

BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Agreement") is entered into by and between **Lifespace Communities, Inc.** ("Covered Entity") and Business Associate, _____, ("Associate"). This Agreement shall supplement and is made a part of the contract dated _____, ("Contract") between the parties. This Agreement shall be effective as of the effective date shown below ("Effective Date").

RECITALS

- A. Covered Entity wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. Covered Entity and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule, and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Agreement.

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1 Definitions.

- 1.1 **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- 1.2 **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- 1.3 **Business Associate** shall have the meaning given to such term under the Privacy Rule, including, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 CFR Section 160.103.

- 1.4 Covered Entity** shall have the meaning given to such term under the Privacy Rule, and the Security Rule, including, but not limited to, 45 CFR Section 160.103.
- 1.5 Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.6 Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.7 Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- 1.8 Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- 1.9 Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- 1.10 Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164 Subparts A & E.
- 1.11 Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.304].
- 1.12 Protected Information** shall mean PHI provided by Covered Entity to Associate or created, maintained, received, or transmitted by Associate on Covered Entity's behalf.
- 1.13 Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- 1.14 Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

1.15 Unsecured PHI shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2 Obligations of Associate.

2.1 Permitted Uses. Associate shall use Protected Information only for the purpose of performing Associate's obligations under the Contract and as permitted or required under the Contract and Agreement, or as required by law. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity, except that Associate may use Protected Information (i) for the proper management and administration of Associate, (ii) to carry out the legal responsibilities of Associate, (iii) as required by law, or (iv) for Data Aggregation purposes relating to the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(0)]

2.2 Permitted Disclosures. Associate shall disclose Protected Information only for the purpose of performing Associate's obligations under the Contract and as permitted or required under the Contract and Agreement, or as required by law. Associate shall not disclose Protected Health Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Associate may disclose Protected Information as necessary (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate, (iii) as required by law, or (iv) for Data Aggregation purposes relating to the Health Care Operations of Covered Entity.

To the extent that Associate discloses Protected Information to a third party for purposes set forth above in 2.2(i), 2.2(ii), and 2.2(iii), Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Associate of any Breaches, suspected Breaches, Security Incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.m of the Agreement, to the extent it has obtained knowledge of such occurrences. [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

2.3 Prohibited Uses and Disclosures. Associate shall not use or disclose PHI to any person, entity, or organization outside the United States. Specifically, Associate shall not outsource any PHI to any person or organization outside the continental United States.

Associate shall indemnify, defend, and hold harmless Covered Entity, and its officers, directors, employees, agents, and representatives (collectively "Covered Entity"), against all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, accounting fees, and expert witness fees) incurred by Covered Entity ("Losses"), known or unknown, contingent or otherwise, directly or indirectly arising from or related to the disclosure of PHI to any person, entity or organization outside the United States.

Associate shall not use or disclose PHI other than as permitted or required by the Contract and Agreement, or as required by law. Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Associate shall not disclose Protected Information to a health plan for payment or Health Care Operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or services to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by Covered Entity to Associate for services provided pursuant to the Contract.

Covered Entity shall notify Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Associate's use or disclosure of protected health information.

2.4 Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Section 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 Section 164.308(b)]. Associate shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931] Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

2.5 Associate's Subcontractors and Agents. Associate shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of Covered Entity, agree in writing to the same restrictions and conditions that apply to Associate with respect to such Protected Information and implement the safeguards required by paragraph 2.4 above with respect to Electronic PHI [45 C.F.R. Sections 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

2.6 Access to Protected Information. This provision will be effective only when Associate maintains a Designated Record Set on behalf of Covered Entity. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) Business days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [California Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 CFR Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Associate maintains Protected Information in electronic format, Associate shall provide such information in electronic format as necessary to enable Covered Entity to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.

2.7 Amendment of PHI. This provision will be effective only when Associate maintains a Designated Record Set on behalf of Covered Entity. Within ten (10) business days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate and its agents and subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment or other documentation to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify Covered Entity in writing within five (5) business days of the request and of any approval or denial of amendment of Protected Information maintained by Associate or its agents or subcontractors [45 C.F.R. Sections 164.504(e)(2)(ii)(F)].

2.8 Accounting Rights. Within ten (10) business days of notice by Covered Entity to Associate of a request for an accounting of disclosures of Protected Information for which Covered Entity is required to account to an individual, Associate and its agents and subcontractors

shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528 and the HITECH Act, including, but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or Health Care Operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Associate maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the

basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) business days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Sections 2.2 of this Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G), 164.414(a), 164.528(a)(3), 165.528, and 164.530(j)(2)]. The provisions of this subparagraph shall survive the termination of this Agreement.

2.9 Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity (with reasonable notice) and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Associate's compliance with the HIPAA [45 C.F.R. Sections 164.504(e)(2)(ii)(I)]. To the extent permitted by law, Associate shall provide to Covered Entity a copy of any Protected Information and other documents and records that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

2.10 Disclosure of Minimum Necessary PHI. Associate, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Sections 164.514(d)] Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

2.11 Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

2.12 Retention of Protected Information. Notwithstanding Section 3.3 of this Agreement, Associate and its agents and subcontractors shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2.8 of this Agreement for a period of six (6) years after termination of the Contract 45 C.F.R. 164.414(a); 45 C.F.R. 164.528(a)(3); and 45 C.F.R. 164.530(j)(2).

2.13 Notification of Breach. Associate shall notify Covered Entity within two (2) business days of any Breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by Associate or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose Unsecured PHI provided by Covered Entity to Associate or created, maintained, received, or transmitted by Associate on Covered Entity's behalf, has been, or is reasonably believed by the Associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that Covered Entity is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. Associate shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

2.14 Breach Pattern or Practice by Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if Associate knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement, the Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Associate must terminate the Agreement or other arrangement if feasible. Associate shall provide written notice to Covered Entity of any pattern of activity or practice of a subcontractor or agent that Associate believes constitutes a material breach or violation of the subcontractor or agent's obligations

under the Agreement or other arrangement within five (5) business days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

2.15 Audits, Inspection and Enforcement. Within ten (10) business days of a written request by Covered Entity, Associate and its agents and subcontractors shall allow Covered Entity or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether Associate has complied with this Agreement or maintains adequate security safeguards; provided, however, that (i) Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Agreement. Associate shall notify Covered Entity within five (5) business days of learning that Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

2.16 Obligations Under Subpart E. To the extent Associate is to carry out one or more of Covered Entity's obligations(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

2.17 Indemnification. Associate shall indemnify, defend, and hold harmless Covered Entity, and its officers, directors, employees, agents, and representatives (collectively "Covered Entity"), against all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, accounting fees, and expert witness fees) incurred by Covered Entity ("Losses"), known or unknown, contingent or otherwise, directly or indirectly, arising out of or in connection with any (a) unauthorized use or disclosure of PHI, (b) failure in security measures affecting PHI; or (c) other material breach of the terms of this Agreement by Associate or any person or entity under Associate's control. Indemnification is conditioned upon Covered entity notifying Associate in writing promptly upon learning of any claim for which indemnification may be sought hereunder, and tendering the defense of such claim to

Associate. Associate will not be required to indemnify Covered Entity if any claim is settled without Associate's written consent.

3 Termination.

- 3.1 Material Breach.** A breach by Associate of any material provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of the Contract. Associate will have 10 business days to cure such breach. In the event Associate does not cure the breach, Covered Entity retains the right to immediately terminate the contract. [45 C.F.R. Section 164.504(e)(2)(iii)]
- 3.2 Judicial or Administrative Proceedings.** Covered Entity may terminate this Contract, effective immediately, if (i) Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- 3.3 Effect of Termination.** Upon termination of this Contract for any reason, Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Associate or its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Associate shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If Covered Entity elects destruction of the PHI, Associate shall certify in writing to Covered Entity that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- 3.4 Limitation of Liability.** Any limitation of liability in the Contract shall not apply to damages related to a Breach of Associate's privacy or security obligations under the Agreement.
- 3.5 Disclaimer.** Covered Entity makes no warranty or representation that compliance by Associate with this Agreement, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

4 Amendment.

- 4.1 Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. Covered Entity may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section or (ii) Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.
- 4.2 Litigation or Administrative Proceedings.** Associate shall notify Covered Entity within five (5) business days of any litigation or administrative proceedings commenced against Associate or its agents or subcontractors related to violations of HIPAA, the HITECH Act, the HIPAA regulations, or other state or federal laws relating to the security and privacy of health information. In addition, Associate shall make itself and any subcontractors, employees and agents assisting Associate in the performance of its obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the HIPAA regulations, or other state or federal laws relating to security and privacy, as a result of a breach of this Agreement by Associate or its subcontractors, employees or agents, except where Associate or its subcontractors, employees or agents are a named adverse party.
- 4.3 No Third Party Beneficiaries.** Nothing express or implied in this Contract or any addendum thereto is intended to confer, nor shall anything herein confer, upon any

person other than Covered Entity, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- 4.4 Interpretation.** The provisions of this Agreement shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Agreement. This Agreement and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations, and other applicable state and federal laws related to security and privacy. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the HIPAA regulations, and other applicable state and federal laws related to security and privacy.
- 4.5 Notices/Supplying Information.** Any notices to be given to a Party must be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below. Each Party may change its address and that of its representative for notice in the manner herein provided:

IF TO COVERED ENTITY

Lifespace Communities, Inc.

Attn: SVP and General Counsel

Street Address: 4201 Corporate Drive

City/State/Zip: West Des Moines, Iowa 50266

IF TO ASSOCIATE:

Company Name: _____

Attn: _____

Street Address: _____

City/State/Zip: _____

- 4.6 Governing Law/Jurisdiction/Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa. All claims and causes of action arising from this Agreement shall be brought in the federal or state court located in Polk County, Iowa or in a United States District Court located in the Southern District of Iowa.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement and the Effective Date shall be as of the _____ day of _____, _____.

COVERED ENTITY

Lifespace Communities, Inc.

By:

Print Name:

Title:

Date:

BUSINESS ASSOCIATE

By:

Print Name:

Title:

Date:
