billed will have serious consequences for you and the Community. We would treat such actions as a material breach of this Contract. We may take legal action against you and those that help you in misusing or transferring assets in violation of this Contract in order to enforce our rights under this Contract.

If your Contract is for a double occupancy Residence, each of you hereby agrees to sufficiently ensure the financial security of the surviving occupant upon the death of the other, so that such surviving occupant may fully perform his or her financial obligations under the Contract.

ARTICLE XVIII. RESIDENTS RIGHTS

Section 18.01 Right to Occupy the Residence

Your right to occupy the Residence shall exist and continue during your lifetime, subject to the terms and conditions in this Contract. Your right to occupy the Residence under this Contract is not assignable and no such rights or benefits under this Contract shall inure to your heirs, assigns or representatives.

Section 18.02 Residents Council

As a part of the Fountaingate community, a Residents Council provides an opportunity for members to provide input and represent the residents. You shall have the right to participate as a member of a Residents Council and to participate in electing the officers of the Residents Council.

The Residents Council has the right to engage in group activities for any lawful purpose; use Community facilities to conduct group meetings held for any lawful purpose; to obtain the current copies of the Disclosure Statement, Annual Report, audit reports and final results of any surveillance activities pertaining to the Community.

We will meet with the Residents Council no less than quarterly and will meet with the entire resident population no less than annually to discuss and explain subjects such as our financial position, programs and policies and other matters.

Section 18.03 Pets Policy

You have the right to have small domestic pets in the Residence. Your pet may not be a nuisance to other residents and must be properly cared for at all times. Pets are not permitted in the Community Center.

Section 18.04 Guest Privileges

You have the right to have guests visit the Residence. Our explicit permission is required if a guest stay exceeds fourteen (14) consecutive days. You are responsible for the conduct of your guests. The only charge for such guests is for meals in the dining room.

Section 18.05 Change in Law

If changes are made to any of the statutes or regulations applicable to this Contract, we will modify the Contract to conform to such changes.

Section 18.06 Structural Changes in the Residence

You may make structural or other physical changes to the Residence only upon your receipt of our prior written approval. You are exclusively responsible for the costs of such structural or other physical changes and the costs of any subsequent restoration of the Residence to its original condition. You may only use materials and workers approved and supervised by us.

ARTICLE XIX. RESCISSION, TERMINATION AND REFUNDS

Section 19.01 Prior to Occupancy

(a) Automatic Right of Rescission

You may rescind this Contract by providing written notice to us within 3 days of executing this Contract. We will refund to you all of the Entrance Fee you paid to us within three (3) days of our receipt of your written notice of rescission.

(b) Rescission Due to Death or Deterioration of Health or Incapacity of Self-Maintenance

Your Contract will be automatically deemed rescinded if you die or your physical or mental condition changes to the extent that, in our sole opinion, you (for a single occupancy Residence) or both Residents (for a double occupancy Residence) are incapable of self-maintenance at the time of occupancy or if you fail to provide to us satisfactory evidence that you (for a single occupancy Residence) or both Residents (for a double occupancy Residence) are capable of self-maintenance. If one of two Residents dies or his or her physical or mental condition changes to the extent that, in our sole opinion, such Resident is incapable of self-maintenance at the time of occupancy, the remaining Resident may either elect to continue under the terms of the Contract, rescind the Contract, or rescind the Contract and apply to enter into a new Contract. We may require additional

information in evaluating your new application. You will not need to pay another Application Fee.

Rescinding the Contract under this Section 19.01(b) entitles you to a refund of the Entrance Fee you paid to us plus any accrued interest, less those costs, if any, specifically incurred by us at your request and set forth in writing in a separate addendum signed by both of us. Your refund will be paid to you within thirty (30) days after resale of the Residence, but in no event later than one year after we receive your written notice of rescission.

(c) Rescission Based on Change in Financial Condition

If your financial condition changes to the extent that you become unable to meet the financial requirements of the Contract, either of us may rescind this Contract upon sixty (60) days prior written notice to the other. **Please see Article XX (Your Inability to Pay) for additional details.**

We will refund to you all of the Entrance Fee you paid to us plus any accrued interest, less those costs, if any, specifically incurred by us at your request and set forth in writing in a separate addendum signed by both of us. Your refund will be paid to you within thirty (30) days after a new resident has paid the then current Entrance Fee for the Residence, but in no event later than one year after we receive your written notice of rescission.

(d) Voluntary Rescission

You may rescind this Contract for any reason other than those listed under this Section, by providing thirty (30) days prior written notice to us.

We will refund to you all of the Entrance Fee you paid to us, less the actual cost of any services we have rendered to you and the actual cost of refurbishing your Residence for occupancy by another resident. Your refund will be paid to you within thirty (30) days after a new resident has paid the then current Entrance Fee for the Residence, but in no event later than one year after we receive your written notice of rescission.

Section 19.02 After Occupancy

(a) Voluntary Termination

After your Occupancy Date, you may terminate this Contract for any reason by giving us thirty (30) days advance written notice of the Termination Date. The Termination Date shall be the thirty-first (31st) day after we receive your written notice. You are responsible for paying the Monthly Fee for the Residence in accordance with Section 16.02 (Removal and Storage of Property).

(b) Termination by Death

When you (for a single occupancy Residence) or both of you (for a double occupancy Residence) die, your estate is responsible for paying the then current Monthly Fee and removing your personal property in accordance with Section 16.02 (Removal and Storage of Property) and, thereafter, this Contract shall terminate.

(c) Termination by Fountaingate Gardens

We shall have the right to terminate this Contract at any time following the Occupancy Date for “just cause”, which includes any one or more of the following:

1. failure to pay your Entrance Fee;
2. failure to pay your Monthly Fees or other charges when due as a result of your willful mismanagement of assets or income needed for payment of the Monthly Fees (**see Article XX for additional information regarding willful mismanagement**);
3. material misrepresentations or omission in connection with your application for admission (particularly including statements about your health or financial condition);
4. any acts of fraud committed by you in connection with this Contract; or
5. if your continued presence has become a threat to your life, health or safety or to that of other residents or persons in the Community.

(d) Refund for Termination Within First Ninety (90) Days of Occupancy

We will refund all of your Entrance Fee, less those costs specifically incurred by us and the costs of preparing the Residence for occupancy by another.

(e) Refund for Termination After First Ninety (90) Days of Occupancy

The Entrance Fee refund will decline by an initial four percent (4%) as an administrative fee, and two percent (2%) per month after the Date of Occupancy for a period of up to twenty-three (23) months. At that time, the refundable portion of the Entrance Fee will be fifty percent (50%) of the Entrance Fee you paid.

(f) General

You authorize us to satisfy any outstanding financial obligations due to us out of your refund. These outstanding financial obligations may include any unpaid Monthly Fees or other charges incurred under this Contract and property damage for which you are responsible.

We shall pay to you your refund, less any additional payments required hereunder, within thirty (30) days after a new resident has paid the then current Entrance Fee for the Residence, but no later than one year after the date of termination.

Section 19.03 New Contract

If you have terminated your Contract and later wish to enter into a new Contract, you must complete the full application process, including providing us all required medical and financial information. We will consider this application as we would any other application, including information we have from your prior application and/or occupancy. The outcome of your application shall be made in our sole discretion.

ARTICLE XX. YOUR INABILITY TO PAY

Section 20.01 Our Responsibility

It is our policy that if the sole reason for your non-payment of your financial obligations to us, is beyond your control and not due to your willful financial mismanagement, we will review the matter with you. In our sole discretion, we may partly or wholly subsidize your Monthly Fee based on our financial assistance policies. Residents who wish to apply for financial assistance will be asked to provide financial and tax information. Any such discussion and determination shall be regarded as a confidential transaction between us, except for reports required to be made to financial institutions lending money to us or to regulatory or other governmental bodies. All determinations we make concerning the granting or continuing of subsidizes shall be final and shall be binding on you.

Section 20.02 Repayment of Financial Assistance

How and whether we will seek repayment of any financial assistance given to you will be defined in our financial assistance policies. We affirmatively reserve the right to recover any assistance given to you from the refundable portion of your Entrance Fee or, to the extent a deficiency remains, from your estate.

Section 20.03 Your Responsibility

It shall be a condition of receiving financial assistance from us that you represent that you have not made any gift or other transfer of money or personal property in contemplation of the execution of this Contract, or subsequently, which would impair your ability or your estate's ability to satisfy the financial obligations under this Contract. If your income is found to be inadequate to meet your responsibilities to us and to pay personal and incidental expenses, you will make every effort to obtain assistance from available resources and, if you can qualify, to take the necessary steps to obtain County, State or Federal aid or assistance.

If your Monthly Fee is subsidized wholly or in part by us, you will notify us of any sale or transfer of property and you agree, from time to time at our request, to supply us with financial statements and copies of your tax returns. Should we determine that you are willfully mismanaging your assets, we may terminate any subsidy you are receiving from us and may terminate this Contract pursuant to Section 19.02(c) (Termination by Fountaingate Gardens). At our discretion, you may be required to move to the smallest residence available.

ARTICLE XXI. DISPUTE RESOLUTION

It is our experience and our expectation that residents and staff, working together in good spirit, generally will be able to resolve issues successfully and easily. Should there be an instance in which a problem is not resolved satisfactorily, you are invited to ask for assistance from the appropriate supervisor, department head, or area administrator, in that order. The Residents Council can also serve as an avenue for the discussion and resolution of issues. Should satisfactory resolution still not be achieved, the matter may be referred to the Executive Director. In deciding the issue, the Executive Director will review our policies and procedures with you and any representative you wish to include. You may present any information concerning the issue. The Executive Director will consult with appropriate staff or seek other input as necessary and, after considering all of the information presented, shall make a decision.

You may request the Board of Directors to review the matter after the Executive Director's decision. The Board, or its designees pursuant to our policies promulgated from time to time, will review all relevant information, including any information presented by you, and will decide whether to direct the Executive Director to reconsider the issue. The Board's determination will be final.

ARTICLE XXII. MISCELLANEOUS

Section 22.01 Governing Law

This Contract shall be construed and enforced under the laws of the State of New York.

Section 22.02 Authority

Both of us represent that we are authorized to enter into this Contract. No officer, trustee, agent or employee of Fountaingate Gardens shall be personally liable under this Contract for any reason.

Section 22.03 Right to Delegate

You understand that any authority or responsibility given by this Contract to the Executive Director or Medical Director may be delegated to any one or more of our staff.

Section 22.04 Policies, Procedures and Rules, Notices

We have the right to adopt policies, procedures and rules regarding the operation of the Community consistent with the provisions of this Contract. You agree to observe these policies, procedures and rules. Notices, when required by the terms of the Contract, shall be sufficient if given to us at our administrative office and to you at the address you provide until you occupy the Residence, and thereafter at the Residence.

Section 22.05 Differences Among Contracts

We reserve the right to enter into contracts with other residents or non-residents, which may contain terms different from those contained in this Contract. Despite these differences, this Contract alone sets forth your rights and obligations with respect to your care and Residence. You shall not be deemed the third party beneficiary of any other agreement between us and a resident or non-resident.

Section 24.06 Entire Contract

This Contract constitutes the entire Contract between us and includes all addenda, and other documents and statements provided to you or by you and/or your financial and/or healthcare providers on which we have based our decision to admit you. These documents are hereby incorporated by reference. Knowing that we will rely on your statements made in these documents, you represent that all such statements are true and complete. In the case of any ambiguity between documents, this Contract shall govern.

[signature page follows]

ACCEPTANCE

You and we agree that you have been accepted as a Resident. By your signature below you accept the terms of this Contract.

FIRST PERSON RESIDENT

Date

SECOND PERSON RESIDENT (IF ANY)

Date

Gurwin Independent Housing, Inc.

By: _____
Representative

Date

ADDENDUM A – OPTIONAL SELECTIONS

To be developed once Design of the project is completed. This Addendum will detail Optional Selections of residents for fixtures, flooring, countertops and other furnishings offered as part of a package of Options and Upgrades.