

RECEIVED
JUN 04 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleas of Beaufort County, South Carolina
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-199666

Elizabeth O'Meara,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Yvonne Carrie Pruett,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Janet Sue Scheerle,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

CONSOLIDATED RECORD ON APPEAL

INDEX

PAGE

As to Elizabeth O'Meara:

ORDERS

Order Denying Motion to Reconsider, filed September 20, 2011 1

Order Denying Defendants, Brookdale Senior Living, Inc. and Southern
Assisted Living, LLC's Motion to Dismiss and Compel Arbitration, filed
August 19, 2011.....2

PLEADINGS

Complaint, filed April 6, 2011 8

Amended Complaint, filed April 20, 2011 21

MOTIONS

Motion to Dismiss and Compel Arbitration with Exhibits A and B, filed
June 6, 2011 35

Exhibit A - Residency Agreement.....37

Exhibit B - Affidavit of Timothy Cesar, dated June 2, 2011.....66

Memorandum in Opposition to Defendants, Brookdale Senior Living,
Inc. and Southern Assisted Living, LLC's Motion to Dismiss and
Compel Arbitration, with Exhibits 1 through 3, dated June 21, 2011.....71

Exhibit 1 - Power of Attorney 78

Exhibit 2 - *Timms v. Greene*, 301 S.C. 469, 427 S.E.2d 642
(1993) 80

Exhibit 3 - Unpublished Order, *Schwartz v. Integrated Health
Services at Drift*, 2001 WL 35988562 (S.C. Com. PL.) 83

Memorandum in Support of Motion to Dismiss and Compel
Arbitration with Exhibit C and Exhibit D, dated June 22, 2011.....87

Exhibit C - North Carolina Secretary of State Record for
Southern Assisted Living, LLC.....128

Exhibit D - Unpublished Opinion, *Oesterle v. Atria Management
Co., LLC*, 2009 WL 2043492 (D. Kan.) 130

Motion to Reconsider with Exhibit A, filed September 6, 2011	141
Exhibit A – Affidavit of Timothy Cesar, dated September 1, 2011.....	145

As to Yvonne Carrie Pruett:

ORDERS

Order Denying Motion to Reconsider, filed September 20, 2011	149
Order Denying Defendants, Brookdale Senior Living, Inc. and Southern Assisted Living, LLC’s Motion to Dismiss and Compel Arbitration, filed August 19, 2011.....	151

PLEADINGS

Complaint, filed April 13, 2011	156
Amended Complaint, filed September 24, 2012	170

MOTIONS

Motion to Dismiss and Compel Arbitration with Exhibits A and B, filed June 6, 2011	188
Exhibit A - Residency Agreement.....	190
Exhibit B - Affidavit of Timothy Cesar dated June 2, 2011	221
Memorandum in Opposition to Defendants, Brookdale Senior Living, Inc. and Southern Assisted Living, LLC’s Motion to Dismiss and Compel Arbitration, with Exhibits 1 and 2, dated June 21, 2011	226
Exhibit 1 – <i>Timms v. Greene</i> , 301 S.C. 469, 427 S.E.2d 642 (1993);	232
Exhibit 2 – Unpublished Order, <i>Schwartz v. Integrated Health Services at Drift</i> , 2001 WL 35988562 (S.C. Com. PL.).	235
Memorandum in Support of Motion to Dismiss and Compel Arbitration with Exhibit C and Exhibit D, dated June 22, 2011	239
Exhibit C – North Carolina Secretary of State Record for Southern Assisted Living, LLC	283
Exhibit D – Unpublished Opinion, <i>Oesterle v. Atria Management Co., LLC</i> , 2009 WL 2043492 (D. Kan.)	285

Motion to Reconsider with Exhibit A, filed September 6, 2011	296
Exhibit A – Affidavit of Timothy Cesar, dated September 1, 2011.....	299

As to Janet Sue Scheerle:

ORDERS

Order Denying Defendants, Brookdale Senior Living, Inc. and Southern Assisted Living, LLC’s Motion to Dismiss and Compel Arbitration, filed October 28, 2011	304
Order Denying Defendants, Brookdale Senior Living, Inc. and Southern Assisted Living, LLC d/b/a Carolina House of Hilton Head’s Motion to Dismiss and Compel Arbitration on Amended Complaint, filed September 19, 2012.....	311

PLEADINGS

Complaint, filed June 24, 2011	316
Amended Complaint, filed June 27, 2012	330

MOTIONS

Motion to Dismiss and Compel Arbitration with Exhibits A and B, filed August 11, 2011	347
Exhibit A - Residency Agreement.....	349
Exhibit B - Affidavit of Timothy Cesar signed August 9, 2011.....	367
Motion to Reconsider Or to Alter or Amend the Judgment, filed November 15, 2011	372
Brookdale Defendants’ Renewed Motion to Dismiss, filed July 2, 2012.....	377
Certificate of Counsel	402

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-070-16/0

Elizabeth O'Meara vs. Brookdale Senior Living Inc, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 12(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

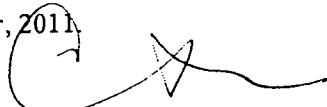
2011 SEP 20 AM 10:04
BEAUFORT COUNTY, S.C.
CLERK OF COURT

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Defendant Brookdale Senior Living's Motion to Reconsider Order, is respectfully denied without a hearing.

Dated at Beaufort, South Carolina, this 20 day of September, 2011.



PRESIDING JUDGE - Carmen T. Mullen

This judgment was entered on the 20 day of September 2011, and a copy mailed first class this 20 day of September, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Kelly McPherson Jolley McNair Law Firm, PA
PO Drawer 3 Hilton Head Island, SC 29938

Manton M Grier, Jr. Nexsen Pruet, LLC
PO Drawer 2426 Columbia, SC 29202

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

Jamie Thompson

Jerri Ann Roseneau - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

(Jury Trial Requested)

ORDER DENYING DEFENDANTS,
BROOKDALE SENIOR LIVING, INC.
AND SOUTHERN ASSISTED LIVING,
LLC'S MOTION TO DISMISS AND
COMPEL ARBITRATION

CLERK OF COURT
AUG 19 PM 4:06

This matter is before me on Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC's (collectively the "Defendants") Motion to Dismiss and Compel Arbitration on the claims asserted by Plaintiff Elizabeth O'Meara ("Plaintiff" or "Mrs. O'Meara"). A hearing was held on June 14, 2009 at 11 a.m. in which I heard oral arguments from Defendants' counsel, Manton R. Grier, Jr., and Plaintiffs' counsel, Kelly M. Jolley.

The basis for Defendants' Motion is arbitration language found in the arbitration provision contained in the Residency Agreement between Elizabeth O'Meara and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Carolina House"), signed by Mrs. O'Meara's daughter Julie Stanton on September 30, 2008. Mrs. O'Meara opposed this motion and filed an opposing memorandum with exhibits, and Defendants filed a memorandum in support of the motion. Plaintiff opposed enforcement of the arbitration clause found in the Residency Agreement on four grounds: (1) it is not binding pursuant to the South Carolina Arbitration Act, S.C. Code Section 15-48-10(b), (2) the Federal Arbitration Act (hereinafter "FAA") does not apply to this action because the Residency Agreement does not involve

interstate commerce, (3) the arbitration and limitation of liability clauses contained in the Residency Agreement are unconscionable, and (4) no one with the authority to bind Elizabeth O'Meara to arbitration executed the Residency Agreement on her behalf and discovery would be required to demonstrate any such authority. The Court is persuaded by Plaintiff's arguments opposing the Motion to Compel Arbitration and accordingly denies Defendants' Motion to Dismiss and Compel Arbitration.

During the hearing on this Motion, the parties conceded that arbitration cannot be compelled under the South Carolina Arbitration Act in this matter because Mrs. O'Meara's claims all arise out of her alleged personal injury. S.C. Code Ann. Section 15-48-10. Defendants contend that the FAA preempts the South Carolina state statute. However, I find that the Residency Agreement between Elizabeth O'Meara and Carolina House does not involve interstate commerce. Therefore, this case is not subject to the FAA. The South Carolina Supreme Court in *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) held that the FAA was inapplicable to a similar contract for patient and residency services. The Court explained that the analysis must focus on the contract between the parties, and whether that contract involves interstate commerce. The Residency Agreement here is a contract for basic services – accommodations, meals, utilities, housekeeping, laundry and recreation. The provision of these contractual services to Mrs. O'Meara at the Carolina House facility in Hilton Head does not involve interstate commerce. Moreover, the Affidavit of Timothy J. Caesar attached to Defendants' Motion does not contain any facts from which one could conclude that any of the basic services included in the contract between Mrs. O'Meara and Carolina House involve interstate commerce.

Defendants argued that *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) and *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995) changed the analysis previously supported in *Timms*. However, these cases clarify that a transaction occurring via a

contract must in fact involve interstate commerce to enforce an arbitration provision in the contract. Neither case alters our Supreme Court's holding in *Timms* that arbitration cannot be compelled pursuant to the FAA when the underlying transaction does not involve interstate commerce. The Residency Agreement does not involve interstate commerce and Defendants' Motion to Dismiss and Compel Arbitration must be denied.

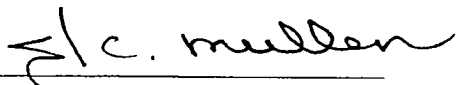
Even if the Residency Agreement did involve interstate commerce so as to bring it under the purview of the FAA, I find that the arbitration and limitation of liability clauses in the Residency Agreement are unconscionable and should be struck in their entirety from the contract. Among other provisions, the arbitration and limitation of liability clauses in the Residency Agreement significantly restrict discovery, limit compensatory damages, and prohibit punitive damages. Both the "Arbitration Provision" (V.A.) and the "Limitation of Liability Provision" (V.B.) are included in Section V. of the Residency Agreement. Subsection V.A(13) incorporates by reference the Limitation of Liability Provision into the Arbitration Provision. Taken together, these provisions restrict discovery, including a limitation on depositions to only those of experts, and limits liability for any "claims by, or on behalf of, a Resident ... arising out of the care or treatment received by the Resident...." For example, all "[n]et economic damages" awarded must be "offset by any collateral source payments such as payments made by medical insurance." Additionally, the provisions limit noneconomic damages, including pain and suffering, to "a maximum of \$350,000.00", prohibit payment of "[i]nterest and/or late fees on unpaid assisted living charges", and preclude any award for punitive damages. Generally, "courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 28, 644 S.E.2d 663, 670 (2007). I find that the limitations on damages and discovery unilaterally

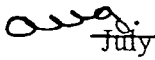
imposed upon Mrs. O'Meara in the Residency Agreement are substantively unconscionable and violate public policy. Accordingly, even if the FAA were applied to the Residency Agreement, Section V of the Residency Agreement ("Arbitration and Limitation of Liability Provision") is unconscionable and unenforceable in its entirety. *See, e.g. Simpson*, 373 S.C. at 33-37, 644 S.E.2d at 673-674.

Finally, there is a question whether Mrs. O'Meara's acquiescence to the arbitration agreement in the Residency Agreement is valid. Mrs. O'Meara argued that she did not execute the Residency Agreement, that Julia Stanton, Mrs. O'Meara daughter, executed the Residency Agreement as Mrs. O'Meara's Attorney-in-Fact for health care matters, and that Julia Stanton is not Mrs. O'Meara's attorney-in-fact under Mrs. O'Meara's durable power of attorney and does not have the authority to bind Mrs. O'Meara to arbitration. Mrs. O'Meara presented a instrument designating Thomas Stanton as Mrs. O'Meara's attorney-in-fact. The proper forum for determining whether an arbitration clause is enforceable in South Carolina is the trial court rather than arbitration. *See, Simpson*, 373 S.C. at 23, 644 S.E.2d at 667-668 ("[T]he trial court should determine the threshold validity of the arbitration agreement."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("The question of the arbitrability of a claim is an issue for judicial determination, unless the apties provide otherwise."); *Hous. Auth of the City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct. App. 2003) ("The initial inquiry to be made by the trial court is whether an arbitration agreement exists between the parties.") To the extent that the parties contest whether Julia Stanton had the authority to bind Mrs. O'Meara to arbitration, the parties must engage in discovery regarding the matter, precluding dismissal of this case at this time.

IT IS NOW THEREFORE ORDERED, this action shall proceed on the jury docket for the Fourteenth Judicial Circuit, Beaufort County, South Carolina. The Defendants shall have fifteen (15) days from the date of this Order to file responsive pleadings.

AND IT IS SO ORDERED.

By: 
Carmen T. Mullen
Circuit Court Judge
Fourteenth Judicial Circuit

 July 8, 2011

Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

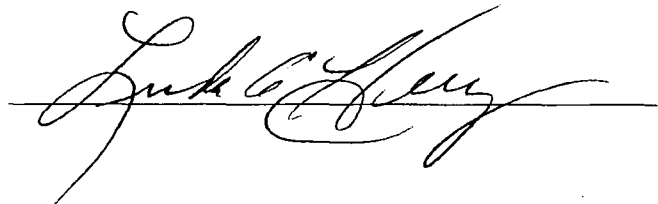
Defendants.

CERTIFICATE OF SERVICE

I, LINDA C. HUEY, an employee of McNair Law Firm, P.A., have this date served a copy of **ORDER DENYING DEFENDANTS, BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC'S MOTION TO DISMISS AND COMPEL ARBITRATION** on defendants in the above-referenced action by depositing a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this 24 day of AUGUST, 2011:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina



RECEIVED

AUG 29 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Elizabeth O'Meara,

Plaintiff(s),

vs.

Brookdale Senior Living, Inc., Southern Assisted
Living, Inc., and Sonia S. King,

Defendant(s).

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CIVIL COVER SHEET

2011-CP-07- 1610

Submitted By: Kelly M. Jolley
Address: McNair Law Firm, P.A.
P.O. Drawer 3
Hilton Head Island, SC 29938

SC Bar #: 72573
Telephone #: 843-785-2171
Fax #: 843-341-9830
Other:
E-mail: kjolley@mcnair.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Subpoena and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Construction (103)	☐ Dental Malpractice (209)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (460)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (210)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Merchant's Lien (430)
☐ Breach of Contract (140)	29 -CP- _____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/File Med Mal (230)	☒ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (705)	☐ Reinstatement Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlements (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture - Petition (840)	☐ Probate Court (940)
	☐ Transfer of Structured	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Settlement Payment Rights	☐ Other (899)	☐ Worker's Comp (960)
	Application (760)		☐ Zoning Board (970)
	☐ Other (799)		☐ Administrative Law Judge (980)
Special/Complex /Other			☐ Public Service Commission (990)
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Employment Security Comm (991)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Other (999)
☐ Medical (620)	☐ Out-of-State Depositions (650)		
☐ Other (699)	☐ Motion to Quash Subpoena in Out-Of-County Action (660)		
	☐ Sexual Predator (610)		

Submitting Party Signature: Kelly M. Jolley

Date: 4/5/2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, INC., and
SONIA S. KING,

Defendants.

SUMMONS

2011 APR -6 AM 10:40
RECEIVED
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: BROOKDALE SENIOR LIVING, INC., SOUTHERN ASSISTED LIVING, INC.
and SONIA S. KING:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-referenced action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928, within thirty (30) days after the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

Dated: April 5, 2011

MCNAIR LAW FIRM, P.A.

By

Kelly M. Jolley
Kelly M. Jolley, (SC Bar #72573)
E-Mail: kjolley@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Attorneys for Plaintiff

HILTONHEAD 739059v1

RECORD P. 000009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, INC., and
SONIA S. KING,

Defendants.

COMPLAINT

(JURY TRIAL REQUESTED)

2011 APR -6 AM 10:40
HILTON HEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiff, herein, by and through her undersigned counsel of record will respectfully show onto the Court that:

1. Plaintiff Elizabeth O'Meara is a resident of Beaufort County, South Carolina.
2. Upon information and belief, Defendant Brookdale Senior Living, Inc. ("Brookdale") is a corporation organized and existing under the laws of one of the United States of America which transacts business in Beaufort County, South Carolina.
3. Upon information and belief, Defendant Southern Assisted Living, Inc. is a corporation organized and existing under the laws of North Carolina.
4. Upon information and belief, at all times relevant hereto, Defendant Southern Assisted Living, Inc. operated, managed, and / or owned a community residential care facility doing business as Carolina House of Hilton Head (hereinafter "Carolina House") located at 35 Beach City Road on Hilton Head Island in Beaufort County, South Carolina, which provided long term care for the facility's residents including Plaintiff.
5. Upon information and belief, Defendant Sonia S. King is a resident of Hampton

County, South Carolina and at all times relevant hereto, Ms. King was employed by Defendant Southern Assisted Living, Inc. and worked in Defendant's Carolina House facility on Hilton Head Island in Beaufort County, South Carolina.

6. This Court has personal jurisdiction and venue over the parties and subject matter jurisdiction over this action.

BACKGROUND

7. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

8. On or about December 31, 2010, and for some time prior thereto, Elizabeth O'Meara was a resident of Carolina House as a result of progressive dementia and her inability to care for herself in an independent setting.

9. Mrs. O'Meara is ninety-three (93) years old, mentally incapacitated due to Alzheimer's disease, and confined to a wheelchair.

10. At all time relevant hereto, Carolina House was required to maintain a safe environment free of abuse, accidents, and hazards for its residents, including Plaintiff.

11. On or about December 31, 2010 between the hours of 5:00 and 6:00 a.m., Defendant Sonia King physically and verbally abused Mrs. O'Meara.

12. Defendant King slapped Mrs. O'Meara on the left side of her face while giving her medication, causing her nose to bleed.

13. Defendant King forcefully shoved Mrs. O'Meara's medication down her throat once Mrs. O'Meara had spit out the medication.

14. Defendant King also verbally abused Mrs. O'Meara several times and threatened to force Mrs. O'Meara to smell her own feces.

15. The abuse was witnessed and recorded by Defendant King's co-worker, Shanada Young, who reported the abuse to the Carolina House Director of Nursing.

16. Upon information and belief, Defendant King was known to abuse the residents of Carolina House.

17. Prior to December 31, 2010, Ms. King was suspended from Carolina House for verbally abusing a senior resident.

18. Following an investigation by the Beaufort County Sheriff's Office, Defendant King was arrested and charged with elder abuse.

19. As a result of the physical and verbal abuse, Mrs. O'Meara suffered painful injury to her face and nose as well as emotion distress, mental anguish and fear.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT
AGAINST BROOKDALE and
CAROLINA HOUSE

20. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

21. Defendants Brookdale and Carolina House by and through their authorized agents and servants was negligent, wanton, reckless, careless, willful, and grossly negligent in the operation, management and/or ownership of its community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents and hazards;
- b. In allowing Defendant Sonia King to continue working at the facility following her suspension for previous verbal abuse of a resident;

- c. In failing to adequately investigate and resolve prior reports and / or concerns of abuse of residents by Defendant King and other employees of Carolina House;
- d. In failing to adequately supervise employees on all shifts at Carolina House;
- e. In failing to provide equal access to quality of care;
- f. In failing to employ necessary safety precautions for Plaintiff's safety and welfare;
- g. In failing to establish and / or require compliance with abuse or accident reporting procedures;
- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Defendant Carolina House's resident population, including Plaintiff;
- i. In failing to hire or contract with adequately trained and competent employees or agents to whom the care and wellbeing of patients such as Plaintiff was entrusted;
- j. In failing to take reasonable and prudent action to prevent Plaintiff from suffering abuse, physical injury, and emotional distress from the caregivers Defendant Carolina House provided to care for Carolina House's vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

22. As a direct and proximate result of Defendants' gross, willful, and wanton negligence, Mrs. O'Meara has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

23. Mrs. O'Meara is entitled to an award of compensatory and punitive damages.

FOR A SECOND CAUSE OF ACTION
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
AGAINST BROOKDALE AND CAROLINA HOUSE

24. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

25. Defendants Brookdale and Carolina House knew or should have known that subjecting its vulnerable adult residents with dementia, including Plaintiff, to employees with a history of abuse would result in further abuse and severe mental and emotion distress and anguish.

26. Despite a previous incident of abuse of a resident and previous concerns about Defendant King's abuse of residents, Defendants continued to employ or otherwise retain Defendant King, to put her on the work schedule, and allow her contact with vulnerable residents without supervision.

27. By allowing Defendant King to have contact with Carolina House's vulnerable residents, Defendants intentionally or recklessly placed all of residents at Carolina House's facility, including specifically Plaintiff, at risk.

28. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

29. Defendants' actions caused Plaintiff severe emotional distress.

30. By their actions, Defendants acted intentionally or recklessly.

31. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

32. As a direct and proximate result of Defendants' actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

33. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

34. As a direct and proximate result of Defendants' extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendants.

FOR A THIRD CAUSE OF ACTION
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
AGAINST BROOKDALE AND CAROLINA HOUSE

35. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

36. Defendants Brookdale and Carolina House publically assert and advertise that Carolina House "provides Personalized Assisted Living and Alzheimer's and Dementia care options for seniors".

37. Defendants also assert that Carolina House partners "with each resident to design an individualized, personal service plan" via a "service planning process, unique to Brookdale Senior Living communities, [that] bases service fees on delivering quality service and care to each individual."

38. Defendants claim that these "Personalized Service Plans are reviewed regularly by staff to ensure that we meet the changing needs of our residents. Our trained staff is there to

assist with personal needs – bathing or showering, selection of clothing, dressing assistance, grooming, hygiene, mobility and transferring and dining assistance – 24 hours a day.”

39. Upon information and belief, Defendants charge residents, including Plaintiff, variable fees for services, including grooming, bathing or showering, hygiene, without providing these services.

40. Upon information and belief, Defendants do not have adequately trained staff on hand 24 hours a day to supervise and assist its senior population living with Alzheimer’s and dementia, to provide quality care, or to protect those same vulnerable adults, including but not limited to Plaintiff, from abuse.

41. Defendants have engaged in unfair and deceptive acts in offering and advertising of specialized services for individuals with Alzheimer’s or dementia without having adequate trained staff on hand to provide for those individuals, charging and accepting payment for personalized services that are not in fact personalized or are not provided, and failing to protect residents from abuse all constitute unfair trade practices under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. Section 39-5-10 to 39-5-250 (2010).

42. Defendants’ unfair or deceptive acts or practices have an impact upon the public interest and have the potential for repetition. In fact, on or about December 31, 2010, two residents other than Plaintiff were physically and verbally abused in the Carolina House facility by Defendant King.

43. Plaintiff would not have entered Carolina House’s community residential care facility if Brookdale and Carolina House had not held the facility out to the public as being a place specifically designed to provide high quality care to individuals with Alzheimer’s or dementia.

44. Furthermore, Plaintiff would not have paid Carolina House for services in accordance with Plaintiff's "Personalized Service Plan" if Brookdale and Carolina House had not assured Plaintiff, Plaintiff's caregivers, and the public that Carolina House provided quality services in accordance with that plan.

45. Upon information and belief, Plaintiff did not receive a Personalized Service Plan wherein charges directly correlated to the services Carolina House agreed to provide. Plaintiff did not receive all services requested and paid for. Plaintiff did not consistently receive quality Alzheimer and dementia care services. Plaintiff was abused by staff at Carolina House.

46. As a direct and proximate result of Defendants' deceptive and unfair trade practices, Plaintiff has been damaged in not receiving services paid for and in paying for services and care not received. Plaintiff has also been physically and mentally injured through the abuse perpetrated by Defendants' staff and Defendant's lack of supervision over and training regarding same.

47. Mrs. O'Meara is entitled to an award of compensatory and treble damages.

FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY AGAINST SONIA S. KING

48. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

49. Defendant King, with force and violence, caused severe and painful injury to Plaintiff Elizabeth O'Meara.

50. Defendant King slapped Mrs. O'Meara in the face, injuring her face and nose, and causing her nose to bleed.

51. By her words and acts, Defendant King caused Mrs. O'Meara reasonable apprehension of imminent harmful and offensive contact.

52. Additionally, Defendant King was rude, insolent and angry toward Plaintiff.
53. Defendant King's actions were offensive to any ordinary person.
54. By reason of Defendant King's words and acts, Plaintiff did reasonably believe that an offensive and harmful contact would occur.
55. Defendant did assault and batter Mrs. O'Meara.

56. As a direct and proximate result of Defendant King's assault and battery, Mrs. O'Meara has suffered pain, extreme emotional trauma, anxiety and distress. By reason Defendant's unlawful and unauthorized assault and battery, Mrs. O'Meara is entitled to recover punitive damages from the Defendant.

FOR A FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST SONIA KING

57. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

58. By her words and actions, Defendant King's conduct was extreme, reckless and outrageous and so severe as to cause emotional distress to Plaintiff.

59. By her words and actions, Defendant King acted intentionally or recklessly.

60. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

61. Defendant King's actions were so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community.

62. As a direct and proximate result of Defendant King's actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

63. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

64. As a direct and proximate result of Defendant King's extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendant King.

65. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

66. By her actions, Defendant King was grossly, willfully and wantonly negligent in executing her duties as a caregiver and / or med tech for Carolina House, including physically and verbally abusing Plaintiff in violation of the Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2010)

67. As a direct and proximate result of Defendant King's gross, willful, and wanton negligence, Mrs. O'Meara has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

68. Mrs. O'Meara is entitled to an award of compensatory and punitive damages. WHEREFORE, the Plaintiff Elizabeth O'Meara prays this Honorable Court will find judgment for the Plaintiff as follows:

- (a) For actual punitive and treble damages;
- (b) Attorneys fees, costs and additional damages as provided by statute; and
- (c) For such other and further relief as the Court may deem just and proper.

[Signatures appear on the following page]

Dated: April 5, 2011

MCNAIR LAW FIRM, P.A.

By

Kelly M. Jolley

Kelly M. Jolley, (SC Bar #72579)

E-Mail: kjolley@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Attorneys for Plaintiff



**Service of Process
Transmittal**

05/06/2011

CT Log Number 518480878



TO: Susan Jeffrey
Brookdale Living Communities, Inc.
330 N. Wabash, Suite 1400
Chicago, IL 60611-

RE: Process Served in South Carolina

FOR: Southern Assisted Living, LLC (Domestic State: NC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Elizabeth O'Meara, Pltff. vs. Brookdale Senior Living, Inc., et al. including Southern Assisted Living, LLC, Dfts.

DOCUMENT(S) SERVED: Letter, Amended Summons, Amended Complaint

COURT/AGENCY: Beaufort County Court of Common Pleas, SC
Case # 2011-CP-07-1610

NATURE OF ACTION: Medical Injury - Improper Care and Treatment - On or about December 31, 2010 due to defendant's negligence plaintiff sustained severe injuries at carolina house

ON WHOM PROCESS WAS SERVED: CT Corporation System, Columbia, SC

DATE AND HOUR OF SERVICE: By Certified Mail on 05/06/2011 postmarked on 05/04/2011

JURISDICTION SERVED : South Carolina

APPEARANCE OR ANSWER DUE: Within 20 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Kelly M. Jolley
McNair Law Firm, P.A.
Shelter Cove Executive Park
23-B Shelter Cove Lane Suite 400
Hilton Head Island, SC 29928
843-785-2171

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 794735387588

SIGNED: CT Corporation System
PER: Amy McLaren
ADDRESS: 2 Office Park Court
Suite 103
Columbia, SC 29229
TELEPHONE: 800-592-9023

Page 1 of 1 / MS

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

RECORD P. 000021

MCNAIR
ATTORNEYS

May 4, 2011

Kelly M. Jolley

kjolley@mcnair.net
T (843) 785-2171
F (843) 341-9839

Via Certified Mail, Return Receipt Requested

C T Corporation System
Registered Agent for Southern Assisted Living, LLC
2 Office Park Court, Suite 103
Columbia, SC 29223

Re: Elizabeth O'Meara vs.
Brookdale Senior Living, Inc.,
Southern Assisted Living, LLC, and
Sonia S. King
Civil Action No.: 2011-CP-07-1610

To Whom it May Concern:

We wish to advise you that our firm represents Elizabeth O'Meara in the above referenced matter. Enclosed herewith and served upon you is the Summons and Complaint in this matter.

Very truly yours,



Kelly M. Jolley

KMJ:lch
Enclosures

McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29938

mcnair.net

HILTONHEAD 742038v1

ANDERSON

BLUFFTON

CHARLESTON

CHARLOTTE

RECORD P. 000022

COLUMBIA

GREENVILLE

HILTON HEAD

MYRTLE BEACH

PAWLEYS ISLAND

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

AMENDED SUMMONS

2011 APR 20 PM 1:22
JEREMY ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

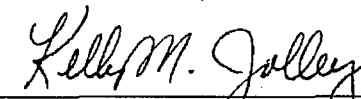
TO: BROOKDALE SENIOR LIVING, INC., SOUTHERN ASSISTED LIVING, LLC
and SONIA S. KING:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-referenced action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928, within thirty (30) days after the service thereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

Dated: April 19, 2011

MCNAIR LAW FIRM, P.A.

By



Kelly M. Jolley, (SC Bar #72573)

E-Mail: kjolley@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

2011 APR 20 PM 1:28
JENNIFER A. ROSEHEAR
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The Plaintiff, herein, by and through her undersigned counsel of record will respectfully show onto the Court that:

1. Plaintiff Elizabeth O'Meara is a resident of Beaufort County, South Carolina.
2. Upon information and belief, Defendant Brookdale Senior Living, Inc. ("Brookdale") is a corporation organized and existing under the laws of one of the United States of America which transacts business in Beaufort County, South Carolina.
3. Upon information and belief, Defendant Southern Assisted Living, LLC is a limited liability company organized and existing under the laws of North Carolina.
4. Upon information and belief, at all times relevant hereto, Defendant Southern Assisted Living, LLC. operated, managed, and / or owned a community residential care facility doing business as Carolina House of Hilton Head (hereinafter "Carolina House") located at 35 Beach City Road on Hilton Head Island in Beaufort County, South Carolina, which provided long term care for the facility's residents including Plaintiff.
5. Upon information and belief, Defendant Sonia S. King is a resident of Hampton

County, South Carolina and at all times relevant hereto, Ms. King was employed by Defendant Southern Assisted Living, Inc. and worked in Defendant's Carolina House facility on Hilton Head Island in Beaufort County, South Carolina.

6. This Court has personal jurisdiction and venue over the parties and subject matter jurisdiction over this action.

BACKGROUND

7. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

8. On or about December 31, 2010, and for some time prior thereto, Elizabeth O'Meara was a resident of Carolina House as a result of progressive dementia and her inability to care for herself in an independent setting.

9. Mrs. O'Meara is ninety-three (93) years old, mentally incapacitated due to Alzheimer's disease, and confined to a wheelchair.

10. At all time relevant hereto, Carolina House was required to maintain a safe environment free of abuse, accidents, and hazards for its residents, including Plaintiff.

11. On or about December 31, 2010 between the hours of 5:00 and 6:00 a.m., Defendant Sonia King physically and verbally abused Mrs. O'Meara.

12. Defendant King slapped Mrs. O'Meara on the left side of her face while giving her medication, causing her nose to bleed.

13. Defendant King forcefully shoved Mrs. O'Meara's medication down her throat once Mrs. O'Meara had spit out the medication.

14. Defendant King also verbally abused Mrs. O'Meara several times and threatened to force Mrs. O'Meara to smell her own feces.

15. The abuse was witnessed and recorded by Defendant King's co-worker, Shanada Young, who reported the abuse to the Carolina House Director of Nursing.

16. Upon information and belief, Defendant King was known to abuse the residents of Carolina House.

17. Prior to December 31, 2010, Ms. King was suspended from Carolina House for verbally abusing a senior resident.

18. Following an investigation by the Beaufort County Sheriff's Office, Defendant King was arrested and charged with elder abuse.

19. As a result of the physical and verbal abuse, Mrs. O'Meara suffered painful injury to her face and nose as well as emotion distress, mental anguish and fear.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT
AGAINST BROOKDALE and
CAROLINA HOUSE

20. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

21. Defendants Brookdale and Carolina House by and through their authorized agents and servants was negligent, wanton, reckless, careless, willful, and grossly negligent in the operation, management and/or ownership of its community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents and hazards;
- b. In allowing Defendant Sonia King to continue working at the facility following her suspension for previous verbal abuse of a resident;

- c. In failing to adequately investigate and resolve prior reports and / or concerns of abuse of residents by Defendant King and other employees of Carolina House;
- d. In failing to adequately supervise employees on all shifts at Carolina House;
- e. In failing to provide equal access to quality of care;
- f. In failing to employ necessary safety precautions for Plaintiff's safety and welfare;
- g. In failing to establish and / or require compliance with abuse or accident reporting procedures;
- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Defendant Carolina House's resident population, including Plaintiff;
- i. In failing to hire or contract with adequately trained and competent employees or agents to whom the care and wellbeing of patients such as Plaintiff was entrusted;
- j. In failing to take reasonable and prudent action to prevent Plaintiff from suffering abuse, physical injury, and emotional distress from the caregivers Defendant Carolina House provided to care for Carolina House's vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

22. As a direct and proximate result of Defendants' gross, willful, and wanton negligence, Mrs. O'Meara has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

23. Mrs. O'Meara is entitled to an award of compensatory and punitive damages.

FOR A SECOND CAUSE OF ACTION
INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
AGAINST BROOKDALE AND CAROLINA HOUSE

24. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

25. Defendants Brookdale and Carolina House knew or should have known that subjecting its vulnerable adult residents with dementia, including Plaintiff, to employees with a history of abuse would result in further abuse and severe mental and emotion distress and anguish.

26. Despite a previous incident of abuse of a resident and previous concerns about Defendant King's abuse of residents, Defendants continued to employ or otherwise retain Defendant King, to put her on the work schedule, and allow her contact with vulnerable residents without supervision.

27. By allowing Defendant King to have contact with Carolina House's vulnerable residents, Defendants intentionally or recklessly placed all of residents at Carolina House's facility, including specifically Plaintiff, at risk.

28. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

29. Defendants' actions caused Plaintiff severe emotional distress.

30. By their actions, Defendants acted intentionally or recklessly.

31. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

32. As a direct and proximate result of Defendants' actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

33. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

34. As a direct and proximate result of Defendants' extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendants.

FOR A THIRD CAUSE OF ACTION
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
AGAINST BROOKDALE AND CAROLINA HOUSE

35. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

36. Defendants Brookdale and Carolina House publically assert and advertise that Carolina House "provides Personalized Assisted Living and Alzheimer's and Dementia care options for seniors".

37. Defendants also assert that Carolina House partners "with each resident to design an individualized, personal service plan" via a "service planning process, unique to Brookdale Senior Living communities, [that] bases service fees on delivering quality service and care to each individual."

38. Defendants claim that these "Personalized Service Plans are reviewed regularly by staff to ensure that we meet the changing needs of our residents. Our trained staff is there to

assist with personal needs – bathing or showering, selection of clothing, dressing assistance, grooming, hygiene, mobility and transferring and dining assistance – 24 hours a day.”

39. Upon information and belief, Defendants charge residents, including Plaintiff, variable fees for services, including grooming, bathing or showering, hygiene, without providing these services.

40. Upon information and belief, Defendants do not have adequately trained staff on hand 24 hours a day to supervise and assist its senior population living with Alzheimer’s and dementia, to provide quality care, or to protect those same vulnerable adults, including but not limited to Plaintiff, from abuse.

41. Defendants have engaged in unfair and deceptive acts in offering and advertising of specialized services for individuals with Alzheimer’s or dementia without having adequate trained staff on hand to provide for those individuals, charging and accepting payment for personalized services that are not in fact personalized or are not provided, and failing to protect residents from abuse all constitute unfair trade practices under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. Section 39-5-10 to 39-5-250 (2010).

42. Defendants’ unfair or deceptive acts or practices have an impact upon the public interest and have the potential for repetition. In fact, on or about December 31, 2010, two residents other than Plaintiff were physically and verbally abused in the Carolina House facility by Defendant King.

43. Plaintiff would not have entered Carolina House’s community residential care facility if Brookdale and Carolina House had not held the facility out to the public as being a place specifically designed to provide high quality care to individuals with Alzheimer’s or dementia.

44. Furthermore, Plaintiff would not have paid Carolina House for services in accordance with Plaintiff's "Personalized Service Plan" if Brookdale and Carolina House had not assured Plaintiff, Plaintiff's caregivers, and the public that Carolina House provided quality services in accordance with that plan.

45. Upon information and belief, Plaintiff did not receive a Personalized Service Plan wherein charges directly correlated to the services Carolina House agreed to provide. Plaintiff did not receive all services requested and paid for. Plaintiff did not consistently receive quality Alzheimer and dementia care services. Plaintiff was abused by staff at Carolina House.

46. As a direct and proximate result of Defendants' deceptive and unfair trade practices, Plaintiff has been damaged in not receiving services paid for and in paying for services and care not received. Plaintiff has also been physically and mentally injured through the abuse perpetrated by Defendants' staff and Defendant's lack of supervision over and training regarding same.

47. Mrs. O'Meara is entitled to an award of compensatory and treble damages.

FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY AGAINST SONIA S. KING

48. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

49. Defendant King, with force and violence, caused severe and painful injury to Plaintiff Elizabeth O'Meara.

50. Defendant King slapped Mrs. O'Meara in the face, injuring her face and nose, and causing her nose to bleed.

51. By her words and acts, Defendant King caused Mrs. O'Meara reasonable apprehension of imminent harmful and offensive contact.

52. Additionally, Defendant King was rude, insolent and angry toward Plaintiff.
53. Defendant King's actions were offensive to any ordinary person.
54. By reason of Defendant King's words and acts, Plaintiff did reasonably believe that an offensive and harmful contact would occur.
55. Defendant did assault and batter Mrs. O'Meara.
56. As a direct and proximate result of Defendant King's assault and battery, Mrs. O'Meara has suffered pain, extreme emotional trauma, anxiety and distress. By reason Defendant's unlawful and unauthorized assault and battery, Mrs. O'Meara is entitled to recover punitive damages from the Defendant.

FOR A FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST SONIA KING

57. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.
58. By her words and actions, Defendant King's conduct was extreme, reckless and outrageous and so severe as to cause emotional distress to Plaintiff.
59. By her words and actions, Defendant King acted intentionally or recklessly.
60. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.
61. Defendant King's actions were so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community.
62. As a direct and proximate result of Defendant King's actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

63. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

64. As a direct and proximate result of Defendant King's extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendant King.

65. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

66. By her actions, Defendant King was grossly, willfully and wantonly negligent in executing her duties as a caregiver and / or med tech for Carolina House, including physically and verbally abusing Plaintiff in violation of the Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2010)

67. As a direct and proximate result of Defendant King's gross, willful, and wanton negligence, Mrs. O'Meara has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

68. Mrs. O'Meara is entitled to an award of compensatory and punitive damages. WHEREFORE, the Plaintiff Elizabeth O'Meara prays this Honorable Court will find judgment for the Plaintiff as follows:

- (a) For actual punitive and treble damages;
- (b) Attorneys fees, costs and additional damages as provided by statute; and
- (c) For such other and further relief as the Court may deem just and proper.

[Signatures appear on the following page]

Dated: April 19, 2011

MCNAIR LAW FIRM, P.A.

By



Kelly M. Jolley, (SC Bar #02573)

E-Mail: kjolley@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,
Plaintiff,

Case No. 2011-CP-07-1610

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

**MOTION TO DISMISS AND COMPEL
ARBITRATION**

11 JUN -6 PM 4:53
CLERK OF COURT
JULIA STANTON

Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC move this Court for an Order dismissing the Complaint pursuant to Rule 12 and compelling the parties to arbitrate this dispute pursuant to the arbitration clause found in the plaintiff's residency agreement.

The grounds for this motion are as follows:

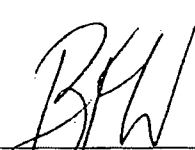
1. Plaintiff Elizabeth O'Meara and Julia Stanton, plaintiff daughter and the legally responsible party, both signed a Residency Agreement on September 30, 2008, which states that "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company . . . shall be submitted to binding arbitration[.]" (Residency Agreement, pp. 11, attached as **Exhibit A**). The arbitration provision was specifically initialed by "JS," which represents the initials of Julia Stanton.

2. The Residency Agreement states on the cover page, in capital letters, that it is subject to arbitration. Further, the arbitration provision heading is in bold typeface. Finally, the arbitration provision instructs the party to seek legal counsel before signing.

3. The arbitration provision states that the Federal Arbitration Act ("FAA") shall govern. The FAA preempts any state law to the contrary because the Defendants provide supplies that are procured through interstate commerce. (See Affidavit of Timothy J. Cesar, attached as **Exhibit B**). Further, many of the residents at the Carolina House of Hilton Head are from out of state. Id.

4. Therefore, Plaintiff's claims are governed by a valid and binding arbitration provision, and this Court should dismiss the Complaint and compel arbitration.

5. Finally, should the Court deny this Motion, Defendants reserve the right to file an Answer or otherwise respond to the Amended Complaint.

 77901
FOR MANTON GRIER
Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC

June 3, 2010
Columbia, South Carolina

Exhibit A

404

RESIDENCY AGREEMENT

The Company strongly believes in the importance of fully disclosing all services and fees to the best of our ability and in accordance with state law. As with any legally binding contract, it is our recommendation that you consult your legal counsel to ensure proper understanding of this Agreement before signing.

THIS AGREEMENT IS SUBJECT TO ARBITRATION

Table of Contents

- I. SERVICES AND ACCOMMODATIONS
 - A. BASIC SERVICES
 - B. PERSONAL SERVICE PLAN
 - C. AVAILABLE SELECT SERVICES
 - D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT
- II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS
 - A. CARE OF SUITE
 - B. SUITE ACCESS
 - C. HEALTH ASSESSMENT
 - D. HEALTH CARE PROVIDER NOTIFICATION
 - E. OBLIGATORY INFORMATION
 - F. ADVANCE DIRECTIVE
 - G. MOTORIZED VEHICLES
 - H. RESPONSIBILITIES UPON TERMINATION
 - I. RULE AND REGULATION COMPLIANCE
 - J. GUESTS
- III. RATES
 - A. MOVE-IN FEE
 - B. MONTHLY SERVICE RATE
 - C. RESIDENT ABSENCE
 - D. AVAILABLE SELECT SERVICES
 - E. PAYMENT
 - F. RATE CHANGES
- IV. TERM AND TERMINATION
 - A. TERM
 - B. TERMINATION BY RESIDENT
 - C. TERMINATION BY COMPANY
 - D. TERMINATION BY EITHER PARTY
 - E. STORAGE CHARGES
- V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION
 - A. ARBITRATION PROVISION
 - B. LIMITATION OF LIABILITY PROVISION
 - C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS
- VI. MISCELLANEOUS
 - A. DEFAULT TO ARBITRATION
 - B. NON-DISCRIMINATION
 - C. RISK AGREEMENT
 - D. RELIANCE
 - E. NO LIABILITY IF AWAY FROM RESIDENCE
 - F. ASSIGNMENT
 - G. HEIRS AND SUCCESSORS
 - H. AMENDMENTS
 - I. SEVERANCE
 - J. RESPONSIBLE PARTY
 - K. SUBORDINATION

L. NOTICES

RESIDENCY AGREEMENT

This Agreement is entered into as of 9/30/08, _____ by and between Southern Assisted Living, Inc., d/b/a Carolina House of Hilton Head ("Company"), _____ ("You" or "Resident"); and _____ ("Responsible Party"). The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS

A. BASIC SERVICES

You will be entitled to the following Basic Services, which are included in the Basic Service Rate, subject to the terms and conditions of this Agreement:

- ♦ Accommodations - You are entitled to the use of the suite described in Exhibit A and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with all other residents the common areas of the building (the "Community"). You may provide your own furnishings and personal property; however, the Company reserves the right to limit the number and type of furnishings if the Company determines that they present a safety hazard or potential safety hazard.
- ♦ Daily Meals - The Company will provide three meals daily. Snacks are available 24 hours a day.
- ♦ Utility Service - The Company will provide gas, electric and water service. Telephone charges are not included in the Basic Service Rate. Costs for basic cable television are described in Exhibit A.
- ♦ Weekly Housekeeping Service - The Company will clean your suite once a week.
- ♦ Weekly Laundry and Linen Service - The Company will launder your personal items and your bed linens once a week.
- ♦ Life Enrichment Program - The Company will provide planned social, educational and recreational programs.
- ♦ Staffing 24 hours a day - The Company will have staff available 24-hours a day, seven days a week.
- ♦ Transportation - The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation

services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

B. PERSONAL SERVICE PLAN

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the residence. An outside agency or individual will be permitted to provide these services or any related personal services only if the Company has given prior approval.

C. AVAILABLE SELECT SERVICES

From time to time, the Company may make select services available to you at your or your Responsible Party's request. If available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, or special events. (See additional information on Transportation in Section I. A of this Agreement.) These additional choices are not included in the Basic Service Rate or the Personal Service Plan. Your Executive Director will provide, upon your request, a listing of the available select services as well as a current fee schedule.

D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT

You and your Responsible Party are responsible for obtaining and paying for all services which are not included in the Basic Services or Personal Services Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by the Company, its subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy services, newspaper subscriptions, or beauty/barber services. Any fees for services provided by other service providers will be billed directly by the service provider. All third party service providers (including, but not limited to, third party health care and medical providers) must receive the Company's prior authorization to provide services to you at the residence. All third party providers who enter the residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

You may not contract with any of the Company's current employees to perform any services at the residence. You may contract with former employees to perform any

services at the residence only with the Company's consent. The Company reserves the right to refuse entry to 1) former employees, 2) persons whose actions may be disruptive to the residence; 3) persons whose actions may threaten the safety of any resident or employee; or 4) persons whose presence may foreseeably result in liability to the Company.

II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE

You agree that residence and the suite are in satisfactory, habitable condition. You also agree the Company has made no promise to decorate, alter or improve the residence or suite, unless otherwise provided in writing by the Company and attached as part of this Agreement. You agree to maintain the suite and to surrender the suite upon termination of this Agreement in good condition, exclusive of normal wear and tear. You agree to pay all damages, beyond normal wear and tear, including any improvements made without the Company's consent, which you, your Family, and/or other Guests (including any agent, employee, contractor, or other invitee) cause to residence property.

*I. They said
I'm with the
skintide new
wrestle with
installed*

B. SUITE ACCESS

You agree to give the Company access to the suite in order to carry out the intent of this Agreement. Such entry includes, but is not limited to, performance of services provided as part of the Basic Services or in your Personal Service Plan; response to emergency situations; and entry by authorized personnel with the reasonable belief that your safety or safety of others is in question or that the Company's policies and procedures are being violated.

Upon written notice, the Company reserves the right to relocate you to a more appropriate suite within residence as required for your health or safety, or because the residents of a companion suite are incompatible.

C. HEALTH ASSESSMENT

You agree that the Company may from time to time assess your health to determine the appropriate Personal Service Plan and/or whether you are appropriate to stay in the residence. Not more than thirty (30) days prior to the date this Agreement is entered into, and at least annually thereafter or upon the request of the Company, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree that the Company may require you to undergo examination by a particular specialist, at your cost, as the Company determines is warranted by your current physical or mental status. You will request the examiner to provide the Company with recommendations, including a statement attesting to the appropriateness of the placement. Based upon the assessment(s) and the Company's judgement, the Company may determine your appropriateness to remain in the residence. You will request the examiner to perform any tests and complete any forms required by the Company or applicable law.

D. HEALTH CARE PROVIDER NOTIFICATION

You authorize the Company to contact responsible parties, health care providers, and/or other persons listed in your records:

- (1) If the Company determines it is necessary to advise them of your situation;
- (2) To arrange for health care services and other assistance required by you; or
- (3) In case of an emergency. If you have a life-threatening emergency, the Company will contact an emergency rescue service.

If your designated health care providers are unavailable, you authorize the Company to arrange for the services of other health care providers.

During the term of this Agreement, you agree the Company may provide such persons with copies of your records, including, but not limited to, resident records to the extent they are needed to assist with treatment, advance directives, living will, and the names of persons empowered to make health care decisions, for the purpose of arranging for health care services.

E. OBLIGATORY INFORMATION

You will provide the Company with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You or your Responsible Party will provide the Company with copies of any health care power of attorney, power of attorney executed by you or of any court order, guardianship, or other legal action which may (1) affect your status or (2) designate or appoint another person to make health care or financial decisions or to bear financial responsibility on your behalf. You authorize the Company to rely on the instructions of such designees or appointees. You understand that you must immediately notify the Company of changes relating to any of the information stated above.

F. ADVANCE DIRECTIVES

Upon admission to the Company, it is strongly suggested that you have your advance directives in place in the event you become incapacitated. Advance directives include, but are not limited to, Living Wills, Powers of Attorney for Health Care, Guardianships and Do Not Resuscitate Orders. You will notify the Company and provide copies to the Company of such advance directives. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company), subject to all bond, accounting and other legal requirements. Neither the Company nor any of its employees or agents may be your guardian. If it is necessary for the Company to petition the court for appointment of a guardian, any costs associated therein shall be paid by you. If you are a Resident in a Memory Care Unit (e.g. Clare Bridge or a Clare Bridge Cottage), these designations should be made prior to move-in.

G. MOTORIZED VEHICLES

Motorized vehicles may be used by a resident, subject to the following:

- (1) You have a physician's order stating that such a vehicle is a medical necessity for you;
- (2) You have been assessed as being able to safely operate the vehicle and you continue to demonstrate that your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
- (3) The vehicle is operated at a low setting; and
- (4) You agree to abide by the Company's safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the motorized vehicle rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of yourself, the other residents, the residence staff or visitors.

- (1) You further understand and agree that the Company may, at its sole discretion, prohibit your further use of a motorized vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION

You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that the Company may charge you a storage fee for your belongings equal to your Basic Service Rate. You further agree that the Company may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail.

Termination will not release you or the Company from any liability or obligation to the other party under the terms of this Agreement.

I. RULE AND REGULATION COMPLIANCE

You acknowledge that the Company is licensed by the State of South Carolina as a Community Residential Care Facility. You understand that the Company has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to the rules, regulations, policies and procedures as they now exist and as amended from time-to-time for the operation and management of the Community.

J. GUESTS

You understand that as a resident, you have the right to associate with your friends and family ("guests") during reasonable hours. Because the Company is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the resident's health status or other pertinent factors.

You acknowledge and understand that your guests are subject to the Company's Rules and Regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to staff, residents or others, the Company may request that they leave the Community until their behavior is under control or may place limitations upon the location and time of their visitation. You understand that, where circumstances warrant, the Company may exclude such individuals from the residence.

III. RATES

A. MOVE-IN FEE

1. Fee – You will pay the Company a one-time Move-In Fee in an amount indicated in Exhibit A at the time this Agreement is signed.
2. Refund - The Company will refund a prorated share of one-half of the Move-In Fee if this Agreement is terminated within ninety (90) days of the date this Agreement is signed and any one of the following circumstances occur:
 - (a) The Company terminates this Agreement;
 - (b) The Company or your physician determines you require care not offered by the Company; or
 - (c) by reason of death.

↓

X

(Please initial as having read and understood the above provision.)

B. MONTHLY SERVICE RATE

1. Rate – You agree to pay the Basic Service Rate and, if applicable, the charge for the Personal Service Plan as indicated in Exhibit A (together the "Monthly Service Rate").
2. Refund – The Company will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - (a) following termination in accordance with Section IV;
 - (b) because you require care that is not offered by the Company; or
 - (c) by reason of death.

Refunds will be based upon the actual number of days the resident is in the facility and a reasonable number of bed hold days. A storage fee equal to the prorated share of the Monthly Service Rate will be charged until such time as all of your property is removed

from the Suite. The Company will issue the refund to Resident or Responsible Party within 45 days of the effective date of termination based on Section IV of this Agreement. Unless prohibited by law, you agree the Company may offset such refunds by any amount due under the terms of this Agreement.

✓

X _____

(Please initial as having read and understood the above provision.)

C. RESIDENT ABSENCE

If the Resident is absent from the Community for any reason, including, but not limited to, hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate until such time that the Resident or Representative provides the Company with written notice of their intent to terminate the Agreement, pursuant to Section IV of the Agreement. Termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES

In addition to the Monthly Service Rate, you agree to pay the Company the established charges for any select services provided to you by the Company.

E. PAYMENT

The Company will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for select services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be one thirtieth (1/30) of the usual rate times the number of days remaining in the month.

The Company will charge a \$250.00 late fee if the Company has not received all fees when due. The Company will also charge a \$25.00 returned payment fee for each check or automatic withdrawal that is returned by a financial institution for any reason, including but not limited to, insufficient funds or incompleteness. After two payments are returned by a financial institution to the Company, you will thereafter pay the Monthly Service Rate and any other amounts due by cashiers check. You also agree to pay interest on all amounts not paid by the due date. The interest rate will be the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES

The Company will provide thirty (30) days written notice of any change in the Basic Services Rate. The Company may offer or require a change in the Personal Service Plan when the Company determines additional services are requested or required. The new charge for the Personal Service Plan will be effective immediately upon the provision of written notice.

X
(Please initial as having read and understood the above provision.)

IV. TERM AND TERMINATION

A. TERM

This Agreement will commence on the date set forth above and will continue until terminated as provided below.

B. TERMINATION BY RESIDENT

The Company requests you or your Responsible Party to provide thirty (30) days written notice of your intent to terminate this Agreement. Termination shall be effective the day after your last date of residence.

X
(Please initial as having read and understood the above provision.)

C. TERMINATION BY COMPANY

The Company may terminate this Agreement, upon providing you or your Responsible Party thirty (30) days written notice, for any of the following events, as determined by the Company:

- (1) You require care or services that the Company is unable to provide or which requires staff that are not available at the Company;
- (2) You are disruptive, create unsafe conditions, are physically or verbally abusive to other residents or otherwise impair the welfare of yourself or others in the residence;
- (3) You fail to pay fees and charges when due.

X
(Please initial as having read and understood the above provision.)

For emergency medical or welfare reasons of you or other residents, the Company may, upon written notice to you or your Responsible Party, immediately terminate the Agreement, and transfer or discharge you. If the emergency requires your immediate transfer, the Company will notify the Responsible Party at the earliest practicable hour, but not later than twenty-four (24) hours following the transfer.

The Company will provide a written explanation if the Company terminates this Agreement with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY

You, your Responsible Party or the Company may terminate this agreement immediately in the event of death or if a physician certifies, based upon an examination prior to moving out, that you must be relocated because of your health. The Company requests you provide written notice of your intent to terminate. Termination shall be effective the day after your last date of residence.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION

Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

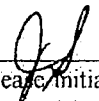
A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. Demand for Arbitration by Resident, his or her guardian, a person or organization acting on behalf of a Resident with the consent of the Resident or his or her guardian, or the personal representative of the estate of a deceased Resident (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by the Company shall be made in writing and submitted to the Resident or his or her agent, representative, successor or assign and/or Resident's Attorney-in-Fact, and/or Responsible Party via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then the arbitration shall be submitted to the National Arbitration Forum, or other similar organization, but must still be conducted by one (1) arbitrator who is a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience practicing as an attorney. If the arbitrator is selected from the National Arbitration Forum, or other similar organization, each party shall have the right to request one (1) substitution within ten (10) days of receiving notice of the identity of the arbitrator. The person requesting of the substitution shall submit a request for substitution in writing to the National Arbitration Forum, or other similar organization, and to the other party via U.S. mail.
5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the Federal Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide the Company with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and the Company shall reimburse Resident Party \$0.25 per page).
 - b. The Company shall provide the Resident Party with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse the Company \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. The Company shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

- f. The Company shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
- g. Resident Party shall have thirty (30) days after the Company's expert designation is received in which to depose such experts.
- h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
- i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 - 1. List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witnesses' intended testimony;
 - 2. List of documents to be relied upon at the arbitration hearing;
 - 3. Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
- j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.
- 7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
- 8. The arbitrator shall apply the Federal Rules of Evidence and Federal Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, Federal law except as otherwise stated in this Arbitration Provision.
- 9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
- 10. The arbitrator's decision shall be final and binding without the right to appeal.
- 11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

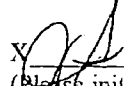
12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or the name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision
14. This Arbitration Provision and the Limitation of Liability Provision below shall survive the death of the Resident.

X 
(Please initial as having read and understood
the provisions of section V., subsection A)

B. LIMITATION OF LIABILITY PROVISION: *Read Carefully Before Signing*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by the Company for unpaid Basic Service or Personal Service charges, or a claim by, or on behalf of, a Resident, Resident Party, or by a Resident's Estate, Agent or Legal Representative, arising out of the care or treatment received by the Resident or the Resident's occupancy or presence at the Company, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Noneconomic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.
 - c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.

3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

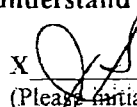
X 
(Please initial as having read and understood
the provisions of section V., subsection B.)

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, the Company is better able to offer its services and accommodations at a rate that is more affordable to the Resident. In terms of the time-savings offered by selecting arbitration, the parties recognize that often the Resident is elderly and may have a limited life-expectancy, and therefore selecting a quick method of resolution is potentially to a Resident's advantage.

The Resident, Responsible Party, or his or her legal guardian, or authorized Power of Attorney understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. **The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.**

The parties to this Agreement further understand that a jury will not decide their case.

X 
(Please initial as having read and understood
the provisions of section V., subsection C.)

VI. MISCELLANEOUS

A. DEFAULT TO ARBITRATION

If it is determined by a court of law that the Arbitration Provision provided in this Agreement is invalid, the parties hereto make clear their express desire to waive a jury trial and resolve their claims against each other in the appropriate court solely before a judge.

B. NON-DISCRIMINATION

The Company does not discriminate on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment. The Company respects all religious faiths and does not have any specific religious affiliation.

C. RISK AGREEMENT

You and your Responsible Party are responsible for your personal, financial and health care decisions. In addition, you are responsible for maintaining at all times your own health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance with coverage for your personal property and your general liability in the amount of \$100,000. You agree to provide proof of such coverage to the Company. You acknowledge that the Company is not an insurer of your person or property.

You understand and agree that:

1. The Company may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
3. The standard of services in an assisted living residence does not include one-on-one care, assistance or supervision e.g. one resident assistant for each Resident, or immediate response to non-emergent needs. Consistent with your daily life activities, including but not limited to resting in your apartment or common areas, watching television, listening to music, reading, and sleeping at night, there may be short and long periods of time in which you will be left alone, unsupervised;
4. The Company makes no representations or guarantees that the Company staff can prevent Residents from falling. Further, the Company does not represent or guarantee your health condition will not change or deteriorate throughout your Residency;
5. The services provided by the Company may not meet all of your personal, social, or health care needs and the Company will use its best efforts to assist you in arranging for services which you require and which are not included in this Agreement;
6. Many Residents of the Company suffer from memory impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior

including, but not limited to, wandering, forgetfulness, agitation towards others and confusion. The Company makes no representations or guarantees that it can predict the behavior of its Residents. Therefore, the Company also makes no representations or guarantees that it can always prevent a Resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another Resident;

7. The Company makes no representations or guarantees that the Company is secure from theft or any other criminal act perpetrated by any other Resident or person; therefore, the Company recommends that valuables, including but not limited to, jewelry and large amounts of money, not be brought into the Community. If you choose to bring in such valuables, you are doing so at your own risk and the Company will not be responsible for any theft or loss of these items;
8. Due to state regulations and fire code, the Company is not permitted to lock its exterior doors and, therefore, does not guarantee that its Residents will not wander out of the Community. In our memory care buildings, the exterior doors are alarmed with a delayed egress feature and our systems are designed to alert our staff to respond and assist a Resident to safety, should they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold the Company and its employees and agents harmless for any damages or injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action of any third party, fire, water, theft or the elements; or (3) loss of personal property. The Company will only be liable for damages, injuries or other losses to you or any third party entering a Suite, or any other part of the residence, if due to willful misconduct or negligence of the Company.

The Company reserves the right to recover from you any loss caused by fire, vandalism or any other acts by you or your invitees or guests. The Company may assign such right to its insurance carrier.

D. RELIANCE

By entering into this Agreement, the Company is relying upon the truthfulness of the promises and representations made by you and your Responsible Party.

E. NO LIABILITY IF AWAY FROM RESIDENCE

In the event that you knowingly leave the Community or are temporarily away from the Community, any and all responsibility of the Company for your welfare shall terminate during your absence.

F. ASSIGNMENT

This Agreement is not assignable by you or your Responsible Party without prior written consent of the Company. The rights and obligations of the Company may be assigned to any person or entity, and such person or entity will be responsible to ensure the obligations of the Company under this Agreement are satisfied in full from and after the date that you are notified of such assignment. The Company may engage another person or entity to perform any or all of the services under this Agreement.

G. HEIRS AND SUCCESSORS

This Agreement is for the benefit of and binds the parties and their respective heirs, representatives, successors and assigns.

H. AMENDMENTS

This Agreement and any written amendments constitute the entire agreement between the parties and supercede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written, pertaining to this Agreement. Except for the right of the Company to modify fees, rates and charges, amend services provided and establish reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.

I. SEVERANCE

Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.

J. RESPONSIBLE PARTY

You have designated a Responsible Party, who has agreed to the terms of the attached Responsible Party Agreement and whose signature appears below.

K. SUBORDINATION

This Agreement and the parties' rights hereunder will be subordinate to any ground lease, mortgage or deed of trust now or hereafter placed upon the residence, but your right to remain in possession of your suite will not be disturbed so long as you comply with all of the provision of this Agreement.

L. NOTICES

Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

The Company:
Executive Director at Community
Address (as noted on Exhibit A)

Resident:
(as noted at end of this Agreement)

Responsible Party:
(as noted in Exhibit B)

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.

<u>Phineas M. Maurer, Jr.</u>	<u>9-30-08</u>
For the Company	Title Date
<u>Elizabeth O'Meara</u>	<u>9/30/08</u>
Resident	Date
<u>Julia A. Stentor</u>	<u>9/30/08</u>
Responsible Party	Date

SEND NOTICES AND MONTHLY STATEMENTS TO RESIDENT IN CARE OF:

Name: Julia A. Stentor
Address: 2 NIBLICK CT., Hilton Head Is., SC 29928
Phone No.: 843-686-2008

OTHER RELATED MATERIALS

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package and Special Services Form
5. Medical Records Release
6. Resident Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Responsible Party Agreement
- C. Pet Addendum
- D. Additional Resident Fee
- E. Pharmacy Services Agreement
- F. Acknowledgement of Grievance Procedure and Resident Bill of Rights

ADDITIONAL EXHIBITS:

- X. Select Services List
- Y. Therapeutic Services List
- Z. Assessment Price Schedule

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident Elizabeth O' Mara MEARA
Community CHIH
Address 35 Beach City Rd.
H17, SC 29926

Suite # 404

Move-In Fee (Prior to Move-in) \$ 1000

Basic Services

Basic Service Rate \$ 4368

- ♦ **Accommodations** - You are entitled to the use of the suite described above and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with all other residents the common areas of the residence. You may provide your own furnishings and personal property; however, the Company reserves the right to limit the number and type of furnishings if the Company determines that they present a safety hazard or potential safety hazard.
- ♦ **Daily Meals** - The Company will provide three meals daily. Snacks are available 24-hours a day.
- ♦ **Utility Service** - The Company will provide gas, electric and water service. Telephone charges are not included in the Basic Service Rate. Basic cable television is not included in the Basic Service Rate.
- ♦ **Weekly Housekeeping Service** - The Company will clean your suite once a week.
- ♦ **Weekly Laundry and Linen Service** - The Company will launder your personal items and your bed linens once a week.
- ♦ **Life Enrichment Program** - The Company will provide planned social, educational and recreational programs.
- ♦ **Staffing 24 hours a day** - The Company will have staff on duty 24-hours per day, seven days a week.

♦ **Transportation** – The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

Personal Service Plan

Personal Service Plan Rate

~~\$~~ 855.00
\$ 855.00

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. All third party providers (including, but not limited to, third party health care and medical providers) who enter residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

MONTHLY SERVICE RATE

(Add Basic Service Rate and Personal Service Plan)

\$ 4368 + 855 = \$ 5223

Available Select Services

From time to time, the Company may make select services available to you at your request. When available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, special events, or special programs. These additional choices are not included in the Basic Service Rate. Please contact your Executive Director for a current fee schedule.

I agree to the above Schedule of Services and Rates effective Sept 29, 2008, and I understand and agree that the Company has a right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

For the Company

Title

Date

Resident

Date

Responsible Party

Date

EXHIBIT B
RESPONSIBLE PARTY AGREEMENT

Elizabeth O'Mara ("Resident"); Julia A. Stenton
("Responsible Party") and Southern Assisted Living, Inc., d/b/a Carolina House of Hilton
Head ton (herein after the "Company"), hereby agree as follows:

WHEREAS, the Resident desires to live in the suite identified in the attached
Residency Agreement; and

WHEREAS, the Company is willing to enter into the Residency Agreement if
Resident identifies an individual who is willing to provide certain assistance to or on behalf of
Resident in the event that such assistance is necessary, and who is willing to pay Resident's
financial obligations to the Company under the Residency Agreement in the event that
Resident does not make payments when due; and

WHEREAS, Responsible Party agrees to provide such assistance and to pay such
obligations, if and as necessary.

IN CONSIDERATION of the foregoing, the Parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such
assistance, and upon the request of the Company, Responsible Party will assist Resident or
legally responsible person, as necessary by:

- (a) Participating with the Company staff in evaluating Resident's needs and in
planning and implementing an appropriate plan for Resident's care;
- (b) Maintaining Resident's welfare and fulfilling Resident's obligations under the
Residency Agreement;
- (c) Relocating Resident following termination;
- (d) Transferring Resident to a hospital, nursing home, or other facility in the
event that Resident requires care the Company does not offer;
- (e) Removing Resident's personal property from suite when Resident leaves;
- (f) Making necessary arrangements for funeral services and burial in the event of
death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to the
Company under the Residency Agreement, Responsible Party agrees to pay the Company
such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. Responsible Party acknowledges that he or she has received and has reviewed a copy of the Residency Agreement, and has had an opportunity to ask any questions Responsible Party may have.

BY THEIR SIGNATURES, the parties or their representatives have executed this

Agreement to be effective as of 9-30-2008

<u>Theresa M. Mearns</u>	<u>ED</u>	<u>9-30-08</u>
For the Company	Title	Date
<u>Elizabeth O Mearns</u>		<u>9-30-08</u>
Resident		Date
<u>Julia A. Stanton</u>	<u>29236-5834 #100018536</u>	<u>9-30-08</u>
Responsible Party	Social Security No.	DL No. Date

SEND NOTICES TO RESPONSIBLE PARTY AT:

Address: 3 NIBLICK CT. N.H.I., SC 29928
Phone No.: 843-686-2008

EXHIBIT C
PET ADDENDUM

The Company consents to the Resident keeping in the suite the household Pet described as follows:

_____	Kind and breed
_____	Name
_____	Color
_____	Weight
_____	Age

I. RESIDENT RESPONSIBILITIES. The Resident will keep the Pet in the suite except when walking the Pet, if applicable, or transporting it to and from the suite. The Resident will not allow the Pet in lobbies or in common residential areas, and will transport the Pet to and from the suite only by side entrances of the building, when available and/or feasible. The Resident will walk and curb the Pet only in areas designated by the Company and will be responsible for cleaning up after the Pet. When the Pet is not in the suite, the Resident will keep it on a leash no longer than five (5) feet or in a cage or other appropriate closed and ventilated container, and in the control of the Resident. If the Pet is a bird, the Resident will keep it caged both in and out of the suite. If the Pet is a dog or cat, the Resident will ensure that it wears a collar with appropriate identification (including the Resident's telephone number) at all times that it is out of the suite.

The Resident will comply with all vaccination and licensing requirements applicable to the Pet, showing proof of this upon request, and will comply with appropriate standards of care, treatment, and grooming. In all circumstances, the Resident is responsible for the health, welfare, and proper care of the Pet. The Resident will ensure that the Pet does not disturb the right of other residents to the peaceful enjoyment of their suites and of the common areas. The Resident will not leave the Pet unattended when the Pet is not in the suite.

The Company, in its discretion, may assist the Resident in caring for the Pet as part of the Resident's Personal Service Plan. Charges and payment for such services will be governed by the terms of the Residency Agreement.

The Resident will be liable for any personal injury or property damage caused by the Pet that is suffered by the Company, its employees or agents, other residents, guests, or invitees. The Resident and/or Responsible Party agree to purchase renter's insurance in the amount of \$100,000, which specifically covers any personal injury or property damage caused by the Pet. The Resident shall provide Community with proof of insurance coverage.

II. TERM & TERMINATION. This Addendum will continue until the Residency Agreement between the Resident and the Company is terminated, unless either party terminates this Addendum for any reason by giving fourteen (14) days prior written notice to

the other party. The Company may terminate this Addendum upon twenty-four (24) hours notice in the event the Resident breaches any of the Resident's obligations under this Addendum. In the event that the Pet is left unattended for more than twenty-four (24) hours, or if the Company determines that the Resident, for any reason, is unable to care for the Pet, the Company reserves the right to arrange for the Pet to be delivered to:

Sponsor: _____
Address: _____
Phone: _____

Or to such other individual or agency as the Company determines to be appropriate. The Resident will pay all costs of delivery, feeding, care, treatment, and housing of the Pet. The Resident acknowledges that the Resident has no right to keep a pet, except to the extent expressly permitted by this Addendum. The Company reserves the right to withdraw its consent to the Resident keeping the Pet at any time by terminating this Addendum, as permitted above.

BY THEIR SIGNATURES, the parties executed the Addendum to be effective _____,
_____.

For the Company	_____	Title	_____	Date	_____	
Resident	_____		_____	Date	_____	
Responsible Party	_____				Date	_____

EXHIBIT D
ADDITIONAL RESIDENT FEE

When two residents occupy a single occupancy suite, the Company charges a single occupancy Basic Service Rate plus an additional resident fee. Each resident in the suite is responsible for paying one-half of the total of the single occupancy Basic Service Rate plus the additional resident fee, entitling each resident to receive the Basic Services described in Section I of the Residency Agreement. Each resident will also be responsible for the cost of his or her Personal Service Plan.

In the event that the Agreement of one resident is terminated for any reason, effective upon such termination, the remaining resident's Basic Service Rate will automatically be adjusted to reflect the Basic Service Rate for a single occupancy suite for the remainder of the month in which the adjustment is made and for each month thereafter.

Single Occupancy Basic Service Rate \$ _____

Additional Resident Fee \$ _____

Total Charge for Suite \$ _____

BASIC SERVICE RATE FOR EACH RESIDENT \$ _____
(1/2 of the total charge for suite)

Resident *NA* Date _____

Responsible Party Date _____

EXHIBIT E
PHARMACY SERVICES AGREEMENT

The Company works closely with pharmacy providers to make certain that the needs of our residents are met. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions when appropriate
- Providing competitive pricing for comparable packaging and offering generic substitutions when appropriate
- Alerting staff and physicians when there is a duplication of prescriptions
- Individual wellness recommendations
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets the Community's standards for safety

Our "preferred provider" for pharmacy services at the Community CHHIT is Palmetto PC. Our staff works closely with this pharmacy to meet the needs of our residents. They will review all current medications before your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Company's "preferred provider", they will be required to meet the Company's standards regarding medication management.

Please review and sign the following statement acknowledging you understand the Company's expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Company's preferred provider, I will be charged a fee, which is set forth on Exhibit X, the Select Services List.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Regional Director of Operations.

I understand there is a service fee of \$ 50.00 a month associated with a packaging exemption due to the additional administrative oversight required.

If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.

X JS

(Please initial as having read and understood the above provision.)

If I do not use the Company's preferred provider, I also understand that I will have the responsibility for reordering medications but in the event the medications are not delivered within two days prior to the depletion of my medication stock, the Company will reorder my medications with the 'Preferred Pharmacy' to insure no disruption takes place. I agree to pay for the medications and any associated service charges.

The fees associated with reordering medications from the "Preferred Pharmacy" are determined by the "Preferred Pharmacy", and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Elizabeth O'Malley
Resident Signature (by J. Stanton)

9-30-08
Date

Legal Representative Signature

Date

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,
Plaintiff,

Case No. 2011-CP-07-1610

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, ("Affiant"), who having been duly sworn, deposes and states:

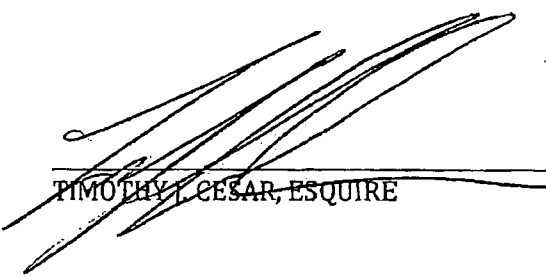
1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.
2. I am Counsel and Vice-President of Legal for Brookdale Senior Living, a Wisconsin Corporation, and the Carolina House of Hilton Head, South Carolina.
3. Carolina House of Hilton receives goods, services, and supplies from out-of-state vendors, including but not limited to, One Source, a vendor of supplies from Wisconsin; Sysco, a corporation with its corporate office located in Houston Texas; and a vendor of carpeting from North Carolina.

4. Carolina House of Hilton Head orders supplies from out-of-state vendors by mail, electronic mail, telephone and facsimile transmissions. Those supplies are then shipped over various state lines to Carolina House of Hilton Head.

5. Carolina House of Hilton Head receives and admits out-of-state residents as residents at Carolina House of Hilton Head. Currently, there are residents from Connecticut, Florida and New York.

FURTHER this Affiant sayeth naught.

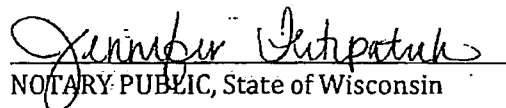
STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)


TIMOTHY J. CESAR, ESQUIRE

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced _____ as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 2 day of June, 2011.




NOTARY PUBLIC, State of Wisconsin

My Commission Expires: 10/16/11

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,

Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,

Defendants.

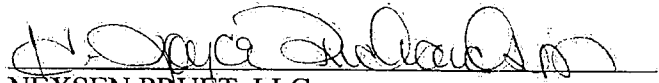
Case No. 2011-CP-071610

CERTIFICATE OF SERVICE

11 JUN -6 PM 4:53
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The undersigned certifies that a copy of the foregoing **MOTION TO DISMISS AND COMPEL ARBITRATION** has been served upon counsel of record by depositing a copy of the same in the United States Mail, first-class postage prepaid, on the 30 day of June, 2011, to the address shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUET, LLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Elizabeth O'Meara.

☐ Plaintiff

11 JUN -6 PM 4: 53

v. BEAUFORT COUNTY, S.C.
CLERK OF COURT

Brookdale Senior Living, Inc., Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-07-1610

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Kelly M. Jolley, Bar No. 72573
Address:
PO Drawer 3, Hilton Head Island, SC 29938
phone: 843-785-2171 fax:
e-mail: kjolley@mcnair.net other:

Defendant's Attorney:
Marc Manos/Manton Grier, Jr, Bar No. 011876/70525
Address:
Post Office Drawer 2426, Columbia, SC 29202
phone: 803-540-2116 fax: 803-727-1439
e-mail: MGrier@nexsenpruet.com other: MManos@

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss and Compel Arbitration

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 3, 2011

Date submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: 25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED – AMOUNT DUE:** _____

RECEIVED

JUN - 9 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

(Jury Trial Requested)

)
)
)
) MEMORANDUM IN OPPOSITION TO
) DEFENDANTS, BROOKDALE SENIOR
) LIVING, INC. AND SOUTHERN
) ASSISTED LIVING, LLC'S
) MOTION TO DISMISS AND COMPEL
) ARBITRATION
)
)
)
)

The Plaintiff, Elizabeth O'Meara, submits this Memorandum in Opposition to Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC's (collectively the "Defendants") Motion to Dismiss and Compel Arbitration. Defendants' motion should be denied because the arbitration provision contained in the Residency Agreement between Elizabeth O'Meara and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Carolina House") is unenforceable in that (1) it is not binding pursuant to the South Carolina Arbitration Act, S.C. Code Section 15-48-10(b), (2) the Federal Arbitration Act (hereinafter "FAA") does not apply to this action because the Residency Agreement does not involve interstate commerce, and (3) no one with the authority to bind Elizabeth O'Meara to arbitration executed the Residency Agreement on her behalf and discovery would be required to demonstrate any such authority.

STATEMENT OF FACTS

Mrs. O'Meara, who has Alzheimer's Disease, was admitted to Carolina House's Memory Care Unit by her daughter Julia Stanton due to her progressive dementia and her inability to care

for herself in an independent setting on September 30, 2008. Julia Stanton is designated Mrs. O'Meara's Health Care Power of Attorney. Julia Stanton is not Mrs. O'Meara's attorney-in-fact under a durable power of attorney and does not have the authority to bind Mrs. O'Meara to arbitration. Mrs. O'Meara's attorney-in-fact under her Durable Power of Attorney is Thomas Stanton. (See attached Exhibit 1).

On December 31, 2010 between the hours of 5:00 and 6:00 a.m., Carolina House's employee Sonia King physically and verbally abused Mrs. O'Meara for which she was subsequently arrested and charged with elder abuse. This case is a personal injury action brought by Mrs. O'Meara in attempt to recover damages from Defendants for Mrs. O'Meara's injuries, emotional distress, mental anguish and fear. Mrs. O'Meara has brought causes of action for negligence, gross negligence, willful misconduct, intentional infliction of emotional distress, and violation of the unfair trade practices act against Defendants.

ARGUMENT

A. The South Carolina Arbitration Act Does Not Apply To This Case.

S.C. Code Section 15-48-10(a) states as follows:

(a) ... Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon, the contract shall not be subject to arbitration.

(b) This chapter however shall not apply to:

(4) Any claim arising out of personal injury, based on contract or tort

This action seeks redress for personal injury. Accordingly, it is not arbitrable under the South Carolina Arbitration Act.

B. The Federal Arbitration Act (FAA) Is Not Applicable.

Defendants contend that the FAA preempts the South Carolina state statute in error. Interstate commerce is not substantially affected by the contract between Elizabeth O'Meara and Carolina House to render this case subject to the FAA. The South Carolina Supreme Court in *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) (attached hereto as Exhibit 2) held that the FAA was inapplicable to a similar contract for patient and residency services. The Court explained that the analysis must focus on the contract between the parties, and whether it involves interstate commerce. The Residency Agreement here is a contract for basic services – accommodations, meals, utilities, housekeeping, laundry and recreation. The provision of such basic services to Mrs. Pruett at the Carolina House facility in Hilton Head does not substantially involve interstate commerce.

The Affidavit of Timothy J. Caesar attached to Defendants' Motion does not contain any facts from which one could conclude that any of the basic services included in the contract between Mrs. O'Meara and Carolina House involve interstate commerce. On the contrary, the affidavit does no more than indicate that Carolina House conducts some business in interstate commerce, in that it has contracts with other entities that may involve interstate commerce and, at times, admits residents that previously lived outside of South Carolina. In *Timms*, our Supreme Court made it clear that the applicability of the FAA turns on whether the contract between the plaintiff and the defendant involves interstate commerce. The Residency Agreement between Mrs. O'Meara and Carolina House does not involve interstate commerce. Accordingly, the FAA is inapplicable to Mrs. O'Meara's personal injury claims.

Defendants may argue that *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) or *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995) impact the analysis

previously supported in *Timms*. However, these cases clarify that a transaction occurring via a contract must in fact involve interstate commerce to enforce an arbitration provision in the contract. In *Munoz*, the South Carolina Supreme Court, relying on *Allied-Bruce*, expressly overruled *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1994) to the extent it required the trial judge to consider if the parties to the transaction actually “contemplated” interstate commerce in determining whether to compel arbitration under the FAA. *Munoz*, 343 S.C. at 539, n.3. Under *Munoz*, whether the parties contemplated arbitration is irrelevant in determining whether to compel arbitration under the FAA: “the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Id.* At 539 (emphasis added). However, the Supreme Court’s holding in *Munoz* does not alter its holding in *Timms* that arbitration cannot be compelled pursuant to the FAA when the underlying transaction does not involve interstate commerce. Neither *Munoz* nor *Allied-Bruce* addressed whether the underlying transaction did, in fact, involve interstate commerce. In *Allied-Bruce*, the parties expressly declined to argue that issue, 513 U.S. at 281, and in *Munoz* the underlying transaction included a loan from an out of state creditor, 343 S.C. at 535.

Accordingly, there is clear precedent in South Carolina holding on analogous facts that arbitration may not be compelled under the FAA based on a patient residency and services agreement like the Resident Agreement between Elizabeth O’Meara and Carolina House. Neither *Munoz* nor *Allied-Bruce* overruled *Timms*’ holding that arbitration may only be compelled where the underlying transaction itself, in fact, involves interstate commerce. *See, e.g. Swartz v. Integrated Health Services at Drift*, No. 2001-CP-10-000598 (July 6, 2001)

(attached hereto as Exhibit 3). The Residency Agreement does not involve interstate commerce and Defendants' Motion to Dismiss and Compel Arbitration must be denied.

C. Julia Stanton is not Elizabeth O'Meara's Attorney-in-Fact under her Durable Power of Attorney.

Elizabeth O'Meara was admitted to Carolina House's Memory Care Unit because she had progressive dementia and was unable to care for herself independently. Mrs. O'Meara did not execute the Residency Agreement. Julia Stanton, Mrs. O'Meara daughter, executed the Residency Agreement as Mrs. O'Meara's Attorney-in-Fact for health care matters. Julia Stanton is not Mrs. O'Meara's attorney-in-fact under Mrs. O'Meara's durable power of attorney and does not have the authority to bind Mrs. O'Meara to arbitration. Mrs. O'Meara's attorney-in-fact under her Durable Power of Attorney is Thomas Stanton. (See attached Exhibit 1). To the extent, Defendants contest whether Julia Stanton had the authority to bind Mrs. O'Meara to arbitration, the parties must engage in discovery regarding the matter, precluding that this case be dismissed at this time.

CONCLUSION

Plaintiff Elizabeth O'Meara respectfully requests this Court deny Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC's Motion to Dismiss and Compel Arbitration on the grounds that the arbitration clause is not binding pursuant to the South Carolina Arbitration Act, (2) arbitration may not be compelled under the Federal Arbitration Act because the Residency Agreement does not involve interstate commerce, and (3) no one with the authority to bind Elizabeth O'Meara to arbitration executed the Residency Agreement on her behalf.

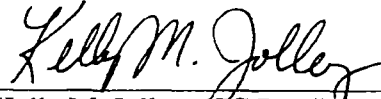
[Signature appears on following page]

Dated: June 21, 2011

Respectfully submitted,

MCNAIR LAW FIRM, P.A.

By

A handwritten signature in cursive script, reading "Kelly M. Jolley". The signature is written in black ink and is positioned above a horizontal line.

Kelly M. Jolley, (SC Bar #72573)

E-Mail: kjolley@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

ELIZABETH O'MEARA,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

CERTIFICATE OF SERVICE

I, Linda Huey, an employee of McNair Law Firm, P.A., have this date served a copy of **MEMORANDUM IN OPPOSITION TO DEFENDANTS, BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC'S MOTION TO DISMISS AND COMPEL ARBITRATION** on defendants in the above-referenced action by depositing a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this 21st day of June, 2011:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina

POWER OF ATTORNEY

*28:00 07/31/06 13:03:05
P/A -06-070154-0002
Montgomery County
Judy Dodge Recorder

KNOW ALL MEN BY THESE PRESENTS:

I, ELIZABETH A. O'MEARA, Soc. Sec. No. 281-10-4705
City of Centerville, County of Montgomery and State of Ohio, have made, constituted and appointed, and by these presents do make, constitute and appoint THOMAS R. STANTON of Hilton Head Island, SC my true and lawful attorney to act in, manage and conduct all my estate and all my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do, execute, exercise or perform, or to concur with persons jointly interested with myself therein in the doing executing, exercising and performing of all acts, powers, duties, rights and obligations whatsoever that I now have, or may subsequently acquire the legal right, power or capacity to do, execute, exercise or perform, in connection with, arising from or relating to any person, item, transaction, business, real or personal property, tangible or intangible thing or any matter whatsoever, including but not limited to the following:

(1) To buy, receive, lease, accept, or otherwise acquire; to sell, convey, gift, mortgage, hypothecate, pledge, quitclaim, or otherwise encumber or dispose of; or to contract or agree for the acquisition, disposal, or encumbrance of; all such sums of money, debts, dues, bonds, notes, checks, drafts, accounts, deposits, legacies, bequests, devises, interests, dividends, stock certificates, certificates of deposit, annuities, pension and retirement benefits, insurance benefits and proceeds, documents of title, choses in action, personal and real property, intangible and tangible property and property rights, and demands whatsoever, liquidated or unliquidated, as are now, or will later become owned by, or due, owing, payable, or belonging to me or in which I have or may acquire an interest upon such terms as my said attorney shall think proper;

(2) To take, hold, possess, invest, lease, or let, or otherwise manage any or all of my property or any interest therein; to eject, remove, or relieve tenants or other persons from, and recover possession of, such property by all lawful means, and to maintain, protect, preserve, store, transport, manage, insure, repair, rebuild, modify or improve the same or any part thereof;

(3) To make, do and transact all and every kind of business of what nature or kind so ever, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interests, dividends, annuities, demands, debts, taxes, and obligations which may now or hereafter be due, owing or payable by me or to me;

(4) To make, endorse, accept, receive, sign, seal, execute, acknowledge and deliver deeds, assignments, agreements, certificates, securities, hypothecations, checks, notes, bonds, including but not limited to United States Bonds, United States Treasury Bills, United States Treasury Notes, vouchers, receipts and such other instruments in writing of whatever kind and nature as may be necessary, convenient or proper in the premises;

(5) To deposit and withdraw for the purposes hereof, in either my said attorney's name or my name, in or from any banking institution, savings and loan, stock brokerage firm, and credit union, any funds, negotiable paper, IRA accounts, or monies which may come into my said attorney's hands as such attorney or which I now or hereafter may have on deposit or be entitled to;

(6) To institute, prosecute, defend, compromise, arbitrate and dispose of legal, equitable or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation in connection with the premises;

(7) To act as my attorney or proxy in respect to any stocks, shares, bonds, or other investments, rights or interests I may now or hereafter hold;

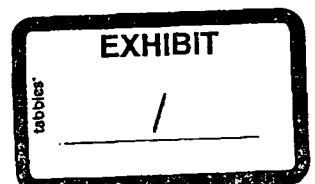
(8) To engage and dismiss agents, counsel, and employees and to appoint and remove at pleasure any substitute for, or agent of my said attorney, in respect to all or any of the matters or things herein mentioned and upon such terms as my attorney shall think fit;

(9) To execute vouchers on my behalf for any and all allowances and reimbursements properly payable to me by the United States or its agencies, to receive, endorse and collect the proceeds of checks payable to the order of the undersigned drawn on the Treasurer of the United States;

(10) To make, sign, execute, accept, receive, deliver, possess and fund any and all trust documents, revocable or irrevocable, of any kind or nature and to take any and all other steps as may be necessary and proper to exercise and carry out the terms of such trust documents;

Jed HOLZFASTER, CECIL, McKNIGHT & MUES
Attorneys at Law

RECORD P. 000078



(11) To prepare, execute, and file income and other tax returns, and other government reports, federal, state and city;

(12) To receive, accept, endorse, deposit and cash any social security checks, medicaid checks, checks for insurance proceeds, checks for settlements of legal claims, any pension and/or retirement checks and any and all other checks in my name and to enter my safe deposit box and remove any article therein;

(13) To make, endorse, accept, receive, sign, seal, execute, acknowledge, deliver and sell any and all motor vehicle certificates of title or any other documents related thereto including registration for license plates;

(14) To sell or gift any and all of my real estate, now owned or hereafter acquired, on such terms as my Attorney may deem proper, including the signing of deeds, contracts and other instruments and releasing any dower rights, and to receive any and all sale proceeds;

(15) To sign, endorse, execute, acknowledge, deliver, receive, and possess such applications, contracts, agreements, options, covenants, deeds, conveyances, trust deeds, security agreements, bills of sale, leases, mortgages, assignments, insurance policies, annuities, bills of lading, warehouse receipts, documents of title, bills, bonds, debentures, checks, drafts, bills of exchange, notes, stock certificates, proxies, warrants, commercial paper, receipts, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of banks, savings and loan or other institutions or associations, proofs of loss, evidences of debts, releases, and satisfaction of mortgages, judgments, liens, security agreements, and other debts and obligations, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the exercise of the rights and powers herein granted.

This Power of Attorney shall not be affected by the mental or physical disability of the principal.

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act, deed, matter and thing whatsoever in and about my estate, property, and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specially enumerated powers being in aid and exemplification of the full, complete and general power herein granted and not in limitation or definition thereof; and hereby ratify all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

And I hereby declare that any act or thing lawfully done hereunder by my said attorney shall be binding on my self, and my heirs, legal and personal representatives and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 15 day of October, 2002.

WITNESSETH:

Elizabeth A. O'Meara
Elizabeth A. O'Meara

Elizabeth A. O'Meara
ELIZABETH A. O'MEARA

ACKNOWLEDGMENT

STATE OF OHIO
COUNTY OF MONTGOMERY, SS:

I, Joseph E. Balmer III, do hereby certify that I am a duly commissioned, qualified and authorized Notary Public in the State of Ohio and that ELIZABETH A. O'MEARA, Grantor in the foregoing Power of Attorney, dated the 15 day of October, 2002, is personally known to me as the person who executed the foregoing Power of Attorney and being first duly sworn, executed said instrument after the contents thereof had been read, and acknowledged that the execution of said instrument by him/her was his/her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 15 day of October, 2002.

Joseph E. Balmer III
Notary Public

This Instrument Prepared By:

JOSEPH E. BALMER III
Attorney at Law
1105 Wilmington Avenue
Dayton, Ohio 45420

HOLZFASTER, CECIL, McKNIGHT & MUES
Attorneys at Law

V:\POA-FORM.WPD

P

Supreme Court of South Carolina.

Dora R. TIMMS, Respondent,

v.

Mary GREENE, National HealthCorp, L.P., Greenwood Nursing Homes, Inc., d/b/a/ Greenwood Health Care Center, Appellants.

No. 23805.

Submitted May 19, 1992.

Decided Feb. 16, 1993.

Rehearing Denied March 23, 1993.

Nursing home resident brought action against home, seeking damages for injuries to her head and ears which allegedly occurred when she was left unattended under hair dryer. The Circuit Court, Greenwood County, James E. Moore, J., denied home's motion to dismiss, and home appealed. The Supreme Court, Finney, J., held that there was insufficient relationship with interstate commerce to render controversy subject to Federal Arbitration Act.

Affirmed.

West Headnotes

[1] Commerce 83 ↪ 80.583 Commerce83II Application to Particular Subjects and Methods of Regulation83II(1) Civil Remedies83k80.5 k. Arbitration. Most Cited Cases

Contract between nursing home and resident lacked sufficient relationship with interstate commerce to render Federal Arbitration Act applicable to controversy arising from head and ear injuries which resident allegedly suffered when left unattended under hair dryer, even though home was allegedly division of Delaware partnership, marketed its services to persons residing outside state, hired employees from outside state, purchased majority of its goods, equipment and supplies outside state, and contemplated payment in part by Medicare or Medicaid. 9

U.S.C.A. § 1 et seq.[2] Commerce 83 ↪ 80.583 Commerce83II Application to Particular Subjects and Methods of Regulation83II(1) Civil Remedies83k80.5 k. Arbitration. Most Cited Cases

Interstate commerce is necessary basis for application of Federal Arbitration Act, and contract or agreement not so predicated must be governed by state law. 9 U.S.C.A. § 1 et seq.

****642 *469** Phillip E. Reeves, of Gibbes & Clarkson, P.A., Greenville, for appellants.

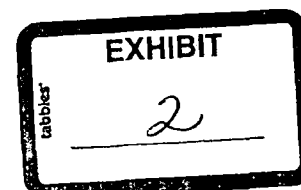
Robert P. Foster of Foster, Foster & Fortson, Greenville and William T. Jones, of The Jones Law Firm, Greenwood, for respondent.

FINNEY, Justice:

Defendants-Appellants Mary Greene, National HealthCorp, L.P., Greenwood Nursing Homes, Inc., d/b/a Greenwood Health Care Center (appellants), appeal a circuit court order *470 denying appellant's motion to dismiss Plaintiff-Respondent Dora R. Timms' (respondent) negligence action for lack of jurisdiction, improper venue, and failure to state facts sufficient to constitute a cause of action. We affirm.

Prior to her death of unrelated causes, the respondent commenced this negligence action in the Greenwood County Circuit Court in August of 1990 seeking damages for injuries to her head and ears which she alleged occurred while left unattended under a hair dryer at Greenwood Health Care Center, Inc. (the Center). Appellant National Health Care, L.P., was made a party by virtue of its ownership of the Center. Appellant Mary Greene contracted with the Center to provide hair care services to residents and was providing services to the respondent at the time of her injuries.

Appellants did not answer the complaint, but moved to dismiss the action under Rule 12(b)(6).



SCRCP, asserting 1) that the circuit court was without subject matter jurisdiction inasmuch as the contract between Timms and the Center required submission of the dispute to binding arbitration; 2) that the circuit court was the improper venue due to the fact that the proper forum to hear the case was the appropriate arbitration panel; 3) that respondent's complaint failed to allege facts sufficient to state a cause of action; and 4) sought an order requiring the respondent to provide a more definite statement of her complaint, pursuant to Rule 12(e), SCRCP.

The court denied appellant's motion to dismiss, holding that the arbitration agreement is unenforceable in that 1) it does not comply with the notice requirement of the **643 South Carolina Uniform Arbitration Act, S.C.Code Ann. § 15-48-10 et seq. (Supp.1991), (the State Act) or otherwise; and 2) that the contract does not involve interstate commerce, therefore, the Federal Arbitration Act, 9 U.S.C. § 1, et seq., (the Federal Act) does not supersede the State Act. This appeal followed.

The contract evidencing the controverted arbitration agreement was executed by Timms in September of 1988 when she became a resident of the Center. The Center provided an Admission and Financial Contract containing the following Dispute Resolution Procedure.

The parties hereby agree to arbitrate any claims or disputes arising out of or in connection with the care rendered to PATIENT by CENTER and/or its employees in *471 accordance with the provisions of the Uniform Arbitration Act, except that claims arising over non-payment of charges for services rendered or products provided to PATIENT shall not be subject to arbitration. The parties understand that arbitration of claims shall constitute a waiver of the right to trial by judge and/or jury which the parties might otherwise have. The parties hereby agree to arbitration due to the potential for a more timely final resolution of the claim or dispute. The parties freely choose arbitration and understand that the arbitrator's decision is final and binding upon all parties.

In determining enforceability of the arbitration agreement under the State Act, the trial court relied upon the following provisions of Section 15-48-10.

(a) ... Notice that a contract is subject to arbitra-

tion pursuant to this chapter shall be typed in underlined capital letters, or rubber stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

(b) This chapter however shall not apply to:

(1) Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply or to any arbitration or award thereunder ...

(4) Any claim arising out of personal injury, based on contract or tort ...

The court found 1) that the contract did not contain on the first page any mention of arbitration; 2) that there exists an insufficient relationship with interstate commerce to render the controversy subject to the Federal Act; 3) that the contract contained no exclusionary language prohibiting application of the State Act and invoking jurisdiction of the Federal Act; and 4) that the action was one seeking redress for personal injury and not arbitrable under the State Act.

[1] Appellants contend the court erred in failing to find that the express terms of the contract subjects respondent's claim to the Federal Act under the decisions in Episcopal Housing Corp. v. Federal Ins. Co., 269 S.C. 631, 239 S.E.2d 647 (1977); and Circle S. Enterprises v. Stanley Smith & Sons, 288 S.C. 428, 343 S.E.2d 45 (Ct.App.1986), *472 and cites the following provision from Section 2 of the Federal Act.

A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof ... shall be valid, irrevocable, and enforceable, save upon such grounds as exists at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

In furtherance of its claim that interstate commerce is involved, appellants assert the Center's acceptance of federal insurance payments and that terms in the contract imply that the Center procures equipment, services and materials from outside the state. We disagree.

First, the State Act is clear with regard to the notice requirement. Moreover, the agreement specifically provides for arbitration "in accordance with the provisions of the Uniform Arbitration Act," the official designation for the State Act. S.C.Code Ann. § 15-48-240 (Supp.1991).

Second, as to the issue of commerce, **644Episcopal Housing Corp. v. Federal Ins. Co., supra, and Circle S. Enterprises v. Stanley Smith & Sons, supra, are distinguishable from the case under consideration in that both are construction contracts clearly predicated upon transactions involving the purchase and use of materials and supplies from outside the state. In Episcopal Housing Corp., this Court cited the four-prong test for determining applicability of the Federal Act, the second and relevant prong of which is that "the contract evidences a transaction involving commerce." In determining whether the contract on its face evidences commerce, we are required to look to the entire contract document.

[2] In respondent's personal injury action, the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law. See Shearson Hayden Stone, Inc. v. Liang, 493 F.Supp. 104 (N.D.Ill.1980). To activate application*473 of the Federal Act, the commerce involved in the contract must be interstate or foreign. 9 U.S.C. § 1; Varley v. Tarrytown Assoc., Inc., 477 F.2d 208 (2d Cir.1973).

In this record is an affidavit of the administrator of the Center, which avers that the Center engages in interstate commerce in that the Center 1) is a division of National HealthCorp, L.P., a Delaware Limited Partnership; 2) markets its services to persons residing outside this State; 3) hires employees from outside the State; 4) purchases a majority of its goods, equipment and supplies outside the state for use at the Center; and 5) contemplates payment in part by Medicare or Medicaid. Although these factors could evidence the Center's involvement in interstate commerce, we find that their relationship to the agreement between the Center and the respondent is insufficient to form the basis of the contract between the parties.

Accordingly, we hold that the purported arbitration agreement is unenforceable under Section 15-48-10 and that the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, is inapplicable. We affirm the circuit court's denial of appellant's motion to dismiss.

AFFIRMED.

HARWELL, C.J., and CHANDLER and TOAL, JJ.,
concur.
MOORE, J., not participating.

S.C.,1993.
Timms v. Greene
310 S.C. 469, 427 S.E.2d 642

END OF DOCUMENT

Court of Common Pleas of South Carolina.
Charleston County
SCHWARTZ, Lester ATorney in Fact E Lehrman, Tillie Etal, Plaintiff(s),
v.
INTEGRATED HEALTH SERVICES AT DRIFT Integrated Health Service of Charle Integrated Health Services Inc
Etc, Defendant(s).
No. 2001-CP-10-000598.
July 6, 2001.

Gerald C. Smoak, Sr., Judge.

☐ JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.

☐ DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.

☐ ACTION DISMISSED: ☐ RULE 12(B), SCRPC; ☐ RULE 41(A), SCRPC (VOL. NONSUIT); ☐ RULE 43(K), SCRPC (SETTLED); ☐ OTHER-

☐ ACTION STRICKEN: ☐ RULE 40(J), SCRPC; ☐ BANKRUPTCY; ☐ BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM, VACATE OR MODIFY ARBITRATION AWARD; ☐ OTHER

IT IS ORDERED AND ADJUDGED: ☐ SEE ATTACHED; ☐ JUDGMENT BY COURT ORDER THAT THE DEFENDANTS' MOTION TO STAY AND TO COMPEL ARBITRATION IS DENIED.

DATED AT CHARLESTON, SOUTH CAROLINA, THIS 06TH DA OF JULY, 2001

<<signature>>

PRESIDING JUDGE

THIS JUDGMENT WAS ENTER ON THE 10TH DAY OF JULY, 2001 AND A COPY MAILED FIRST CLASS THIS 12TH DAY OF JULY, 2001 TO ATTORNEYS OF

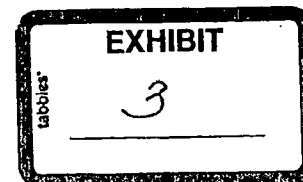
RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:

BUTAITIS, STEPHEN A

ATTORNEY(S) OR PRO SE(S)

SCRPC FORM 4

RAWL, A VICTOR JR



ATTORNEY(S) OR PRO SE(S)

<<signature>>

CLERK OF COURT

ORDER

This matter came before the Court on Defendant's Motion to Stay and to Compel Arbitration. For the reasons stated herein, the Motion is denied.

FACTUAL BACKGROUND

This is a personal injury action brought on behalf of Tillie Lehrman against a nursing home and its parent corporation for injuries sustained while Ms. Lehrman was residing in the Defendant's nursing home. Defendant's have filed a motion to compel arbitration pursuant to an arbitration clause in the admission agreement between Ms. Lehrman and the Defendant nursing home. The arbitration clause provides as follows:

Pursuant to the Federal Arbitration Act, any action, dispute, claim, or controversy of any kind (e.g., whether in contract or in tort, statutory or common law, legal or equitable, or otherwise) now existing or hereafter arising between the parties in any way arising out of, pertaining to or in connection with the provision of health care services, any agreement between the parties, the provision of any other goods or services by the Health Care Center or other transactions, contracts, or agreements of any kind whatsoever, any past, present or future incidents, omissions, acts, errors, practices, or occurrence causing injury to either party whereby the other party or its agents, employees or representatives may be liable, in whole or in part, or any other aspect of the past, present, or future relationships between the parties shall be resolved by binding arbitration administered by the National Health Lawyers Association (the "NHLA").

DISCUSSION

A.

The Defendants claim that the arbitration clause in the admissions contract and the Federal Arbitration Act ("FAA") itself mandate arbitration of the Plaintiff's claim. The Fourth Circuit Court of Appeals has made clear that two elements must exist to compel arbitration pursuant to the FAA:

"For the Federal Arbitration Act to apply to a dispute between parties, the court must make two findings: (1) there was an agreement in writing providing for arbitration; and (2) the contract evidenced a transaction involving interstate commerce. American Home Assurance v. Vecco Concrete Const., 629 F.2d 961, 963 (4th Cir. 1980).

Peoples v. Securities Life Ins. Co., 867 F.2d 809, 813, n.4 (4th Cir. 1989). Here, the Defendants have failed to show that the contract evidenced a transaction involving interstate commerce.

The precise issue before this Court was addressed and decided by the South Carolina Supreme Court in Timms v. Greene, 310 S.C. 469, 427 S.E. 2d 642 (1993). In Timms a nursing home resident brought an action against a nursing home seeking damages for personal injuries when she was left unattended under a hair dryer. The nursing home moved for arbitration under a clause contained in its admission agreement. The trial court held the action was not arbitrable under the South Carolina Uniform Arbitration Act because, *inter alia*, the action was a personal injury action^[FN1] and because there was no nexus with interstate commerce that would bring the FAA into play to preempt the state requirements, the case would proceed in the judicial forum. The Supreme Court affirmed, dismissing an affidavit submitted by the nursing home attempting to establish that the nursing home was an enterprise engaged in

interstate commerce. The *Timms* Court reasoned:

FN1. Section 15-48-10 (b)(4) of the South Carolina Uniform Arbitration Act prohibits mandatory arbitration of personal injury actions.

"Appellants contend the court erred in failing to find that the express terms of the contract subjects respondent's claim to the Federal Act under the decisions in *Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 239 S.E. (2d) 647 (1977); and *Circle S. Enterprises v. Stanley Smith & Sons*, 288 S.C. 428, 343 S.E. (2d) 45 (Ct. App.) 1986, and cites the following provision from Section 2 of the Federal Act.

A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof... shall be valid, irrevocable, and enforceable, save upon such grounds as exists at law or in equity for the revocation of any contract. 9 U.S.C. § 2.

In furtherance of its claim that interstate commerce is involved, appellant asserts the Center's acceptance of federal insurance payments and that terms in the contract imply that the Center procures equipment, services and materials from outside the state. *We disagree.* (emphasis added).

In Respondent's personal injury action, the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State law. See *Shearson Hayden Stone, Inc. v. Liang*, 493 F. Supp. 104 (N.D. Ill. 1980). To activate application of the Federal Act, the commerce involved in the contract must be interstate or foreign. 9 U.S.C. § 1; *Varley v. Tarrytown Assoc., Inc.*, 477 F. (2d) 208 (2d. Cir. 1973). (emphasis added).

In this record is an affidavit of the administrator of the Center, which avers that the Center engages in interstate commerce in that the Center 1) is a division of National Health Corp, L.P., a Delaware Limited Partnership; 2) markets its services to persons outside this State; 3) hires employees from outside the State; 4) purchases a majority of its goods, equipment and supplies outside the state for use at the Center; and 5) contemplates payment in part by Medicare or Medicaid. Although these factors could evidence the Center's involvement in interstate commerce, we find that their relationship to the agreement between the Center and the respondent is insufficient to form the basis of the contract between the parties. (emphasis added).

Accordingly, we hold that the purported arbitration agreement is unenforceable under Section 15-48-10 and that the Federal Arbitration Act, is inapplicable. We affirm the circuit court's denial of appellant's motion to dismiss".

Timms, 310 S.C. at 473. The affidavit filed by the Defendants in this case is identical in all significant respects to the affidavit filed in *Timms*. The affidavit states that the Defendants received Medicare funds, its billing office is in Florida, and it received supplies from outside of South Carolina. As the *Timms* court ruled on a nearly identical record, the contract here simply does not evidence a transaction involving interstate commerce between the parties. For this reason, the FAA is not triggered and Defendants' motion should be denied.

B.

This Court is mindful of *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) and *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995), the cases upon which Defendants principally rely. These cases make clear that to enforce an arbitration provision in a contract, the transaction must in fact involve interstate commerce. The *Munoz* case, relying on *Allied-Bruce*, expressly overruled *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1994) to the extent it required the trial judge to consider Whether the parties to the transaction actually "contemplated" interstate commerce in determining whether the FAA applied. *Munoz*, 343 S.C. at 539, n.3. The *Munoz* Court held that what the parties actually contemplated is not relevant in the analysis. *Munoz*, however, does not otherwise alter the rule that arbitration cannot be compelled pursuant to the FAA in a case in which the underlying transaction does not involve interstate commerce.

As discussed above, our Supreme Court in *Timms* held on facts identical in all significant respects to this case that there did not exist a sufficient nexus between a nursing home admission agreement and interstate commerce and, thus, arbitration could not be compelled pursuant to the FAA. I cannot ignore this clear precedent squarely addressing the issue before this Court. For this reason, the Defendants' Motion to Stay and to Compel Arbitration is denied.

AND IT IS SO ORDERED.

<<signature>>

JUDGE GERALD C. SMOAK, SR. NINTH JUDICIAL CIRCUIT COURT JUDGE

This 6 day of July, 2001 Charleston, South Carolina

SCHWARTZ, Lester ATorney in Fact E Lehrman, Tillie Etal, Plaintiff(s), v. INTEGRATED HEALTH SERVICES
AT DRIFT Integrated Health Service of Charle Integrated Health Services Inc Etc, Defendant(s).
2001 WL 35988562 (S.C.Com.Pl.) (Trial Order)

END OF DOCUMENT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,

Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King.

Defendants.

Case No. 2011-CP-07-1610

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND COMPEL
ARBITRATION**

Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC ("Brookdale Defendants") submit this Memorandum in Support of their Motion to Dismiss and Compel Arbitration.

BACKGROUND

When Elizabeth O'Meara and her responsible party, Julia Stanton, agreed to place Ms. O'Meara in assisted-living care, they signed a Residency Agreement containing a clause that required them to submit this case to binding arbitration. Both signed the Residency Agreement, and Julia Stanton initialed "as having read and understood the provisions" of each section. Despite agreeing to arbitrate this case, Ms. O'Meara now wants the Court to disregard the Residency Agreement and ignore the terms that she freely agreed to follow.

Although claims for personal injury are not subject to arbitration under South Carolina's Uniform Arbitration Act, such claims are subject to arbitration under the Federal Arbitration Act. That Federal Act preempts conflicting law and applies to any arbitration agreement involving interstate commerce. The Residency Agreement involves interstate

commerce because it specifies that residents will receive food, amenities, and other goods from the facility, which the facility first receives through interstate commerce. The facility is also tied to interstate commerce because it is owned by a Wisconsin corporation and receives residents from out of state.

The Court, therefore, should dismiss or stay this case and compel arbitration.

THE ARBITRATION AGREEMENT

Elizabeth O'Meara was a resident of Carolina House of Hilton Head¹("facility"), an assisted-living facility, during the dates relevant to the Complaint. She alleges that Defendant Sonia King verbally and physically abused her.

Prior to her admission to the facility, Ms. O'Meara and Ms. Stanton entered into a Residency Agreement with Southern Assisted Living, Inc. on March 27, 2007. The Residency Agreement contains an arbitration provision governed by the Federal Arbitration Act and stating as follows:

A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding the interpretation of this Agreement, whether arising out of State or Federal Law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, ***shall be submitted to binding arbitration***, as provided below, and shall not be filed in a court of law. The parties to this Agreement further understand that a jury will not decide their case. The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. . . .

(Exhibit A, Residency Agreement, p. 11 attached to Defendants' Motion) (emphasis added).

¹ Carolina House of Hilton Head is owned by Defendant Brookdale Senior Living, Inc.

The Residency Agreement also contains a section titled "**BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISION**," which outlines the benefits of arbitration that flow to both resident and facility. The section also contains an acknowledgment in bold font that "[t]he undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an Attorney." *Id.*, p. 15. The arbitration agreement is not buried inconspicuously in the agreement. It takes up five pages (more than 25%) of the nineteen-page Residency Agreement.

As responsible party, Ms. Stanton also initialed underneath each arbitration provision acknowledging "as having read and understood the provisions [relating to arbitration]." *Id.*, p. 14. The front page of the Residency Agreement states that "**THIS AGREEMENT IS SUBJECT TO ARBITRATION**," and further recommends that "you consult your legal counsel to ensure proper understanding of this Agreement before signing." *Id.*, p. 1.

In addition to containing provisions on dispute resolution, the Residency Agreement lays out the basic services each resident will receive from the facility, including meals, amenities, furnishing, housing, and the ability to further agree to receive medical services from third parties. Many of the goods and services provided to the residents come from out of state. Specifically, the facility receives food supplies for feeding its residents from Sysco Corporation, a Texas corporation; medical supplies from One Source, a Wisconsin Corporation; and carpeting from a North Carolina vendor. (**Exhibit B**, Affidavit of Timothy J. Cesar attached to Defendants' Motion). Thus, many of the goods and services provided to Residents under the Agreement are procured through interstate commerce.

The facility is also involved in interstate commerce in other ways. It orders the

supplies from the out-of-state vendors through email, telephone, and fax orders. Id. The facility also receives and admits out-of-state residents, including residents from Connecticut, Florida, and New York. Id.

ARGUMENT

I. THE ARBITRATION AGREEMENT IS A VALID AND ENFORCEABLE AGREEMENT UNDER THE FEDERAL ARBITRATION ACT BECAUSE THE RESIDENCY AGREEMENT INVOLVES INTERSTATE COMMERCE

Although the South Carolina Uniform Arbitration Act excludes claims for personal injury, parties may still enter pre-injury agreements to arbitrate personal-injury claims through the Federal Arbitration Act (“FAA”). When the FAA governs a dispute, it preempts conflicting state law. Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 269 (1995); Soil Remediation Co. v. Nu-Way Environmental, Inc., 323 S.C. 454, 459, 476 S.E.2d 149, 152 (1996).

Section 2 of the FAA states that a “contract evidencing a transaction involving commerce to settle by arbitration . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9. U.S.C. § 2. The basic purpose of the FAA “is to overcome courts’ refusal to enforce agreements to arbitrate.” Allied-Bruce, 513 U.S. at 270. Because the FAA was intended to enforce arbitration agreements and put them on “the same footing as other contracts,” Congress intended the FAA to have a broad scope and for courts to interpret it liberally. Id. At 270, 275. The language of the FAA evidences a federal policy favoring arbitration. Mastrobouno v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62 (1995).

In Allied-Bruce, the Supreme Court of the United States held that the FAA’s phrase “involving commerce” evidenced “an intent to exercise Congress’ commerce power to the

full.” Id. at 277. The Court held that the parties need not contemplate an interstate transaction at the time of the contract. In that case a homeowner signed a termite-prevention contract that contained an arbitration clause. The defendant was a multistate company that used termite-treating and house-repairing materials that came from out of state. Although the issue of whether the contract involved interstate commerce was not contested, the Supreme Court noted that it involved interstate commerce because the company was a multi-state company and the materials used in the contract came from out of state. Id. at 282. There is no requirement that the transaction “substantially” involves interstate commerce, as argued by the Plaintiff in her Memorandum in Opposition.

In this case, much like the facts in Allied-Bruce, the facility uses goods and materials obtained from out-of-state vendors in order to serve its residents. The facility, for example, receives food from Sysco Company, a Texas Corporation; medical supplies from One Source, a Wisconsin Corporation; and carpeting from a North Carolina vendor. (**Exhibit B**, Affidavit of Timothy J. Cesar). Thus, the Residency Agreement involves interstate commerce because it specifies certain meals, amenities, furnishing, and other goods that may come from out-of-state vendors. Further, the facility is owned and controlled by Brookdale Senior Living, a Wisconsin Corporation. Id. Brookdale advertises nationally, and invites residents to its locations from out of state. The facility houses residents from Connecticut, Florida, and New York. Id. Finally, the Residency Agreement was entered into between Southern Assisted Living and Ms. O’Meara. Southern Assisted-Living is a North Carolina corporation. (**Ex. C**).

Several courts from other jurisdictions have held that arbitration agreements in nursing-home or assisted-living facility agreements are enforceable. For example, in Triad

Health Mgmt. of Georgia, III, LLC v. Johnson, 679 S.E.2d 785 (Ct. App. Ga. 2009), the court held that the FAA applied to an admission contract to a nursing home. In that case, the facility bought supplies from out-of-state vendors, treated out-of-state patients, and had patients insured through Medicaid and Medicare. “Given the evidence establishing a nexus between Triad’s nursing home operations and interstate commerce, and in light of the United States Supreme Courts’ *expansive interpretation of commerce for purposes of the FAA* [in Allied-Bruce], we conclude that the Admission Contract was a contract evidencing a transaction involving commerce, and the FAA therefore applies.” Id. at 788 (emphasis added).

In Briarcliff Nursing Home v. Turcotte, 894 So.2d 661 (Ala. 2004), the Supreme Court of Alabama considered whether a nursing-home admission contract affected interstate commerce. The court found that that facility had out-of-state patients, receives regular shipments from out-of-state vendors, buys medicines from an out-of-state company, and several of its residents were Medicare and Medicaid patients. Id. at 667. Given these facts, the court held that facilities activities substantially affect interstate commerce. See also Oesterle v. Atria Mgmt. Co., LLC, 2009 WL 2043492 (D. Kan. 2009) (unpublished and **attached**) (holding arbitration agreement in nursing-home contract was governed by FAA); Miller v. Cotter, 863 N.E.2d 537 (Mass. 2007) (holding arbitration agreement would be governed by both FAA or state law).

Finally, the case of Timms v. Greene, 310 S.C. 469, 427 S.E.2d 642 (1993) is inapplicable to this case for several reasons. First, Timms holds that a court is required to look at the contract “on its face” to determine if it involves interstate commerce. Id. at 472, 427 S.E.2d at 644 (“In determining whether the contract *on its face* evidences commerce,

we are required to look to the entire contract.”). Essentially, Timms held that the parties must contemplate an interstate transaction because it required that the contract “on its face” must involve interstate commerce. This holding, however, was implicitly overruled two years later by the United States Supreme Court in Allied-Bruce.² As stated above, Allied-Bruce articulated an expansive interpretation of FAA and held that “involving commerce” was intended to reach to the full extent of Congress’ power under the commerce clause. A court is required to look at the entire transaction—and not just the face of the contract—to determine whether it involves interstate commerce.

Second, since Allied-Bruce, other South Carolina opinions have articulated expansive interpretations of the FAA. In Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001), the Court held the FAA applied to a contract that was entered into between South Carolina homeowners and South Carolina builder. Because the builder later transferred the contract to a Delaware corporation, and the loan proceeds were distributed from a bank in Minnesota, the “contractual relationship . . . in fact involves interstate commerce and therefore the FAA applies.” Id. at 539, 542 S.E.2d at 364; see also (New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008) (holding FAA applies to construction contract because it will involve businesses and supplies from outside South Carolina).

² Mathews v. Fluor Corp., 312 S.C. 404, 440 S.E.2d 880 (1994) cited Simms for the proposition that “the express terms of the contract involved interstate commerce.” However, in Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001), the Court expressly overruled Mathews “to the extent it considered whether the parties contemplated interstate commerce as a factor in determining if the FAA applied.” Presumably, Munoz also overruled Simms to the same extent.

Third, the facts in Timms are distinguishable from this case. In Timms, there was no evidence tying the *agreement* to interstate commerce. The only evidence was that the facility involved itself in interstate commerce. Here, unlike Timms, the Residency Agreement is actually tied to interstate commerce. The Residency Agreement provides that foods and supplies will be provided to residents, and those foods and supplies come from out of state. Further, in Simms the nursing home *was a South Carolina company* (with an out-of-state parent), whereas in this case the assisted living facility is directly owned by a Wisconsin Corporation, and the Residency Agreement was signed by Southern Assisted Living, Inc., a North Carolina corporation.

Therefore, arbitration provisions in resident agreements are enforceable under the FAA if they involve interstate commerce. As stated above, the facility conducts interstate commerce which relate directly to the supply of goods and services outlined in the Residency Agreement. Not only does the facility engage in interstate commerce, but the agreement itself is involved in interstate commerce. The FAA governs this dispute.

II. TO THE EXTENT THE PLAINTIFF CLAIMS SHE DID NOT SIGN THE AGREEMENT OR LACKED CAPACITY TO SIGN THE AGREEMENT, SUCH ISSUES MUST BE DECIDED BY AN ARBITER.

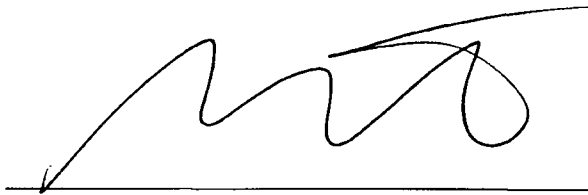
Ms. O'Meara claims that "she did not execute the Residency Agreement." Such a challenge, however, is for an arbiter, not a court, to decide.

Although common sense suggests that if a party challenges the validity of a contract, that party also necessarily challenges the validity of the arbitration clause. The courts, however, have found that where a party simply challenges the validity of the contract—and not the validity of the particular arbitration provision—such an issue must be raised with the arbiter, not the court. In New Hope Missionary Baptist Church, the court wrestled with

this odd scenario, but ultimately held that, where a valid arbitration exists, an arbiter must decide issues challenging the validity of the entire contract. 379 S.C. at 631, 667 S.E.2d at 6. For example, if a party alleges the arbitration provision is unconscionable, that is an issue for the court to decide because it directly challenges the arbitration provision. But if a party merely challenges her capacity to sign the agreement—as Ms. O'Meara has done—such a challenge must be decided by an arbiter.

CONCLUSION

For the foregoing reasons, this Court should dismiss or stay the Complaint and compel the parties to arbitrate. The Residency Agreement contains an arbitration provision governed by the FAA, because the agreement involves interstate commerce.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC.

June 22, 2011
Columbia, South Carolina

EXHIBIT A

404

RESIDENCY AGREEMENT

The Company strongly believes in the importance of fully disclosing all services and fees to the best of our ability and in accordance with state law. As with any legally binding contract, it is our recommendation that you consult your legal counsel to ensure proper understanding of this Agreement before signing.

THIS AGREEMENT IS SUBJECT TO ARBITRATION

Table of Contents

- I. SERVICES AND ACCOMMODATIONS
 - A. BASIC SERVICES
 - B. PERSONAL SERVICE PLAN
 - C. AVAILABLE SELECT SERVICES
 - D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT
- II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS
 - A. CARE OF SUITE
 - B. SUITE ACCESS
 - C. HEALTH ASSESSMENT
 - D. HEALTH CARE PROVIDER NOTIFICATION
 - E. OBLIGATORY INFORMATION
 - F. ADVANCE DIRECTIVE
 - G. MOTORIZED VEHICLES
 - H. RESPONSIBILITIES UPON TERMINATION
 - I. RULE AND REGULATION COMPLIANCE
 - J. GUESTS
- III. RATES
 - A. MOVE-IN FEE
 - B. MONTHLY SERVICE RATE
 - C. RESIDENT ABSENCE
 - D. AVAILABLE SELECT SERVICES
 - E. PAYMENT
 - F. RATE CHANGES
- IV. TERM AND TERMINATION
 - A. TERM
 - B. TERMINATION BY RESIDENT
 - C. TERMINATION BY COMPANY
 - D. TERMINATION BY EITHER PARTY
 - E. STORAGE CHARGES
- V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION
 - A. ARBITRATION PROVISION
 - B. LIMITATION OF LIABILITY PROVISION
 - C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS
- VI. MISCELLANEOUS
 - A. DEFAULT TO ARBITRATION
 - B. NON-DISCRIMINATION
 - C. RISK AGREEMENT
 - D. RELIANCE
 - E. NO LIABILITY IF AWAY FROM RESIDENCE
 - F. ASSIGNMENT
 - G. HEIRS AND SUCCESSORS
 - H. AMENDMENTS
 - I. SEVERANCE
 - J. RESPONSIBLE PARTY
 - K. SUBORDINATION

L. NOTICES

RESIDENCY AGREEMENT

This Agreement is entered into as of 9/30/08, _____ by and between Southern Assisted Living, Inc., d/b/a Carolina House of Hilton Head ("Company"), _____ ("You" or "Resident"); and _____ ("Responsible Party"). The terms and conditions of this Agreement are as follows:

I. **SERVICES AND ACCOMMODATIONS**

A. **BASIC SERVICES**

You will be entitled to the following Basic Services, which are included in the Basic Service Rate, subject to the terms and conditions of this Agreement:

- ♦ **Accommodations** - You are entitled to the use of the suite described in Exhibit A and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with all other residents the common areas of the building (the "Community"). You may provide your own furnishings and personal property; however, the Company reserves the right to limit the number and type of furnishings if the Company determines that they present a safety hazard or potential safety hazard.
- ♦ **Daily Meals** - The Company will provide three meals daily. Snacks are available 24 hours a day.
- ♦ **Utility Service** - The Company will provide gas, electric and water service. Telephone charges are not included in the Basic Service Rate. Costs for basic cable television are described in Exhibit A.
- ♦ **Weekly Housekeeping Service** - The Company will clean your suite once a week.
- ♦ **Weekly Laundry and Linen Service** - The Company will launder your personal items and your bed linens once a week.
- ♦ **Life Enrichment Program** - The Company will provide planned social, educational and recreational programs.
- ♦ **Staffing 24 hours a day** - The Company will have staff available 24-hours a day, seven days a week.
- ♦ **Transportation** - The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation

services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

B. PERSONAL SERVICE PLAN

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the residence. An outside agency or individual will be permitted to provide these services or any related personal services only if the Company has given prior approval.

C. AVAILABLE SELECT SERVICES

From time to time, the Company may make select services available to you at your or your Responsible Party's request. If available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, or special events. (See additional information on Transportation in Section I. A of this Agreement.) These additional choices are not included in the Basic Service Rate or the Personal Service Plan. Your Executive Director will provide, upon your request, a listing of the available select services as well as a current fee schedule.

D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT

You and your Responsible Party are responsible for obtaining and paying for all services which are not included in the Basic Services or Personal Services Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by the Company, its subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy services, newspaper subscriptions, or beauty/barber services. Any fees for services provided by other service providers will be billed directly by the service provider. All third party service providers (including, but not limited to, third party health care and medical providers) must receive the Company's prior authorization to provide services to you at the residence. All third party providers who enter the residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

You may not contract with any of the Company's current employees to perform any services at the residence. You may contract with former employees to perform any

services at the residence only with the Company's consent. The Company reserves the right to refuse entry to 1) former employees, 2) persons whose actions may be disruptive to the residence; 3) persons whose actions may threaten the safety of any resident or employee; or 4) persons whose presence may foreseeably result in liability to the Company.

II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE

You agree that residence and the suite are in satisfactory, habitable condition. You also agree the Company has made no promise to decorate, alter or improve the residence or suite, unless otherwise provided in writing by the Company and attached as part of this Agreement. You agree to maintain the suite and to surrender the suite upon termination of this Agreement in good condition, exclusive of normal wear and tear. You agree to pay all damages, beyond normal wear and tear, including any improvements made without the Company's consent, which you, your Family, and/or other Guests (including any agent, employee, contractor, or other invitee) cause to residence property.

*I. I agree and
I will be
responsible for
any tile
installed*

B. SUITE ACCESS

You agree to give the Company access to the suite in order to carry out the intent of this Agreement. Such entry includes, but is not limited to, performance of services provided as part of the Basic Services or in your Personal Service Plan; response to emergency situations; and entry by authorized personnel with the reasonable belief that your safety or safety of others is in question or that the Company's policies and procedures are being violated.

Upon written notice, the Company reserves the right to relocate you to a more appropriate suite within residence as required for your health or safety, or because the residents of a companion suite are incompatible.

C. HEALTH ASSESSMENT

You agree that the Company may from time to time assess your health to determine the appropriate Personal Service Plan and/or whether you are appropriate to stay in the residence. Not more than thirty (30) days prior to the date this Agreement is entered into, and at least annually thereafter or upon the request of the Company, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree that the Company may require you to undergo examination by a particular specialist, at your cost, as the Company determines is warranted by your current physical or mental status. You will request the examiner to provide the Company with recommendations, including a statement attesting to the appropriateness of the placement. Based upon the assessment(s) and the Company's judgement, the Company may determine your appropriateness to remain in the residence. You will request the examiner to perform any tests and complete any forms required by the Company or applicable law.

D. HEALTH CARE PROVIDER NOTIFICATION

You authorize the Company to contact responsible parties, health care providers, and/or other persons listed in your records:

- (1) If the Company determines it is necessary to advise them of your situation;
- (2) To arrange for health care services and other assistance required by you; or
- (3) In case of an emergency. If you have a life-threatening emergency, the Company will contact an emergency rescue service.

If your designated health care providers are unavailable, you authorize the Company to arrange for the services of other health care providers.

During the term of this Agreement, you agree the Company may provide such persons with copies of your records, including, but not limited to, resident records to the extent they are needed to assist with treatment, advance directives, living will, and the names of persons empowered to make health care decisions, for the purpose of arranging for health care services.

E. OBLIGATORY INFORMATION

You will provide the Company with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You or your Responsible Party will provide the Company with copies of any health care power of attorney, power of attorney executed by you or of any court order, guardianship, or other legal action which may (1) affect your status or (2) designate or appoint another person to make health care or financial decisions or to bear financial responsibility on your behalf. You authorize the Company to rely on the instructions of such designees or appointees. You understand that you must immediately notify the Company of changes relating to any of the information stated above.

F. ADVANCE DIRECTIVES

Upon admission to the Company, it is strongly suggested that you have your advance directives in place in the event you become incapacitated. Advance directives include, but are not limited to, Living Wills, Powers of Attorney for Health Care, Guardianships and Do Not Resuscitate Orders. You will notify the Company and provide copies to the Company of such advance directives. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company), subject to all bond, accounting and other legal requirements. Neither the Company nor any of its employees or agents may be your guardian. If it is necessary for the Company to petition the court for appointment of a guardian, any costs associated therein shall be paid by you. If you are a Resident in a Memory Care Unit (e.g. Clare Bridge or a Clare Bridge Cottage), these designations should be made prior to move-in.

G. MOTORIZED VEHICLES

Motorized vehicles may be used by a resident, subject to the following:

- (1) You have a physician's order stating that such a vehicle is a medical necessity for you;
- (2) You have been assessed as being able to safely operate the vehicle and you continue to demonstrate that your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
- (3) The vehicle is operated at a low setting; and
- (4) You agree to abide by the Company's safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the motorized vehicle rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of yourself, the other residents, the residence staff or visitors.

- (1) You further understand and agree that the Company may, at its sole discretion, prohibit your further use of a motorized vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION

You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that the Company may charge you a storage fee for your belongings equal to your Basic Service Rate. You further agree that the Company may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail.

Termination will not release you or the Company from any liability or obligation to the other party under the terms of this Agreement.

I. RULE AND REGULATION COMPLIANCE

You acknowledge that the Company is licensed by the State of South Carolina as a Community Residential Care Facility. You understand that the Company has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to the rules, regulations, policies and procedures as they now exist and as amended from time-to-time for the operation and management of the Community.

J. GUESTS

You understand that as a resident, you have the right to associate with your friends and family ("guests") during reasonable hours. Because the Company is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the resident's health status or other pertinent factors.

You acknowledge and understand that your guests are subject to the Company's Rules and Regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to staff, residents or others, the Company may request that they leave the Community until their behavior is under control or may place limitations upon the location and time of their visitation. You understand that, where circumstances warrant, the Company may exclude such individuals from the residence.

III. RATES

A. MOVE-IN FEE

1. Fee – You will pay the Company a one-time Move-In Fee in an amount indicated in Exhibit A at the time this Agreement is signed.
2. Refund – The Company will refund a prorated share of one-half of the Move-In Fee if this Agreement is terminated within ninety (90) days of the date this Agreement is signed and any one of the following circumstances occur:
 - (a) The Company terminates this Agreement;
 - (b) The Company or your physician determines you require care not offered by the Company; or
 - (c) by reason of death.

J
X
(Please initial as having read and understood the above provision.)

B. MONTHLY SERVICE RATE

1. Rate – You agree to pay the Basic Service Rate and, if applicable, the charge for the Personal Service Plan as indicated in Exhibit A (together the "Monthly Service Rate").
2. Refund – The Company will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - (a) following termination in accordance with Section IV,
 - (b) because you require care that is not offered by the Company; or
 - (c) by reason of death.

Refunds will be based upon the actual number of days the resident is in the facility and a reasonable number of bed hold days. A storage fee equal to the prorated share of the Monthly Service Rate will be charged until such time as all of your property is removed

from the Suite. The Company will issue the refund to Resident or Responsible Party within 45 days of the effective date of termination based on Section IV of this Agreement. Unless prohibited by law, you agree the Company may offset such refunds by any amount due under the terms of this Agreement.

✓

X _____

(Please initial as having read and understood the above provision.)

C. RESIDENT ABSENCE

If the Resident is absent from the Community for any reason, including, but not limited to, hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate until such time that the Resident or Representative provides the Company with written notice of their intent to terminate the Agreement, pursuant to Section IV of the Agreement. Termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES

In addition to the Monthly Service Rate, you agree to pay the Company the established charges for any select services provided to you by the Company.

E. PAYMENT

The Company will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for select services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be one thirtieth (1/30) of the usual rate times the number of days remaining in the month.

The Company will charge a \$250.00 late fee if the Company has not received all fees when due. The Company will also charge a \$25.00 returned payment fee for each check or automatic withdrawal that is returned by a financial institution for any reason, including but not limited to, insufficient funds or incompleteness. After two payments are returned by a financial institution to the Company, you will thereafter pay the Monthly Service Rate and any other amounts due by cashiers check. You also agree to pay interest on all amounts not paid by the due date. The interest rate will be the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES

The Company will provide thirty (30) days written notice of any change in the Basic Services Rate. The Company may offer or require a change in the Personal Service Plan when the Company determines additional services are requested or required. The new charge for the Personal Service Plan will be effective immediately upon the provision of written notice.

X 
(Please initial as having read and understood the above provision.)

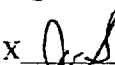
IV. TERM AND TERMINATION

A. TERM

This Agreement will commence on the date set forth above and will continue until terminated as provided below.

B. TERMINATION BY RESIDENT

The Company requests you or your Responsible Party to provide thirty (30) days written notice of your intent to terminate this Agreement. Termination shall be effective the day after your last date of residence.

X 
(Please initial as having read and understood the above provision.)

C. TERMINATION BY COMPANY

The Company may terminate this Agreement, upon providing you or your Responsible Party thirty (30) days written notice, for any of the following events, as determined by the Company:

- (1) You require care or services that the Company is unable to provide or which requires staff that are not available at the Company;
- (2) You are disruptive, create unsafe conditions, are physically or verbally abusive to other residents or otherwise impair the welfare of yourself or others in the residence;
- (3) You fail to pay fees and charges when due.

X 
(Please initial as having read and understood the above provision.)

For emergency medical or welfare reasons of you or other residents, the Company may, upon written notice to you or your Responsible Party, immediately terminate the Agreement, and transfer or discharge you. If the emergency requires your immediate transfer, the Company will notify the Responsible Party at the earliest practicable hour, but not later than twenty-four (24) hours following the transfer.

The Company will provide a written explanation if the Company terminates this Agreement with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY

You, your Responsible Party or the Company may terminate this agreement immediately in the event of death or if a physician certifies, based upon an examination prior to moving out, that you must be relocated because of your health. The Company requests you provide written notice of your intent to terminate. Termination shall be effective the day after your last date of residence.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION

Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

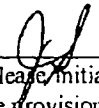
A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. Demand for Arbitration by Resident, his or her guardian, a person or organization acting on behalf of a Resident with the consent of the Resident or his or her guardian, or the personal representative of the estate of a deceased Resident (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by the Company shall be made in writing and submitted to the Resident or his or her agent, representative, successor or assign and/or Resident's Attorney-in-Fact, and/or Responsible Party via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then the arbitration shall be submitted to the National Arbitration Forum, or other similar organization, but must still be conducted by one (1) arbitrator who is a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience practicing as an attorney. If the arbitrator is selected from the National Arbitration Forum, or other similar organization, each party shall have the right to request one (1) substitution within ten (10) days of receiving notice of the identity of the arbitrator. The person requesting of the substitution shall submit a request for substitution in writing to the National Arbitration Forum, or other similar organization, and to the other party via U.S. mail.
5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the Federal Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide the Company with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and the Company shall reimburse Resident Party \$0.25 per page).
 - b. The Company shall provide the Resident Party with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse the Company \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. The Company shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

- f. The Company shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
- g. Resident Party shall have thirty (30) days after the Company's expert designation is received in which to depose such experts.
- h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
- i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 - 1. List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witnesses' intended testimony;
 - 2. List of documents to be relied upon at the arbitration hearing;
 - 3. Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
- j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.
- 7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
- 8. The arbitrator shall apply the Federal Rules of Evidence and Federal Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, Federal law except as otherwise stated in this Arbitration Provision.
- 9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
- 10. The arbitrator's decision shall be final and binding without the right to appeal.
- 11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

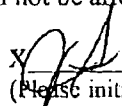
12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or the name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision
14. This Arbitration Provision and the Limitation of Liability Provision below shall survive the death of the Resident.

X 
(Please initial as having read and understood
the provisions of section V., subsection A)

B. LIMITATION OF LIABILITY PROVISION: *Read Carefully Before Signing*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by the Company for unpaid Basic Service or Personal Service charges, or a claim by, or on behalf of, a Resident, Resident Party, or by a Resident's Estate, Agent or Legal Representative, arising out of the care or treatment received by the Resident or the Resident's occupancy or presence at the Company, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Noneconomic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.
 - c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.

3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

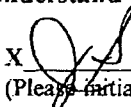
X 
(Please initial as having read and understood
the provisions of section V., subsection B.)

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, the Company is better able to offer its services and accommodations at a rate that is more affordable to the Resident. In terms of the time-savings offered by selecting arbitration, the parties recognize that often the Resident is elderly and may have a limited life-expectancy, and therefore selecting a quick method of resolution is potentially to a Resident's advantage.

The Resident, Responsible Party, or his or her legal guardian, or authorized Power of Attorney understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

The parties to this Agreement further understand that a jury will not decide their case.

X 
(Please initial as having read and understood
the provisions of section V., subsection C.)

VI. MISCELLANEOUS

A. DEFAULT TO ARBITRATION

If it is determined by a court of law that the Arbitration Provision provided in this Agreement is invalid, the parties hereto make clear their express desire to waive a jury trial and resolve their claims against each other in the appropriate court solely before a judge.

B. NON-DISCRIMINATION

The Company does not discriminate on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment. The Company respects all religious faiths and does not have any specific religious affiliation.

C. RISK AGREEMENT

You and your Responsible Party are responsible for your personal, financial and health care decisions. In addition, you are responsible for maintaining at all times your own health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance with coverage for your personal property and your general liability in the amount of \$100,000. You agree to provide proof of such coverage to the Company. You acknowledge that the Company is not an insurer of your person or property.

You understand and agree that:

1. The Company may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
3. The standard of services in an assisted living residence does not include one-on-one care, assistance or supervision e.g. one resident assistant for each Resident, or immediate response to non-emergent needs. Consistent with your daily life activities, including but not limited to resting in your apartment or common areas, watching television, listening to music, reading, and sleeping at night, there may be short and long periods of time in which you will be left alone, unsupervised;
4. The Company makes no representations or guarantees that the Company staff can prevent Residents from falling. Further, the Company does not represent or guarantee your health condition will not change or deteriorate throughout your Residency;
5. The services provided by the Company may not meet all of your personal, social, or health care needs and the Company will use its best efforts to assist you in arranging for services which you require and which are not included in this Agreement;
6. Many Residents of the Company suffer from memory impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior

including, but not limited to, wandering, forgetfulness, agitation towards others and confusion. The Company makes no representations or guarantees that it can predict the behavior of its Residents. Therefore, the Company also makes no representations or guarantees that it can always prevent a Resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another Resident;

7. The Company makes no representations or guarantees that the Company is secure from theft or any other criminal act perpetrated by any other Resident or person; therefore, the Company recommends that valuables, including but not limited to, jewelry and large amounts of money, not be brought into the Community. If you choose to bring in such valuables, you are doing so at your own risk and the Company will not be responsible for any theft or loss of these items;
8. Due to state regulations and fire code, the Company is not permitted to lock its exterior doors and, therefore, does not guarantee that its Residents will not wander out of the Community. In our memory care buildings, the exterior doors are alarmed with a delayed egress feature and our systems are designed to alert our staff to respond and assist a Resident to safety, should they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold the Company and its employees and agents harmless for any damages or injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action of any third party, fire, water, theft or the elements; or (3) loss of personal property. The Company will only be liable for damages, injuries or other losses to you or any third party entering a Suite, or any other part of the residence, if due to willful misconduct or negligence of the Company.

The Company reserves the right to recover from you any loss caused by fire, vandalism or any other acts by you or your invitees or guests. The Company may assign such right to its insurance carrier.

D. RELIANCE

By entering into this Agreement, the Company is relying upon the truthfulness of the promises and representations made by you and your Responsible Party.

E. NO LIABILITY IF AWAY FROM RESIDENCE

In the event that you knowingly leave the Community or are temporarily away from the Community, any and all responsibility of the Company for your welfare shall terminate during your absence.

F. ASSIGNMENT

This Agreement is not assignable by you or your Responsible Party without prior written consent of the Company. The rights and obligations of the Company may be assigned to any person or entity, and such person or entity will be responsible to ensure the obligations of the Company under this Agreement are satisfied in full from and after the date that you are notified of such assignment. The Company may engage another person or entity to perform any or all of the services under this Agreement.

G. HEIRS AND SUCCESSORS

This Agreement is for the benefit of and binds the parties and their respective heirs, representatives, successors and assigns.

H. AMENDMENTS

This Agreement and any written amendments constitute the entire agreement between the parties and supercede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written, pertaining to this Agreement. Except for the right of the Company to modify fees, rates and charges, amend services provided and establish reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.

I. SEVERANCE

Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.

J. RESPONSIBLE PARTY

You have designated a Responsible Party, who has agreed to the terms of the attached Responsible Party Agreement and whose signature appears below.

K. SUBORDINATION

This Agreement and the parties' rights hereunder will be subordinate to any ground lease, mortgage or deed of trust now or hereafter placed upon the residence, but your right to remain in possession of your suite will not be disturbed so long as you comply with all of the provision of this Agreement.

L. NOTICES

Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

The Company:
Executive Director at Community
Address (as noted on Exhibit A)

Resident:
(as noted at end of this Agreement)

Responsible Party:
(as noted in Exhibit B)

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.

Chimede Mauer, Esq. 9-30-08
For the Company Title Date

Elizabeth O'Meara 9/30/08
Resident Date

Julia A. Stanton 9/30/08
Responsible Party Date

SEND NOTICES AND MONTHLY STATEMENTS TO RESIDENT IN CARE OF:

Name: Julia A. Stanton
Address: 2 NIBLICK CT., Hilton Head Is., SC 29928
Phone No.: 843-686-2008

OTHER RELATED MATERIALS

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package and Special Services Form
5. Medical Records Release
6. Resident Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Responsible Party Agreement
- C. Pet Addendum
- D. Additional Resident Fee
- E. Pharmacy Services Agreement
- F. Acknowledgement of Grievance Procedure and Resident Bill of Rights

ADDITIONAL EXHIBITS:

- X. Select Services List
- Y. Therapeutic Services List
- Z. Assessment Price Schedule

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident

Elizabeth O' Mara MEARA

Community

CHH

Address

35 Beach City Rd.
H11, SC 29920

Suite #

404

Move-In Fee (Prior to Move-in)

\$ 1000

Basic Services

Basic Service Rate

\$ 436.8

- ♦ Accommodations - You are entitled to the use of the suite described above and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with all other residents the common areas of the residence. You may provide your own furnishings and personal property; however, the Company reserves the right to limit the number and type of furnishings if the Company determines that they present a safety hazard or potential safety hazard.
- ♦ Daily Meals - The Company will provide three meals daily. Snacks are available 24-hours a day.
- ♦ Utility Service - The Company will provide gas, electric and water service. Telephone charges are not included in the Basic Service Rate. Basic cable television is not included in the Basic Service Rate.
- ♦ Weekly Housekeeping Service - The Company will clean your suite once a week.
- ♦ Weekly Laundry and Linen Service - The Company will launder your personal items and your bed linens once a week.
- ♦ Life Enrichment Program - The Company will provide planned social, educational and recreational programs.
- ♦ Staffing 24 hours a day - The Company will have staff on duty 24-hours per day, seven days a week.

- ♦ Transportation – The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

Personal Service Plan

Personal Service Plan Rate

~~\$~~ 855.00
\$ 855.00

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. All third party providers (including, but not limited to, third party health care and medical providers) who enter residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

MONTHLY SERVICE RATE

(Add Basic Service Rate and Personal Service Plan)

~~\$~~ 4368 ~~\$~~ 855 ~~\$~~ 5223
\$ 4368 + 855 = 5223

Available Select Services

From time to time, the Company may make select services available to you at your request. When available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, special events, or special programs. These additional choices are not included in the Basic Service Rate. Please contact your Executive Director for a current fee schedule.

I agree to the above Schedule of Services and Rates effective Sept 29, 2008, and I understand and agree that the Company has a right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

For the Company

Title

Date

Resident

Date

Responsible Party

Date

EXHIBIT B
RESPONSIBLE PARTY AGREEMENT

Elinor O'Meara ("Resident"), Julia A. Stenton
("Responsible Party") and Southern Assisted Living, Inc., d/b/a Carolina House of Hilton
Head ton (herein after the "Company"), hereby agree as follows:

WHEREAS, the Resident desires to live in the suite identified in the attached
Residency Agreement; and

WHEREAS, the Company is willing to enter into the Residency Agreement if
Resident identifies an individual who is willing to provide certain assistance to or on behalf of
Resident in the event that such assistance is necessary, and who is willing to pay Resident's
financial obligations to the Company under the Residency Agreement in the event that
Resident does not make payments when due; and

WHEREAS, Responsible Party agrees to provide such assistance and to pay such
obligations, if and as necessary.

IN CONSIDERATION of the foregoing, the Parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such
assistance, and upon the request of the Company, Responsible Party will assist Resident or
legally responsible person, as necessary by:

- (a) Participating with the Company staff in evaluating Resident's needs and in
planning and implementing an appropriate plan for Resident's care;
- (b) Maintaining Resident's welfare and fulfilling Resident's obligations under the
Residency Agreement;
- (c) Relocating Resident following termination;
- (d) Transferring Resident to a hospital, nursing home, or other facility in the
event that Resident requires care the Company does not offer;
- (e) Removing Resident's personal property from suite when Resident leaves;
- (f) Making necessary arrangements for funeral services and burial in the event of
death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to the
Company under the Residency Agreement, Responsible Party agrees to pay the Company
such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. Responsible Party acknowledges that he or she has received and has reviewed a copy of the Residency Agreement, and has had an opportunity to ask any questions Responsible Party may have.

BY THEIR SIGNATURES, the parties or their representatives have executed this

Agreement to be effective as of 9-30-2008

<u>Theresa M. Mearns</u>	<u>ED</u>	<u>9-30-08</u>
For the Company	Title	Date
<u>Elizabeth O'Meara</u>		<u>9-30-08</u>
Resident		Date
<u>Julia A. Stanton</u>	<u>29236-5834 #100018536</u>	<u>9-30-08</u>
Responsible Party	Social Security No.	DL No. Date

SEND NOTICES TO RESPONSIBLE PARTY AT:

Address: 2 NIBLICK CT. N.H.I., SC 29928

Phone No.: 843-686-2008

**EXHIBIT C
PET ADDENDUM**

The Company consents to the Resident keeping in the suite the household Pet described as follows:

_____	Kind and breed
_____	Name
_____	Color
_____	Weight
_____	Age

I. RESIDENT RESPONSIBILITIES. The Resident will keep the Pet in the suite except when walking the Pet, if applicable, or transporting it to and from the suite. The Resident will not allow the Pet in lobbies or in common residential areas, and will transport the Pet to and from the suite only by side entrances of the building, when available and/or feasible. The Resident will walk and curb the Pet only in areas designated by the Company and will be responsible for cleaning up after the Pet. When the Pet is not in the suite, the Resident will keep it on a leash no longer than five (5) feet or in a cage or other appropriate closed and ventilated container, and in the control of the Resident. If the Pet is a bird, the Resident will keep it caged both in and out of the suite. If the Pet is a dog or cat, the Resident will ensure that it wears a collar with appropriate identification (including the Resident's telephone number) at all times that it is out of the suite.

The Resident will comply with all vaccination and licensing requirements applicable to the Pet, showing proof of this upon request, and will comply with appropriate standards of care, treatment, and grooming. In all circumstances, the Resident is responsible for the health, welfare, and proper care of the Pet. The Resident will ensure that the Pet does not disturb the right of other residents to the peaceful enjoyment of their suites and of the common areas. The Resident will not leave the Pet unattended when the Pet is not in the suite.

The Company, in its discretion, may assist the Resident in caring for the Pet as part of the Resident's Personal Service Plan. Charges and payment for such services will be governed by the terms of the Residency Agreement.

The Resident will be liable for any personal injury or property damage caused by the Pet that is suffered by the Company, its employees or agents, other residents, guests, or invitees. The Resident and/or Responsible Party agree to purchase renter's insurance in the amount of \$100,000, which specifically covers any personal injury or property damage caused by the Pet. The Resident shall provide Community with proof of insurance coverage.

II. TERM & TERMINATION. This Addendum will continue until the Residency Agreement between the Resident and the Company is terminated, unless either party terminates this Addendum for any reason by giving fourteen (14) days prior written notice to

the other party. The Company may terminate this Addendum upon twenty-four (24) hours notice in the event the Resident breaches any of the Resident's obligations under this Addendum. In the event that the Pet is left unattended for more than twenty-four (24) hours, or if the Company determines that the Resident, for any reason, is unable to care for the Pet, the Company reserves the right to arrange for the Pet to be delivered to:

Sponsor: _____
Address: _____
Phone: _____

Or to such other individual or agency as the Company determines to be appropriate. The Resident will pay all costs of delivery, feeding, care, treatment, and housing of the Pet. The Resident acknowledges that the Resident has no right to keep a pet, except to the extent expressly permitted by this Addendum. The Company reserves the right to withdraw its consent to the Resident keeping the Pet at any time by terminating this Addendum, as permitted above.

BY THEIR SIGNATURES, the parties executed the Addendum to be effective _____,
_____.

For the Company	_____	Title	_____	Date	_____
Resident	_____		_____	Date	_____
Responsible Party	_____			Date	_____

EXHIBIT D
ADDITIONAL RESIDENT FEE

When two residents occupy a single occupancy suite, the Company charges a single occupancy Basic Service Rate plus an additional resident fee. Each resident in the suite is responsible for paying one-half of the total of the single occupancy Basic Service Rate plus the additional resident fee, entitling each resident to receive the Basic Services described in Section I of the Residency Agreement. Each resident will also be responsible for the cost of his or her Personal Service Plan.

In the event that the Agreement of one resident is terminated for any reason, effective upon such termination, the remaining resident's Basic Service Rate will automatically be adjusted to reflect the Basic Service Rate for a single occupancy suite for the remainder of the month in which the adjustment is made and for each month thereafter.

Single Occupancy Basic Service Rate \$ _____

Additional Resident Fee \$ _____

Total Charge for Suite \$ _____

BASIC SERVICE RATE FOR EACH RESIDENT \$ _____
(1/2 of the total charge for suite)

Resident

NA

Date

Responsible Party

Date

EXHIBIT E
PHARMACY SERVICES AGREEMENT

The Company works closely with pharmacy providers to make certain that the needs of our residents are met. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions when appropriate
- Providing competitive pricing for comparable packaging and offering generic substitutions when appropriate
- Alerting staff and physicians when there is a duplication of prescriptions
- Individual wellness recommendations
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets the Community's standards for safety

Our "preferred provider" for pharmacy services at the Community CHHIT is Palmetto JRC. Our staff works closely with this pharmacy to meet the needs of our residents. They will review all current medications before your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Company's "preferred provider", they will be required to meet the Company's standards regarding medication management.

Please review and sign the following statement acknowledging you understand the Company's expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Company's preferred provider, I will be charged a fee, which is set forth on Exhibit X, the Select Services List.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Regional Director of Operations.

I understand there is a service fee of \$ 50.00 a month associated with a packaging exemption due to the additional administrative oversight required.

If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.

X JS
(Please initial as having read and understood the above provision.)

If I do not use the Company's preferred provider, I also understand that I will have the responsibility for reordering medications but in the event the medications are not delivered within **two days prior to the depletion** of my medication stock, the Company will reorder my medications with the 'Preferred Pharmacy' to insure no disruption takes place. I agree to pay for the medications and any associated service charges.

The fees associated with reordering medications from the "Preferred Pharmacy" are determined by the "Preferred Pharmacy", and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Elizabeth D. Murray
Resident Signature (by J. Stanton)

9-30-08
Date

Legal Representative Signature

Date

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,
Plaintiff,

Case No. 2011-CP-07-1610

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, ("Affiant"), who having been duly sworn, deposes and states:

1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.

2. I am Counsel and Vice-President of Legal for Brookdale Senior Living, a Wisconsin Corporation, and the Carolina House of Hilton Head, South Carolina.

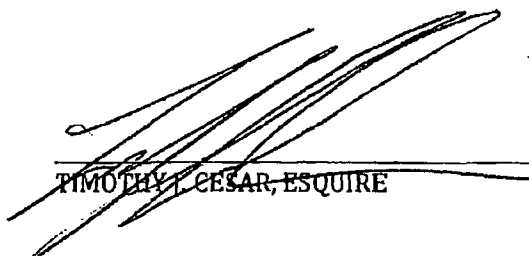
3. Carolina House of Hilton receives goods, services, and supplies from out-of-state vendors, including but not limited to, One Source, a vendor of supplies from Wisconsin; Sysco, a corporation with its corporate office located in Houston Texas; and a vendor of carpeting from North Carolina.

4. Carolina House of Hilton Head orders supplies from out-of-state vendors by mail, electronic mail, telephone and facsimile transmissions. Those supplies are then shipped over various state lines to Carolina House of Hilton Head.

5. Carolina House of Hilton Head receives and admits out-of-state residents as residents at Carolina House of Hilton Head. Currently, there are residents from Connecticut, Florida and New York.

FURTHER this Affiant sayeth naught.

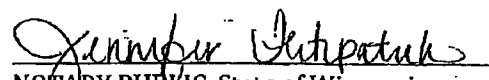
STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)


TIMOTHY J. CESAR, ESQUIRE

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced _____ as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 2 day of June, 2011.




NOTARY PUBLIC, State of Wisconsin

My Commission Expires: 10/10/11

EXHIBIT C



Elaine F. Marshall
Secretary

North Carolina

**DEPARTMENT OF THE
SECRETARY OF STATE**

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

Date: 6/22/2011

Click here to:

[View Document Filings](#) | [Sign Up for E-Notifications](#) |

[Pre-populated Annual Report Fillable PDF Form](#) | [File an Annual Report](#) |

Corporation Names

Name	Name Type
NC SOUTHERN ASSISTED LIVING, LLC	LEGAL
NC SOUTHERN ASSISTED LIVING, INC.	PREV LEGAL

Limited Liability Company Information

SOSID:	0369303
Status:	Current-Active
Effective Date:	1/1/2011
Dissolution Date:	
Annual Report Due Date:	4/15/2012
Citizenship:	DOMESTIC
State of Inc.:	NC
Duration:	PERPETUAL
Annual Report Status:	CURRENT

Registered Agent

Agent Name:	CT CORPORATION SYSTEM
Office Address:	150 FAYETTEVILLE ST., BOX 1011 RALEIGH NC 27601
Mailing Address:	150 FAYETTEVILLE ST., BOX 1011 RALEIGH NC 27601

Principal Office

Office Address:	111 WESTWOOD PLACE, SUITE 400 BRENTWOOD TN 37027
Mailing Address:	111 WESTWOOD PLACE, SUITE 400 BRENTWOOD TN 37027

Officers

This website is provided to the public as a part of the Secretary of State Knowledge Base (SOSKB) system. Version: 287

Westlaw.

Page 1

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

C

Only the Westlaw citation is currently available.

United States District Court,
D. Kansas.

Mary E. OESTERLE, by and through Sharon
Stoner, Administrator of the estate of Mary E. Oes-
terle, Plaintiff,

v.

ATRIA MANAGEMENT CO., LLC and A98 Seni-
or, LLC, d/b/a Atria Hearthstone East, Defendants.

No. 09-4010-JAR.
July 14, 2009.

West KeySummaryAlternative Dispute Resolu-
tion 25T  134(6)

25T Alternative Dispute Resolution

25TII Arbitration

25TII(B) Agreements to Arbitrate

25Tk131 Requisites and Validity

25Tk134 Validity

25Tk134(6) k. Unconscionability.

Most Cited Cases

An arbitration provision of a nursing home contract which was not explained to a new patient was not unconscionable. The patient allegedly felt pressured and hurried to sign the contract and the employees who had the authority to explain the arbitration provision to the patient showed a general lack of knowledge of its actual effect. The provision was not unconscionable because the patient did not ask for an explanation of the provision before she signed the contract and the circumstances which caused her to feel hurried and pressure were not created by the nursing home but by circumstances under her control.

Margaret A. Farley, Margeret Farley, Attorney at Law, Lawrence, KS, for Plaintiff.

Arthur A. Glassman, Shaye L. Downing, Sloan, Eisenbarth, Glassman, Mcentire & Jarboe, L.L.C., Topeka, KS, for Defendants.

MEMORANDUM AND ORDER

JULIE A. ROBINSON, District Judge.

*1 Before the Court is defendants Atria Management Company, LLC's and A98 Senior, LLC's, d/b/a Atria Hearthstone East's (collectively "Atria"), Motion to Dismiss or Alternatively, to Order this Matter to Arbitration (Doc. 4). Plaintiff Mary E. Oesterle, by and through Sharon Stoner, filed a Response on February 23, 2009. The Court ordered the parties to provide additional briefing after limited discovery. Plaintiff filed a Supplemental Response (Doc. 23) on May 15, 2009, and defendants have failed to respond in the time allotted. ^{FN1} The Court has reviewed the briefs and for the reasons provided in further detail below, Atria's Motion to Dismiss or Alternatively, to Order this Matter to Arbitration (Doc. 4) is granted in part and denied in part.

FN1. See D. Kan. R. 6.1(d).

I. Relevant Facts

Atria is a registered Kentucky corporation and plaintiff was a resident of Kansas. Sharon Stoner, the daughter of the deceased plaintiff and administrator of plaintiff's estate, executed the agreement upon which defendants rely. The events leading to the execution of that contract are as follows. Stoner flew to California to escort plaintiff back to Kansas so that she could reside at defendants' facility. Although plaintiff anticipated arriving in Kansas in January 2004, she and her daughter arrived in October 2003. Stoner made arrangements with defendants for her mother over the phone. On October 10, 2003, plaintiff and Stoner went to Hearthstone East to admit plaintiff. Upon arrival, Stoner was given a stack of admission papers "on a take it or leave it basis" to sign, which she did. Indeed, even if Stoner wanted to negotiate the provisions of the agreement, the staff in charge of explaining the terms did not have the authority to amend the agreement. During the initial meeting no one from the defendants' facility pointed out, explained, or reviewed the meaning of the arbitration provision.

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

That clause provides:

By signing this Agreement, both of us hereby agree that all claims, disputes, demands, or controversies arising out of or in any way relating to this Agreement or its breach or related to any act or omission committed by us or any of our employees in connection with any services that we may provide you while a resident of the Community will be submitted to binding arbitration in the state where the Community is located. Such Arbitration will be conducted in accordance with the rules of the American Arbitration

Association, applying the laws of the state where the Community is located. Your agreement to arbitrate disputes arising under this Agreement or disputes arising out of or related to any services that we may provide you while a resident at the Community applies to any claim, dispute, demand or controversy, whether against the Community, its owners, operators, managers, employees, agents, officers and directors or affiliates or subsidiaries, and binds you, your legal representative, your responsible person(s), your spouse, estate and your heirs. Any award rendered by the arbitrator shall be final and binding upon each of the parties, and judgment thereon may be entered in any court having jurisdiction over the parties.

***2** The costs of any Arbitration proceeding shall be shared equally by both of us. All current damages arising out of such claims or controversies shall also be incorporated into the initial filing or amendment thereto.

On both signature pages of the Residency Agreement, just above the signature lines, the following provision is written.

You understand and agree that as a result of signing this Agreement, you agree to arbitrate any claims, disputes, demands, or controversies that you may have with the Community and that you are waiving your right to bring any such claim, dispute, demand or controversy in any fed-

eral, state or local court before any judge or jury.

When Stoner signed the papers, she believed that the arbitration provision meant that she was obligated to negotiate with the defendants prior to bringing any action in court. Indeed, that is essentially the same meaning applied to the clause by those employees of defendants who were in charge of explaining the provisions to prospective residents. The Executive Director saddled with explaining and answering any questions about the agreement thought that the arbitration provision meant that "if there was an issue between the resident and the community, that we would go to an arbitration process, if there's a grievance or an appeal that we would go to the arbitration process and at that time with arbitration the results of that would be a binding arbitration and it would be according to our state." The Community Business Director thought the arbitration provision meant "that we would go through arbitration if there's any disputes or grievances and it would be handled in arbitration and it's set to be what is decided by arbitration would be final." When asked if the signor of the agreement had the right to go to court, the Community Business Director responded that she did not know. Finally, the Regional Vice President of Operations, with authority over Texas and Kansas, thought that the arbitration provision required mediation until legal action in court was necessary. He described the provision as requiring the parties to first mediate any action.

Plaintiff, through her estate, filed this action claiming that Atria was negligent in the care it provided her while she was a resident of Atria, and that Atria violated the Kansas Consumer Protection Act. Plaintiff alleges that defendants failed to provide reasonable and adequate care as required under common law and its contractual obligations. As a result of defendants' negligence, plaintiff died on November 19, 2007.

Based on the foregoing provisions, defendants filed their motion to dismiss for lack of jurisdiction,

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

arguing that the Court should dismiss the action or order that the parties to proceed to arbitration.

II. Discussion

Atria moves the Court to dismiss the action for lack of jurisdiction or, alternatively, to compel arbitration under the Federal Arbitration Act ("FAA"). State law contract principles control when determining the enforceability of an arbitration agreement.^{FN2} When evaluating arbitration agreements under the FAA, many of the Circuit Courts of Appeal, including the Tenth Circuit, have applied a standard similar to the summary judgment standard.^{FN3} That standard provides that the moving party must first establish that there is a valid arbitration agreement.^{FN4} Once the moving party meets that burden, the burden shifts to the opposing party to show a genuine issue of fact as to the validity of the arbitration agreement.^{FN5}

FN2. *Hardin v. First Cash Fin. Servs., Inc.*, 465 F.3d 470, 475 (10th Cir.2006).

FN3. *Id.*; see also *Kuhn v. Ameriquist Mortgage Co.*, Case No. 04-2229, 2004 WL 2782568, at *1 (D.Kan. Dec.1, 2004).

FN4. *Perkins v. Rent-A-Center, Inc.*, Case No. 04-2019, 2004 WL 1047919, at *2 (D.Kan. May, 5, 2004).

FN5. *Id.*; *Hardin*, 465 F.3d at 475.

*3 Plaintiff opposes arbitration, urging that: (A) the arbitration agreement is unconscionable, against public policy, and an adhesion contract; (B) there was no meeting of the minds between the parties; (C) the FAA is inapplicable to the current action because the contract does not involve interstate commerce; and (D) the scope of the arbitration provision does not encompass plaintiff's claims.

A. Unconscionability

"Under Kansas law, 'a party who freely enters a contract is bound by it even though it was unwise or disadvantageous to the party, so long as the contract is not unconscionable.' " ^{FN6} "Mere unequal-

ity of bargaining power is insufficient to render a contract unconscionable." ^{FN7} To show unconscionability, the party attacking the contract has the burden to establish that there were additional deceptive bargaining practices in the execution of the agreement.^{FN8}

FN6. *In re Universal Serv. Fund Tel. Billing Practices Litig.*, 300 F.Supp.2d 1107, 1125 (D.Kan.2003) (quoting *Moler v. Melzer*, 24 Kan.App.2d 76, 942 P.2d 643, 645 (1997)).

FN7. *Id.* (citing *Aves ex rel. Aves v. Shah*, 258 Kan. 506, 906 P.2d 642, 652 (Kan.1995)).

FN8. *Id.* (citing *Adams v. John Deere Co.*, 13 Kan.App.2d 489, 774 P.2d 355, 357 (Kan.Ct.App.1989)).

In *Willie v. Southwestern Bell Telephone Co.*, ^{FN9} the Kansas Supreme Court provided a list of factors to consider in determining whether a contract provision is unconscionable. That list includes:

FN9. 219 Kan. 755, 549 P.2d 903 (Kan.1976).

(1) The use of printed form or boilerplate contracts drawn skillfully by the party in the strongest economic position, which establish industry wide standards offered on a take it or leave it basis to the party in a weaker economic position ...; (2) a significant cost-price disparity or excessive price; (3) a denial of basic rights and remedies to a buyer of consumer goods ...; (4) the inclusion of penalty clauses; (5) the circumstances surrounding the execution of the contract, including its commercial setting, its purpose and actual effect ...; (6) the hiding of clauses which are disadvantageous to one party in a mass of fine print trivia or in places which are inconspicuous to the party signing the contract ...; (7) phrasing clauses in language that is incomprehensible to a

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

layman or that divert his attention from the problems raised by them or the rights given up through them; (8) an overall imbalance in the obligations and rights imposed by the bargain; (9) exploitation of the underprivileged, unsophisticated, uneducated and the illiterate ...; and (10) inequality of bargaining or economic power.^{FN10}

FN10. *Santa Rosa KM Assocs., Ltd. v. Principal Life Ins. Co.*, 206 P.3d 40, 50 (Kan.Ct.App.2009) (citing *Willie*, 549 P.2d at 906-07).

In addition, the court must find that the contract provision is so outrageous and unfair in its wording or its allocation that it shocks the conscience.^{FN11} Any finding of unconscionability must be accompanied by some element of deceptive bargaining conduct as well as unequal bargaining power.^{FN12}

FN11. *Adams*, 774 P.2d at 357.

FN12. *Id.* at 359.

Plaintiff contends that the arbitration clause was unconscionable because it was boilerplate language skillfully drawn by defendants' attorneys; the arbitration provision denies plaintiff the basic right to access the courts; the arbitration agreement penalizes the plaintiff by requiring that each party pay half of the arbitration fee; the circumstances surrounding the execution of the agreement pressured plaintiff into signing the agreement; the arbitration language is incomprehensible to the layman; and there was inequality of bargaining power between the parties.

*4 Each claim that a contract or a clause is unconscionable rests on the facts of that particular case.^{FN13} In this case, plaintiff's arguments appear to suggest that the arbitration clause is procedurally unconscionable. Generally, a contract is procedurally unconscionable when a party enters the contract lacking knowledge or lacking voluntariness.^{FN14} Plaintiff's first argument that the arbitration

clause is a skillfully drawn boilerplate provision is unfounded. The agreement is laid out in twelve pages, four pages of which are signature or attachment pages. Each section of the contract is labeled in capitalized numbered headings. The heading under which the arbitration provision lies is labeled "7. MISCELLANEOUS PROVISIONS." Under that section, the arbitration provision is found at sub-section "j." The arbitration provision is written in the same font and size as every other provision in the agreement. It is not hidden or lost to the reader.

FN13. *John Deere Leasing Co. v. Blubaugh*, 636 F.Supp. 1569, 1573 (D.Kan.1986).

FN14. *Id.*

Plaintiff argues that the language of the arbitration clause is boilerplate because it refers to the state where the Community is located rather than to Kansas. That, however, does not aid plaintiff in showing that the clause is unconscionable because there is no dispute that the agreement was a form contract drafted for the purposes of being valid in every state in which defendant operated. Even if the Court were to view that the arbitration clause was written in the contract under a list of boilerplate provisions, this factor alone would not be enough to find the clause unconscionable.^{FN15}

FN15. *Id.* (noting that the cases suggest that there must be additional conduct such as deceptive bargaining practices).

Next, plaintiff argues that the Arbitration clause denies plaintiff the right to access the courts, an essential remedy of a consumer. That is correct. Again, however, that is the purpose of the arbitration clause. That alone is not enough to find the clause unconscionable.^{FN16} In addition, plaintiff argues, without citation, that the arbitration provision places a penalty on plaintiff because it requires her to pay half the arbitration fees. A party seeking to invalidate an arbitration provision based on prohibitive cost bears the burden to show that arbitra-

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

tion would be cost prohibitive.^{FN17} Plaintiff must provide evidence of costs associated with arbitration that are so high as to prevent access to the forum and the likelihood of incurring those costs.^{FN18} In this case, the Court finds the fee-splitting aspect of the Arbitration clause valid.

FN16. *Id.*

FN17. *Green Tree Fin., Corp.-Ala. v. Randolph*, 531 U.S. 79, 92, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000).

FN18. *Id.*

In *Shankle v. B-G Maintenance Managemnt of Colorado, Inc.*,^{FN19} the Tenth Circuit found a fee-splitting provision unenforceable because it worked as a disincentive to employees who wanted to bring a claim.^{FN20} In that case, the Court determined that fee-splitting arbitration was unenforceable because plaintiff, who was a janitor and signed the arbitration provision as a basis for employment, could not reasonably afford the fee-splitting of any claim that went to arbitration.^{FN21} The arbitration provision in that case was supposed to serve as an optional route to vindicate the statutory rights provided plaintiff as an employee.^{FN22} Where the arbitration provision did not aid in vindication, but actually prohibited, the forum was not adequate for resolution of plaintiff's rights.^{FN23}

FN19. 163 F.3d 1230 (10th Cir.1999).

FN20. *Id.* at 1234.

FN21. *Id.* at 1235.

FN22. *Id.* at 1234.

FN23. *Id.*

*5 In this case, however, the contract is not one for employment. And although it is a contract on a take it or leave it basis, plaintiff could have left it. Moreover, the Court in *Shankle* found it important that plaintiff was seeking to enforce a statutory

claim of employment discrimination. But here, plaintiff is bringing a tort claim. Plaintiff is not enforcing any statutory right for which the arbitration clause would serve as a disincentive or operate to stifle public policy. In that sense, the fee-splitting provision is enforceable. Furthermore, plaintiff has not provided any evidence of the costs associated with arbitration. Without any evidence before the Court, it cannot find that the cost is prohibitive.

Finally, plaintiff argues that there was an inequality of bargaining power and that the circumstances surrounded the execution of the contract show that the arbitration provision is unconscionable. Plaintiff argues that because she was forced by the circumstances to seek a place of resident for her mother sooner than anticipated and because she had to sign the papers the day she arrived at the care facility, there was pressure and a "hurried" nature to the execution of the agreement. Furthermore, she argues because no one explained the provisions to her and because it was later determined that the parties who had the authority to explain the arbitration provision showed a general lack of knowledge of its actual effect, the provision should be deemed unconscionable.

As a general rule, a party signing a contract is required to read the agreement.^{FN24} If an agreement is signed, the Court does not second guess the provisions where a party failed to read, understand, or ask the appropriate questions.^{FN25} In this case, plaintiff wants the Court to second guess the provisions because she was "hurried" into signing the provisions. But, the Court notes that the hurried nature of the proceedings leading to the execution of the contract was not created by the defendant but by circumstances under the control of plaintiff. In fact, plaintiff states that she felt hurried because she had to complete the arrangements for home care sooner than anticipated and because her mother recently arrived from California. Moreover, plaintiff did not ask for clarification of the arbitration provision or the consequences of signing the contract and agreeing to the arbitration provision. And while

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

there appears to be inequality of bargaining power, that alone, based on the circumstances of this case, is not enough to invalidate the arbitration provision.

FN24. *Albers v. Nelson*, 248 Kan. 575, 809 P.2d 1194, 1197 (Kan.1991).

FN25. *Id.*

B. Meeting of the Minds

For there to be a binding contract, there must be a meeting of the minds on all the essential terms of the agreement.^{FN26} “To constitute a meeting of the minds there must be a fair understanding between the parties which normally accompanies mutual consent and the evidence must show with reasonable definiteness that the minds of the parties met upon the same matter and agreed upon the terms of the contract.”^{FN27} In *Navair v. IFR Americas, Inc.*,^{FN28} the Tenth Circuit stated:

FN26. *Steele v. Harrison*, 220 Kan. 422, 552 P.2d 957, 962 (Kan.1976).

FN27. *Price v. Grimes*, 234 Kan. 898, 677 P.2d 969, 974 (Kan.1984) (quoting *Steele*, 552 P.2d at 962).

FN28. 519 F.3d 1131 (10th Cir.2008).

*6 The element of agreement is sometimes referred to as a “meeting of the minds.” The parties to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. The phrase used here, therefore, is “manifestation of mutual assent.”^{FN29}

FN29. *Id.* at 1139 (quoting RICHARD A. LORD, WILLISTON ON CONTRACTS § 4:1 (4th ed.2007)).

The court then went on to provide that “[t]ypically, judicial opinions stating the meeting-of-the-minds principle then point to objective communications and conduct in resolving the case.”

FN30. All contracting parties have a duty to learn the contents of a written contract before signing it, “and such duty includes reading the contract and obtaining an explanation of its terms.”^{FN31} “[A] party who signs a written contract is bound by its provisions” absent fraud, undue influence, or mutual mistake.^{FN32}

FN30. *Id.*

FN31. *Albers v. Nelson*, 248 Kan. 575, 809 P.2d 1194, 1197 (Kan.1991) (citing *Sutherland v. Sutherland*, 187 Kan. 599, 358 P.2d 776, 785 (1961)).

FN32. *Id.* (citations omitted).

Plaintiff argues that there was no meeting of the minds when the parties executed the agreement because plaintiff did not know that the arbitration clause obligated her to arbitrate all claims and forego her access to the courts and defendants' representatives also did not believe that the arbitration clause required binding and final arbitration. However, when determining whether there was a meeting of the minds, the courts generally look to the agreement; a signed agreement is usually evidence that the parties met on the terms on the agreement.^{FN33} Here, there is a signed agreement by both parties. Moreover, plaintiff's subjective thoughts of what the provisions meant did not come into play because they were never revealed to defendants at the time of execution.^{FN34} Accordingly, the Court finds that the parties entered into a contract and had a meeting of minds on the terms of that contract.

FN33. *Id.*

FN34. *Id.* at 1198. (Citing *Triple A Contractors, Inc. v. Rural Water Dist. No. 4*, 226 Kan. 626, 603 P.2d 184, 186 (Kan.1979) (noting that as general rule, “in the absence of fraud, a unilateral mistake will not excuse nonperformance of a contract.”)).

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

D. Interstate Commerce

Plaintiff argues that the FAA is inapplicable because defendants are not engaged in interstate commerce; instead, the nursing home is merely an intrastate operation. As noted above, defendants have not replied to plaintiff's supplemental response and accordingly, have not addressed this argument. The FAA applies to all arbitration agreements involving interstate commerce.^{FN35} The requirement that the underline transaction must involve interstate commerce " 'is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause.' " ^{FN36} According to the Supreme Court, the FAA reaches physical shipment of goods and any contract relating to interstate commerce.^{FN37} The term "involving" has been understood to mean "affecting" interstate commerce, giving the FAA a wide web based on Congress's Commerce power.^{FN38} When determining whether the arbitration provision falls under the FAA, the Court must determine whether the transaction at issue in fact involves interstate commerce.^{FN39}

FN35. *Comanchie Indian Tribe of Okla. v. 49, L.L.C.*, 391 F.3d 1129, 1131 (10th Cir.2004).

FN36. *Id.* at 1132 (quoting *Foster v. C.F. Turley, Jr.*, 808 F.2d 38, 40 (10th Cir.1986)).

FN37. *Id.* (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 401 n. 7, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967)).

FN38. *Allied-Bruce Terminex Companies, Inc. v. Dobson*, 513 U.S. 265, 281, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995).

FN39. *Id.*

Plaintiff cites to *Bruner v. Timberlane Man or Limited Partnership*^{FN40} as support for its proposition that the transaction at issue does not involve

interstate commerce. In *Bruner*, the Oklahoma Supreme Court decided that the contract between a resident and a nursing home did not involve interstate commerce. Even though the facility received Medicaid and Medicare benefits from the federal government pursuant to Congress's spending power, used out-of-state vendors, used instruments of interstate commerce, and complied with federal regulations, it did not engage interstate commerce.^{FN41} The Court reasoned that the Medicare funds did not have a substantial effect on interstate commerce and neither did the distribution of Medicaid funds from a state agency.^{FN42}

FN40. 155 P.3d 16 (Okla.2006).

FN41. *Id.* at 31.

FN42. *Id.*

*7 In *Bruner*, the parties were both from Oklahoma.^{FN43} In this case, plaintiff was a resident of California prior to entering the care of defendants in Kansas, and defendants are a Kentucky corporation. And although diversity alone will not meet the test,^{FN44} the Court believes that the instant contract involves interstate commerce. First, Plaintiff claims that other than the defendants being a registered corporation in Kentucky, there is less evidence of involvement in interstate commerce than in *Bruner*. But that is belied by the fact that plaintiff moved from California to reside in the facilities in Kansas. And second, unlike *Bruner*, fees paid to defendant are transactions in interstate commerce where defendant is a Kentucky corporation and plaintiff was a resident of Kansas. Even assuming that the fee transactions might have taken place entirely in Kansas, the reach of the FAA is not defeated by the fact that, taken alone, the transaction did not have a substantial effect on interstate commerce.^{FN45}

FN43. *Id.*

FN44. *Biomat Inc. v. Sampson*, 28 Kan.App.2d 242, 15 P.3d 846, 849

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

(Kan.Ct.App.2000) (citing *Sigco Sunplant, Inc. v. Harrison*, No. 89-2229-0, 1989 WL 134462 (D. Kan. Oct 18, 1999)).

FN45. *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003) (citations omitted).

"Interstate commerce is involved so long as some part of the transaction has a nexus to it."

^{FN46} In this case the nexus is clear. Furthermore, it is obvious that while the facility at issue operated in Topeka, plaintiff's form contract referred to the "laws of the state where the Community is located," leading the to Court believe that the form contract was used in other states. Otherwise, the contract would have referred specifically to "Kansas." Finally, plaintiff asserts as uncontested, facts derived from the deposition of defendants' regional vice president of operations. This vice president has routine oversight of the Texas and Kansas regions. The company is a Kentucky corporation, and it operates in Texas and Kansas. Based on those facts, the Court finds that the contract at issue does involve interstate commerce.

FN46. *Baer v. Terminex Int'l Co.*, 975 F.Supp. 1272, 1278 (D.Kan.1997).

E. Scope of Arbitration Clause

Plaintiff argues that the arbitration clause at issue was not intended to cover "pre-dispute consumer health care liability." Specifically, plaintiff states that because the arbitration provision references the American Arbitration Association ("AAA"), which provides that it will not "accept administration of cases involving individual patients without a *post-dispute* agreement to arbitrate" after January 1, 2003, the arbitration provision is not applicable to the instant claims.^{FN47} According to plaintiff, because the agreement was signed on October 10, 2003, and revolves around a *pre-dispute* arbitration clause, the arbitration provision does not encompass any claim made.

FN47. American Arbitration Association,

Healthcare Policy Statement, available at <http://www.adr.org/sp.asp?id=32192> (hereafter Healthcare Policy Statement).

Federal policy favors arbitration agreements and requires rigorous enforcement of arbitration provisions.^{FN48} The FAA creates a presumption of arbitrability and when faced with issues about the scope of an arbitration provision, courts must resolve any doubt in favor of arbitration.^{FN49} "District courts defer to arbitration 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute ... doubts should be resolved in favor of coverage.'" ^{FN50} "While courts favor arbitration, the parties' intent and the scope of the arbitration clause dictate whether arbitration is appropriate." ^{FN51} It is up to the court to determine whether the clause is broad or narrow.^{FN52}

FN48. *Housh v. Dinovo*, No. 02-2562, 2003 WL 1119526, at *2 (D.Kan. Mar.7, 2003) (citing *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987)).

FN49. *Housh*, 2003 WL 1119526, at *2 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-5, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983)).

FN50. *Trezvant v. Weston*, No. 04-1246, 2006 WL 2370121, at *2 (D.Kan.2006) (quoting *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)).

FN51. *Id.* (citing *Armijo v. Prudential Ins. Co. of Am.*, 72 F.3d 793, 797 (10th Cir.1995)).

FN52. *Id.* (citation omitted).

*8 The arbitration clause at issue states that
all claims ... arising out of ... this Agreement ... or

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

omission committed by us or any of our employees in connection with any services that we may provide you while a resident of the Community will be submitted to binding arbitration in the state where the Community is located. Such Arbitration will be conducted in accordance with the rules of the American Arbitration Association, applying the laws of the state where the Community is located.

The language of the provision makes clear that all claims, whether contract or tort, will be submitted to binding arbitration and conducted according to the rules of the AAA. By policy statement, the AAA provides that: "As a result of a review of its caseload in the health care area, the American Arbitration Association has announced that it will no longer accept the administration of cases involving individual patients without a *post-dispute* agreement to arbitrate. In order to provide sufficient notice for an orderly transition, this change will become effective on January 1, 2003." ^{FN53}

FN53. Healthcare Policy Statement (emphasis added).

The agreement in this case is dated October 10, 2003, after January 1, 2003. Thus, according to the plaintiff, the parties are not subject to arbitration unless there is a *post-dispute* agreement to arbitrate. In this case there is only a *pre-dispute* agreement to arbitrate. The Court, however, reads the language differently.

The arbitration provision provides that all claims will "be submitted to arbitration in the state where the Community is located." It then goes on to state that any arbitration will be "conducted in accordance with the rules of the [AAA]." What is apparent from the language of the arbitration provision is that the parties intended that Kansas law apply-referring to the law of the Community's location-and that the arbitration be conducted in accord with AAA rules. The obstacle is reconciling the arbitration in accordance with AAA when AAA states that it will not accept arbitration of individual

health care claims where there is no post-dispute agreement to arbitrate.

In a factually similar case, the Supreme Court concluded that even though the arbitration provision provided that New York law would apply, that did not mean that the arbitrators could not award punitive damages.^{FN54} In *Mastrobuono v. Shearson Lehman Hutton, Inc.*, the plaintiffs sued alleging a variety of state and federal law claims.^{FN55} The claims were sent to arbitration based on an arbitration provision that provided that New York law governed and that arbitration would be conducted in accordance with the rules of the National Association of Securities Dealers ("NASD").^{FN56} New York, however, did not permit arbitrators to award punitive damages, but NASD permitted arbitrators to award punitive damages.^{FN57}

FN54. 514 U.S. 52, 64, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995).

FN55. *Id.* at 55.

FN56. *Id.* at 58-59.

FN57. *Id.* at 53, 62.

In reconciling the obvious conflict, the Court, noting the strong federal policy in favor of arbitration, concluded that the arbitrators could award punitive damages.^{FN58} A similar conclusion is warranted here, where the arbitration provision is ambiguous. This conclusion is consistent with the FAA. Plaintiff argues that the AAA rules would preempt an arbitration provision under the FAA. But this conclusion is untenable as the FAA preempts state law. Therefore, finding that the FAA preempts AAA policy is a conclusion this Court can comfortably recognize.^{FN59}

FN58. *Id.* at 62.

FN59. See *Volt Info. Sci., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989) (noting that the FAA

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

preempts state law); *Perry v. Thomas*, 482 U.S. 483, 491, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987) (concluding that the FAA preempts California law).

*9 Guided by the Supreme Court, this Court finds that the appropriate way to construe the arbitration provision is to read it as simply requiring arbitration in accordance with AAA rules and not AAA policy.^{FN60} Thus, the AAA provision covers the rules to abide by when conducting the arbitration, while AAA policy on the types of arbitrable claims is simply just that-AAA's policy.^{FN61} And while plaintiff argues that her reading of the provision is the correct one, "such a result would be quite inimical to the FAA's primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms." ^{FN62} Indeed, the parties may contractually limit the issues that they will arbitrate and may specify the rules to govern any such arbitration.^{FN63} There is nothing in the FAA that prevents parties from enforcing arbitration provisions under different rules than those in the FAA.^{FN64} Where the parties have decided to arbitrate in accordance with AAA rules, enforcing that decision is certainly consistent with the FAA. ^{FN65}

FN60. "We think the best way to harmonize the choice-of-law provision with the arbitration provision is to read 'the laws of the State of New York' to encompass substantive principles that New York courts would apply, but not to include special rules limiting the authority of arbitrators." *Mastrobuono*, 514 U.S. at 63-4 (quoting the arbitration clause at issue).

FN61. The Court notes that the parties can pursue arbitration based on AAA rules but not administer the arbitration process through AAA. This would also be a consistent reading of the arbitration provision. *See id.*

FN62. *Id.* at 57 (quoting *Mitsubishi Motors*

Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985)).

FN63. *Id.* (citing *Volt Info. Sci., Inc.*, 489 U.S. at 479).

FN64. *Volt Info. Sci., Inc.*, 489 U.S. at 479.

FN65. *Id.*

Accordingly, defendants' motion to compel arbitration is granted and the action will be stayed pending such arbitration.

IT IS THEREFORE ORDERED THAT defendants' Motion to Dismiss or Alternatively, to Order this Matter to Arbitration (Doc. 4) is granted in part and denied in part. The action will be stayed pending arbitration.

IT IS SO ORDERED.

D.Kan., 2009.
Oesterle v. Atria Management Co., LLC
Slip Copy, 2009 WL 2043492 (D.Kan.)

END OF DOCUMENT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Elizabeth O'Meara.

☐ Plaintiff

v.

Brookdale Senior Living, Inc., Et Al.

☒ Defendant.

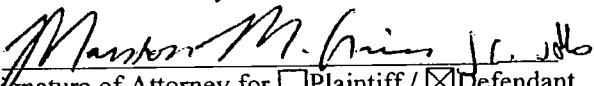
IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-07-1610

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

11 SEP -6 PM 4:25
JERILAN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiff's Attorney: Kelly M. Jolley, Bar No. 72573 Address: PO Drawer 3, Hilton Head Island, SC 29938 phone: 843-785-2171 fax: e-mail: kjolley@mcnair.net other:		Defendant's Attorney: Marc Manos/Manton Grier, Jr, Bar No. 011876/70525 Address: Post Office Drawer 2426, Columbia, SC 29202 phone: 803-540-2116 fax: 803-727-1439 e-mail: MGrier@nexsenpruet.com other: MManos@	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion To Reconsideration Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant September 2, 2011 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

RECEIVED

SEP 12 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,
Plaintiff,

Case No. 2011-CP-07-1610

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

MOTION TO RECONSIDER

11 SEP -6 PM 4:25
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Defendants Brookdale Senior Living Inc. and Southern Assisted Living, LLC ("Defendants") move this Court to reconsider its Order Denying Defendants Motion to Dismiss and Compel Arbitration, received by Defendants' counsel on August 23, 2011.

The grounds for this motion are as follows:

The FAA governs the Residency Agreement

1. The Court failed to apply the Federal Arbitration Act ("FAA") to a Residency Agreement that involves interstate commerce. (The Residency Agreement is attached as Exhibit A to Defendants' Original Motion). The United States Supreme Court expanded the scope of the FAA in Allied-Bruce Terminix Cos. Inc. v. Dobson, 513 U.S. 265, 269 (1995). There is no requirement that interstate commerce be "substantially involved," or that the parties contemplate an interstate transaction at the time they entered the agreement. To satisfy the FAA, an agreement must simply "involve commerce." The courts have held that this is a relatively easy threshold to meet.

2. In this case, the Residency Agreement involves interstate commerce because it specifies that residents are to receive meals from the facility, and the food to prepare those meals comes from a Texas corporation. (**Exhibit A**, ¶ 4, Affidavit of Timothy J. Cesar). Further, medical supplies administered to the residents come from a Wisconsin Corporation. *Id.* Finally, the payments made on Ms. O'Meara's behalf are addressed to Brookdale Senior Living Inc. ("Brookdale"), a Delaware corporation, and sent to a Wells Fargo bank in Texas, where they ultimately end up in Brookdale's corporate offices in Milwaukee, Wisconsin. *Id.*

The Arbitration Agreement is Not Unconscionable and, In the Alternative, is Severable

3. The arbitration agreement found in the Residency Agreement is not unconscionable. The contract was entered into knowingly by Ms. O'Meara, with full knowledge that she and her responsible party should consult with an attorney before signing. Considering the time and expenses saved through arbitration, the terms are not unconscionable. In the alternative, the arbitration stands alone and is severable. The portions of the Residency Agreement that this Court found unconscionable were not part of the actual arbitration clause. Because the Court would not need to re-write the arbitration clause, there was no basis for failing to sever the parts of the Residency Agreement that the Court found unconscionable.

Ms. O'Meara is Bound by the Residency Agreement

4. Finally, Ms. O'Meara is bound by the Residency Agreement because either she signed it, or a responsible party signed on her behalf and with her authority. To the extent an issue exists over whether Ms. O'Meara is bound by the Residency Agreement, such issues must be decided by an arbiter not a court.

5. Defendants, therefore, respectfully ask the Court to reconsider its Order Denying Defendants Motion to Dismiss and Compel Arbitration.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900
MManos@nexsenpruet.com
MGrier@nexsenpruet.com

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC

September 2, 2011

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Elizabeth O'Meara,
Plaintiff,

Case No. 2011-CP-07-1610

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, who
having been duly sworn, deposes and states:

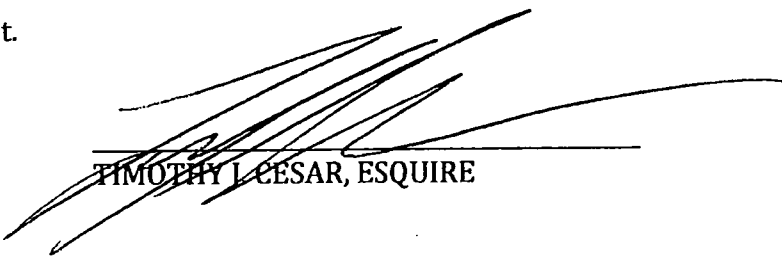
1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.
2. I am Counsel and Vice-President of Legal for Brookdale Senior Living Inc., a Delaware Corporation, and the Carolina House of Hilton Head, South Carolina.
3. This affidavit supplements my affidavit in support of Defendants' Motion to Dismiss and Compel Arbitration. I am writing this affidavit to give further support for why the Residency Agreement signed in this case involves interstate commerce.
4. The goods, services, and supplies procured through interstate commerce are part of the Residency Agreement. For example, the food from Sysco (a Texas corporation) is delivered to the resident in the form of daily meals, which the resident has contracted to

receive under the Residency Agreement. Whenever a resident is to receive medical assistance under the Residency Agreement, the resident receives supplies procured through Direct Supply (a Wisconsin corporation). The name on the Residency Agreement is Southern Assisted Living, a North Carolina corporation and a subsidiary of Brookdale Senior Living.

5. Payments received on Ms. O'Meara's behalf and other residents are through checks written out to Brookdale Senior Living, which are sent to a Wells Fargo bank in Texas. The checks are deposited into accounts owed by Brookdale Senior Living Inc., which ultimately receives that money at its corporate offices in Milwaukee, Wisconsin.

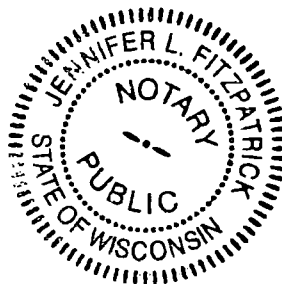
FURTHER this Affiant sayeth naught.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)


TIMOTHY J. CESAR, ESQUIRE

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced _____ as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 1 day of September, 2011.




NOTARY PUBLIC, State of Wisconsin
Commission expires: 10/16/11

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Elizabeth O'Meara,
Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

IN THE COURT OF COMMON PLEAS

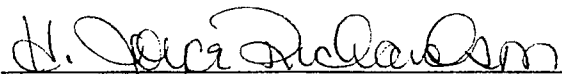
Case No. 2011-CP-07-1610

CERTIFICATE OF SERVICE

11 SEP -6 PM 4:26
JENNIFER L. SENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The undersigned certifies that a copy of the foregoing **Motion To Reconsider** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail on the 2nd day of September, 2011, to the address shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUETT, LLC

Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-070-1700

Yvonne Carrie Pruett vs. Brookdale Senior Living Inc, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 12(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Defendant Brookdale Senior Living's Motion to Reconsider Order, is respectfully denied without a hearing.

Dated at Beaufort, South Carolina, this 20 day of September, 2011.


PRESIDING JUDGE - Carmen T. Mullen

This judgment was entered on the 20 day of September 2011, and a copy mailed first class this 20 day of September, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Kelly McPherson Jolley McNair Law Firm, PA
PO Drawer 3 Hilton Head Island, SC 29938

Manton M Grier, Jr. Nexsen Pruet, LLC
PO Drawer 2426 Columbia, SC 29202

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

Jamie Thompson

Jerri Ann Roseneau - Clerk of Court

FORM 4

9-22-11

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-070-16/0

Elizabeth O'Meara vs. Brookdale Senior Living Inc, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 12(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

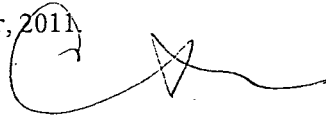
IT IS ORDERED AND ADJUDGED:

☐ See attached order. (Formal order to follow)

☐ Statement of Judgment by the Court:

Defendant Brookdale Senior Living's Motion to Reconsider Order, is respectfully denied without a hearing.

Dated at Beaufort, South Carolina, this 20 day of September, 2011.



PRESIDING JUDGE - Carmen T. Mullen

This judgment was entered on the 20 day of September 2011, and a copy mailed first class this 20 day of September, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Kelly McPherson Jolley McNair Law Firm, PA
PO Drawer 3 Hilton Head Island, SC 29938

Manton M Grier, Jr. Nexsen Pruet, LLC
PO Drawer 2426 Columbia, SC 29202

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

Jamie Thompson

Jerri Ann Roseneau - Clerk of Court

IN THE COURT OF COMMON PLEAS

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847

:

:

—

1

;

;

5

22

11

4

2

4

2

COMMON PLEAS COURT
CLERK OF COURT
7-1786
AUG 19 PM 4:35
DEFENDANT
OR LIVING, I
ASSISTED LIVING
TO DISMISS AND
LITIGATION
PAULS CANCELLED
CLERK OF COURT
Inc. and So

HULTONHEAD 745618v1

(3) the arbitration and limitation of liability clauses in the Residency agreement are unconscionable. The Court is persuaded by Plaintiff's arguments opposing the Motion to Compel Arbitration and accordingly denies Defendants' Motion to Dismiss and Compel Arbitration.

During the hearing on this Motion, the parties conceded that arbitration cannot be compelled under the South Carolina Arbitration Act in this matter because Mrs. Pruett's claims all arise out of her alleged personal injury. S.C. Code Ann. Section 15-48-10. Defendants contend that the FAA preempts the South Carolina state statute. However, I find that the Residency Agreement between Mrs. Pruett and Carolina House does not involve interstate commerce. Therefore, this case subject is not subject to the FAA. The South Carolina Supreme Court in *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) held that the FAA was inapplicable to a similar contract for patient and residency services. The Court explained that the analysis must focus on the contract between the parties, and whether that contract involves interstate commerce. The Residency Agreement here is a contract for basic services – accommodations, meals, utilities, housekeeping, laundry and recreation. The provision of these contractual services to Mrs. Pruett at the Carolina House facility in Hilton Head does not involve interstate commerce. Moreover, the Affidavit of Timothy J. Caesar attached to Defendants' Motion does not contain any facts from which one could conclude that any of the basic services included in the contract between Mrs. Pruett and Carolina House involve interstate commerce.

Defendants argued that *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) and *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995) changed the analysis previously supported in *Timms*. However, these cases clarify that a transaction occurring via a contract must in fact involve interstate commerce to enforce an arbitration provision in the

contract. Neither case alters our Supreme Court's holding in *Timms* that arbitration cannot be compelled pursuant to the FAA when the underlying transaction does not involve interstate commerce. The Residency Agreement does not involve interstate commerce and Defendants' Motion to Dismiss and Compel Arbitration must be denied.

Even if the Residency Agreement did involve interstate commerce so as to bring it under the purview of the FAA, I find that the arbitration and limitation of liability clauses in the Residency Agreement are unconscionable and should be struck in their entirety from the contract. Among other provisions, the arbitration and limitation of liability clauses in the Residency Agreement significantly restrict discovery, limit compensatory damages, and prohibit punitive damages. Both the "Arbitration Provision" (V.A.) and the "Limitation of Liability Provision" (V.B.) are included in Section V. of the Residency Agreement. Subsection V.A(13) incorporates by reference the Limitation of Liability Provision into the Arbitration Provision. Taken together, these provisions restrict discovery, including a limitation on depositions to only those of experts, and limits liability for any "claims by, or on behalf of, a Resident ... arising out of the care or treatment received by the Resident...." For example, all "[n]et economic damages" awarded must be "offset by any collateral source payments such as payments made by medical insurance." Additionally, the provisions limit noneconomic damages, including pain and suffering, to "a maximum of \$350,000.00", prohibit payment of "[i]nterest and/or late fees on unpaid assisted living charges", and preclude any award for punitive damages.

Generally, "courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 28, 644 S.E.2d 663, 670 (2007). I find that the limitations on damages and discovery unilaterally imposed upon Mrs. Pruett in the Residency Agreement are substantively

unconscionable and violate public policy. Accordingly, even if the FAA were applied to the Residency Agreement, Section V of the Residency Agreement ("Arbitration and Limitation of Liability Provision") is unconscionable and unenforceable in its entirety. *See, e.g. Simpson*, 373 S.C. at 33-37, 644 S.E.2d at 673-674.

IT IS NOW THEREFORE ORDERED, this action shall proceed on the jury docket for the Fourteenth Judicial Circuit, Beaufort County, South Carolina. The Defendants shall have fifteen (15) days from the date of this Order to file responsive pleadings.

AND IT IS SO ORDERED.

By: *C. T. Mullen*

Carmen T. Mullen
Circuit Court Judge
Fourteenth Judicial Circuit

Aug.

~~July~~ 8, 2011

Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

YVONNE CARRIE PRUETT,
Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

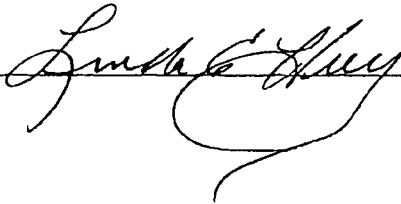
Defendants.

CERTIFICATE OF SERVICE

I, LUXAS C. HUEY, an employee of McNair Law Firm, P.A., have this date served a copy of **ORDER DENYING DEFENDANTS, BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC'S MOTION TO DISMISS AND COMPEL ARBITRATION** on defendants in the above-referenced action by depositing a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this 24 day of AUGUST, 2011:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina



RECEIVED

AUG 29 2011

NEXSEN PRUET LLC



CT Corporation

**Service of Process
Transmittal**

05/06/2011

CT Log Number 518480049



TO: Susan Jeffrey
Brookdale Living Communities, Inc.
330 N. Wabash, Suite 1400
Chicago, IL 60611-

RE: Process Served in South Carolina

FOR: Southern Assisted Living, LLC (Domestic State: NC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Yvonne Carrie Pruett, Pltf. vs. Brookdale Senior Living, Inc., et al. including Southern Assisted Living, LLC, Dfts.

DOCUMENT(S) SERVED: Letter, Summons, Complaint,

COURT/AGENCY: Beaufort County Court of Common Pleas, SC
Case # 2011-CP-07-1700

NATURE OF ACTION: Defendants have engaged in unfair and deceptive acts and failing to protect residents from abuse all constitute unfair trade practices under south carolina unfair trade practices act

ON WHOM PROCESS WAS SERVED: CT Corporation System, Columbia, SC

DATE AND HOUR OF SERVICE: By Certified Mail on 05/06/2011 postmarked on 05/04/2011

JURISDICTION SERVED : South Carolina

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Kelly M. Jolley
McNair Law Firm, P.A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Ste 400
Hilton Head Island, SC 29928
843-785-2171

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 794735387588

SIGNED: CT Corporation System
PER: Amy McLaren
ADDRESS: 2 Office Park Court
Suite 103
Columbia, SC 29229
TELEPHONE: 800-592-9023

Page 1 of 1 / NP

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

RECORD P. 000156

M C N A I R
ATTORNEYS

May 4, 2011

Kelly M. Jolley

kjolley@mcnair.net
T (843) 785-2171
F (843) 341-9830

Via Certified Mail, Return Receipt Requested

C T Corporation System
Registered Agent for Southern Assisted Living, LLC
2 Office Park Court, Suite 103
Columbia, SC 29223

Re: Yvonne Carrie Pruett vs.
Brookdale Senior Living, Inc.,
Southern Assisted Living, LLC, and
Sonia S. King
Civil Action No.: 2011-CP-07-1700

To Whom it May Concern:

We wish to advise you that our firm represents Elizabeth O'Meara in the above referenced matter. Enclosed herewith and served upon you is the Summons and Complaint in this matter.

Very truly yours,



Kelly M. Jolley

KMJ:lch
Enclosures

McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29935

mcnair.net

HILTONHEAD 742105v1

ANDERSON

BLUFFTON

CHARLESTON

CHARLOTTE

RECORD P. 000157

HILTON HEAD

MYRTLE BEACH

PAWLEYS ISLAND

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

YVONNE CARRIE PRUETT,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC., and
SONIA S. KING,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07 -1700

11 APR 13 2011
CLERK OF COURT
BEAUFORT COUNTY, S.C.

SUMMONS

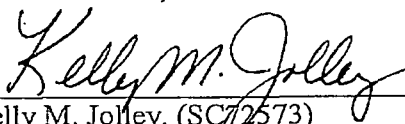
TO: BROOKDALE SENIOR LIVING, INC., SOUTHERN ASSISTED LIVING, LLC
and SONIA S. KING:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-referenced action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928, within thirty (30) days after the service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

Dated: April 12, 2011

MCNAIR LAW FIRM, P.A.

By


Kelly M. Jolley, (SC72573)
E-Mail: kjolley@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) APR 13 2011
) CASE NO.: 2011-CP-07

YVONNE CARRIE PRUETT,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC and
SONIA S. KING,

Defendants.

CLERK OF COURT
BEAUFORT COUNTY, S.C.

COMPLAINT

(JURY TRIAL REQUESTED)

The Plaintiff, herein, by and through her undersigned counsel of record will respectfully show onto the Court that:

1. Plaintiff Yvonne Carrie Pruett is a resident of Beaufort County, South Carolina.
2. Upon information and belief, Defendant Brookdale Senior Living, Inc. ("Brookdale") is a corporation organized and existing under the laws of one of the United States of America which transacts business in Beaufort County, South Carolina.
3. Upon information and belief, Defendant Southern Assisted Living, LLC is a limited liability company organized and existing under the laws of North Carolina.
4. Upon information and belief, at all times relevant hereto, Defendant Southern Assisted Living, LLC operated, managed, and / or owned a community residential care facility doing business as Carolina House of Hilton Head (hereinafter "Carolina House") located at 35 Beach City Road on Hilton Head Island in Beaufort County, South Carolina, which provided long term care for the facility's residents including Plaintiff.
5. Upon information and belief, Defendant Sonia S. King is a resident of Hampton

County, South Carolina and at all times relevant hereto, Ms. King was employed by Defendant Southern Assisted Living, LLC and worked in Defendant's Carolina House facility on Hilton Head Island in Beaufort County, South Carolina.

6. This Court has personal jurisdiction and venue over the parties and subject matter jurisdiction over this action.

BACKGROUND

7. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

8. On or about December 31, 2010, and for some time prior thereto, Yvonne Carrie Pruett was a resident of Carolina House as a result of progressive dementia and her inability to care for herself in an independent setting.

9. Mrs. Pruett is seventy-nine (79) years old and mentally incapacitated due to Alzheimer's disease.

10. At all time relevant hereto, Carolina House was required to maintain a safe environment free of abuse, accidents, and hazards for its residents, including Plaintiff.

11. On or about December 31, 2010 between the hours of 5:00 and 6:00 a.m., Defendant Sonia King physically and verbally abused Mrs. Pruett.

12. Defendant King jerked Mrs. Pruett from her bed by her arms, undressed her, placed toothpaste on a washcloth, and "washed" Mrs. Pruett's vaginal area with toothpaste.

13. Defendant King also verbally abused Mrs. Pruett several times and threatened to "choke her out" if Mrs. Pruett attempted to stop Defendant King from washing her with the toothpaste.

14. The abuse was witnessed and recorded by Defendant King's co-worker, Shanada Young, who reported the abuse to the Carolina House Director of Nursing.

15. Upon information and belief, Defendant King was known to abuse the residents of Carolina House.

16. Prior to December 31, 2010, Ms. King was suspended from Carolina House for verbally abusing a senior resident.

17. Following an investigation by the Beaufort County Sheriff's Office, Defendant King was arrested and charged with elder abuse.

18. As a result of the physical and verbal abuse, Mrs. Pruett suffered painful injury as well as emotional distress, mental anguish and fear.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT
AGAINST BROOKDALE and
CAROLINA HOUSE

19. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

20. Defendants Brookdale and Carolina House by and through their authorized agents and servants was negligent, wanton, reckless, careless, willful, and grossly negligent in the operation, management and/or ownership of its community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents and hazards;
- b. In allowing Defendant Sonia King to continue working at the facility following her suspension for previous verbal abuse of a resident;
- c. In failing to adequately investigate and resolve prior reports and / or concerns of abuse of residents by Defendant King and other employees of Carolina House;

- d. In failing to adequately supervise employees on all shifts at Carolina House;
- e. In failing to provide equal access to quality of care;
- f. In failing to employ necessary safety precautions for Plaintiff's safety and welfare;
- g. In failing to establish and / or require compliance with abuse or accident reporting procedures;
- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Defendant Carolina House's resident population, including Plaintiff;
- i. In failing to hire or contract with adequately trained and competent employees or agents to whom the care and wellbeing of patients such as Plaintiff was entrusted;
- j. In failing to take reasonable and prudent action to prevent Plaintiff from suffering abuse, physical injury, and emotional distress from the caregivers Defendant Carolina House provided to care for Carolina House's vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

21. As a direct and proximate result of Defendants' gross, willful, and wanton negligence, Mrs. Pruett has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

22. Mrs. Pruett is entitled to an award of compensatory and punitive damages.

FOR A SECOND CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST BROOKDALE AND CAROLINA HOUSE

23. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

24. Defendants Brookdale and Carolina House knew or should have known that subjecting its vulnerable adult residents with dementia, including Plaintiff, to employees with a history of abuse would result in further abuse and severe mental and emotion distress and anguish.

25. Despite a previous incident of abuse of a resident and previous concerns about Defendant King's abuse of residents, Defendants continued to employ or otherwise retain Defendant King, to put her on the work schedule, and allow her contact with vulnerable residents without supervision.

26. By allowing Defendant King to have contact with Carolina House's vulnerable residents, Defendants intentionally or recklessly placed all of residents at Carolina House's facility, including specifically Plaintiff, at risk.

27. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

28. Defendants' actions caused Plaintiff severe emotional distress.

29. By their actions, Defendants acted intentionally or recklessly.

30. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

31. As a direct and proximate result of Defendants' actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

32. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

33. As a direct and proximate result of Defendants' extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendants.

FOR A THIRD CAUSE OF ACTION
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
AGAINST BROOKDALE AND CAROLINA HOUSE

34. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

35. Defendants Brookdale and Carolina House publically assert and advertise that Carolina House "provides Personalized Assisted Living and Alzheimer's and Dementia care options for seniors".

36. Defendants also assert that Carolina House partners "with each resident to design an individualized, personal service plan" via a "service planning process, unique to Brookdale Senior Living communities, [that] bases service fees on delivering quality service and care to each individual."

37. Defendants claim that these "Personalized Service Plans are reviewed regularly by staff to ensure that we meet the changing needs of our residents. Our trained staff is there to assist with personal needs – bathing or showering, selection of clothing, dressing assistance, grooming, hygiene, mobility and transferring and dining assistance – 24 hours a day."

38. Upon information and belief, Defendants charge residents, including Plaintiff, variable fees for services, including grooming, bathing or showering, hygiene, without providing these services.

39. Upon information and belief, Defendants do not have adequately trained staff on hand 24 hours a day to supervise and assist its senior population living with Alzheimer's and dementia, to provide quality care, or to protect those same vulnerable adults, including but not limited to Plaintiff, from abuse.

40. Defendants have engaged in unfair and deceptive acts in offering and advertising of specialized services for individuals with Alzheimer's or dementia without having adequate trained staff on hand to provide for those individuals, charging and accepting payment for personalized services that are not in fact personalized or are not provided, and failing to protect residents from abuse all constitute unfair trade practices under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. Section 39-5-10 to 39-5-250 (2010).

41. Defendants' unfair or deceptive acts or practices have an impact upon the public interest and have the potential for repetition. In fact, on or about December 31, 2010, two residents other than Plaintiff were physically and verbally abused in the Carolina House facility by Defendant King.

42. Plaintiff would not have entered Carolina House's community residential care facility if Brookdale and Carolina House had not held the facility out to the public as being a place specifically designed to provide high quality care to individuals with Alzheimer's or dementia.

43. Furthermore, Plaintiff would not have paid Carolina House for services in accordance with Plaintiff's "Personalized Service Plan" if Brookdale and Carolina House had not

assured Plaintiff, Plaintiff's caregivers, and the public that Carolina House provided quality services in accordance with that plan.

44. Upon information and belief, Plaintiff did not receive a Personalized Service Plan wherein charges directly correlated to the services Carolina House agreed to provide. Plaintiff did not receive all services requested and paid for. Plaintiff did not consistently receive quality Alzheimer and dementia care services. Plaintiff was abused by staff at Carolina House.

45. As a direct and proximate result of Defendants' deceptive and unfair trade practices, Plaintiff has been damaged in not receiving services paid for and in paying for services and care not received. Plaintiff has also been physically and mentally injured through the abuse perpetrated by Defendants' staff and Defendant's lack of supervision over and training regarding same.

46. Mrs. Pruett is entitled to an award of compensatory and treble damages.

FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY AGAINST SONIA S. KING

47. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

48. Defendant King, with force and violence, caused severe and painful injury to Plaintiff Yvonne Carrie Pruett.

49. Defendant King jerked Mrs. Pruett out of her bed causing injury to her arms.

50. Defendant King applied toothpaste to Mrs. Pruett's vaginal area causing Mrs. Pruett great pain and anguish.

51. Defendant King threatened to choke Mrs. Pruett if she attempted to resist Defendant King.

52. By her words and acts, Defendant King caused Mrs. Pruett reasonable apprehension of imminent harmful and offensive contact.

53. Additionally, Defendant King was rude, insolent and angry toward Plaintiff.

54. Defendant King's actions were offensive to any ordinary person.

55. By reason of Defendant King's words and acts, Plaintiff did reasonably believe that an offensive and harmful contact would occur.

56. Defendant did assault and batter Mrs. Pruett.

57. As a direct and proximate result of Defendant King's assault and battery, Mrs. Pruett has suffered pain, extreme emotional trauma, anxiety and distress. By reason Defendant's unlawful and unauthorized assault and battery, Mrs. Pruett is entitled to recover punitive damages from the Defendant.

FOR A FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST SONIA S. KING

58. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

59. By her words and actions, Defendant King's conduct was extreme, reckless and outrageous and so severe as to cause emotional distress to Plaintiff.

60. By her words and actions, Defendant King acted intentionally or recklessly.

61. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

62. Defendant King's actions were so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community.

63. As a direct and proximate result of Defendant King's actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

64. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

65. As a direct and proximate result of Defendant King's extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendant King.

66. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

67. By her actions, Defendant King was grossly, willfully and wantonly negligent in executing her duties as a caregiver and / or med tech for Carolina House, including physically and verbally abusing Plaintiff in violation of the Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2010)

68. As a direct and proximate result of Defendant King's gross, willful, and wanton negligence, Mrs. Pruett has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

69. Mrs. Pruett is entitled to an award of compensatory and punitive damages.

WHEREFORE, the Plaintiff Yvonne Carrie Pruett prays this Honorable Court will find judgment for the Plaintiff as follows:

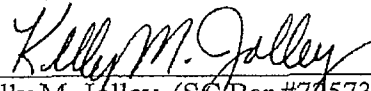
- (a) For actual punitive and treble damages;
- (b) Attorneys fees, costs and additional damages as provided by statute; and
- (c) For such other and further relief as the Court may deem just and proper.

[Signatures appear on the following page]

Dated: April 12, 2011

MCNAIR LAW FIRM, P.A.

By



Kelly M. Jolley, (SC Bar #74573)

E-Mail: kjolley@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1700

SAMUEL H. PRUETT, AS PERSONAL
REPRESENTATIVE FOR THE ESTATE OF
YVONNE CARRIE PRUETT,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.;
SOUTHERN ASSISTED LIVING, LLC, d/b/a
CAROLINA HOUSE OF HILTON HEAD; and
SONIA S. KING,

Defendants.

AMENDED SUMMONS

TO: BROOKDALE SENIOR LIVING, INC.; SOUTHERN ASSISTED LIVING, LLC,
d/b/a CAROLINA HOUSE OF HILTON HEAD; and SONIA S. KING:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in the above-referenced action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint on the subscribers at their office at 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928, within fifteen (15) days after the service thereof; exclusive of the day of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Amended Complaint and a judgment will be rendered against you.

[Signature block appears on the following page.]

Dated: September 26, 2012

MCNAIR LAW FIRM, P.A.

By



Kelly M. Jolley (SC Bar # 72579)

E-Mail: kjolley@mcnair.net

Kathleen G. Chewning (SC Bar # 78854)

E-Mail: kchewning@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Susan Taylor Wall (SC Bar # 5799)

E-Mail: swall@mcnair.net

Post Office Box 1431

Charleston, SC 29402

(843) 785-7831

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1700

SAMUEL H. PRUETT, AS PERSONAL
REPRESENTATIVE FOR THE ESTATE OF
YVONNE CARRIE PRUETT,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.;
SOUTHERN ASSISTED LIVING, LLC, d/b/a
CAROLINA HOUSE OF HILTON HEAD; and
SONIA S. KING,

Defendants.

AMENDED COMPLAINT
(Wrongful Death and Survival Actions)

(JURY TRIAL REQUESTED)

RECEIVED
12 SEP 24 11:04
CLERK OF COURT

Plaintiff is the duly appointed personal representative of the Estate of Yvonne Carrie Pruett, and is bringing this action on behalf of the Estate of Yvonne Carrie Pruett and on behalf of the beneficiaries of Yvonne Carrie Pruett. Plaintiff brings this action against Brookdale Senior Living, Inc.; and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Brookdale Defendants"); and Sonia S. King ("King"). Yvonne Pruett died on May 30, 2012, as a result of injuries and neglect sustained due to the incidents complained of herein. Prior to her death, Yvonne Pruett experienced conscious pain, suffering, and humiliation. The Plaintiff, by and through his undersigned counsel of record, will respectfully show unto the Court that:

1. Plaintiff and Yvonne Carrie Pruett were at all times mentioned herein residents of Beaufort County, South Carolina.

2. Upon information and belief, Defendant Brookdale Senior Living, Inc., is a corporation organized and existing under the laws of one of the United States of America which

transacts business in Beaufort County, South Carolina.

3. Upon information and belief, Defendant Southern Assisted Living, LLC, is a limited liability company organized and existing under the laws of North Carolina.

4. Upon information and belief, at all times relevant hereto, Defendant Southern Assisted Living, LLC, operated, managed, and/or owned a community residential care facility doing business as Carolina House of Hilton Head (hereinafter "Carolina House") located at 35 Beach City Road on Hilton Head Island in Beaufort County, South Carolina, which provided long term care for the facility's residents, including Yvonne Pruett.

5. Upon information and belief, Defendant Sonia S. King is a resident of Hampton County, South Carolina, and at all times relevant hereto, Defendant King was employed by the Brookdale Defendants, and worked in Defendants' Carolina House facility on Hilton Head Island in Beaufort County, South Carolina.

6. This Court has personal jurisdiction and venue over the parties and subject matter jurisdiction over this action.

BACKGROUND

7. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

8. On or about December 31, 2010, and for some time prior thereto, Yvonne Carrie Pruett was a resident of Carolina House as a result of progressive dementia and her inability to care for herself in an independent setting.

9. At the time of the incidents, Mrs. Pruett was seventy-nine (79) years old and mentally incapacitated due to Alzheimer's disease.

10. At all times relevant hereto, Carolina House was required to maintain a safe environment free of abuse, accidents, and hazards for its residents, including Mrs. Pruett.

11. On or about December 31, 2010, and for some time prior thereto, Defendant Sonia King and other employees and agents of the Brookdale Defendants physically and verbally abused and neglected Mrs. Pruett.

12. On or about December 31, 2010, between the hours of 5:00 and 6:00 a.m., Defendant King jerked Mrs. Pruett from her bed by her arms, undressed her, placed toothpaste on a washcloth, and "washed" Mrs. Pruett's vaginal area with toothpaste.

13. Defendant King also verbally abused Mrs. Pruett several times and threatened to "choke her out" if Mrs. Pruett attempted to stop Defendant King from washing her with the toothpaste.

14. The abuse was witnessed and recorded by employees of the Brookdale Defendants, including Defendant King's co-worker, Shanada Young, who thereafter reported the abuse to the Carolina House Director of Nursing.

15. Upon information and belief, Defendant King was known to the Brookdale Defendants to abuse residents of Carolina House.

16. Prior to December 31, 2010, Defendant King was suspended from Carolina House for verbally abusing a senior resident.

17. Upon information and belief, Mrs. Pruett was a victim of other incidents of painful physical and verbal abuse and/or neglect while a resident at Carolina House.

18. Following an investigation by the Beaufort County Sheriff's Office, Defendant King was arrested and charged with elder abuse.

19. Defendant King pled guilty to the charge.

20. As a result of the physical and verbal abuse administered by Defendant King and other employees of the Brookdale Defendants, Mrs. Pruett suffered painful injuries as well as ongoing emotional distress, mental anguish, humiliation, and fear.

21. As a result of the physical and verbal abuse and neglect suffered at the hands of employees and agents of the Brookdale Defendants, Mrs. Pruett's condition deteriorated and she died on May 30, 2012.

FOR A FIRST CAUSE OF ACTION
CORPORATE NEGLIGENCE / NONDELAGABLE DUTY
AGAINST THE BROOKDALE DEFENDANTS

22. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

23. Southern Assisted Living d/b/a Carolina House is licensed as a community residential care facility by the State of South Carolina.

24. Additionally, Southern Assisted Living d/b/a Carolina House is licensed or otherwise authorized by the State of South Carolina to hold itself out as providing an Alzheimer's special care unit and to perform specialized services, care or treatment especially applicable to or suitable for residents with Alzheimer's Disease and Dementia, and did so hold itself out.

25. Mrs. Pruett and her family, including Plaintiff, relied upon Southern Assisted Living d/b/a Carolina House's disclosures required by South Carolina Code Ann. Section 44-36-520 (2002) (the "Alzheimer's Special Care Disclosure Act") and the Brookdale Defendants' promotional materials regarding the safe environment and specialized services, care, or treatment especially applicable to or suitable for residents with Alzheimer's Disease and Dementia that the Brookdale Defendants asserted would be provided to vulnerable residents with Alzheimer's Disease and Dementia in choosing to place Mrs. Pruett at the Carolina House facility.

26. The Brookdale Defendants' responsibilities to provide the safe environment and specialized services, care or treatment it promised to give to its vulnerable residents with Alzheimer's Disease and Dementia is so important to the community and public at large that the Brookdale Defendants are not permitted to transfer or delegate the responsibilities to their agents, servants, employees, or contractors.

27. The Brookdale Defendants were negligent and/or grossly negligent, and/or willful, wanton, and reckless in the operation, management and/or ownership of the community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents, and hazards;
- b. In allowing employees, including Defendant King, to continue working at the facility despite a history of abuse and neglect of residents;
- c. In failing to adequately investigate and resolve prior reports and/or concerns of abuse of residents by employees of Brookdale Defendants;
- d. In failing to adequately supervise employees on all shifts at Carolina House;
- e. In failing to provide equal access to quality of care for all residents;
- f. In failing to employ reasonable safety precautions necessary to protect the safety and welfare of residents with Alzheimer's Disease and Dementia, including specifically Mrs. Pruett;
- g. In failing to establish and/or require compliance with abuse or accident reporting procedures;

- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Carolina House's resident population, including Mrs. Pruett;
- i. In failing to adequately train and supervise employees and agents to whom the care and wellbeing of patients such as Mrs. Pruett was entrusted;
- j. In failing to take reasonable and prudent action to prevent Mrs. Pruett from suffering abuse, physical injury, emotional distress, and/or neglect from the caregivers that the Brookdale Defendants provided to care for their vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by Mrs. Pruett and Plaintiff.

28. Upon information and belief, to save costs and increase profits, the Brookdale Defendants replaced trained and licensed personnel with untrained, unlicensed staff and overextended the staff by having them fulfill job responsibilities for several different positions at once, denying staff work breaks and vacation, threatening staff with reduced hours or termination if complaints about patient care were made and/or vacation taken, and routinely understaffing the facility, including specifically the Care Bridge Memory Care Unit where residents with Alzheimer's Disease and Dementia, including Mrs. Pruett, resided, without adequate supervision and guidance.

29. By its actions, the Brookdale Defendants were grossly, willfully, and wantonly negligent as a corporate body in executing their duties as caregiver in allowing the physical and verbal abuse and neglect of residents, including specifically Mrs. Pruett, in violation of the

Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2011).

30. As a direct and proximate result of the Brookdale Defendants' corporate negligence and gross negligence, Mrs. Pruett suffered severe and painful personal injuries as well as ongoing emotional trauma, anxiety and stress; and died.

31. Plaintiff is entitled to an award of compensatory and punitive damages.

FOR A SECOND CAUSE OF ACTION
NEGLIGENCE (Vicarious Liability)
AGAINST THE BROOKDALE DEFENDANTS

32. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

33. The Brookdale Defendants owed a duty of reasonable care to Carolina House residents.

34. Defendant King and other caregivers for Mrs. Pruett were employees and agents of the Brookdale Defendants at all times pertinent to this action.

35. Defendant King and other caregivers acted within the scope of their employment duties and responsibilities at all times pertinent to this action.

36. The Brookdale Defendants are liable for Mrs. Pruett's injuries resulting from the conduct and omissions of Defendant King and other employees.

FOR A THIRD CAUSE OF ACTION
NEGLIGENT SUPERVISION
AGAINST THE BROOKDALE DEFENDANTS

37. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

38. Defendant King and other individuals assigned to care for Mrs. Pruett, as employees of the Brookdale Defendants, harmed and neglected Mrs. Pruett while on the premises of Carolina House.

39. The Brookdale Defendants knew or had reason to know of their ability and obligation to train, supervise, and control the conduct of their employees.

40. The Brookdale Defendants knew or should have known Defendant King and other employees abused and neglected Carolina House residents in the past and, therefore, knew or should have known of the necessity to exercise control over and supervise Defendant King and other employees to prevent Mrs. Pruett's injuries.

41. As a direct and proximate result of the Defendants' negligence, gross negligence, and willful and wanton conduct, Mrs. Pruett suffered injuries and died.

42. Plaintiff is entitled to an award of actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
WRONGFUL DEATH
AGAINST THE BROOKDALE DEFENDANTS

43. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

44. Defendants owed a duty of care to Mrs. Pruett to exercise reasonable care in the operations and management of the Carolina House.

45. Defendants breached that duty of care by engaging in negligent, reckless, willful, and wanton conduct described in the preceding paragraphs.

46. Defendants' breach proximately caused Mrs. Pruett's injuries and death.

47. As a result of Mrs. Pruett's death, her beneficiaries have endured pecuniary loss, grief, sorrow, loss of Mrs. Pruett's companionship, and wounded feelings.

48. Plaintiff is entitled to an award of actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
SURVIVAL
AGAINST THE BROOKDALE DEFENDANTS

49. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

50. As a result and consequence of the negligence, recklessness, and grossly negligent conduct of the Brookdale Defendants, Mrs. Pruett died. Prior to her death, Mrs. Pruett experienced conscious pain and suffering, both physical and mental.

51. Mrs. Pruett's estate incurred funeral expenses.

52. Plaintiff is entitled to actual and punitive damages for the negligence, recklessness, gross negligence, and/or willful and wanton conduct of the Brookdale Defendants.

FOR A SIXTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST THE BROOKDALE DEFENDANTS

53. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

54. The Brookdale Defendants knew or should have known that subjecting their vulnerable adult residents with dementia, including Mrs. Pruett, to employees with a history of abuse would result in further abuse and/or neglect resulting in severe mental and emotional distress and anguish suffered by the residents, including Mrs. Pruett.

55. Despite previous incidents of abuse of residents and previous concerns about Defendant King's abuse and neglect of residents and other employees' failure to protect residents, the Brookdale Defendants continued to employ or otherwise retain Defendant King, to

put her on the work schedule, and to allow her contact with vulnerable residents without supervision and guidance.

56. By allowing Defendant King to have contact with Carolina House's vulnerable residents, Brookdale Defendants intentionally or recklessly placed all of the residents at Carolina House's facility, including specifically Mrs. Pruett, at risk.

57. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

58. Defendants' actions caused Mrs. Pruett severe emotional distress and death.

59. By their actions, Defendants acted intentionally or recklessly.

60. Defendant King's actions were substantially certain to cause severe emotional distress to Mrs. Pruett.

61. As a direct and proximate result of Defendants' actions and conduct, Mrs. Pruett suffered severe, extreme, and continuing emotional distress and anxiety and death.

62. Mrs. Pruett's emotional distress was so severe that no reasonable person could be expected to endure it.

63. As a direct and proximate result of Defendants' extreme and outrageous conduct, Mrs. Pruett suffered extreme emotional distress and anxiety.

64. Plaintiff is entitled to an award of actual and punitive damages against Defendants.

FOR A SEVENTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
AGAINST THE BROOKDALE DEFENDANTS

65. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

66. The Brookdale Defendants publically assert and advertise that Carolina House “provides Personalized Assisted Living and Alzheimer's and Dementia care options for seniors.”

67. The Brookdale Defendants also assert that Carolina House partners “with each resident to design an individualized, personal service plan” via a “service planning process, unique to Brookdale Senior Living communities, [that] bases service fees on delivering quality service and care to each individual.”

68. The Brookdale Defendants claim that these “Personalized Service Plans are reviewed regularly by staff to ensure that we meet the changing needs of our residents. Our trained staff is there to assist with personal needs – bathing or showering, selection of clothing, dressing assistance, grooming, hygiene, mobility and transferring and dining assistance – 24 hours a day.”

69. Upon information and belief, the Brookdale Defendants charge residents, including Mrs. Pruett, variable fees for services, including grooming, bathing or showering, hygiene, without providing these services.

70. Upon information and belief, the Brookdale Defendants did not have adequately trained staff on hand 24 hours a day to supervise and assist its senior population living with Alzheimer's and dementia, to provide quality care, or to protect those same vulnerable adults, including Mrs. Pruett, from abuse and/or neglect.

71. The Brookdale Defendants engaged in unfair and deceptive acts in offering and advertising specialized services for individuals with Alzheimer's or dementia without having adequately trained staff on hand to provide for those individuals, charging and accepting payment for personalized services and quality care that were not in fact personalized or were not provided, and failing to protect residents from abuse and/or neglect all constituting unfair trade practices under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. Sections 39-5-10 to 39-5-250 (1976 & Supp. 2011).

72. The Brookdale Defendants' unfair and deceptive acts or practices have an impact upon the public interest and have the potential for repetition. In fact, on or about December 31, 2010, at least two residents other than Mrs. Pruett were physically and verbally abused in the Carolina House facility and were neglected and not protected by employees of the Brookdale Defendants. Upon information and belief, other residents were similarly harmed or neglected and not protected by employees of the Brookdale Defendants on prior occasions.

73. Mrs. Pruett would not have entered Carolina House's community residential care facility if the Brookdale Defendants had not held the facility out to the public as being a place specifically designed to provide for the safety and wellbeing of individuals with Alzheimer's or dementia.

74. Furthermore, Mrs. Pruett would not have paid Carolina House for services in accordance with her "Personalized Service Plan" if the Brookdale Defendants had not assured Mrs. Pruett, her caregivers, and the public that Carolina House would provide high quality care and services in accordance with that plan.

75. Upon information and belief, Mrs. Pruett did not receive a Personalized Service Plan wherein charges directly correlated to the services the Brookdale Defendants agreed to

provide. Mrs. Pruett did not receive all services requested and paid for. Mrs. Pruett did not consistently receive quality Alzheimer's and dementia care services. The Brookdale Defendants did not provide for the safety and wellbeing of Mrs. Pruett. In fact, Mrs. Pruett was abused , improperly medicated, and neglected by staff at Carolina House.

76. As a direct and proximate result of the Brookdale Defendants' deceptive and unfair trade practices, Mrs. Pruett was damaged in not receiving services paid for and in paying for services and care not received. Mrs. Pruett was also physically and mentally injured through the abuse perpetrated by Defendants' staff and as a result of Defendants' lack of supervision over and training of its employees and agents.

77. Plaintiff is entitled to an award of compensatory and treble damages and attorneys fees and costs.

FOR AN EIGHTH CAUSE OF ACTION
ASSAULT AND BATTERY AGAINST SONIA S. KING

78. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

79. Defendant King, with force and violence, caused severe and painful injuries to Mrs. Pruett.

80. Defendant King jerked Mrs. Pruett out of her bed causing injury to her arms.

81. Defendant King applied toothpaste to Mrs. Pruett's vaginal area causing Mrs. Pruett great pain, anguish, and humiliation.

82. Defendant King threatened to choke Mrs. Pruett if she attempted to resist Defendant King.

83. By her words and acts, Defendant King caused Mrs. Pruett reasonable apprehension of imminent harmful and offensive contact.

84. Additionally, Defendant King was rude, insolent, and angry toward Mrs. Pruett.

85. Defendant King's actions were offensive to any ordinary person.

86. By reason of Defendant King's words and acts, Mrs. Pruett did reasonably believe that an offensive and harmful contact would occur.

87. Defendant did assault and batter Mrs. Pruett.

88. As a direct and proximate result of Defendant King's assault and battery, Mrs. Pruett suffered pain, extreme emotional trauma, anxiety and distress, and died. By reason of Defendant King's unauthorized assault and battery, Plaintiff is entitled to recover actual and punitive damages from Defendant King and from her former employer, the Brookdale Defendants.

WHEREFORE, the Plaintiff prays this Honorable Court will find judgment for the Plaintiff as follows:

(a) For actual, punitive, and treble damages in favor of the Estate of Yvonne Carrie Pruett;

(b) For actual and punitive damages in favor of the beneficiaries of Yvonne Carrie Pruett;

(b) Attorneys fees, costs, and additional damages as provided by statute; and

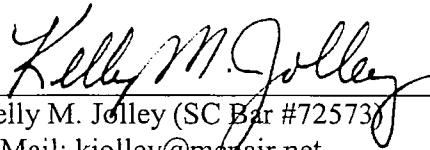
(c) For such other and further relief as the Court and jury may deem just and proper.

[Signatures appear on the following page]

Dated: September 21, 2012

MCNAIR LAW FIRM, P.A.

By



Kelly M. Jolley (SC Bar #72573)

E-Mail: kjolley@mcnair.net

Kathleen G. Chewning (SC Bar #78854)

E-Mail: kchewning@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Susan Taylor Wall (SC Bar # 5799)

E-mail: swall@mcnair.net

Post Office Box 1431

Charleston, SC 29402

(843) 723-7831

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1700

SAMUEL H. PRUETT, AS PERSONAL
REPRESENTATIVE FOR THE ESTATE OF
YVONNE CARRIE PRUETT,

Plaintiff

v.

BROOKDALE SENIOR LIVING, INC.;
SOUTHERN ASSISTED LIVING, LLC, d/b/a
CAROLINA HOUSE OF HILTON HEAD; and
SONIA S. KING,

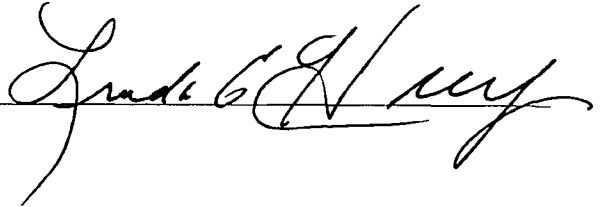
Defendants.

CERTIFICATE OF SERVICE

I, LINDA C. HUEY, an employee of McNair Law Firm, P.A., have this date served a copy of Amended Summons and Amended Complaint on defendants in the above-referenced action by depositing a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this 26th day of September, 2012:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

Case No. 2011-CP-07-1700

vs.

**MOTION TO DISMISS AND COMPEL
ARBITRATION**

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC move this Court for an Order dismissing the Complaint pursuant to Rule 12 and compelling the parties to arbitrate this dispute pursuant to the arbitration clause found in the plaintiff's residency agreement.

The grounds for this motion are as follows:

1. Samuel H. Pruett, plaintiff Yvonne Carrie Pruett's husband and the legally responsible party, signed a Residency Agreement on March 31, 2009, which states that "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company . . . shall be submitted to binding arbitration[.]" (Residency Agreement, p. 11, attached as **Exhibit A**). The arbitration provision was specifically initialed by "SHP," which represents the initials of Samuel H. Pruett.

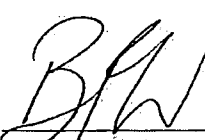
2. The Residency Agreement states on the cover page, in capital letters, that it is subject to arbitration. Further, the arbitration provision heading is in bold typeface.

Finally, the arbitration provision instructs the party to seek legal counsel before signing.

3. The arbitration provision states that the Federal Arbitration Act ("FAA") shall govern. The FAA preempts any state law to the contrary because the Defendants provide supplies that are procured through interstate commerce. (See Affidavit of Timothy J. Cesar, attached as **Exhibit B**). Further, many of the residents at the Carolina House of Hilton Head are from out of state. Id.

4. Therefore, Plaintiff's claims are governed by a valid and binding arbitration provision, and this Court should dismiss the Complaint and compel arbitration.

5. Finally, should the Court deny this Motion, Defendants reserve the right to file an Answer or otherwise respond to the Complaint.

 77901
FOR MANTON GRIER

Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC

June 3, 2010
Columbia, South Carolina

Exhibit A

RESIDENCY AGREEMENT

The Company strongly believes in the importance of fully disclosing all services and fees to the best of our ability and in accordance with state law. As with any legally binding contract, it is our recommendation that you consult your legal counsel to ensure proper understanding of this Agreement before signing.

THIS AGREEMENT IS SUBJECT TO ARBITRATION

Table of Contents

- I. SERVICES AND ACCOMMODATIONS
 - A. BASIC SERVICES
 - B. PERSONAL SERVICE PLAN
 - C. AVAILABLE SELECT SERVICES
 - D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT
- II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS
 - A. CARE OF SUITE
 - B. SUITE ACCESS
 - C. HEALTH ASSESSMENT
 - D. HEALTH CARE PROVIDER NOTIFICATION
 - E. OBLIGATORY INFORMATION
 - F. ADVANCE DIRECTIVE
 - G. MOTORIZED VEHICLES
 - H. RESPONSIBILITIES UPON TERMINATION
 - I. RULE AND REGULATION COMPLIANCE
 - J. GUESTS
- III. RATES
 - A. MOVE-IN FEE
 - B. MONTHLY SERVICE RATE
 - C. RESIDENT ABSENCE
 - D. AVAILABLE SELECT SERVICES
 - E. PAYMENT
 - F. RATE CHANGES
- IV. TERM AND TERMINATION
 - A. TERM
 - B. TERMINATION BY RESIDENT
 - C. TERMINATION BY COMPANY
 - D. TERMINATION BY EITHER PARTY
 - E. STORAGE CHARGES
- V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION
 - A. ARBITRATION PROVISION
 - B. LIMITATION OF LIABILITY PROVISION
 - C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS
- VI. MISCELLANEOUS
 - A. DEFAULT TO ARBITRATION
 - B. NON-DISCRIMINATION
 - C. RISK AGREEMENT
 - D. RELIANCE
 - E. NO LIABILITY IF AWAY FROM RESIDENCE
 - F. ASSIGNMENT
 - G. HEIRS AND SUCCESSORS
 - H. AMENDMENTS
 - I. SEVERANCE
 - J. RESPONSIBLE PARTY
 - K. SUBORDINATION

L. NOTICES

RESIDENCY AGREEMENT

This Agreement is entered into as of March 31, 2009 by and between Southern Assisted Living, Inc., d/b/a Carolina House of Hilton Head ("Company"), Yvonne C. Pruett ("You" or "Resident"); and Samuel H. Pruett ("Responsible Party"). The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS

A. BASIC SERVICES

You will be entitled to the following Basic Services, which are included in the Basic Service Rate, subject to the terms and conditions of this Agreement:

- ♦ Accommodations – You are entitled to the use of the suite described in Exhibit A and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with all other residents the common areas of the building (the "Community"). You may provide your own furnishings and personal property; however, the Company reserves the right to limit the number and type of furnishings if the Company determines that they present a safety hazard or potential safety hazard.
- ♦ Daily Meals - The Company will provide three meals daily. Snacks are available 24 hours a day.
- ♦ Utility Service - The Company will provide gas, electric and water service. Telephone charges are not included in the Basic Service Rate. Costs for basic cable television are described in Exhibit A.
- ♦ Weekly Housekeeping Service - The Company will clean your suite once a week.
- ♦ Weekly Laundry and Linen Service - The Company will launder your personal items and your bed linens once a week.
- ♦ Life Enrichment Program - The Company will provide planned social, educational and recreational programs.
- ♦ Staffing 24 hours a day - The Company will have staff available 24-hours a day, seven days a week.
- ♦ Transportation – The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation

services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

B. PERSONAL SERVICE PLAN

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the residence. An outside agency or individual will be permitted to provide these services or any related personal services only if the Company has given prior approval.

C. AVAILABLE SELECT SERVICES

From time to time, the Company may make select services available to you at your or your Responsible Party's request. If available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, or special events. (See additional information on Transportation in Section I. A of this Agreement.) These additional choices are not included in the Basic Service Rate or the Personal Service Plan. Your Executive Director will provide, upon your request, a listing of the available select services as well as a current fee schedule.

D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT

You and your Responsible Party are responsible for obtaining and paying for all services which are not included in the Basic Services or Personal Services Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by the Company, its subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy services, newspaper subscriptions, or beauty/barber services. Any fees for services provided by other service providers will be billed directly by the service provider. All third party service providers (including, but not limited to, third party health care and medical providers) must receive the Company's prior authorization to provide services to you at the residence. All third party providers who enter the residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

You may not contract with any of the Company's current employees to perform any services at the residence. You may contract with former employees to perform any

services at the residence only with the Company's consent. The Company reserves the right to refuse entry to 1) former employees, 2) persons whose actions may be disruptive to the residence; 3) persons whose actions may threaten the safety of any resident or employee; or 4) persons whose presence may foreseeably result in liability to the Company.

II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE

You agree that residence and the suite are in satisfactory, habitable condition. You also agree the Company has made no promise to decorate, alter or improve the residence or suite, unless otherwise provided in writing by the Company and attached as part of this Agreement. You agree to maintain the suite and to surrender the suite upon termination of this Agreement in good condition, exclusive of normal wear and tear. You agree to pay all damages, beyond normal wear and tear, including any improvements made without the Company's consent, which you, your Family, and/or other Guests (including any agent, employee, contractor, or other invitee) cause to residence property.

B. SUITE ACCESS

You agree to give the Company access to the suite in order to carry out the intent of this Agreement. Such entry includes, but is not limited to, performance of services provided as part of the Basic Services or in your Personal Service Plan; response to emergency situations; and entry by authorized personnel with the reasonable belief that your safety or safety of others is in question or that the Company's policies and procedures are being violated.

Upon written notice, the Company reserves the right to relocate you to a more appropriate suite within residence as required for your health or safety, or because the residents of a companion suite are incompatible.

C. HEALTH ASSESSMENT

You agree that the Company may from time to time assess your health to determine the appropriate Personal Service Plan and/or whether you are appropriate to stay in the residence. Not more than thirty (30) days prior to the date this Agreement is entered into, and at least annually thereafter or upon the request of the Company, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree that the Company may require you to undergo examination by a particular specialist, at your cost, as the Company determines is warranted by your current physical or mental status. You will request the examiner to provide the Company with recommendations, including a statement attesting to the appropriateness of the placement. Based upon the assessment(s) and the Company's judgement, the Company may determine your appropriateness to remain in the residence. You will request the examiner to perform any tests and complete any forms required by the Company or applicable law.

D. HEALTH CARE PROVIDER NOTIFICATION

You authorize the Company to contact responsible parties, health care providers, and/or other persons listed in your records:

- (1) If the Company determines it is necessary to advise them of your situation;
- (2) To arrange for health care services and other assistance required by you; or
- (3) In case of an emergency. If you have a life-threatening emergency, the Company will contact an emergency rescue service.

If your designated health care providers are unavailable, you authorize the Company to arrange for the services of other health care providers.

During the term of this Agreement, you agree the Company may provide such persons with copies of your records, including, but not limited to, resident records to the extent they are needed to assist with treatment, advance directives, living will, and the names of persons empowered to make health care decisions, for the purpose of arranging for health care services.

E. OBLIGATORY INFORMATION

You will provide the Company with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You or your Responsible Party will provide the Company with copies of any health care power of attorney, power of attorney executed by you or of any court order, guardianship, or other legal action which may (1) affect your status or (2) designate or appoint another person to make health care or financial decisions or to bear financial responsibility on your behalf. You authorize the Company to rely on the instructions of such designees or appointees. You understand that you must immediately notify the Company of changes relating to any of the information stated above.

F. ADVANCE DIRECTIVES

Upon admission to the Company, it is strongly suggested that you have your advance directives in place in the event you become incapacitated. Advance directives include, but are not limited to, Living Wills, Powers of Attorney for Health Care, Guardianships and Do Not Resuscitate Orders. You will notify the Company and provide copies to the Company of such advance directives. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company), subject to all bond, accounting and other legal requirements. Neither the Company nor any of its employees or agents may be your guardian. If it is necessary for the Company to petition the court for appointment of a guardian, any costs associated therein shall be paid by you. If you are a Resident in a Memory Care Unit (e.g. Clare Bridge or a Clare Bridge Cottage), these designations should be made prior to move-in.

G. MOTORIZED VEHICLES

Motorized vehicles may be used by a resident, subject to the following:

- (1) You have a physician's order stating that such a vehicle is a medical necessity for you;
- (2) You have been assessed as being able to safely operate the vehicle and you continue to demonstrate that your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
- (3) The vehicle is operated at a low setting; and
- (4) You agree to abide by the Company's safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the motorized vehicle rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of yourself, the other residents, the residence staff or visitors.

- (1) You further understand and agree that the Company may, at its sole discretion, prohibit your further use of a motorized vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION

You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that the Company may charge you a storage fee for your belongings equal to your Basic Service Rate. You further agree that the Company may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail.

Termination will not release you or the Company from any liability or obligation to the other party under the terms of this Agreement.

I. RULE AND REGULATION COMPLIANCE

You acknowledge that the Company is licensed by the State of South Carolina as a Community Residential Care Facility. You understand that the Company has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to the rules, regulations, policies and procedures as they now exist and as amended from time-to-time for the operation and management of the Community.

I. GUESTS

You understand that as a resident, you have the right to associate with your friends and family ("guests") during reasonable hours. Because the Company is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the resident's health status or other pertinent factors.

You acknowledge and understand that your guests are subject to the Company's Rules and Regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to staff, residents or others, the Company may request that they leave the Community until their behavior is under control or may place limitations upon the location and time of their visitation. You understand that, where circumstances warrant, the Company may exclude such individuals from the residence.

III. RATES

A. MOVE-IN FEE

- waived per 00. *5AP*
1. Fee - You will pay the Company a one-time Move-In Fee in an amount indicated in Exhibit A at the time this Agreement is signed.
 2. Refund - The Company will refund a prorated share of one-half of the Move-In Fee if this Agreement is terminated within ninety (90) days of the date this Agreement is signed and any one of the following circumstances occur:
 - (a) The Company terminates this Agreement;
 - (b) The Company or your physician determines you require care not offered by the Company; or
 - (c) by reason of death.

X *5AP*
(Please initial as having read and understood the above provision.)

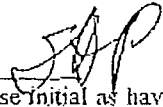
B. MONTHLY SERVICE RATE

1. Rate - You agree to pay the Basic Service Rate and, if applicable, the charge for the Personal Service Plan as indicated in Exhibit A (together the "Monthly Service Rate").
2. Refund - The Company will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - (a) following termination in accordance with Section IV;
 - (b) because you require care that is not offered by the Company; or
 - (c) by reason of death.

Refunds will be based upon the actual number of days the resident is in the facility and a reasonable number of bed hold days. A storage fee equal to the prorated share of the Monthly Service Rate will be charged until such time as all of your property is removed

from the Suite. The Company will issue the refund to Resident or Responsible Party within 45 days of the effective date of termination based on Section IV of this Agreement. Unless prohibited by law, you agree the Company may offset such refunds by any amount due under the terms of this Agreement.

X


(Please Initial as having read and understood the above provision.)

C. RESIDENT ABSENCE

If the Resident is absent from the Community for any reason, including, but not limited to, hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate until such time that the Resident or Representative provides the Company with written notice of their intent to terminate the Agreement, pursuant to Section IV of the Agreement. Termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES

In addition to the Monthly Service Rate, you agree to pay the Company the established charges for any select services provided to you by the Company.

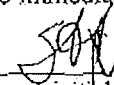
E. PAYMENT

The Company will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for select services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be one thirtieth (1/30) of the usual rate times the number of days remaining in the month.

The Company will charge a \$250.00 late fee if the Company has not received all fees when due. The Company will also charge a \$25.00 returned payment fee for each check or automatic withdrawal that is returned by a financial institution for any reason, including but not limited to, insufficient funds or incompleteness. After two payments are returned by a financial institution to the Company, you will thereafter pay the Monthly Service Rate and any other amounts due by cashiers check. You also agree to pay interest on all amounts not paid by the due date. The interest rate will be the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES

The Company will provide thirty (30) days written notice of any change in the Basic Services Rate. The Company may offer or require a change in the Personal Service Plan when the Company determines additional services are requested or required. The new charge for the Personal Service Plan will be effective immediately upon the provision of written notice.

X 
(Please initial as having read and understood the above provision.)

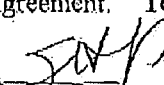
IV. TERM AND TERMINATION

A. TERM

This Agreement will commence on the date set forth above and will continue until terminated as provided below.

B. TERMINATION BY RESIDENT

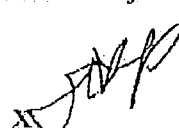
The Company requests you or your Responsible Party to provide thirty (30) days written notice of your intent to terminate this Agreement. Termination shall be effective the day after your last date of residence.

X 
(Please initial as having read and understood the above provision.)

C. TERMINATION BY COMPANY

The Company may terminate this Agreement, upon providing you or your Responsible Party thirty (30) days written notice, for any of the following events, as determined by the Company:

- (1) You require care or services that the Company is unable to provide or which requires staff that are not available at the Company;
- (2) You are disruptive, create unsafe conditions, are physically or verbally abusive to other residents or otherwise impair the welfare of yourself or others in the residence;
- (3) You fail to pay fees and charges when due.

X 
(Please initial as having read and understood the above provision.)

For emergency medical or welfare reasons of you or other residents, the Company may, upon written notice to you or your Responsible Party, immediately terminate the Agreement, and transfer or discharge you. If the emergency requires your immediate transfer, the Company will notify the Responsible Party at the earliest practicable hour, but not later than twenty-four (24) hours following the transfer.

The Company will provide a written explanation if the Company terminates this Agreement with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY

You, your Responsible Party or the Company may terminate this agreement immediately in the event of death or if a physician certifies, based upon an examination prior to moving out, that you must be relocated because of your health. The Company requests you provide written notice of your intent to terminate. Termination shall be effective the day after your last date of residence.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION

Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

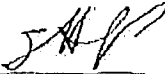
A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. The parties to this Agreement further understand that a jury will not decide their case. The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. Demand for Arbitration by Resident, his or her guardian, a person or organization acting on behalf of a Resident with the consent of the Resident or his or her guardian, or the personal representative of the estate of a deceased Resident (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by the Company shall be made in writing and submitted to the Resident or his or her agent, representative, successor or assign and/or Resident's Attorney-in-Fact, and/or Responsible Party via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then the arbitration shall be submitted to the National Arbitration Forum, or other similar organization, but must still be conducted by one (1) arbitrator who is a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience practicing as an attorney. If the arbitrator is selected from the National Arbitration Forum, or other similar organization, each party shall have the right to request one (1) substitution within ten (10) days of receiving notice of the identity of the arbitrator. The person requesting of the substitution shall submit a request for substitution in writing to the National Arbitration Forum, or other similar organization, and to the other party via U.S. mail.
5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the Federal Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide the Company with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and the Company shall reimburse Resident Party \$0.25 per page).
 - b. The Company shall provide the Resident Party with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse the Company \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. The Company shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

- f. The Company shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
- g. Resident Party shall have thirty (30) days after the Company's expert designation is received in which to depose such experts.
- h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
- i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 1. List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witnesses' intended testimony;
 2. List of documents to be relied upon at the arbitration hearing;
 3. Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
- j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.
7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
8. The arbitrator shall apply the Federal Rules of Evidence and Federal Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, Federal law except as otherwise stated in this Arbitration Provision.
9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
10. The arbitrator's decision shall be final and binding without the right to appeal.
11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or the name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision
14. This Arbitration Provision and the Limitation of Liability Provision below shall survive the death of the Resident.

X 

(Please initial as having read and understood the provisions of section V., subsection A)

B. LIMITATION OF LIABILITY PROVISION: Read Carefully Before Signing

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by the Company for unpaid Basic Service or Personal Service charges, or a claim by, or on behalf of, a Resident, Resident Party, or by a Resident's Estate, Agent or Legal Representative, arising out of the care or treatment received by the Resident or the Resident's occupancy or presence at the Company, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Noneconomic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.
 - c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.

3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

X

JHP
(Please initial as having read and understood
the provisions of section V., subsection B.)

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, the Company is better able to offer its services and accommodations at a rate that is more affordable to the Resident. In terms of the time-savings offered by selecting arbitration, the parties recognize that often the Resident is elderly and may have a limited life-expectancy, and therefore selecting a quick method of resolution is potentially to a Resident's advantage.

The Resident, Responsible Party, or his or her legal guardian, or authorized Power of Attorney understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

The parties to this Agreement further understand that a jury will not decide their case.

X

JHP
(Please initial as having read and understood
the provisions of section V., subsection C.)

VI. MISCELLANEOUS

A. DEFAULT TO ARBITRATION

If it is determined by a court of law that the Arbitration Provision provided in this Agreement is invalid, the parties hereto make clear their express desire to waive a jury trial and resolve their claims against each other in the appropriate court solely before a judge.

B. NON-DISCRIMINATION

The Company does not discriminate on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment. The Company respects all religious faiths and does not have any specific religious affiliation.

C. RISK AGREEMENT

You and your Responsible Party are responsible for your personal, financial and health care decisions. In addition, you are responsible for maintaining at all times your own health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance with coverage for your personal property and your general liability in the amount of \$100,000. You agree to provide proof of such coverage to the Company. You acknowledge that the Company is not an insurer of your person or property.

You understand and agree that:

1. The Company may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
3. The standard of services in an assisted living residence does not include one-on-one care, assistance or supervision e.g. one resident assistant for each Resident; or immediate response to non-emergent needs. Consistent with your daily life activities, including but not limited to resting in your apartment or common areas, watching television, listening to music, reading, and sleeping at night, there may be short and long periods of time in which you will be left alone, unsupervised;
4. The Company makes no representations or guarantees that the Company staff can prevent Residents from falling. Further, the Company does not represent or guarantee your health condition will not change or deteriorate throughout your Residency;
5. The services provided by the Company may not meet all of your personal, social, or health care needs and the Company will use its best efforts to assist you in arranging for services which you require and which are not included in this Agreement;
6. Many Residents of the Company suffer from memory impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior

including, but not limited to, wandering, forgetfulness, agitation towards others and confusion. The Company makes no representations or guarantees that it can predict the behavior of its Residents. Therefore, the Company also makes no representations or guarantees that it can always prevent a Resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another Resident;

7. The Company makes no representations or guarantees that the Company is secure from theft or any other criminal act perpetrated by any other Resident or person; therefore, the Company recommends that valuables, including but not limited to, jewelry and large amounts of money, not be brought into the Community. If you choose to bring in such valuables, you are doing so at your own risk and the Company will not be responsible for any theft or loss of these items;
8. Due to state regulations and fire code, the Company is not permitted to lock its exterior doors and, therefore, does not guarantee that its Residents will not wander out of the Community. In our memory care buildings, the exterior doors are alarmed with a delayed egress feature and our systems are designed to alert our staff to respond and assist a Resident to safety, should they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold the Company and its employees and agents harmless for any damages or injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action of any third party, fire, water, theft or the elements; or (3) loss of personal property. The Company will only be liable for damages, injuries or other losses to you or any third party entering a Suite, or any other part of the residence, if due to willful misconduct or negligence of the Company.

The Company reserves the right to recover from you any loss caused by fire, vandalism or any other acts by you or your invitees or guests. The Company may assign such right to its insurance carrier.

D. RELIANCE

By entering into this Agreement, the Company is relying upon the truthfulness of the promises and representations made by you and your Responsible Party.

E. NO LIABILITY IF AWAY FROM RESIDENCE

In the event that you knowingly leave the Community or are temporarily away from the Community, any and all responsibility of the Company for your welfare shall terminate during your absence.

F. ASSIGNMENT

This Agreement is not assignable by you or your Responsible Party without prior written consent of the Company. The rights and obligations of the Company may be assigned to any person or entity, and such person or entity will be responsible to ensure the obligations of the Company under this Agreement are satisfied in full from and after the date that you are notified of such assignment. The Company may engage another person or entity to perform any or all of the services under this Agreement.

G. HEIRS AND SUCCESSORS

This Agreement is for the benefit of and binds the parties and their respective heirs, representatives, successors and assigns.

H. AMENDMENTS

This Agreement and any written amendments constitute the entire agreement between the parties and supercede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written, pertaining to this Agreement. Except for the right of the Company to modify fees, rates and charges, amend services provided and establish reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.

I. SEVERANCE

Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.

J. RESPONSIBLE PARTY

You have designated a Responsible Party, who has agreed to the terms of the attached Responsible Party Agreement and whose signature appears below.

K. SUBORDINATION

This Agreement and the parties' rights hereunder will be subordinate to any ground lease, mortgage or deed of trust now or hereafter placed upon the residence, but your right to remain in possession of your suite will not be disturbed so long as you comply with all of the provision of this Agreement.

L. NOTICES

Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

The Company:
Executive Director at Community
Address (as noted on Exhibit A)

Resident:
(as noted at end of this Agreement)

Responsible Party:
(as noted in Exhibit B)

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.

For the Company

Title

Date

Resident

Date

Responsible Party

Date

SEND NOTICES AND MONTHLY STATEMENTS TO RESIDENT IN CARE OF:

Name:

Address:

Phone No.:

OTHER RELATED MATERIALS

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package and Special Services Form
5. Medical Records Release
6. Resident Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Responsible Party Agreement
- C. Pet Addendum
- D. Additional Resident Fee
- E. Pharmacy Services Agreement
- F. Acknowledgement of Grievance Procedure and Resident Bill of Rights

ADDITIONAL EXHIBITS:

- X. Select Services List
- Y. Therapeutic Services List
- Z. Assessment Price Schedule

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident Yvonne (Bonnie) C. Pruett.

Community Carolina House - Hilton Head
Address 35 Beach City Rd.
Hilton Head, SC 29926

Suite # 312 - # 415

Move-In Fee (Prior to Move-in) \$ waived 6-1-2009 CB. X 5/1/09

Basic Services

Basic Service Rate \$2500 (per ps) \$3100 - Private

♦ Accommodations - You are entitled to the use of the suite described above and to the use of the Community's personal property located in the suite. You are also entitled to use and enjoy with a own furnish the number hazard or pr

Base rent

♦ Daily Meal a day.

♦ Utility Ser charges are included in

♦ Weekly H

♦ Weekly La your bed li

♦ Life Enric recreation

♦ Staffing 2 days a we

3 year fixed
Rate at 8/13/2009
\$3100 (per ps)
Sum must sign!

COZAAR **HYZAAR**
(LOSARTAN POTASSIUM TABLETS) (LOSARTAN POTASSIUM HYDROCHLOROTHIAZIDE TABLETS)

Please read accompanying Prescribing Information, including Boxed Warning on use in pregnancy, at back of pad.
COZAAR and HYZAAR are registered trademarks of E.I. du Pont de Nemours and Company, Wilmington, Delaware, USA
www.COZAAR.com

COZAAR-11-COZ

SC- Carolina House of Hilton Head

17 18 2002 104

RECORD P. 000211

Jul 3 2011 1:54PM

♦ Transportation – The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

Personal Service Plan

Personal Service Plan Rate

\$ 372⁰⁰

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. All third party providers (including, but not limited to, third party health care and medical providers) who enter residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

MONTHLY SERVICE RATE

(Add Basic Service Rate and Personal Service Plan)

Available Select Services

6-1-2009

~~\$ 2,912⁰⁰~~
\$ ~~3,000⁰⁰~~

\$ 3,472⁰⁰

From time to time, the Company may make select services available to you at your request. When available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, special events, or special programs. These additional choices are not included in the Basic Service Rate. Please contact your Executive Director for a current fee schedule.

I agree to the above Schedule of Services and Rates effective Mar 31 2009, and I understand and agree that the Company has a right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

For the Company

Title

Date

Resident

Date

Responsible Party

Date

EXHIBIT B
RESPONSIBLE PARTY AGREEMENT

Yvonne C. Pruett ("Resident"); Samuel H. Pruett
("Responsible Party") and Southern Assisted Living, Inc., d/b/a Carolina House of Hilton
Head ton (herein after the "Company"), hereby agree as follows:

WHEREAS, the Resident desires to live in the suite identified in the attached
Residency Agreement; and

WHEREAS, the Company is willing to enter into the Residency Agreement if
Resident identifies an individual who is willing to provide certain assistance to or on behalf of
Resident in the event that such assistance is necessary, and who is willing to pay Resident's
financial obligations to the Company under the Residency Agreement in the event that
Resident does not make payments when due; and

WHEREAS, Responsible Party agrees to provide such assistance and to pay such
obligations, if and as necessary.

IN CONSIDERATION of the foregoing, the Parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such
assistance, and upon the request of the Company, Responsible Party will assist Resident or
legally responsible person, as necessary by:

- (a) Participating with the Company staff in evaluating Resident's needs and in
planning and implementing an appropriate plan for Resident's care;
- (b) Maintaining Resident's welfare and fulfilling Resident's obligations under the
Residency Agreement;
- (c) Relocating Resident following termination;
- (d) Transferring Resident to a hospital, nursing home, or other facility in the
event that Resident requires care the Company does not offer;
- (e) Removing Resident's personal property from suite when Resident leaves;
- (f) Making necessary arrangements for funeral services and burial in the event of
death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to the
Company under the Residency Agreement, Responsible Party agrees to pay the Company
such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. Responsible Party acknowledges that he or she has received and has reviewed a copy of the Residency Agreement, and has had an opportunity to ask any questions Responsible Party may have.

BY THEIR SIGNATURES, the parties or their representatives have executed this

Agreement to be effective as of Mar 31, 2009.

<u>Khmede I. Mary E.</u>	<u>3/31/09</u>
For the Company	Title Date
<u>Jenn Pruitt</u>	<u>3/31/09</u>
Resident	Date
<u>314 80 8496</u>	<u>3/31/09</u>
Responsible Party	Social Security No. DL No. Date

SEND NOTICES TO RESPONSIBLE PARTY AT:

Address: 9 N. Calabogue Cay Rd, Hilton Head, SC 29928
Phone No.: 843 362-6664

EXHIBIT C
PET ADDENDUM

The Company consents to the Resident keeping in the suite the household Pet described as follows:

Half Shitzu / Halfoodle Kind and breed
Maggie Name
Gray Color
12 lbs. Weight
13 yrs. Age

I. RESIDENT RESPONSIBILITIES. The Resident will keep the Pet in the suite except when walking the Pet, if applicable, or transporting it to and from the suite. The Resident will not allow the Pet in lobbies or in common residential areas, and will transport the Pet to and from the suite only by side entrances of the building, when available and/or feasible. The Resident will walk and curb the Pet only in areas designated by the Company and will be responsible for cleaning up after the Pet. When the Pet is not in the suite, the Resident will keep it on a leash no longer than five (5) feet or in a cage or other appropriate closed and ventilated container, and in the control of the Resident. If the Pet is a bird, the Resident will keep it caged both in and out of the suite. If the Pet is a dog or cat, the Resident will ensure that it wears a collar with appropriate identification (including the Resident's telephone number) at all times that it is out of the suite.

The Resident will comply with all vaccination and licensing requirements applicable to the Pet, showing proof of this upon request, and will comply with appropriate standards of care, treatment, and grooming. In all circumstances, the Resident is responsible for the health, welfare, and proper care of the Pet. The Resident will ensure that the Pet does not disturb the right of other residents to the peaceful enjoyment of their suites and of the common areas. The Resident will not leave the Pet unattended when the Pet is not in the suite.

The Company, in its discretion, may assist the Resident in caring for the Pet as part of the Resident's Personal Service Plan. Charges and payment for such services will be governed by the terms of the Residency Agreement.

The Resident will be liable for any personal injury or property damage caused by the Pet that is suffered by the Company, its employees or agents, other residents, guests, or invitees. The Resident and/or Responsible Party agree to purchase renter's insurance in the amount of \$100,000, which specifically covers any personal injury or property damage caused by the Pet. The Resident shall provide Community with proof of insurance coverage.

II. TERM & TERMINATION. This Addendum will continue until the Residency Agreement between the Resident and the Company is terminated, unless either party terminates this Addendum for any reason by giving fourteen (14) days prior written notice to

Sponsor: Sam H Pruett
Address: 9 North Calibogue, Bay Rd, Ht. 29928.
Phone: 843-363-1666 -

BY THEIR SIGNATURES, the parties executed the Addendum to be effective 11/1/31

Resident	Date
<i>Ann Pruitt</i>	<i>3/31/09</i>
Responsible Party	Date

4/8/2009 On hold (RM)

EXHIBIT D
ADDITIONAL RESIDENT FEE

When two residents occupy a single occupancy suite, the Company charges a single occupancy Basic Service Rate plus an additional resident fee. Each resident in the suite is responsible for paying one-half of the total of the single occupancy Basic Service Rate plus the additional resident fee, entitling each resident to receive the Basic Services described in Section I of the Residency Agreement. Each resident will also be responsible for the cost of his or her Personal Service Plan.

In the event that the Agreement of one resident is terminated for any reason, effective upon such termination, the remaining resident's Basic Service Rate will automatically be adjusted to reflect the Basic Service Rate for a single occupancy suite for the remainder of the month in which the adjustment is made and for each month thereafter.

Single Occupancy Basic Service Rate \$ _____

Additional Resident Fee \$ _____

Total Charge for Suite \$ _____

BASIC SERVICE RATE FOR EACH RESIDENT \$ _____
(1/2 of the total charge for suite)

Resident Date

Responsible Party Date

EXHIBIT E
PHARMACY SERVICES AGREEMENT

The Company works closely with pharmacy providers to make certain that the needs of our residents are met. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions when appropriate
- Providing competitive pricing for comparable packaging and offering generic substitutions when appropriate
- Alerting staff and physicians when there is a duplication of prescriptions
- Individual wellness recommendations
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets the Community's standards for safety

Our "preferred provider" for pharmacy services at the Community Carolina House HHI
Long Term Care Pharmacy Our staff works closely with this pharmacy to meet the needs of our residents. They will review all current medications before your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Company's "preferred provider", they will be required to meet the Company's standards regarding medication management.

Please review and sign the following statement acknowledging you understand the Company's expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Company's preferred provider, I will be charged a fee, which is set forth on Exhibit X, the Select Services List.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Regional Director of Operations.

I understand there is a service fee of \$ 50.00 a month associated with a packaging exemption due to the additional administrative oversight required.

If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.

X JA
(Please initial as having read and understood the above provision.)

If I do not use the Company's preferred provider, I also understand that I will have the responsibility for reordering medications but in the event the medications are not delivered within two days prior to the depletion of my medication stock, the Company will reorder my medications with the 'Preferred Pharmacy' to insure no disruption takes place. I agree to pay for the medications and any associated service charges.

The fees associated with reordering medications from the "Preferred Pharmacy" are determined by the "Preferred Pharmacy", and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Jane Pruett
Resident Signature

3/30/07
Date

[Signature]
Legal Representative Signature

Date

ADDENDUM TO THE RESIDENCY AGREEMENT

BASE RATE FREEZE

I understand and acknowledge that Carolina House of Hilton Head (the "Community") agrees to issue me a Base Rate Freeze in the amount of \$3100 per month, effective August 13, 2009. This rate freeze will be in effect for three years, ending August 13, 2012.

I understand and acknowledge that this Base Rate Freeze is not automatically transferable to another Brookdale Senior Living Community, meaning if I move to another Brookdale Community, this Base Rate Freeze will not transfer unless the Regional Director responsible for such Brookdale Community approves the transfer. In addition, this Base Rate Freeze is not transferable to another individual.

If I choose to relocate to a different apartment style within the community or choose to have a roommate at any point during my residency with the Community, my Basic Service Rate will be adjusted to be equitable with the current market rate for that apartment style or living option at the time of relocation. I further understand and acknowledge that my Personal Service Rate and other charges may increase over time, consistent with the terms of the Residency Agreement.

It is further explicitly understood that the terms of Section IV of the Residency Agreement regarding termination of the contract are not affected by the Basic Rate Freeze and remain in full force and effect.

Shirley M. Maurer, Esq. 8/19/2009
For the Community Title Date

Yvonne Pruitt
Resident

John Pruitt 08/19/09
Responsible Party Date

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

Case No. 2011-CP-07-1700

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

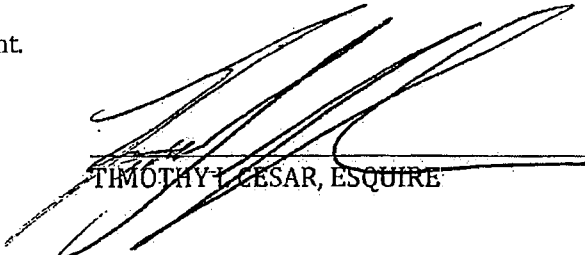
Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, ("Affiant"), who having been duly sworn, deposes and states:

1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.
2. I am Counsel and Vice-President of Legal for Brookdale Senior Living, a Wisconsin Corporation, and the Carolina House of Hilton Head, South Carolina.
3. Carolina House of Hilton receives goods, services, and supplies from out-of-state vendors, including but not limited to, One Source, a vendor of supplies from Wisconsin; Sysco, a corporation with its corporate office locate in Houston Texas; and a vendor of carpeting from North Carolina.

4. Carolina House of Hilton Head orders supplies from out-of-state vendors by mail, electronic mail, telephone and facsimile transmissions. Those supplies are then shipped over various state lines to Carolina House of Hilton Head.

5. Carolina House of Hilton Head receives and admits out-of-state residents as residents at Carolina House of Hilton Head. Currently, there are residents from Connecticut, Florida and New York.

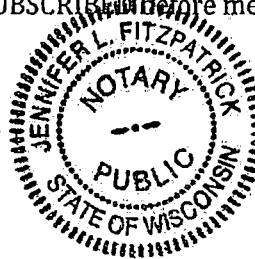
FURTHER this Affiant sayeth naught.

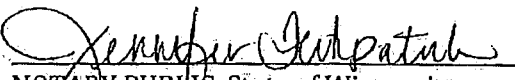

TIMOTHY J. CESAR, ESQUIRE

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced _____ as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 2 day of June, 2011.




NOTARY PUBLIC, State of Wisconsin

My Commission Expires: 10/16/11

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

Case No. 2011-CP-07-1700

CERTIFICATE OF SERVICE

1 JUN -6 PM 4:35
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The undersigned certifies that a copy of the foregoing **MOTION TO DISMISS AND COMPEL ARBITRATION** has been served upon counsel of record by depositing a copy of the same in the United States Mail, first-class postage prepaid, on the 3rd day of June, 2011, to the address shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUET, LLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett.

☐ Plaintiff

11 JUN -6 PM 4:35

CASE NO.

2011-CP-07-1700

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Brookdale Senior Living, Inc., Et Al.

☒ Defendant.

Plaintiff's Attorney:

Kelly M. Jolley, Bar No. 72573

Address:

PO Drawer 3, Hilton Head Island, SC 29938

phone: 843-785-2171 fax:

e-mail: kjolley@mcnair.net other:

Defendant's Attorney:

Marc Manos/Manton Grier, Jr, Bar No. 011876/70525

Address:

Post Office Drawer 2426, Columbia, SC 29202

phone: 803-540-2116 fax: 803-727-1439

e-mail: MGrier@nexsenpruet.com other: MManos@

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss and Compel Arbitration

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 3, 2011

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

RECEIVED

JUN - 9 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

YVONNE CARRIE PRUETT,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
CAROLINA HOUSE OF HILTON HEAD and
SONIA KING,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) CASE NO.: 2011-CP-07-1700

)

(Jury Trial Requested)

)

)

)

MEMORANDUM IN OPPOSITION TO
DEFENDANTS, BROOKDALE SENIOR

)

LIVING, INC. AND SOUTHERN

)

ASSISTED LIVING, LLC'S

)

MOTION TO DISMISS AND COMPEL
ARBITRATION

)

)

)

)

)

The Plaintiff, Yvonne Carrie Pruett, submits this Memorandum in Opposition to Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC's (collectively the "Defendants") Motion to Dismiss and Compel Arbitration. Defendants' motion should be denied because the arbitration provision contained in the Residency Agreement between Yvonne Carrie Pruett and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head ("Carolina House") (hereinafter the "Residency Agreement") is unenforceable in that (1) it is not binding pursuant to the South Carolina Arbitration Act, S.C. Code Section 15-48-10(b) and (2) the Federal Arbitration Act (hereinafter "FAA") does not apply to this action because the Residency Agreement does not involve interstate commerce.

STATEMENT OF FACTS

Mrs. Pruett, who has Alzheimer's Disease, was admitted to Carolina House's Memory Care Unit by her husband Samuel H. Pruett due to her progressive dementia and her inability to care for herself in an independent setting on March 31, 2009. On December 31, 2010 between

the hours of 5:00 and 6:00 a.m., Carolina House's employee Sonia King physically and verbally abused Mrs. Pruett for which Ms. King was subsequently arrested and charged with elder abuse. This case is a personal injury action brought by Mrs. Pruett in an attempt to recover damages from Defendants for Mrs. Pruett's injuries, emotional distress, mental anguish and fear. Mrs. Pruett has brought causes of action for negligence, gross negligence, willful misconduct, intentional infliction of emotional distress, and violation of the unfair trade practices act against Defendants.

ARGUMENT

A. The South Carolina Arbitration Act Does Not Apply To This Case.

S.C. Code Section 15-48-10 states as follows:

(a) ... Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon, the contract shall not be subject to arbitration.

(b) This chapter however shall not apply to:

(4) Any claim arising out of personal injury, based on contract or tort

This action seeks redress for personal injury. Accordingly, it is not arbitrable under the South Carolina Arbitration Act.

B. The Federal Arbitration Act (FAA) Is Not Applicable.

Defendants contend that the FAA preempts the South Carolina Arbitration Act in error. Interstate commerce is not substantially affected by the contract between Yvonne Carrie Pruett and Carolina House to render this case subject to the FAA. The South Carolina Supreme Court

in *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) (attached hereto as Exhibit 1) held that the FAA was inapplicable to a similar contract for patient and residency services. The Court explained that the analysis must focus on the contract between the parties and whether it involves interstate commerce. The Residency Agreement here is a contract for basic services – accommodations, meals, utilities, housekeeping, laundry and recreation. The provision of such basic services to Mrs. Pruett at the Carolina House facility in Hilton Head does not substantially involve interstate commerce.

The Affidavit of Timothy J. Caesar attached to Defendants’ Motion does not contain any facts from which one could conclude that any of the basic services included in the Residency Agreement between Mrs. Pruett and Carolina House involve interstate commerce. On the contrary, the affidavit does no more than indicate that Carolina House conducts some business in interstate commerce, in that it has contracts with other entities that may involve interstate commerce, and, at times, admits residents that previously lived outside of South Carolina. In *Timms*, our Supreme Court made it clear that the applicability of the FAA turns on whether the contract between the plaintiff and the defendant involves interstate commerce. The Residency Agreement between Mrs. Pruett and Carolina House does not involve interstate commerce. Accordingly, the FAA is inapplicable to Mrs. Pruett’s personal injury claims.

Defendants may argue that *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) or *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995) impact the analysis previously supported in *Timms*. However, these cases clarify that a transaction occurring via a contract must in fact involve interstate commerce to enforce an arbitration provision in the contract. In *Munoz*, the South Carolina Supreme Court, relying on *Allied-Bruce*, expressly overruled *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1994) to the extent it required

the trial judge to consider if the parties to the transaction actually “contemplated” interstate commerce in determining whether to compel arbitration under the FAA. *Munoz*, 343 S.C. at 539, n.3. Under *Munoz*, whether the parties contemplated arbitration is irrelevant in determining whether to compel arbitration under the FAA: “the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Id.* At 539 (emphasis added). However, the Supreme Court’s holding in *Munoz* does not alter its holding in *Timms* that arbitration cannot be compelled pursuant to the FAA when the underlying transaction does not involve interstate commerce. Neither *Munoz* nor *Allied-Bruce* addressed whether the underlying transaction did, in fact, involve interstate commerce. In *Allied-Bruce*, the parties expressly declined to argue that issue, 513 U.S. at 281, and in *Munoz* the underlying transaction included a loan from an out of state creditor, 343 S.C. at 535.

Accordingly, there is clear precedent in South Carolina holding on analogous facts that arbitration may not be compelled under the FAA based on a patient residency and services agreement like the Resident Agreement between Elizabeth Pruett and Carolina House. Neither *Munoz* nor *Allied-Bruce* overruled *Timms*’ holding that arbitration may only be compelled where the underlying transaction itself, in fact, involves interstate commerce. *See, e.g. Swartz v. Integrated Health Services at Drift*, No. 2001-CP-10-000598 (July 6, 2001) (attached hereto as Exhibit 2). The Residency Agreement does not involve interstate commerce and Defendants’ Motion to Dismiss and Compel Arbitration must be denied.

CONCLUSION

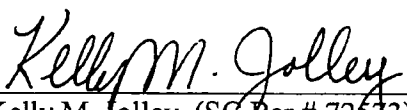
Plaintiff Carrie Yvonne Pruett respectfully requests this Court deny Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC's Motion to Dismiss and Compel Arbitration on the grounds that the arbitration clause is not binding pursuant to the South Carolina Arbitration Act and (2) arbitration may not be compelled under the Federal Arbitration Act because the Residency Agreement does not involve interstate commerce.

Respectfully submitted,

Dated: June 21, 2011

MCNAIR LAW FIRM, P.A.

By



Kelly M. Jolley, (SC Bar # 72673)
E-Mail: kjolley@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-1610

YVONNE CARRIE PRUETT,
Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

CERTIFICATE OF SERVICE

I, Justin Huey, an employee of McNair Law Firm, P.A., have this date served a copy of
**MEMORANDUM IN OPPOSITION TO DEFENDANTS, BROOKDALE SENIOR
LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC'S MOTION TO DISMISS
AND COMPEL ARBITRATION** on defendants in the above-referenced action by depositing
a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this
21st day of June, 2011:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina

▷

Supreme Court of South Carolina.
 Dora R. TIMMS, Respondent,
 v.

Mary GREENE, National HealthCorp, L.P., Greenwood Nursing Homes, Inc., d/b/a/ Greenwood Health Care Center, Appellants.

No. 23805.

Submitted May 19, 1992.

Decided Feb. 16, 1993.

Rehearing Denied March 23, 1993.

Nursing home resident brought action against home, seeking damages for injuries to her head and ears which allegedly occurred when she was left unattended under hair dryer. The Circuit Court, Greenwood County, James E. Moore, J., denied home's motion to dismiss, and home appealed. The Supreme Court, Finney, J., held that there was insufficient relationship with interstate commerce to render controversy subject to Federal Arbitration Act.

Affirmed.

West Headnotes

[1] Commerce 83 ↪ 80.5

83 Commerce

83II Application to Particular Subjects and Methods of Regulation

83II(I) Civil Remedies

83k80.5 k. Arbitration. Most Cited Cases

Contract between nursing home and resident lacked sufficient relationship with interstate commerce to render Federal Arbitration Act applicable to controversy arising from head and ear injuries which resident allegedly suffered when left unattended under hair dryer, even though home was allegedly division of Delaware partnership, marketed its services to persons residing outside state, hired employees from outside state, purchased majority of its goods, equipment and supplies outside state, and contemplated payment in part by Medicare or Medicaid. 2

U.S.C.A. § 1 et seq.

[2] Commerce 83 ↪ 80.5

83 Commerce

83II Application to Particular Subjects and Methods of Regulation

83II(I) Civil Remedies

83k80.5 k. Arbitration. Most Cited Cases

Interstate commerce is necessary basis for application of Federal Arbitration Act, and contract or agreement not so predicated must be governed by state law. 9 U.S.C.A. § 1 et seq.

****642 *469** Phillip E. Reeves, of Gibbes & Clarkson, P.A., Greenville, for appellants.

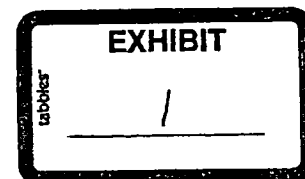
Robert P. Foster of Foster, Foster & Fortson, Greenville and William T. Jones, of The Jones Law Firm, Greenwood, for respondent.

FINNEY, Justice:

Defendants-Appellants Mary Greene, National HealthCorp, L.P., Greenwood Nursing Homes, Inc., d/b/a Greenwood Health Care Center (appellants), appeal a circuit court order *470 denying appellant's motion to dismiss Plaintiff-Respondent Dora R. Timms' (respondent) negligence action for lack of jurisdiction, improper venue, and failure to state facts sufficient to constitute a cause of action. We affirm.

Prior to her death of unrelated causes, the respondent commenced this negligence action in the Greenwood County Circuit Court in August of 1990 seeking damages for injuries to her head and ears which she alleged occurred while left unattended under a hair dryer at Greenwood Health Care Center, Inc. (the Center). Appellant National Health Care, L.P., was made a party by virtue of its ownership of the Center. Appellant Mary Greene contracted with the Center to provide hair care services to residents and was providing services to the respondent at the time of her injuries.

Appellants did not answer the complaint, but moved to dismiss the action under Rule 12(b)(6),



SCRCF, asserting 1) that the circuit court was without subject matter jurisdiction inasmuch as the contract between Timms and the Center required submission of the dispute to binding arbitration; 2) that the circuit court was the improper venue due to the fact that the proper forum to hear the case was the appropriate arbitration panel; 3) that respondent's complaint failed to allege facts sufficient to state a cause of action; and 4) sought an order requiring the respondent to provide a more definite statement of her complaint, pursuant to Rule 12(e), SCRCF.

The court denied appellant's motion to dismiss, holding that the arbitration agreement is unenforceable in that 1) it does not comply with the notice requirement of the **643 South Carolina Uniform Arbitration Act, S.C.Code Ann. § 15-48-10 et seq. (Supp.1991), (the State Act) or otherwise; and 2) that the contract does not involve interstate commerce, therefore, the Federal Arbitration Act, 9 U.S.C. § 1, et seq., (the Federal Act) does not supersede the State Act. This appeal followed.

The contract evidencing the controverted arbitration agreement was executed by Timms in September of 1988 when she became a resident of the Center. The Center provided an Admission and Financial Contract containing the following Dispute Resolution Procedure.

The parties hereby agree to arbitrate any claims or disputes arising out of or in connection with the care rendered to PATIENT by CENTER and/or its employees in *471 accordance with the provisions of the Uniform Arbitration Act, except that claims arising over non-payment of charges for services rendered or products provided to PATIENT shall not be subject to arbitration. The parties understand that arbitration of claims shall constitute a waiver of the right to trial by judge and/or jury which the parties might otherwise have. The parties hereby agree to arbitration due to the potential for a more timely final resolution of the claim or dispute. The parties freely choose arbitration and understand that the arbitrator's decision is final and binding upon all parties.

In determining enforceability of the arbitration agreement under the State Act, the trial court relied upon the following provisions of Section 15-48-10.

(a) ... Notice that a contract is subject to arbitra-

tion pursuant to this chapter shall be typed in underlined capital letters, or rubber stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

(b) This chapter however shall not apply to:

(1) Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply to or to any arbitration or award thereunder ...

(4) Any claim arising out of personal injury, based on contract or tort ...

The court found 1) that the contract did not contain on the first page any mention of arbitration; 2) that there exists an insufficient relationship with interstate commerce to render the controversy subject to the Federal Act; 3) that the contract contained no exclusionary language prohibiting application of the State Act and invoking jurisdiction of the Federal Act; and 4) that the action was one seeking redress for personal injury and not arbitrable under the State Act.

[1] Appellants contend the court erred in failing to find that the express terms of the contract subjects respondent's claim to the Federal Act under the decisions in Episcopal Housing Corp. v. Federal Ins. Co., 269 S.C. 631, 239 S.E.2d 647 (1977); and Circle S. Enterprises v. Stanley Smith & Sons, 288 S.C. 428, 343 S.E.2d 45 (Ct.App.1986), *472 and cites the following provision from Section 2 of the Federal Act.

A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof ... shall be valid, irrevocable, and enforceable, save upon such grounds as exists at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

In furtherance of its claim that interstate commerce is involved, appellants assert the Center's acceptance of federal insurance payments and that terms in the contract imply that the Center procures equipment, services and materials from outside the state. We disagree.

First, the State Act is clear with regard to the notice requirement. Moreover, the agreement specifically provides for arbitration "in accordance with the provisions of the Uniform Arbitration Act," the official designation for the State Act. S.C.Code Ann. § 15-48-240 (Supp.1991).

Second, as to the issue of commerce, ****644**Episcopal Housing Corp. v. Federal Ins. Co., *supra*, and Circle S. Enterprises v. Stanley Smith & Sons, *supra*, are distinguishable from the case under consideration in that both are construction contracts clearly predicated upon transactions involving the purchase and use of materials and supplies from outside the state. In Episcopal Housing Corp., this Court cited the four-prong test for determining applicability of the Federal Act, the second and relevant prong of which is that "the contract evidences a transaction involving commerce." In determining whether the contract on its face evidences commerce, we are required to look to the entire contract document.

[2] In respondent's personal injury action, the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law. See Shearson Hayden Stone, Inc. v. Liang, 493 F.Supp. 104 (N.D.Ill.1980). To activate application*473 of the Federal Act, the commerce involved in the contract must be interstate or foreign. 9 U.S.C. § 1; Varley v. Tarrytown Assoc., Inc., 477 F.2d 208 (2d Cir.1973).

In this record is an affidavit of the administrator of the Center, which avers that the Center engages in interstate commerce in that the Center 1) is a division of National HealthCorp, L.P., a Delaware Limited Partnership; 2) markets its services to persons residing outside this State; 3) hires employees from outside the State; 4) purchases a majority of its goods, equipment and supplies outside the state for use at the Center; and 5) contemplates payment in part by Medicare or Medicaid. Although these factors could evidence the Center's involvement in interstate commerce, we find that their relationship to the agreement between the Center and the respondent is insufficient to form the basis of the contract between the parties.

Accordingly, we hold that the purported arbitration agreement is unenforceable under Section 15-48-10 and that the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, is inapplicable. We affirm the circuit court's denial of appellant's motion to dismiss.

AFFIRMED.

HARWELL, C.J., and CHANDLER and TOAL, JJ., concur.

MOORE, J., not participating.

S.C.,1993.

Timms v. Greene

310 S.C. 469, 427 S.E.2d 642

END OF DOCUMENT

Court of Common Pleas of South Carolina.
Charleston County
SCHWARTZ, Lester ATtorney in Fact E Lehrman, Tillie Etal, Plaintiff(s),
v.
INTEGRATED HEALTH SERVICES AT DRIFT Integrated Health Service of Charle Integrated Health Services Inc
Etc, Defendant(s).
No. 2001-CP-10-000598.
July 6, 2001.

Gerald C. Smoak, Sr., Judge.

☐ JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.

☐ DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.

☐ ACTION DISMISSED: ☐ RULE 12(B), SCRCF; ☐ RULE 41(A), SCRCF (VOL. NONSUIT); ☐ RULE 43(K), SCRCF (SETTLED); ☐ OTHER-

☐ ACTION STRICKEN: ☐ RULE 40(J) SCRCF; ☐ BANKRUPTCY; ☐ BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM, VACATE OR MODIFY ARBITRATION AWARD; ☐ OTHER

IT IS ORDERED AND ADJUDGED: ☐ SEE ATTACHED; ☐ JUDGMENT BY COURT ORDER THAT THE DEFENDANTS' MOTION TO STAY AND TO COMPEL ARBITRATION IS DENIED.

DATED AT CHARLESTON, SOUTH CAROLINA, THIS 06TH DA OF JULY, 2001

<<signature>>

PRESIDING JUDGE

THIS JUDGMENT WAS ENTER ON THE 10TH DAY OF JULY, 2001 AND A COPY MAILED FIRST CLASS THIS 12TH DAY OF JULY, 2001 TO ATTORNEYS OF

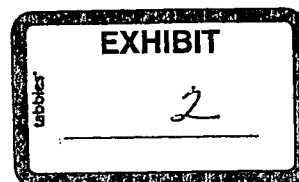
RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:

BUTAITIS, STEPHEN A

ATTORNEY(S) OR PRO SE(S)

SCRCF FORM 4

RAWL, A VICTOR JR



ATTORNEY(S) OR PRO SE(S)

<<signature>>

CLERK OF COURT

ORDER

This matter came before the Court on Defendant's Motion to Stay and to Compel Arbitration. For the reasons stated herein, the Motion is denied.

FACTUAL BACKGROUND

This is a personal injury action brought on behalf of Tillie Lehrman against a nursing home and its parent corporation for injuries sustained while Ms. Lehrman was residing in the Defendant's nursing home. Defendant's have filed a motion to compel arbitration pursuant to an arbitration clause in the admission agreement between Ms. Lehrman and the Defendant nursing home. The arbitration clause provides as follows:

Pursuant to the Federal Arbitration Act, any action, dispute, claim, or controversy of any kind (e.g., whether in contract or in tort, statutory or common law, legal or equitable, or otherwise) now existing or hereafter arising between the parties in any way arising out of, pertaining to or in connection with the provision of health care services, any agreement between the parties, the provision of any other goods or services by the Health Care Center or other transactions, contracts, or agreements of any kind whatsoever, any past, present or future incidents, omissions, acts, errors, practices, or occurrence causing injury to either party whereby the other party or its agents, employees or representatives may be liable, in whole or in part, or any other aspect of the past, present, or future relationships between the parties shall be resolved by binding arbitration administered by the National Health Lawyers Association (the "NHLA").

DISCUSSION

A.

The Defendants claim that the arbitration clause in the admissions contract and the Federal Arbitration Act ("FAA") itself mandate arbitration of the Plaintiff's claim. The Fourth Circuit Court of Appeals has made clear that two elements must exist to compel arbitration pursuant to the FAA:

"For the Federal Arbitration Act to apply to a dispute between parties, the court must make two findings: (1) there was an agreement in writing providing for arbitration; and (2) the contract evidenced a transaction involving interstate commerce. American Home Assurance v. Vecco Concrete Const., 629 F.2d 961, 963 (4th Cir. 1980).

Peoples v. Securities Life Ins. Co., 867 F.2d 809, 813, n.4 (4th Cir. 1989). Here, the Defendants have failed to show that the contract evidenced a transaction involving interstate commerce.

The precise issue before this Court was addressed and decided by the South Carolina Supreme Court in Timms v. Greene, 310 S.C. 469, 427 S.E. 2d 642 (1993). In Timms a nursing home resident brought an action against a nursing home seeking damages for personal injuries when she was left unattended under a hair dryer. The nursing home moved for arbitration under a clause contained in its admission agreement. The trial court held the action was not arbitrable under the South Carolina Uniform Arbitration Act because, *inter alia*, the action was a personal injury action^(FN1) and because there was no nexus with interstate commerce that would bring the FAA into play to preempt the state requirements, the case would proceed in the judicial forum. The Supreme Court affirmed, dismissing an affidavit submitted by the nursing home attempting to establish that the nursing home was an enterprise engaged in

interstate commerce. The *Timms* Court reasoned:

FN1. Section 15-48-10 (b)(4) of the South Carolina Uniform Arbitration Act prohibits mandatory arbitration of personal injury actions.

"Appellants contend the court erred in failing to find that the express terms of the contract subjects respondent's claim to the Federal Act under the decisions in *Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 239 S.E. (2d) 647 (1977); and *Circle S. Enterprises v. Stanley Smith & Sons*, 288 S.C. 428, 343 S.E. (2d) 45 (Ct. App.) 1986), and cites the following provision from Section 2 of the Federal Act.

A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof... shall be valid, irrevocable, and enforceable, save upon such grounds as exists at law or in equity for the revocation of any contract. 9 U.S.C. § 2.

In furtherance of its claim that interstate commerce is involved, appellant asserts the Center's acceptance of federal insurance payments and that terms in the contract imply that the Center procures equipment, services and materials from outside the state. We disagree. (emphasis added).

In Respondent's personal injury action, the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State law. See *Shearson Hayden Stone, Inc. v. Liang*, 493 F. Supp. 104 (N.D. Ill. 1980). To activate application of the Federal Act, the commerce involved in the contract must be interstate or foreign. 9 U.S.C. § 1; Varley v. Tarrytown Assoc., Inc., 477 F. (2d) 208 (2d. Cir. 1973). (emphasis added).

In this record is an affidavit of the administrator of the Center, which avers that the Center engages in interstate commerce in that the Center 1) is a division of National Health Corp, L.P., a Delaware Limited Partnership; 2) markets its services to persons outside this State; 3) hires employees from outside the State; 4) purchases a majority of its goods, equipment and supplies outside the state for use at the Center; and 5) contemplates payment in part by Medicare or Medicaid. Although these factors could evidence the Center's involvement in interstate commerce, we find that their relationship to the agreement between the Center and the respondent is insufficient to form the basis of the contract between the parties. (emphasis added).

Accordingly, we hold that the purported arbitration agreement is unenforceable under Section 15-48-10 and that the Federal Arbitration Act, is inapplicable. We affirm the circuit court's denial of appellant's motion to dismiss".

Timms, 310 S.C. at 473. The affidavit filed by the Defendants in this case is identical in all significant respects to the affidavit filed in *Timms*. The affidavit states that the Defendants received Medicare funds, its billing office is in Florida, and it received supplies from outside of South Carolina. As the *Timms* court ruled on a nearly identical record, the contract here simply does not evidence a transaction involving interstate commerce between the parties. For this reason, the FAA is not triggered and Defendants' motion should be denied.

B.

This Court is mindful of *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) and *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995), the cases upon which Defendants principally rely. These cases make clear that to enforce an arbitration provision in a contract, the transaction must in fact involve interstate commerce. The *Munoz* case, relying on *Allied-Bruce*, expressly overruled *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1994) to the extent it required the trial judge to consider Whether the parties to the transaction actually "contemplated" interstate commerce in determining whether the FAA applied. Munoz, 343 S.C. at 539, n.3. The *Munoz* Court held that what the parties actually contemplated is not relevant in the analysis. *Munoz*, however, does not otherwise alter the rule that arbitration cannot be compelled pursuant to the FAA in a case in which the underlying transaction does not involve interstate commerce.

As discussed above, our Supreme Court in *Timms* held on facts identical in all significant respects to this case that there did not exist a sufficient nexus between a nursing home admission agreement and interstate commerce and, thus, arbitration could not be compelled pursuant to the FAA. I cannot ignore this clear precedent squarely addressing the issue before this Court. For this reason, the Defendants' Motion to Stay and to Compel Arbitration is denied.

AND IT IS SO ORDERED.

<<signature>>

JUDGE GERALD C. SMOAK, SR. NINTH JUDICIAL CIRCUIT COURT JUDGE

This 6 day of July, 2001 Charleston, South Carolina

SCHWARTZ, Lester ATorney in Fact E Lehrman, Tillie Etal, Plaintiff(s), v. INTEGRATED HEALTH SERVICES
AT DRIFT Integrated Health Service of Charle Integrated Health Services Inc Etc, Defendant(s).
2001 WL 35988562 (S.C.Com.Pl.) (Trial Order)

END OF DOCUMENT

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

Case No. 2011-CP-07-1700

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King.
Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND COMPEL
ARBITRATION**

Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC ("Brookdale Defendants") submit this Memorandum in Support of their Motion to Dismiss and Compel Arbitration.

BACKGROUND

When Yvonne Pruett and her husband and responsible party, Samuel Pruett, agreed to place Ms. Pruett in assisted-living care, Mr. Pruett signed a Residency Agreement containing a clause that required them to submit this case to binding arbitration. Mr. Pruett initialed "as having read and understood the provisions" of each section. The Puetts freely agreed to arbitrate any disputes that arose out of Ms. Pruett's stay with Carolina House of Hilton Head.

Although claims for personal injury are not subject to arbitration under South Carolina's Uniform Arbitration Act, such claims are subject to arbitration under the Federal Arbitration Act. That Federal Arbitration Act preempts conflicting law and applies to any arbitration agreement involving interstate commerce. The Residency Agreement involves

interstate commerce because it specifies that residents will receive food, amenities, and other goods from the facility, which the facility first receives through interstate commerce. The facility is also tied to interstate commerce because it is owned by a Wisconsin corporation and receives residents from out of state.

The Court, therefore, should dismiss or stay this case and compel arbitration.

THE ARBITRATION AGREEMENT

Yvonne Pruett was a resident of Carolina House of Hilton Head¹("facility"), an assisted-living facility, during the dates relevant to the Complaint. She alleges that Defendant Sonia King verbally and physically abused her.

Prior to her admission to the facility, Mr. Pruett, on behalf of himself and as Ms. Pruett's representative, entered into a Residency Agreement with Southern Assisted Living, Inc. on March 31, 2009. The Residency Agreement contains an arbitration provision governed by the Federal Arbitration Act and stating as follows:

A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding the interpretation of this Agreement, whether arising out of State or Federal Law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, ***shall be submitted to binding arbitration***, as provided below, and shall not be filed in a court of law. The parties to this Agreement further understand that a jury will not decide their case. The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement....

(Exhibit A, Residency Agreement, p. 11) (emphasis added). The Residency Agreement also

¹ Carolina House of Hilton Head is owned by Defendant Brookdale Senior Living, Inc.

contains a section titled "**BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISION**" which outlines the benefits of arbitration that flow to both resident and facility. The section also contains an acknowledgment in bold font that "[t]he undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an Attorney." Id. p. 15. The arbitration agreement is not buried inconspicuously in the agreement. It takes up five pages (more than 25%) of the nineteen-page Residency Agreement.

As responsible party, Mr. Pruett also initialed underneath each arbitration provision acknowledging "as having read and understood the provisions [relating to arbitration]." Id. p. 14. The front page of the Residency Agreement states that "**THIS AGREEMENT IS SUBJECT TO ARBITRATION.**" and further recommends that "you consult your legal counsel to ensure proper understanding of this Agreement before signing." Id. p. 1.

In addition to containing provisions on dispute resolution, the Residency Agreement lays out the basic services each resident will receive from the facility, including meals, amenities, furnishing, housing, and the ability to further agree to receive medical services from third parties. Many of the goods and services provided to the residents come from out of state. Specifically, the facility receives food supplies for feeding its residents from Sysco Corporation, a Texas corporation; medical supplies from One Source, a Wisconsin Corporation; and carpeting from a North Carolina vendor. (**Exhibit B**, Affidavit of Timothy J. Cesar). Thus, many of the goods and services provided to Residents under the Agreement are procured through interstate commerce.

The facility is also involved in interstate commerce in other ways. It orders the supplies from the out-of-state vendors through email, telephone, and fax orders. Id. The

facility also receives and admits out-of-state residents, including residents from Connecticut, Florida, and New York. Id.

ARGUMENT

I. THE ARBITRATION AGREEMENT IS A VALID AND ENFORCEABLE AGREEMENT UNDER THE FEDERAL ARBITRATION ACT BECAUSE THE RESIDENCY AGREEMENT INVOLVES INTERSTATE COMMERCE

Although the South Carolina Uniform Arbitration Act excludes claims for personal injury, parties may still enter pre-injury agreements to arbitrate personal-injury claims through the Federal Arbitration Act ("FAA"). When the FAA governs a dispute, it preempts conflicting state law. Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 269 (1995); Soil Remediation Co. v. Nu-Way Environmental, Inc., 323 S.C. 454, 459, 476 S.E.2d 149, 152 (1996).

Section 2 of the FAA states that a "contract evidencing a transaction involving commerce to settle by arbitration . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9. U.S.C. § 2. The basic purpose of the FAA "is to overcome courts' refusal to enforce agreements to arbitrate." Allied-Bruce, 513 U.S. at 270. Because the FAA was intended to enforce arbitration agreements and put them on "the same footing as other contracts," Congress intended the FAA to have a broad scope and for courts to interpret it liberally. Id. At 270, 275. The language of the FAA evidences a federal policy favoring arbitration. Mastrobouno v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 62 (1995).

In Allied-Bruce, the Supreme Court of the United States held that the FAA's phrase "involving commerce" evidenced "an intent to exercise Congress' commerce power to the full." Id. at 277. In that case a homeowner signed a termite-prevention contract that

contained an arbitration clause. The defendant was a multistate company that used termite-treating and house-repairing materials that came from out of state. The Supreme Court held that the transaction “involved interstate commerce” even though the parties did not contemplate an interstate-commerce connection at the time of execution. Id. at 282.

In this case, much like the facts in Allied-Bruce, the facility uses goods and materials obtained from out-of-state vendors in order to serve its residents. The facility, for example, receives food from Sysco Company, a Texas Corporation; medical supplies from One Source, a Wisconsin Corporation; and carpeting from a North Carolina vendor. (**Exhibit B**, Affidavit of Timothy J. Cesar). Thus, the Residency Agreement involves interstate commerce because it specifies certain meals, amenities, furnishing, and other goods that may come from out-of-state vendors. Further, the facility is owned and controlled by Brookdale Senior Living, a Wisconsin Corporation. Id. Brookdale advertises nationally, and invites residents to its locations from out of state. The facility houses residents from Connecticut, Florida, and New York. Id.; see also New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008) (holding FAA applied to construction contract involving businesses and supplies from outside South Carolina).

Several courts from other jurisdictions have held that arbitration agreements in nursing-home or assisted-living facility agreements are enforceable. For example, in Triad Health Mgmt. of Georgia, III, LLC v. Johnson, 679 S.E.2d 785 (Ct. App. Ga. 2009), the court held that the FAA applied to an admission contract to a nursing home. In that case, the facility bought supplies from out-of-state vendors, treated out-of-state patients, and had patients insured through Medicaid and Medicare. “Given the evidence establishing a nexus between Triad’s nursing home operations and interstate commerce, and in light of the

United States Supreme Courts' *expansive interpretation of commerce for purposes of the FAA* [in Allied-Bruce], we conclude that the Admission Contract was a contract evidencing a transaction involving commerce, and the FAA therefore applies." Id. at 788 (emphasis added).

In Briarcliff Nursing Home v. Turcotte, 894 So.2d 661 (Ala. 2004), the Supreme Court of Alabama considered whether a nursing-home admission contract affected interstate commerce. The court found that that facility had out-of-state patients, receives regular shipments from out-of-state vendors, buys medicines from an out-of-state company, and several of its residents were Medicare and Medicaid patients. Id. at 667. Given these facts, the court held that facilities activities substantially affect interstate commerce. See also Oesterle v. Atria Mgmt. Co., LLC, 2009 WL 2043492 (D. Kan. 2009) (unpublished and **attached**) (holding arbitration agreement in nursing-home contract was governed by FAA); Miller v. Cotter, 863 N.E.2d 537 (Mass. 2007) (holding arbitration agreement would be governed by both FAA or state law).

Finally, the case of Timms v. Greene, 310 S.C. 469, 427 S.E.2d 642 (1993) is inapplicable to this case for several reasons. First, Timms holds that a court is required to look at the contract "on its face" to determine if it involves interstate commerce. Id. at 472, 427 S.E.2d at 644 ("In determining whether the contract *on its face* evidences commerce, we are required to look to the entire contract."). Essentially, Timms held that the parties must contemplate an interstate transaction because it required that the contract "on its face" must involve interstate commerce. This holding, however, was implicitly overruled two years later by the United States Supreme Court in Allied-Bruce.² As stated above,

² Mathews v. Fluor Corp., 312 S.C. 404, 440 S.E.2d 880 (1994) cited Simms for the

Allied-Bruce articulated an expansive interpretation of FAA and held that “involving commerce” was intended to reach to the full extent of Congress’ power under the commerce clause. A court is required to look at the entire transaction—and not just the face of the contract—to determine whether it involves interstate commerce.

Second, since Allied-Bruce, other South Carolina opinions have articulated expansive interpretations of the FAA. In Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001), the Court held the FAA applied to a contract that was entered into between South Carolina homeowners and South Carolina builder. Because the builder later transferred the contract to a Delaware corporation, and the loan proceeds were distributed from a bank in Minnesota, the “contractual relationship . . . in fact involves interstate commerce and therefore the FAA applies.” Id. at 539, 542 S.E.2d at 364; see also (New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008) (holding FAA applies to construction contract because it will involve businesses and supplies from outside South Carolina).

Third, the facts in Timms are distinguishable from this case. In Timms, there was no evidence tying the *agreement* to interstate commerce. The only evidence was that the facility involved itself in interstate commerce. Here, unlike Timms, the Residency Agreement is actually tied to interstate commerce. The Residency Agreement provides that foods and supplies will be provided to residents, and those foods and supplies come from out of state. Further, in Simms the nursing home *was a South Carolina company* (with

proposition that “the express terms of the contract involved interstate commerce.” However, in Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001), the Court expressly overruled Mathews “to the extent it considered whether the parties contemplated interstate commerce as a factor in determining if the FAA applied.” Presumably, Munoz also overruled Simms to the same extent.

an out-of-state parent), whereas in this case the assisted living facility is directly owned by a Wisconsin Corporation, and the Residency Agreement was signed by Southern Assisted Living, Inc., a North Carolina corporation.

Therefore, arbitration provisions in resident agreements are enforceable under the FAA if they involve interstate commerce. As stated above, the facility conducts substantial interstate commerce which relate directly to the supply of goods and services outlined in the Residency Agreement. Not only does the facility engage in interstate commerce, but the agreement itself is involved in interstate commerce. The FAA governs this dispute.

II. THE ARBITRATION AGREEMENT IS ENFORCEABLE EVEN THOUGH YVONNE PRUETT ONLY SIGNED THE ADDENDUM

Ms. Pruett signed an addendum to the Residency Agreement (**Exhibit C**), but she did not sign the original Residency Agreement. Nevertheless, her husband Sam Pruett signed the Residency Agreement on her behalf as responsible party. Under the necessities doctrine, Sam Pruett's signature binds Ms. Pruett.

Under the early common law, a husband bore a duty to support his wife, and parents to support their children. This evolved into the "necessaries doctrine," whereby "both husbands and wives have an obligation to support their spouses, and both spouses are liable for the cost of necessities supplied to one of the spouses, even if only one spouse is contractually liable for the necessities." Trident Regional Medical Center v. Evans, 317 S.C. 346, 347, 454 S.E.2d 343, 344 (Ct. App. 1995). The necessities doctrine applies in the context of medical care. Id.

A case on point is MN Medinvest Co., L.P. v. Nichols, 908 So.2d 1178 (Ct. App. Fla. 2005). In that case, a mother signed a nursing-home admission contract containing an arbitration clause on behalf of her severely injured daughter. The daughter later died, and

the mother sued the nursing-home, which moved to compel arbitration. After the trial court denied the motion to compel arbitration on the basis that the mother lacked authority to waive her daughter's right to a jury trial, the Florida Court of Appeals reversed. It held that, "pursuant to the law of necessities, the arbitration clause in that agreement should have been enforced by the trial court." Id. at 1179.

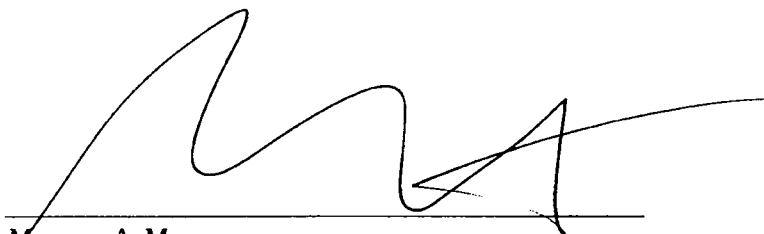
Similarly, the Alabama Supreme Court compelled arbitration where the daughter signed a nursing-home admission contract on behalf of her mother. In Owens v. Coosa Valley Health Care, Inc., 890 So.2d 983 (Ala. 2004), the resident did not sign the admission contract, which was instead signed by her daughter as "Guardian" and "Sponsor." The admission contract, however, was entered into by the resident despite the absence of her signature. The court also noted that "the practice of having a guardian sign documents for the patient is common in nursing-home admissions." Id. at 987.

In this case, the Residency Agreement states on that it was entered into "by and between Southern Assisted Living, d/b/a Carolina House of Hilton Head, *Yvonne Pruett*, and Samuel Pruett." Although Ms. Pruett signed only the addendum and not the actual agreement, she is still bound by the terms. The Residency Agreement provides for necessities, which therefore binds both Mr. and Ms. Pruett. Further, Mr. Pruett had the authority to sign the agreement for his wife as "Responsible Party."

Further, challenges to the existence of an arbitration agreement are to be decided by an arbiter, not the court. New Hope Missionary Baptist Church, the court wrestled with this odd scenario, but ultimately held that, where a valid arbitration exists, an arbiter must decide issues challenging the validity of the entire contract. 379 S.C. at 631, 667 S.E.2d at 6.

CONCLUSION

For the foregoing reasons, this Court should dismiss or stay the Complaint and compel the parties to arbitrate. The Residency Agreement contains an arbitration provision governed by the FAA, because the agreement involves interstate commerce, and it applies to both Mr. and Ms. Pruett.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC.

June ²² 2011
Columbia, South Carolina

EXHIBIT A

RESIDENCY AGREEMENT

The Company strongly believes in the importance of fully disclosing all services and fees to the best of our ability and in accordance with state law. As with any legally binding contract, it is our recommendation that you consult your legal counsel to ensure proper understanding of this Agreement before signing.

THIS AGREEMENT IS SUBJECT TO ARBITRATION

Table of Contents

- I. SERVICES AND ACCOMMODATIONS
 - A. BASIC SERVICES
 - B. PERSONAL SERVICE PLAN
 - C. AVAILABLE SELECT SERVICES
 - D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT
- II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS
 - A. CARE OF SUITE
 - B. SUITE ACCESS
 - C. HEALTH ASSESSMENT
 - D. HEALTH CARE PROVIDER NOTIFICATION
 - E. OBLIGATORY INFORMATION
 - F. ADVANCE DIRECTIVE
 - G. MOTORIZED VEHICLES
 - H. RESPONSIBILITIES UPON TERMINATION
 - I. RULE AND REGULATION COMPLIANCE
 - J. GUESTS
- III. RATES
 - A. MOVE-IN FEE
 - B. MONTHLY SERVICE RATE
 - C. RESIDENT ABSENCE
 - D. AVAILABLE SELECT SERVICES
 - E. PAYMENT
 - F. RATE CHANGES
- IV. TERM AND TERMINATION
 - A. TERM
 - B. TERMINATION BY RESIDENT
 - C. TERMINATION BY COMPANY
 - D. TERMINATION BY EITHER PARTY
 - E. STORAGE CHARGES
- V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION
 - A. ARBITRATION PROVISION
 - B. LIMITATION OF LIABILITY PROVISION
 - C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS
- VI. MISCELLANEOUS
 - A. DEFAULT TO ARBITRATION
 - B. NON-DISCRIMINATION
 - C. RISK AGREEMENT
 - D. RELIANCE
 - E. NO LIABILITY IF AWAY FROM RESIDENCE
 - F. ASSIGNMENT
 - G. HEIRS AND SUCCESSORS
 - H. AMENDMENTS
 - I. SEVERANCE
 - J. RESPONSIBLE PARTY
 - K. SUBORDINATION

L. NOTICES

RESIDENCY AGREEMENT

This Agreement is entered into as of March 31, 2009 by and between Southern Assisted Living, Inc., d/b/a Carolina House of Hilton Head ("Company"), Yvonne C. Pruett ("You" or "Resident"); and Samuel H. Pruett ("Responsible Party"). The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS

A. BASIC SERVICES

You will be entitled to the following Basic Services, which are included in the Basic Service Rate, subject to the terms and conditions of this Agreement:

- ♦ Accommodations - You are entitled to the use of the suite described in Exhibit A and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with all other residents the common areas of the building (the "Community"). You may provide your own furnishings and personal property; however, the Company reserves the right to limit the number and type of furnishings if the Company determines that they present a safety hazard or potential safety hazard.
- ♦ Daily Meals - The Company will provide three meals daily. Snacks are available 24 hours a day.
- ♦ Utility Service - The Company will provide gas, electric and water service. Telephone charges are not included in the Basic Service Rate. Costs for basic cable television are described in Exhibit A.
- ♦ Weekly Housekeeping Service - The Company will clean your suite once a week.
- ♦ Weekly Laundry and Linen Service - The Company will launder your personal items and your bed linens once a week.
- ♦ Life Enrichment Program - The Company will provide planned social, educational and recreational programs.
- ♦ Staffing 24 hours a day - The Company will have staff available 24-hours a day, seven days a week.
- ♦ Transportation - The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation

services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

B. PERSONAL SERVICE PLAN

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the residence. An outside agency or individual will be permitted to provide these services or any related personal services only if the Company has given prior approval.

C. AVAILABLE SELECT SERVICES

From time to time, the Company may make select services available to you at your or your Responsible Party's request. If available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, or special events. (See additional information on Transportation in Section I. A of this Agreement.) These additional choices are not included in the Basic Service Rate or the Personal Service Plan. Your Executive Director will provide, upon your request, a listing of the available select services as well as a current fee schedule.

D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT

You and your Responsible Party are responsible for obtaining and paying for all services which are not included in the Basic Services or Personal Services Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by the Company, its subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy services, newspaper subscriptions, or beauty/barber services. Any fees for services provided by other service providers will be billed directly by the service provider. All third party service providers (including, but not limited to, third party health care and medical providers) must receive the Company's prior authorization to provide services to you at the residence. All third party providers who enter the residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

You may not contract with any of the Company's current employees to perform any services at the residence. You may contract with former employees to perform any

services at the residence only with the Company's consent. The Company reserves the right to refuse entry to 1) former employees, 2) persons whose actions may be disruptive to the residence; 3) persons whose actions may threaten the safety of any resident or employee; or 4) persons whose presence may foreseeably result in liability to the Company.

II. RESIDENT RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE

You agree that residence and the suite are in satisfactory, habitable condition. You also agree the Company has made no promise to decorate, alter or improve the residence or suite, unless otherwise provided in writing by the Company and attached as part of this Agreement. You agree to maintain the suite and to surrender the suite upon termination of this Agreement in good condition, exclusive of normal wear and tear. You agree to pay all damages, beyond normal wear and tear, including any improvements made without the Company's consent, which you, your Family, and/or other Guests (including any agent, employee, contractor, or other invitee) cause to residence property.

B. SUITE ACCESS

You agree to give the Company access to the suite in order to carry out the intent of this Agreement. Such entry includes, but is not limited to, performance of services provided as part of the Basic Services or in your Personal Service Plan; response to emergency situations; and entry by authorized personnel with the reasonable belief that your safety or safety of others is in question or that the Company's policies and procedures are being violated.

Upon written notice, the Company reserves the right to relocate you to a more appropriate suite within residence as required for your health or safety, or because the residents of a companion suite are incompatible.

C. HEALTH ASSESSMENT

You agree that the Company may from time to time assess your health to determine the appropriate Personal Service Plan and/or whether you are appropriate to stay in the residence. Not more than thirty (30) days prior to the date this Agreement is entered into, and at least annually thereafter or upon the request of the Company, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree that the Company may require you to undergo examination by a particular specialist, at your cost, as the Company determines is warranted by your current physical or mental status. You will request the examiner to provide the Company with recommendations, including a statement attesting to the appropriateness of the placement. Based upon the assessment(s) and the Company's judgement, the Company may determine your appropriateness to remain in the residence. You will request the examiner to perform any tests and complete any forms required by the Company or applicable law.

D. HEALTH CARE PROVIDER NOTIFICATION

You authorize the Company to contact responsible parties, health care providers, and/or other persons listed in your records:

- (1) If the Company determines it is necessary to advise them of your situation;
- (2) To arrange for health care services and other assistance required by you; or
- (3) In case of an emergency. If you have a life-threatening emergency, the Company will contact an emergency rescue service.

If your designated health care providers are unavailable, you authorize the Company to arrange for the services of other health care providers.

During the term of this Agreement, you agree the Company may provide such persons with copies of your records, including, but not limited to, resident records to the extent they are needed to assist with treatment, advance directives, living will, and the names of persons empowered to make health care decisions, for the purpose of arranging for health care services.

E. OBLIGATORY INFORMATION

You will provide the Company with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You or your Responsible Party will provide the Company with copies of any health care power of attorney, power of attorney executed by you or of any court order, guardianship, or other legal action which may (1) affect your status or (2) designate or appoint another person to make health care or financial decisions or to bear financial responsibility on your behalf. You authorize the Company to rely on the instructions of such designees or appointees. You understand that you must immediately notify the Company of changes relating to any of the information stated above.

F. ADVANCE DIRECTIVES

Upon admission to the Company, it is strongly suggested that you have your advance directives in place in the event you become incapacitated. Advance directives include, but are not limited to, Living Wills, Powers of Attorney for Health Care, Guardianships and Do Not Resuscitate Orders. You will notify the Company and provide copies to the Company of such advance directives. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company), subject to all bond, accounting and other legal requirements. Neither the Company nor any of its employees or agents may be your guardian. If it is necessary for the Company to petition the court for appointment of a guardian, any costs associated therein shall be paid by you. If you are a Resident in a Memory Care Unit (e.g. Clare Bridge or a Clare Bridge Cottage), these designations should be made prior to move-in.

G. MOTORIZED VEHICLES

Motorized vehicles may be used by a resident, subject to the following:

- (1) You have a physician's order stating that such a vehicle is a medical necessity for you;
- (2) You have been assessed as being able to safely operate the vehicle and you continue to demonstrate that your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
- (3) The vehicle is operated at a low setting; and
- (4) You agree to abide by the Company's safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the motorized vehicle rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of yourself, the other residents, the residence staff or visitors.

- (1) You further understand and agree that the Company may, at its sole discretion, prohibit your further use of a motorized vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION

You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that the Company may charge you a storage fee for your belongings equal to your Basic Service Rate. You further agree that the Company may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail.

Termination will not release you or the Company from any liability or obligation to the other party under the terms of this Agreement.

I. RULE AND REGULATION COMPLIANCE

You acknowledge that the Company is licensed by the State of South Carolina as a Community Residential Care Facility. You understand that the Company has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to the rules, regulations, policies and procedures as they now exist and as amended from time-to-time for the operation and management of the Community.

J. GUESTS

You understand that as a resident, you have the right to associate with your friends and family ("guests") during reasonable hours. Because the Company is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the resident's health status or other pertinent factors.

You acknowledge and understand that your guests are subject to the Company's Rules and Regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to staff, residents or others, the Company may request that they leave the Community until their behavior is under control or may place limitations upon the location and time of their visitation. You understand that, where circumstances warrant, the Company may exclude such individuals from the residence.

III. RATES

A. MOVE-IN FEE

-- waived per 00. x SAP (KMM)

1. Fee - You will pay the Company a one-time Move-In Fee in an amount indicated in Exhibit A at the time this Agreement is signed.
2. Refund - The Company will refund a prorated share of one-half of the Move-In Fee if this Agreement is terminated within ninety (90) days of the date this Agreement is signed and any one of the following circumstances occur:
 - (a) The Company terminates this Agreement;
 - (b) The Company or your physician determines you require care not offered by the Company; or
 - (c) by reason of death.

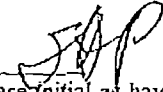
X X SAP
(Please initial as having read and understood the above provision.)

B. MONTHLY SERVICE RATE

1. Rate - You agree to pay the Basic Service Rate and, if applicable, the charge for the Personal Service Plan as indicated in Exhibit A (together the "Monthly Service Rate").
2. Refund - The Company will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - (a) following termination in accordance with Section IV;
 - (b) because you require care that is not offered by the Company; or
 - (c) by reason of death.

Refunds will be based upon the actual number of days the resident is in the facility and a reasonable number of bed hold days. A storage fee equal to the prorated share of the Monthly Service Rate will be charged until such time as all of your property is removed

from the Suite. The Company will issue the refund to Resident or Responsible Party within 45 days of the effective date of termination based on Section IV of this Agreement. Unless prohibited by law, you agree the Company may offset such refunds by any amount due under the terms of this Agreement.

X 
(Please Initial as having read and understood
the above provision.)

C. RESIDENT ABSENCE

If the Resident is absent from the Community for any reason, including, but not limited to, hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate until such time that the Resident or Representative provides the Company with written notice of their intent to terminate the Agreement, pursuant to Section IV of the Agreement. Termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES

In addition to the Monthly Service Rate, you agree to pay the Company the established charges for any select services provided to you by the Company.

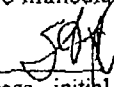
E. PAYMENT

The Company will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for select services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be one thirtieth (1/30) of the usual rate times the number of days remaining in the month.

The Company will charge a \$250.00 late fee if the Company has not received all fees when due. The Company will also charge a \$25.00 returned payment fee for each check or automatic withdrawal that is returned by a financial institution for any reason, including but not limited to, insufficient funds or incompleteness. After two payments are returned by a financial institution to the Company, you will thereafter pay the Monthly Service Rate and any other amounts due by cashiers check. You also agree to pay interest on all amounts not paid by the due date. The interest rate will be the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES

The Company will provide thirty (30) days written notice of any change in the Basic Services Rate. The Company may offer or require a change in the Personal Service Plan when the Company determines additional services are requested or required. The new charge for the Personal Service Plan will be effective immediately upon the provision of written notice.

X 
(Please initial as having read and understood the above provision.)

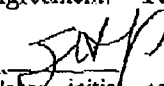
IV. TERM AND TERMINATION

A. TERM

This Agreement will commence on the date set forth above and will continue until terminated as provided below.

B. TERMINATION BY RESIDENT

The Company requests you or your Responsible Party to provide thirty (30) days written notice of your intent to terminate this Agreement. Termination shall be effective the day after your last date of residence.

X 
(Please initial as having read and understood the above provision.)

C. TERMINATION BY COMPANY

The Company may terminate this Agreement, upon providing you or your Responsible Party thirty (30) days written notice, for any of the following events, as determined by the Company:

- (1) You require care or services that the Company is unable to provide or which requires staff that are not available at the Company;
- (2) You are disruptive, create unsafe conditions, are physically or verbally abusive to other residents or otherwise impair the welfare of yourself or others in the residence;
- (3) You fail to pay fees and charges when due.

X 
(Please initial as having read and understood the above provision.)

For emergency medical or welfare reasons of you or other residents, the Company may, upon written notice to you or your Responsible Party, immediately terminate the Agreement, and transfer or discharge you. If the emergency requires your immediate transfer, the Company will notify the Responsible Party at the earliest practicable hour, but not later than twenty-four (24) hours following the transfer.

The Company will provide a written explanation if the Company terminates this Agreement with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY

You, your Responsible Party or the Company may terminate this agreement immediately in the event of death or if a physician certifies, based upon an examination prior to moving out, that you must be relocated because of your health. The Company requests you provide written notice of your intent to terminate. Termination shall be effective the day after your last date of residence.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION

Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

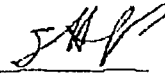
A. ARBITRATION PROVISION

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. The parties to this Agreement further understand that a jury will not decide their case. The Federal Arbitration Act shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. Demand for Arbitration by Resident, his or her guardian, a person or organization acting on behalf of a Resident with the consent of the Resident or his or her guardian, or the personal representative of the estate of a deceased Resident (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by the Company shall be made in writing and submitted to the Resident or his or her agent, representative, successor or assign and/or Resident's Attorney-in-Fact, and/or Responsible Party via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then the arbitration shall be submitted to the National Arbitration Forum, or other similar organization, but must still be conducted by one (1) arbitrator who is a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience practicing as an attorney. If the arbitrator is selected from the National Arbitration Forum, or other similar organization, each party shall have the right to request one (1) substitution within ten (10) days of receiving notice of the identity of the arbitrator. The person requesting of the substitution shall submit a request for substitution in writing to the National Arbitration Forum, or other similar organization, and to the other party via U.S. mail.
5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the Federal Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide the Company with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and the Company shall reimburse Resident Party \$0.25 per page).
 - b. The Company shall provide the Resident Party with permissible discovery per the Federal Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse the Company \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. The Company shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

- f. The Company shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
 - g. Resident Party shall have thirty (30) days after the Company's expert designation is received in which to depose such experts.
 - h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
 - i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 1. List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witnesses' intended testimony;
 2. List of documents to be relied upon at the arbitration hearing;
 3. Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
 - j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.
7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
 8. The arbitrator shall apply the Federal Rules of Evidence and Federal Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, Federal law except as otherwise stated in this Arbitration Provision.
 9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
 10. The arbitrator's decision shall be final and binding without the right to appeal.
 11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or the name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision
14. This Arbitration Provision and the Limitation of Liability Provision below shall survive the death of the Resident.

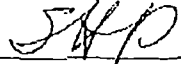
X 

(Please initial as having read and understood the provisions of section V., subsection A)

B. LIMITATION OF LIABILITY PROVISION: Read Carefully Before Signing

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by the Company for unpaid Basic Service or Personal Service charges, or a claim by, or on behalf of, a Resident, Resident Party, or by a Resident's Estate, Agent or Legal Representative, arising out of the care or treatment received by the Resident or the Resident's occupancy or presence at the Company, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Noneconomic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.
 - c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.

3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

X 
(Please initial as having read and understood
the provisions of section V., subsection B.)

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, the Company is better able to offer its services and accommodations at a rate that is more affordable to the Resident. In terms of the time-savings offered by selecting arbitration, the parties recognize that often the Resident is elderly and may have a limited life-expectancy, and therefore selecting a quick method of resolution is potentially to a Resident's advantage.

The Resident, Responsible Party, or his or her legal guardian, or authorized Power of Attorney understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

The parties to this Agreement further understand that a jury will not decide their case.

X 
(Please initial as having read and understood
the provisions of section V., subsection C.)

VI. MISCELLANEOUS

A. DEFAULT TO ARBITRATION

If it is determined by a court of law that the Arbitration Provision provided in this Agreement is invalid, the parties hereto make clear their express desire to waive a jury trial and resolve their claims against each other in the appropriate court solely before a judge.

B. NON-DISCRIMINATION

The Company does not discriminate on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment. The Company respects all religious faiths and does not have any specific religious affiliation.

C. RISK AGREEMENT

You and your Responsible Party are responsible for your personal, financial and health care decisions. In addition, you are responsible for maintaining at all times your own health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance with coverage for your personal property and your general liability in the amount of \$100,000. You agree to provide proof of such coverage to the Company. You acknowledge that the Company is not an insurer of your person or property.

You understand and agree that:

1. The Company may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
3. The standard of services in an assisted living residence does not include one-on-one care, assistance or supervision e.g. one resident assistant for each Resident, or immediate response to non-emergent needs. Consistent with your daily life activities, including but not limited to resting in your apartment or common areas, watching television, listening to music, reading, and sleeping at night, there may be short and long periods of time in which you will be left alone, unsupervised;
4. The Company makes no representations or guarantees that the Company staff can prevent Residents from falling. Further, the Company does not represent or guarantee your health condition will not change or deteriorate throughout your Residency;
5. The services provided by the Company may not meet all of your personal, social, or health care needs and the Company will use its best efforts to assist you in arranging for services which you require and which are not included in this Agreement;
6. Many Residents of the Company suffer from memory impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior

including, but not limited to, wandering, forgetfulness, agitation towards others and confusion. The Company makes no representations or guarantees that it can predict the behavior of its Residents. Therefore, the Company also makes no representations or guarantees that it can always prevent a Resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another Resident;

7. The Company makes no representations or guarantees that the Company is secure from theft or any other criminal act perpetrated by any other Resident or person; therefore, the Company recommends that valuables, including but not limited to, jewelry and large amounts of money, not be brought into the Community. If you choose to bring in such valuables, you are doing so at your own risk and the Company will not be responsible for any theft or loss of these items;
8. Due to state regulations and fire code, the Company is not permitted to lock its exterior doors and, therefore, does not guarantee that its Residents will not wander out of the Community. In our memory care buildings, the exterior doors are alarmed with a delayed egress feature and our systems are designed to alert our staff to respond and assist a Resident to safety, should they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold the Company and its employees and agents harmless for any damages or injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action of any third party, fire, water, theft or the elements; or (3) loss of personal property. The Company will only be liable for damages, injuries or other losses to you or any third party entering a Suite, or any other part of the residence, if due to willful misconduct or negligence of the Company.

The Company reserves the right to recover from you any loss caused by fire, vandalism or any other acts by you or your invitees or guests. The Company may assign such right to its insurance carrier.

D. RELIANCE

By entering into this Agreement, the Company is relying upon the truthfulness of the promises and representations made by you and your Responsible Party.

E. NO LIABILITY IF AWAY FROM RESIDENCE

In the event that you knowingly leave the Community or are temporarily away from the Community, any and all responsibility of the Company for your welfare shall terminate during your absence.

F. ASSIGNMENT

This Agreement is not assignable by you or your Responsible Party without prior written consent of the Company. The rights and obligations of the Company may be assigned to any person or entity, and such person or entity will be responsible to ensure the obligations of the Company under this Agreement are satisfied in full from and after the date that you are notified of such assignment. The Company may engage another person or entity to perform any or all of the services under this Agreement.

G. HEIRS AND SUCCESSORS

This Agreement is for the benefit of and binds the parties and their respective heirs, representatives, successors and assigns.

H. AMENDMENTS

This Agreement and any written amendments constitute the entire agreement between the parties and supercede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written, pertaining to this Agreement. Except for the right of the Company to modify fees, rates and charges, amend services provided and establish reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.

I. SEVERANCE

Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.

J. RESPONSIBLE PARTY

You have designated a Responsible Party, who has agreed to the terms of the attached Responsible Party Agreement and whose signature appears below.

K. SUBORDINATION

This Agreement and the parties' rights hereunder will be subordinate to any ground lease, mortgage or deed of trust now or hereafter placed upon the residence, but your right to remain in possession of your suite will not be disturbed so long as you comply with all of the provision of this Agreement.

L. NOTICES

Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

The Company:
Executive Director at Community
Address (as noted on Exhibit A)

Resident:
(as noted at end of this Agreement)

Responsible Party:
(as noted in Exhibit B)

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.

[Signature] For the Company Title Ed Date 3/31/09

Resident [Signature] Date 3/31/09
Responsible Party Date

SEND NOTICES AND MONTHLY STATEMENTS TO RESIDENT IN CARE OF:

Name: Jan Pruitt
Address: 9 N. Calibogue Cay Rd., Hilton Head SC
Phone No.: 843 363 6664 - Home 843-422-1166 - cell 24928

OTHER RELATED MATERIALS

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package and Special Services Form
5. Medical Records Release
6. Resident Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Responsible Party Agreement
- C. Pet Addendum
- D. Additional Resident Fee
- E. Pharmacy Services Agreement
- F. Acknowledgement of Grievance Procedure and Resident Bill of Rights

ADDITIONAL EXHIBITS:

- X. Select Services List
- Y. Therapeutic Services List
- Z. Assessment Price Schedule

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident Yvonne (Bonnie) C. Pruett.

Community Carolina House - Hilton Head
Address 35 Beach City Rd.
Hilton Head, SC 29926

Suite # 312 # 415

Move-In Fee (Prior to Move-in) \$ waived 6-1-2009. CB. X 5/11/09

Basic Services

Basic Service Rate \$ 2500 (per ps) \$3100 - Private

♦ Accommodations - You are entitled to the use of the suite described above and to the use of the Company's personal property located in the suite. You are also entitled to use and enjoy with a own furnish the number hazard or p

Base
rent.

♦ Daily Meal
a day.

♦ Utility Ser
charges are
included in

♦ Weekly H

♦ Weekly L
your bed li

♦ Life Enric
recreation

♦ Staffing 2
days a we

3 year fixed
rate at
\$3100 (per ps)
Sum must sign

COZAAR
(LOSARTAN POTASSIUM
TABLETS)

HYZAAR
(LOSARTAN POTASSIUM-
HYDROCHLOROTHIAZIDE TABLETS)

Please read accompanying Prescribing Information, including Boxed Warning on use in pregnancy, at each of use.
COZAAR and HYZAAR are registered trademarks of E.I. du Pont de Nemours and Company, Wilmington, Delaware, USA

www.COZAAR.com

0076930-11-COZ

SC- Carolina House of Hilton Head

17 11 2009

Carolina House of Hilton Head

Jun 3 2011 11:54PM

RECORD P. 000270

- ♦ Transportation – The Company will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by the Company at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

The Company will provide thirty (30) days written notice of any change in Basic Services.

Personal Service Plan

Personal Service Plan Rate

\$ 372⁰⁰

The Company will make available, at an additional cost, a Personal Service Plan. The Personal Service Plan is designed to provide you greater personal services than those provided under the Basic Services. The Company will use a personal service assessment to determine the personal services you require prior to moving in and periodically throughout your residency. The results of the assessments and the cost of providing the additional personal services will be shared with you and your Responsible Party. All third party providers (including, but not limited to, third party health care and medical providers) who enter residence must sign in with the Executive Director or supervisor on duty and agree to comply with the Company's policies.

MONTHLY SERVICE RATE

(Add Basic Service Rate and Personal Service Plan)

Available Select Services

6-1-2009

\$ 3472⁰⁰

From time to time, the Company may make select services available to you at your request. When available, such additional services may include guest meals, transportation, transportation escort services, enhanced cable television, special events, or special programs. These additional choices are not included in the Basic Service Rate. Please contact your Executive Director for a current fee schedule.

I agree to the above Schedule of Services and Rates effective Mar 31 2009, and I understand and agree that the Company has a right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

For the Company

Title

Date

Resident

Date

Responsible Party

Date

EXHIBIT B
RESPONSIBLE PARTY AGREEMENT

Kronne C. Pruett ("Resident"); Samuel H. Pruett
("Responsible Party") and Southern Assisted Living, Inc., d/b/a Carolina House of Hilton
Head ton (herein after the "Company"), hereby agree as follows:

WHEREAS, the Resident desires to live in the suite identified in the attached
Residency Agreement; and

WHEREAS, the Company is willing to enter into the Residency Agreement if
Resident identifies an individual who is willing to provide certain assistance to or on behalf of
Resident in the event that such assistance is necessary, and who is willing to pay Resident's
financial obligations to the Company under the Residency Agreement in the event that
Resident does not make payments when due; and

WHEREAS, Responsible Party agrees to provide such assistance and to pay such
obligations, if and as necessary.

IN CONSIDERATION of the foregoing, the Parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such
assistance, and upon the request of the Company, Responsible Party will assist Resident or
legally responsible person, as necessary by:

- (a) Participating with the Company staff in evaluating Resident's needs and in
planning and implementing an appropriate plan for Resident's care;
- (b) Maintaining Resident's welfare and fulfilling Resident's obligations under the
Residency Agreement;
- (c) Relocating Resident following termination;
- (d) Transferring Resident to a hospital, nursing home, or other facility in the
event that Resident requires care the Company does not offer;
- (e) Removing Resident's personal property from suite when Resident leaves;
- (f) Making necessary arrangements for funeral services and burial in the event of
death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to the
Company under the Residency Agreement, Responsible Party agrees to pay the Company
such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. Responsible Party acknowledges that he or she has received and has reviewed a copy of the Residency Agreement, and has had an opportunity to ask any questions Responsible Party may have.

BY THEIR SIGNATURES, the parties or their representatives have executed this

Agreement to be effective as of Mar 31, 2009.

<u>Khmede I. Nany</u>	<u>Es</u>	<u>3/31/09</u>
For the Company	Title	Date
<u>Jenn Pruitt</u>	<u>314 80 8496</u>	<u>3/31/09</u>
Resident		Date
Responsible Party	Social Security No.	DL No. Date

SEND NOTICES TO RESPONSIBLE PARTY AT:

Address: 9 N. Calabogue Cay Rd, Hilton Head, SC 29928
Phone No.: 843 363-6664

**EXHIBIT C
PET ADDENDUM**

The Company consents to the Resident keeping in the suite the household Pet described as follows:

<u>Half Shitzu / Half Boodle</u>	Kind and breed
<u>Maggie</u>	Name
<u>Gray</u>	Color
<u>12 lbs.</u>	Weight
<u>13 yrs.</u>	Age

I. RESIDENT RESPONSIBILITIES. The Resident will keep the Pet in the suite except when walking the Pet, if applicable, or transporting it to and from the suite. The Resident will not allow the Pet in lobbies or in common residential areas, and will transport the Pet to and from the suite only by side entrances of the building, when available and/or feasible. The Resident will walk and curb the Pet only in areas designated by the Company and will be responsible for cleaning up after the Pet. When the Pet is not in the suite, the Resident will keep it on a leash no longer than five (5) feet or in a cage or other appropriate closed and ventilated container, and in the control of the Resident. If the Pet is a bird, the Resident will keep it caged both in and out of the suite. If the Pet is a dog or cat, the Resident will ensure that it wears a collar with appropriate identification (including the Resident's telephone number) at all times that it is out of the suite.

The Resident will comply with all vaccination and licensing requirements applicable to the Pet, showing proof of this upon request, and will comply with appropriate standards of care, treatment, and grooming. In all circumstances, the Resident is responsible for the health, welfare, and proper care of the Pet. The Resident will ensure that the Pet does not disturb the right of other residents to the peaceful enjoyment of their suites and of the common areas. The Resident will not leave the Pet unattended when the Pet is not in the suite.

The Company, in its discretion, may assist the Resident in caring for the Pet as part of the Resident's Personal Service Plan. Charges and payment for such services will be governed by the terms of the Residency Agreement.

The Resident will be liable for any personal injury or property damage caused by the Pet that is suffered by the Company, its employees or agents, other residents, guests, or invitees. The Resident and/or Responsible Party agree to purchase renter's insurance in the amount of \$100,000, which specifically covers any personal injury or property damage caused by the Pet. The Resident shall provide Community with proof of insurance coverage.

II. TERM & TERMINATION. This Addendum will continue until the Residency Agreement between the Resident and the Company is terminated, unless either party terminates this Addendum for any reason by giving fourteen (14) days prior written notice to

the other party. The Company may terminate this Addendum upon twenty-four (24) hours notice in the event the Resident breaches any of the Resident's obligations under this Addendum. In the event that the Pet is left unattended for more than twenty-four (24) hours, or if the Company determines that the Resident, for any reason, is unable to care for the Pet, the Company reserves the right to arrange for the Pet to be delivered to:

Sponsor: Sam H Pruett
Address: 9 North Calibogue, Ray Rd, Ht. 29928.
Phone: 843-363-1664

Or to such other individual or agency as the Company determines to be appropriate. The Resident will pay all costs of delivery, feeding, care, treatment, and housing of the Pet. The Resident acknowledges that the Resident has no right to keep a pet, except to the extent expressly permitted by this Addendum. The Company reserves the right to withdraw its consent to the Resident keeping the Pet at any time by terminating this Addendum, as permitted above.

BY THEIR SIGNATURES, the parties executed the Addendum to be effective Mar 31 2009

Kimberly M. May, Esq. 3/31/09
For the Company Title Date

Sam Pruett 3/31/09
Resident Date
Responsible Party Date

4/8/2009 On hold (RM)

EXHIBIT D
ADDITIONAL RESIDENT FEE

When two residents occupy a single occupancy suite, the Company charges a single occupancy Basic Service Rate plus an additional resident fee. Each resident in the suite is responsible for paying one-half of the total of the single occupancy Basic Service Rate plus the additional resident fee, entitling each resident to receive the Basic Services described in Section I of the Residency Agreement. Each resident will also be responsible for the cost of his or her Personal Service Plan.

In the event that the Agreement of one resident is terminated for any reason, effective upon such termination, the remaining resident's Basic Service Rate will automatically be adjusted to reflect the Basic Service Rate for a single occupancy suite for the remainder of the month in which the adjustment is made and for each month thereafter.

Single Occupancy Basic Service Rate \$ _____

Additional Resident Fee \$ _____

Total Charge for Suite \$ _____

BASIC SERVICE RATE FOR EACH RESIDENT \$ _____
(1/2 of the total charge for suite)

Resident Date

Responsible Party Date

EXHIBIT C
PHARMACY SERVICES AGREEMENT

The Company works closely with pharmacy providers to make certain that the needs of our residents are met. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions when appropriate
- Providing competitive pricing for comparable packaging and offering generic substitutions when appropriate
- Alerting staff and physicians when there is a duplication of prescriptions
- Individual wellness recommendations
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets the Community's standards for safety

Our "preferred provider" for pharmacy services at the Community Carolina House HH is Long Term Care Pharmacy. Our staff works closely with this pharmacy to meet the needs of our residents. They will review all current medications before your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Company's "preferred provider", they will be required to meet the Company's standards regarding medication management.

Please review and sign the following statement acknowledging you understand the Company's expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Company's preferred provider, I will be charged a fee, which is set forth on Exhibit X, the Select Services List.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Regional Director of Operations.

I understand there is a service fee of \$ 50.00 a month associated with a packaging exemption due to the additional administrative oversight required.

If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.

X SH
(Please initial as having read and understood the above provision.)

If I do not use the Company's preferred provider, I also understand that I will have the responsibility for reordering medications but in the event the medications are not delivered within two days prior to the depletion of my medication stock, the Company will reorder my medications with the 'Preferred Pharmacy' to insure no disruption takes place. I agree to pay for the medications and any associated service charges.

The fees associated with reordering medications from the "Preferred Pharmacy" are determined by the "Preferred Pharmacy", and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Jane Pruett
Resident Signature

3/30/07
Date

[Signature]
Legal Representative Signature

Date

ADDENDUM TO THE RESIDENCY AGREEMENT

BASE RATE FREEZE

I understand and acknowledge that Carolina House of Hilton Head (the "Community") agrees to issue me a Base Rate Freeze in the amount of \$3100 per month, effective August 13, 2009. This rate freeze will be in effect for three years, ending August 13, 2012.

I understand and acknowledge that this Base Rate Freeze is not automatically transferable to another Brookdale Senior Living Community, meaning if I move to another Brookdale Community, this Base Rate Freeze will not transfer unless the Regional Director responsible for such Brookdale Community approves the transfer. In addition, this Base Rate Freeze is not transferable to another individual.

If I choose to relocate to a different apartment style within the community or choose to have a roommate at any point during my residency with the Community, my Basic Service Rate will be adjusted to be equitable with the current market rate for that apartment style or living option at the time of relocation. I further understand and acknowledge that my Personal Service Rate and other charges may increase over time, consistent with the terms of the Residency Agreement.

It is further explicitly understood that the terms of Section IV of the Residency Agreement regarding termination of the contract are not affected by the Basic Rate Freeze and remain in full force and effect.

Shirley M. Maurer
For the Community

Ex
Title

8/19/2009
Date

Vonno Pruitt
Resident

John Pruitt
Responsible Party

08/19/09
Date

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

Case No. 2011-CP-07-1700

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, ("Affiant"), who having been duly sworn, deposes and states:

1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.
2. I am Counsel and Vice-President of Legal for Brookdale Senior Living, a Wisconsin Corporation, and the Carolina House of Hilton Head, South Carolina.
3. Carolina House of Hilton receives goods, services, and supplies from out-of-state vendors, including but not limited to, One Source, a vendor of supplies from Wisconsin; Sysco, a corporation with its corporate office locate in Houston Texas; and a vendor of carpeting from North Carolina.

4. Carolina House of Hilton Head orders supplies from out-of-state vendors by mail, electronic mail, telephone and facsimile transmissions. Those supplies are then shipped over various state lines to Carolina House of Hilton Head.

5. Carolina House of Hilton Head receives and admits out-of-state residents as residents at Carolina House of Hilton Head. Currently, there are residents from Connecticut, Florida and New York.

FURTHER this Affiant sayeth naught.

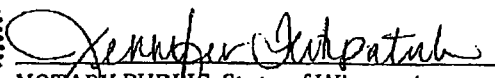

TIMOTHY J. CESAR, ESQUIRE

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced _____ as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 2 day of June, 2011.




NOTARY PUBLIC, State of Wisconsin

My Commission Expires: 10/16/11

EXHIBIT C



Elaine F. Marshall
Secretary

North Carolina

**DEPARTMENT OF THE
SECRETARY OF STATE**

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

Date: 6/22/2011

Click here to:

[View Document Filings](#) | [Sign Up for E-Notifications](#) |

[Pre-populated Annual Report Fillable PDF Form](#) | [File an Annual Report](#) |

Corporation Names

Name	Name Type
NC SOUTHERN ASSISTED LIVING, LLC	LEGAL
NC SOUTHERN ASSISTED LIVING, INC.	PREV LEGAL

Limited Liability Company Information

SOSID:	0369303
Status:	Current-Active
Effective Date:	1/1/2011
Dissolution Date:	
Annual Report Due Date:	4/15/2012
Citizenship:	DOMESTIC
State of Inc.:	NC
Duration:	PERPETUAL
Annual Report Status:	CURRENT

Registered Agent

Agent Name:	CT CORPORATION SYSTEM
Office Address:	150 FAYETTEVILLE ST., BOX 1011 RALEIGH NC 27601
Mailing Address:	150 FAYETTEVILLE ST., BOX 1011 RALEIGH NC 27601

Principal Office

Office Address:	111 WESTWOOD PLACE, SUITE 400 BRENTWOOD TN 37027
Mailing Address:	111 WESTWOOD PLACE, SUITE 400 BRENTWOOD TN 37027

Officers

This website is provided to the public as a part of the Secretary of State Knowledge Base (SOSKB) system. Version: 287



Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

Page 1

C

Only the Westlaw citation is currently available.

United States District Court,
D. Kansas.

Mary E. OESTERLE, by and through Sharon
Stoner, Administrator of the estate of Mary E. Oes-
terle, Plaintiff,

v.

ATRIA MANAGEMENT CO., LLC and A98 Seni-
or, LLC, d/b/a Atria Hearthstone East, Defendants.

No. 09-4010-JAR.
July 14, 2009.

West KeySummaryAlternative Dispute Resolu-
tion 25T 134(6)

25T Alternative Dispute Resolution

25TII Arbitration

25TII(B) Agreements to Arbitrate

25Tk131 Requisites and Validity

25Tk134 Validity

25Tk134(6) k. Unconscionability.

Most Cited Cases

An arbitration provision of a nursing home contract which was not explained to a new patient was not unconscionable. The patient allegedly felt pressured and hurried to sign the contract and the employees who had the authority to explain the arbitration provision to the patient showed a general lack of knowledge of its actual effect. The provision was not unconscionable because the patient did not ask for an explanation of the provision before she signed the contract and the circumstances which caused her to feel hurried and pressure were not created by the nursing home but by circumstances under her control.

Margaret A. Farley, Margeret Farley, Attorney at Law, Lawrence, KS, for Plaintiff.

Arthur A. Glassman, Shaye L. Downing, Sloan, Eisenbarth, Glassman, Mcentire & Jarboe, L.L.C., Topeka, KS, for Defendants.

MEMORANDUM AND ORDER

JULIE A. ROBINSON, District Judge.

*1 Before the Court is defendants Atria Management Company, LLC's and A98 Senior, LLC's, d/b/a Atria Hearthstone East's (collectively "Atria"), Motion to Dismiss or Alternatively, to Order this Matter to Arbitration (Doc. 4). Plaintiff Mary E. Oesterle, by and through Sharon Stoner, filed a Response on February 23, 2009. The Court ordered the parties to provide additional briefing after limited discovery. Plaintiff filed a Supplemental Response (Doc. 23) on May 15, 2009, and defendants have failed to respond in the time allotted. ^{FN1} The Court has reviewed the briefs and for the reasons provided in further detail below, Atria's Motion to Dismiss or Alternatively, to Order this Matter to Arbitration (Doc. 4) is granted in part and denied in part.

FN1. See D. Kan. R. 6.1(d).

I. Relevant Facts

Atria is a registered Kentucky corporation and plaintiff was a resident of Kansas. Sharon Stoner, the daughter of the deceased plaintiff and administrator of plaintiff's estate, executed the agreement upon which defendants rely. The events leading to the execution of that contract are as follows. Stoner flew to California to escort plaintiff back to Kansas so that she could reside at defendants' facility. Although plaintiff anticipated arriving in Kansas in January 2004, she and her daughter arrived in October 2003. Stoner made arrangements with defendants for her mother over the phone. On October 10, 2003, plaintiff and Stoner went to Hearthstone East to admit plaintiff. Upon arrival, Stoner was given a stack of admission papers "on a take it or leave it basis" to sign, which she did. Indeed, even if Stoner wanted to negotiate the provisions of the agreement, the staff in charge of explaining the terms did not have the authority to amend the agreement. During the initial meeting no one from the defendants' facility pointed out, explained, or reviewed the meaning of the arbitration provision.

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

That clause provides:

By signing this Agreement, both of us hereby agree that all claims, disputes, demands, or controversies arising out of or in any way relating to this Agreement or its breach or related to any act or omission committed by us or any of our employees in connection with any services that we may provide you while a resident of the Community will be submitted to binding arbitration in the state where the Community is located. Such Arbitration will be conducted in accordance with the rules of the American Arbitration

Association, applying the laws of the state where the Community is located. Your agreement to arbitrate disputes arising under this Agreement or disputes arising out of or related to any services that we may provide you while a resident at the Community applies to any claim, dispute, demand or controversy, whether against the Community, its owners, operators, managers, employees, agents, officers and directors or affiliates or subsidiaries, and binds you, your legal representative, your responsible person(s), your spouse, estate and your heirs. Any award rendered by the arbitrator shall be final and binding upon each of the parties, and judgment thereon may be entered in any court having jurisdiction over the parties.

*2 The costs of any Arbitration proceeding shall be shared equally by both of us. All current damages arising out of such claims or controversies shall also be incorporated into the initial filing or amendment thereto.

On both signature pages of the Residency Agreement, just above the signature lines, the following provision is written.

You understand and agree that as a result of signing this Agreement, you agree to arbitrate any claims, disputes, demands, or controversies that you may have with the Community and that you are waiving your right to bring any such claim, dispute, demand or controversy in any fed-

eral, state or local court before any judge or jury.

When Stoner signed the papers, she believed that the arbitration provision meant that she was obligated to negotiate with the defendants prior to bringing any action in court. Indeed, that is essentially the same meaning applied to the clause by those employees of defendants who were in charge of explaining the provisions to prospective residents. The Executive Director saddled with explaining and answering any questions about the agreement thought that the arbitration provision meant that "if there was an issue between the resident and the community, that we would go to an arbitration process, if there's a grievance or an appeal that we would go to the arbitration process and at that time with arbitration the results of that would be a binding arbitration and it would be according to our state." The Community Business Director thought the arbitration provision meant "that we would go through arbitration if there's any disputes or grievances and it would be handled in arbitration and it's set to be what is decided by arbitration would be final." When asked if the signor of the agreement had the right to go to court, the Community Business Director responded that she did not know. Finally, the Regional Vice President of Operations, with authority over Texas and Kansas, thought that the arbitration provision required mediation until legal action in court was necessary. He described the provision as requiring the parties to first mediate any action.

Plaintiff, through her estate, filed this action claiming that Atria was negligent in the care it provided her while she was a resident of Atria, and that Atria violated the Kansas Consumer Protection Act. Plaintiff alleges that defendants failed to provide reasonable and adequate care as required under common law and its contractual obligations. As a result of defendants' negligence, plaintiff died on November 19, 2007.

Based on the foregoing provisions, defendants filed their motion to dismiss for lack of jurisdiction,

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

arguing that the Court should dismiss the action or order that the parties to proceed to arbitration.

II. Discussion

Atria moves the Court to dismiss the action for lack of jurisdiction or, alternatively, to compel arbitration under the Federal Arbitration Act ("FAA"). State law contract principles control when determining the enforceability of an arbitration agreement.^{FN2} When evaluating arbitration agreements under the FAA, many of the Circuit Courts of Appeal, including the Tenth Circuit, have applied a standard similar to the summary judgment standard.^{FN3} That standard provides that the moving party must first establish that there is a valid arbitration agreement.^{FN4} Once the moving party meets that burden, the burden shifts to the opposing party to show a genuine issue of fact as to the validity of the arbitration agreement.^{FN5}

FN2. *Hardin v. First Cash Fin. Servs., Inc.*, 465 F.3d 470, 475 (10th Cir.2006).

FN3. *Id.*; see also *Kuhn v. Ameriquest Mortgage Co.*, Case No. 04-2229, 2004 WL 2782568, at * 1 (D.Kan. Dec.1, 2004).

FN4. *Perkins v. Rent-A-Center, Inc.*, Case No. 04-2019, 2004 WL 1047919, at *2 (D.Kan. May, 5, 2004).

FN5. *Id.*; *Hardin*, 465 F.3d at 475.

*3 Plaintiff opposes arbitration, urging that: (A) the arbitration agreement is unconscionable, against public policy, and an adhesion contract; (B) there was no meeting of the minds between the parties; (C) the FAA is inapplicable to the current action because the contract does not involve interstate commerce; and (D) the scope of the arbitration provision does not encompass plaintiff's claims.

A. Unconscionability

"Under Kansas law, 'a party who freely enters a contract is bound by it even though it was unwise or disadvantageous to the party, so long as the contract is not unconscionable.' " ^{FN6} "Mere inequal-

ity of bargaining power is insufficient to render a contract unconscionable." ^{FN7} To show unconscionability, the party attacking the contract has the burden to establish that there were additional deceptive bargaining practices in the execution of the agreement.^{FN8}

FN6. *In re Universal Serv. Fund Tel. Billing Practices Litig.*, 300 F.Supp.2d 1107, 1125 (D.Kan.2003) (quoting *Moler v. Melzer*, 24 Kan.App.2d 76, 942 P.2d 643, 645 (1997)).

FN7. *Id.* (citing *Aves ex rel. Aves v. Shah*, 258 Kan. 506, 906 P.2d 642, 652 (Kan.1995)).

FN8. *Id.* (citing *Adams v. John Deere Co.*, 13 Kan.App.2d 489, 774 P.2d 355, 357 (Kan.Ct.App.1989)).

In *Willie v. Southwestern Bell Telephone Co.*, ^{FN9} the Kansas Supreme Court provided a list of factors to consider in determining whether a contract provision is unconscionable. That list includes:

FN9. 219 Kan. 755, 549 P.2d 903 (Kan.1976).

(1) The use of printed form or boilerplate contracts drawn skillfully by the party in the strongest economic position, which establish industry wide standards offered on a take it or leave it basis to the party in a weaker economic position ...; (2) a significant cost-price disparity or excessive price; (3) a denial of basic rights and remedies to a buyer of consumer goods ...; (4) the inclusion of penalty clauses; (5) the circumstances surrounding the execution of the contract, including its commercial setting, its purpose and actual effect ...; (6) the hiding of clauses which are disadvantageous to one party in a mass of fine print trivia or in places which are inconspicuous to the party signing the contract ...; (7) phrasing clauses in language that is incomprehensible to a

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

layman or that divert his attention from the problems raised by them or the rights given up through them; (8) an overall imbalance in the obligations and rights imposed by the bargain; (9) exploitation of the underprivileged, unsophisticated, uneducated and the illiterate ...; and (10) inequality of bargaining or economic power.^{FN10}

FN10. *Santa Rosa KM Assocs., Ltd. v. Principal Life Ins. Co.*, 206 P.3d 40, 50 (Kan.Ct.App.2009) (citing *Willie*, 549 P.2d at 906-07).

In addition, the court must find that the contract provision is so outrageous and unfair in its wording or its allocation that it shocks the conscience.^{FN11} Any finding of unconscionability must be accompanied by some element of deceptive bargaining conduct as well as unequal bargaining power.^{FN12}

FN11. *Adams*, 774 P.2d at 357.

FN12. *Id.* at 359.

Plaintiff contends that the arbitration clause was unconscionable because it was boilerplate language skillfully drawn by defendants' attorneys; the arbitration provision denies plaintiff the basic right to access the courts; the arbitration agreement penalizes the plaintiff by requiring that each party pay half of the arbitration fee; the circumstances surrounding the execution of the agreement pressured plaintiff into signing the agreement; the arbitration language is incomprehensible to the layman; and there was inequality of bargaining power between the parties.

*4 Each claim that a contract or a clause is unconscionable rests on the facts of that particular case.^{FN13} In this case, plaintiff's arguments appear to suggest that the arbitration clause is procedurally unconscionable. Generally, a contract is procedurally unconscionable when a party enters the contract lacking knowledge or lacking voluntariness.^{FN14} Plaintiff's first argument that the arbitration

clause is a skillfully drawn boilerplate provision is unfounded. The agreement is laid out in twelve pages, four pages of which are signature or attachment pages. Each section of the contract is labeled in capitalized numbered headings. The heading under which the arbitration provision lies is labeled "7. MISCELLANEOUS PROVISIONS." Under that section, the arbitration provision is found at sub-section "j." The arbitration provision is written in the same font and size as every other provision in the agreement. It is not hidden or lost to the reader.

FN13. *John Deere Leasing Co. v. Blubaugh*, 636 F.Supp. 1569, 1573 (D.Kan.1986).

FN14. *Id.*

Plaintiff argues that the language of the arbitration clause is boilerplate because it refers to the state where the Community is located rather than to Kansas. That, however, does not aid plaintiff in showing that the clause is unconscionable because there is no dispute that the agreement was a form contract drafted for the purposes of being valid in every state in which defendant operated. Even if the Court were to view that the arbitration clause was written in the contract under a list of boilerplate provisions, this factor alone would not be enough to find the clause unconscionable.^{FN15}

FN15. *Id.* (noting that the cases suggest that there must be additional conduct such as deceptive bargaining practices).

Next, plaintiff argues that the Arbitration clause denies plaintiff the right to access the courts, an essential remedy of a consumer. That is correct. Again, however, that is the purpose of the arbitration clause. That alone is not enough to find the clause unconscionable.^{FN16} In addition, plaintiff argues, without citation, that the arbitration provision places a penalty on plaintiff because it requires her to pay half the arbitration fees. A party seeking to invalidate an arbitration provision based on prohibitive cost bears the burden to show that arbitra-

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

tion would be cost prohibitive.^{FN17} Plaintiff must provide evidence of costs associated with arbitration that are so high as to prevent access to the forum and the likelihood of incurring those costs.^{FN18} In this case, the Court finds the fee-splitting aspect of the Arbitration clause valid.

FN16. *Id.*

FN17. *Green Tree Fin., Corp.-Ala. v. Randolph*, 531 U.S. 79, 92, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000).

FN18. *Id.*

In *Shankle v. B-G Maintenance Management of Colorado, Inc.*,^{FN19} the Tenth Circuit found a fee-splitting provision unenforceable because it worked as a disincentive to employees who wanted to bring a claim.^{FN20} In that case, the Court determined that fee-splitting arbitration was unenforceable because plaintiff, who was a janitor and signed the arbitration provision as a basis for employment, could not reasonably afford the fee-splitting of any claim that went to arbitration.^{FN21} The arbitration provision in that case was supposed to serve as an optional route to vindicate the statutory rights provided plaintiff as an employee.^{FN22} Where the arbitration provision did not aid in vindication, but actually prohibited, the forum was not adequate for resolution of plaintiff's rights.^{FN23}

FN19. 163 F.3d 1230 (10th Cir.1999).

FN20. *Id.* at 1234.

FN21. *Id.* at 1235.

FN22. *Id.* at 1234.

FN23. *Id.*

*5 In this case, however, the contract is not one for employment. And although it is a contract on a take it or leave it basis, plaintiff could have left it. Moreover, the Court in *Shankle* found it important that plaintiff was seeking to enforce a statutory

claim of employment discrimination. But here, plaintiff is bringing a tort claim. Plaintiff is not enforcing any statutory right for which the arbitration clause would serve as a disincentive or operate to stifle public policy. In that sense, the fee-splitting provision is enforceable. Furthermore, plaintiff has not provided any evidence of the costs associated with arbitration. Without any evidence before the Court, it cannot find that the cost is prohibitive.

Finally, plaintiff argues that there was an inequality of bargaining power and that the circumstances surrounded the execution of the contract show that the arbitration provision is unconscionable. Plaintiff argues that because she was forced by the circumstances to seek a place of resident for her mother sooner than anticipated and because she had to sign the papers the day she arrived at the care facility, there was pressure and a "hurried" nature to the execution of the agreement. Furthermore, she argues because no one explained the provisions to her and because it was later determined that the parties who had the authority to explain the arbitration provision showed a general lack of knowledge of its actual effect, the provision should be deemed unconscionable.

As a general rule, a party signing a contract is required to read the agreement.^{FN24} If an agreement is signed, the Court does not second guess the provisions where a party failed to read, understand, or ask the appropriate questions.^{FN25} In this case, plaintiff wants the Court to second guess the provisions because she was "hurried" into signing the provisions. But, the Court notes that the hurried nature of the proceedings leading to the execution of the contract was not created by the defendant but by circumstances under the control of plaintiff. In fact, plaintiff states that she felt hurried because she had to complete the arrangements for home care sooner than anticipated and because her mother recently arrived from California. Moreover, plaintiff did not ask for clarification of the arbitration provision or the consequences of signing the contract and agreeing to the arbitration provision. And while

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

there appears to be inequality of bargaining power, that alone, based on the circumstances of this case, is not enough to invalidate the arbitration provision.

FN24. *Albers v. Nelson*, 248 Kan. 575, 809 P.2d 1194, 1197 (Kan.1991).

FN25. *Id.*

B. Meeting of the Minds

For there to be a binding contract, there must be a meeting of the minds on all the essential terms of the agreement.^{FN26} “To constitute a meeting of the minds there must be a fair understanding between the parties which normally accompanies mutual consent and the evidence must show with reasonable definiteness that the minds of the parties met upon the same matter and agreed upon the terms of the contract.” ^{FN27} In *Navair v. IFR Americas, Inc.*,^{FN28} the Tenth Circuit stated:

FN26. *Steele v. Harrison*, 220 Kan. 422, 552 P.2d 957, 962 (Kan.1976).

FN27. *Price v. Grimes*, 234 Kan. 898, 677 P.2d 969, 974 (Kan.1984) (quoting *Steele*, 552 P.2d at 962).

FN28. 519 F.3d 1131 (10th Cir.2008).

*6 The element of agreement is sometimes referred to as a “meeting of the minds.” The parties to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. The phrase used here, therefore, is “manifestation of mutual assent.” ^{FN29}

FN29. *Id.* at 1139 (quoting RICHARD A. LORD, WILLISTON ON CONTRACTS § 4:1 (4th ed.2007)).

The court then went on to provide that “[t]ypically, judicial opinions stating the meeting-of-the-minds principle then point to objective communications and conduct in resolving the case.”

FN30 All contracting parties have a duty to learn the contents of a written contract before signing it, “and such duty includes reading the contract and obtaining an explanation of its terms.” ^{FN31} “[A] party who signs a written contract is bound by its provisions” absent fraud, undue influence, or mutual mistake.^{FN32}

FN30. *Id.*

FN31. *Albers v. Nelson*, 248 Kan. 575, 809 P.2d 1194, 1197 (Kan.1991) (citing *Sutherland v. Sutherland*, 187 Kan. 599, 358 P.2d 776, 785 (1961)).

FN32. *Id.* (citations omitted).

Plaintiff argues that there was no meeting of the minds when the parties executed the agreement because plaintiff did not know that the arbitration clause obligated her to arbitrate all claims and forego her access to the courts and defendants’ representatives also did not believe that the arbitration clause required binding and final arbitration. However, when determining whether there was a meeting of the minds, the courts generally look to the agreement; a signed agreement is usually evidence that the parties met on the terms on the agreement.^{FN33} Here, there is a signed agreement by both parties. Moreover, plaintiff’s subjective thoughts of what the provisions meant did not come into play because they were never revealed to defendants at the time of execution.^{FN34} Accordingly, the Court finds that the parties entered into a contract and had a meeting of minds on the terms of that contract.

FN33. *Id.*

FN34. *Id.* at 1198. (Citing *Triple A Contractors, Inc. v. Rural Water Dist. No. 4*, 226 Kan. 626, 603 P.2d 184, 186 (Kan.1979) (noting that as general rule, “in the absence of fraud, a unilateral mistake will not excuse nonperformance of a contract.”)).

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

D. Interstate Commerce

Plaintiff argues that the FAA is inapplicable because defendants are not engaged in interstate commerce; instead, the nursing home is merely an intrastate operation. As noted above, defendants have not replied to plaintiff's supplemental response and accordingly, have not addressed this argument. The FAA applies to all arbitration agreements involving interstate commerce.^{FN35} The requirement that the underline transaction must involve interstate commerce " 'is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause.' " ^{FN36} According to the Supreme Court, the FAA reaches physical shipment of goods and any contract relating to interstate commerce.^{FN37} The term "involving" has been understood to mean "affecting" interstate commerce, giving the FAA a wide web based on Congress's Commerce power.^{FN38} When determining whether the arbitration provision falls under the FAA, the Court must determine whether the transaction at issue in fact involves interstate commerce.^{FN39}

FN35. *Comanchie Indian Tribe of Okla. v. 49, L.L.C.*, 391 F.3d 1129, 1131 (10th Cir.2004).

FN36. *Id.* at 1132 (quoting *Foster v. C.F. Turley, Jr.*, 808 F.2d 38, 40 (10th Cir.1986)).

FN37. *Id.* (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 401 n. 7, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967)).

FN38. *Allied-Bruce Terminex Companies, Inc. v. Dobson*, 513 U.S. 265, 281, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995).

FN39. *Id.*

Plaintiff cites to *Bruner v. Timberlane Man or Limited Partnership*^{FN40} as support for its proposition that the transaction at issue does not involve

interstate commerce. In *Bruner*, the Oklahoma Supreme Court decided that the contract between a resident and a nursing home did not involve interstate commerce. Even though the facility received Medicaid and Medicare benefits from the federal government pursuant to Congress's spending power, used out-of-state vendors, used instruments of interstate commerce, and complied with federal regulations, it did not engage interstate commerce.^{FN41} The Court reasoned that the Medicare funds did not have a substantial effect on interstate commerce and neither did the distribution of Medicaid funds from a state agency.^{FN42}

FN40. 155 P.3d 16 (Okla.2006).

FN41. *Id.* at 31.

FN42. *Id.*

*7 In *Bruner*, the parties were both from Oklahoma.^{FN43} In this case, plaintiff was a resident of California prior to entering the care of defendants in Kansas, and defendants are a Kentucky corporation. And although diversity alone will not meet the test,^{FN44} the Court believes that the instant contract involves interstate commerce. First, Plaintiff claims that other than the defendants being a registered corporation in Kentucky, there is less evidence of involvement in interstate commerce than in *Bruner*. But that is belied by the fact that plaintiff moved from California to reside in the facilities in Kansas. And second, unlike *Bruner*, fees paid to defendant are transactions in interstate commerce where defendant is a Kentucky corporation and plaintiff was a resident of Kansas. Even assuming that the fee transactions might have taken place entirely in Kansas, the reach of the FAA is not defeated by the fact that, taken alone, the transaction did not have a substantial effect on interstate commerce.^{FN45}

FN43. *Id.*

FN44. *Biomat Inc. v. Sampson*, 28 Kan.App.2d 242, 15 P.3d 846, 849

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

(Kan.Ct.App.2000) (citing *Sigco Sunplant, Inc. v. Harrison*, No. 89-2229-0, 1989 WL 134462 (D. Kan. Oct 18, 1999)).

FN45. *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003) (citations omitted).

"Interstate commerce is involved so long as some part of the transaction has a nexus to it."^{FN46} In this case the nexus is clear. Furthermore, it is obvious that while the facility at issue operated in Topeka, plaintiff's form contract referred to the "laws of the state where the Community is located," leading the to Court believe that the form contract was used in other states. Otherwise, the contract would have referred specifically to "Kansas." Finally, plaintiff asserts as uncontested, facts derived from the deposition of defendants' regional vice president of operations. This vice president has routine oversight of the Texas and Kansas regions. The company is a Kentucky corporation, and it operates in Texas and Kansas. Based on those facts, the Court finds that the contract at issue does involve interstate commerce.

FN46. *Baer v. Terminex Int'l Co.*, 975 F.Supp. 1272, 1278 (D.Kan.1997).

E. Scope of Arbitration Clause

Plaintiff argues that the arbitration clause at issue was not intended to cover "pre-dispute consumer health care liability." Specifically, plaintiff states that because the arbitration provision references the American Arbitration Association ("AAA"), which provides that it will not "accept administration of cases involving individual patients without a *post-dispute* agreement to arbitrate" after January 1, 2003, the arbitration provision is not applicable to the instant claims.^{FN47} According to plaintiff, because the agreement was signed on October 10, 2003, and revolves around a *pre-dispute* arbitration clause, the arbitration provision does not encompass any claim made.

FN47. American Arbitration Association,

Healthcare Policy Statement, available at <http://www.adr.org/sp.asp?id=32192> (hereafter Healthcare Policy Statement).

Federal policy favors arbitration agreements and requires rigorous enforcement of arbitration provisions.^{FN48} The FAA creates a presumption of arbitrability and when faced with issues about the scope of an arbitration provision, courts must resolve any doubt in favor of arbitration.^{FN49} "District courts defer to arbitration 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute ... doubts should be resolved in favor of coverage.'" ^{FN50} "While courts favor arbitration, the parties' intent and the scope of the arbitration clause dictate whether arbitration is appropriate." ^{FN51} It is up to the court to determine whether the clause is broad or narrow.^{FN52}

FN48. *Housh v. Dinovo*, No. 02-2562, 2003 WL 1119526, at *2 (D.Kan. Mar.7, 2003) (citing *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 226, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987)).

FN49. *Housh*, 2003 WL 1119526, at *2 (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-5, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983)).

FN50. *Trezvant v. Weston*, No. 04-1246, 2006 WL 2370121, at *2 (D.Kan.2006) (quoting *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)).

FN51. *Id.* (citing *Armijo v. Prudential Ins. Co. of Am.*, 72 F.3d 793, 797 (10th Cir.1995)).

FN52. *Id.* (citation omitted).

*8 The arbitration clause at issue states that

all claims ... arising out of ... this Agreement ... or

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

omission committed by us or any of our employees in connection with any services that we may provide you while a resident of the Community will be submitted to binding arbitration in the state where the Community is located. Such Arbitration will be conducted in accordance with the rules of the American Arbitration Association, applying the laws of the state where the Community is located.

The language of the provision makes clear that all claims, whether contract or tort, will be submitted to binding arbitration and conducted according to the rules of the AAA. By policy statement, the AAA provides that: "As a result of a review of its caseload in the health care area, the American Arbitration Association has announced that it will no longer accept the administration of cases involving individual patients without a *post-dispute* agreement to arbitrate. In order to provide sufficient notice for an orderly transition, this change will become effective on January 1, 2003."^{FN53}

FN53. Healthcare Policy Statement (emphasis added).

The agreement in this case is dated October 10, 2003, after January 1, 2003. Thus, according to the plaintiff, the parties are not subject to arbitration unless there is a *post-dispute* agreement to arbitrate. In this case there is only a *pre-dispute* agreement to arbitrate. The Court, however, reads the language differently.

The arbitration provision provides that all claims will "be submitted to arbitration in the state where the Community is located." It then goes on to state that any arbitration will be "conducted in accordance with the rules of the [AAA]." What is apparent from the language of the arbitration provision is that the parties intended that Kansas law apply-referring to the law of the Community's location-and that the arbitration be conducted in accord with AAA rules. The obstacle is reconciling the arbitration in accordance with AAA when AAA states that it will not accept arbitration of individual

health care claims where there is no post-dispute agreement to arbitrate.

In a factually similar case, the Supreme Court concluded that even though the arbitration provision provided that New York law would apply, that did not mean that the arbitrators could not award punitive damages.^{FN54} In *Mastrobuono v. Shearson Lehman Hutton, Inc.*, the plaintiffs sued alleging a variety of state and federal law claims.^{FN55} The claims were sent to arbitration based on an arbitration provision that provided that New York law governed and that arbitration would be conducted in accordance with the rules of the National Association of Securities Dealers ("NASD").^{FN56} New York, however, did not permit arbitrators to award punitive damages, but NASD permitted arbitrators to award punitive damages.^{FN57}

FN54. 514 U.S. 52, 64, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995).

FN55. *Id.* at 55.

FN56. *Id.* at 58-59.

FN57. *Id.* at 53, 62.

In reconciling the obvious conflict, the Court, noting the strong federal policy in favor of arbitration, concluded that the arbitrators could award punitive damages.^{FN58} A similar conclusion is warranted here, where the arbitration provision is ambiguous. This conclusion is consistent with the FAA. Plaintiff argues that the AAA rules would preempt an arbitration provision under the FAA. But this conclusion is untenable as the FAA preempts state law. Therefore, finding that the FAA preempts AAA policy is a conclusion this Court can comfortably recognize.^{FN59}

FN58. *Id.* at 62.

FN59. See *Volt Info. Sci., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989) (noting that the FAA

Slip Copy, 2009 WL 2043492 (D.Kan.)
(Cite as: 2009 WL 2043492 (D.Kan.))

preempts state law); *Perry v. Thomas*, 482 U.S. 483, 491, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987) (concluding that the FAA preempts California law).

*9 Guided by the Supreme Court, this Court finds that the appropriate way to construe the arbitration provision is to read it as simply requiring arbitration in accordance with AAA rules and not AAA policy.^{FN60} Thus, the AAA provision covers the rules to abide by when conducting the arbitration, while AAA policy on the types of arbitrable claims is simply just that-AAA's policy.^{FN61} And while plaintiff argues that her reading of the provision is the correct one, " 'such a result would be quite inimical to the FAA's primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms.' " ^{FN62} Indeed, the parties may contractually limit the issues that they will arbitrate and may specify the rules to govern any such arbitration.^{FN63} There is nothing in the FAA that prevents parties from enforcing arbitration provisions under different rules than those in the FAA.^{FN64} Where the parties have decided to arbitrate in accordance with AAA rules, enforcing that decision is certainly consistent with the FAA. ^{FN65}

FN60. "We think the best way to harmonize the choice-of-law provision with the arbitration provision is to read 'the laws of the State of New York' to encompass substantive principles that New York courts would apply, but not to include special rules limiting the authority of arbitrators." *Mastrobuono*, 514 U.S. at 63-4 (quoting the arbitration clause at issue).

FN61. The Court notes that the parties can pursue arbitration based on AAA rules but not administer the arbitration process through AAA. This would also be a consistent reading of the arbitration provision. *See id.*

FN62. *Id.* at 57 (quoting *Mitsubishi Motors*

Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985)).

FN63. *Id.* (citing *Volt Info. Sci., Inc.*, 489 U.S. at 479).

FN64. *Volt Info. Sci., Inc.*, 489 U.S. at 479.

FN65. *Id.*

Accordingly, defendants' motion to compel arbitration is granted and the action will be stayed pending such arbitration.

IT IS THEREFORE ORDERED THAT defendants' Motion to Dismiss or Alternatively, to Order this Matter to Arbitration (Doc. 4) is granted in part and denied in part. The action will be stayed pending arbitration.

IT IS SO ORDERED.

D.Kan.,2009.
Oesterle v. Atria Management Co., LLC
Slip Copy, 2009 WL 2043492 (D.Kan.)

END OF DOCUMENT

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

Case No. 2011-CP-07-1700

vs.

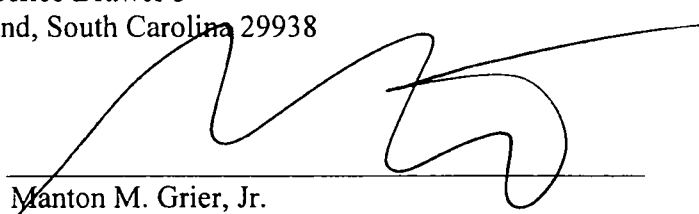
CERTIFICATE OF SERVICE

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King.

Defendants.

This is to certify that a copy of the foregoing MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND COMPEL ARBITRATION has been served upon the following
counsel of record by emailing a copy of the same, addressed to the following as shown below
this _____ day of June, 2011.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938



Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,

Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,

Defendants.

Case No. 2011-CP-078700

MOTION TO RECONSIDER

11 SEP -6 PM 4:26
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Defendants Brookdale Senior Living Inc. and Southern Assisted Living, LLC ("Defendants") move this Court to reconsider its Order Denying Defendants Motion to Dismiss and Compel Arbitration, received by Defendants' counsel on August 23, 2011.

The grounds for this motion are as follows:

The FAA governs the Residency Agreement

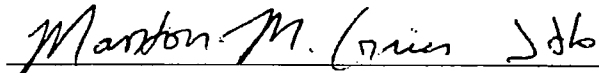
1. The Court failed to apply the Federal Arbitration Act ("FAA") to a Residency Agreement that involves interstate commerce. (The Residency Agreement is attached as Exhibit A to Defendants' Original Motion). The United States Supreme Court expanded the scope of the FAA in Allied-Bruce Terminix Cos. Inc. v. Dobson, 513 U.S. 265, 269 (1995). There is no requirement that interstate commerce be "substantially involved," or that the parties contemplate an interstate transaction at the time they entered the agreement. To satisfy the FAA, an agreement must simply "involve commerce." The courts have held that this is a relatively easy threshold to meet.

2. In this case, the Residency Agreement involves interstate commerce because it specifies that residents are to receive meals from the facility, and the food to prepare those meals comes from a Texas corporation. (**Exhibit A**, ¶ 4, Aff. of Timothy J. Cesar). Further, medical supplies administered to the residents come from a Wisconsin Corporation. *Id.* Finally, the payments made on Ms. Pruett's behalf are addressed to Brookdale Senior Living Inc. ("Brookdale"), a Delaware corporation, and sent to a Wells Fargo bank in Texas, where they ultimately end up in Brookdale's corporate offices in Milwaukee, Wisconsin. *Id.*

The Arbitration Agreement is Not Unconscionable and, In the Alternative, is Severable

3. The arbitration agreement found in the Residency Agreement is not unconscionable. The contract was entered into knowingly by Ms. Pruett, with full knowledge that she and her responsible party should consult with an attorney before signing. Considering the time and expenses saved through arbitration, the terms are not unconscionable. In the alternative, the arbitration stands alone and is severable. The portions of the Residency Agreement that this Court found unconscionable were not part of the actual arbitration clause. Because the Court would not need to re-write the arbitration clause, there was no basis for failing to sever the parts of the Residency Agreement that the Court found unconscionable.

4. Defendants, therefore, respectfully ask the Court to reconsider its Order Denying Defendants Motion to Dismiss and Compel Arbitration.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900
MManos@nexsenpruet.com
MGrier@nexsenpruet.com

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC

September 2, 2011

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Yvonne Carrie Pruett,
Plaintiff,

Case No. 2011-CP-07-1700

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

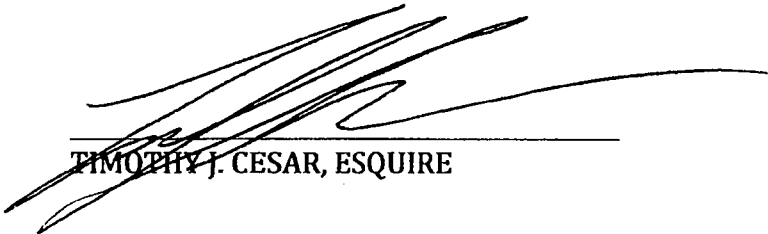
Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, who
having been duly sworn, deposes and states:

1. I am over the age of eighteen, am competent to make this Affidavit, and have
personal knowledge of the matters set forth herein.
2. I am Counsel and Vice-President of Legal for Brookdale Senior Living Inc, a
Delaware Corporation, and the Carolina House of Hilton Head, South Carolina.
3. This affidavit supplements my affidavit in support of the Motion to Dismiss
and Compel Arbitration filed by Brookdale Senior Living and Southern Assisted Living, LLC.
I am writing this affidavit to give further support for why the Residency Agreement signed
in this case involves interstate commerce.
4. The goods, services, and supplies procured through interstate commerce are
part of the Residency Agreement. For example, the food from Sysco (a Texas corporation)

is delivered to the resident in the form of daily meals, which the resident has contracted to receive under the Residency Agreement. Whenever a resident is to receive medical assistance under the Residency Agreement, the resident receives supplies procured through Direct Supply (a Wisconsin corporation). The name on the Residency Agreement is Southern Assisted Living Inc., a North Carolina corporation and a subsidiary of Brookdale Senior Living Inc.

5. Payments received on behalf of Ms. Pruett and other residents are through checks written out to Brookdale Senior Living Inc., which are sent to a Wells Fargo bank in Texas. The checks are deposited into accounts owed by Brookdale Senior Living Inc., which ultimately receives that money at its corporate offices in Milwaukee, Wisconsin.

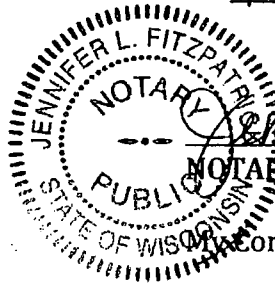
FURTHER this Affiant sayeth naught.


TIMOTHY J. CESAR, ESQUIRE

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced _____ as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 1 day of September, 2011.



NOTARY PUBLIC, State of Wisconsin

Commission Expires: 10/16/11

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Yvonne Carrie Pruett,
Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

IN THE COURT OF COMMON PLEAS

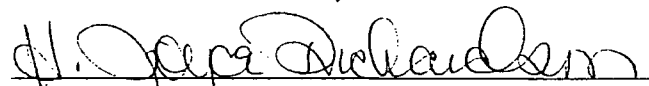
Case No. 2011-CP-07-1500

CERTIFICATE OF SERVICE

11 SEP -6 PM 4:26
JUDGE
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The undersigned certifies that a copy of the foregoing **Motion To Reconsider** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail on the 09th day of September, 2011, to the address shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUETT, LLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Yvonne Carrie Pruett.

☐ Plaintiff

11 SEP -6 PM 4:26

JERRY AND ROSENBAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

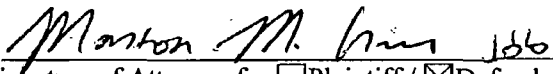
IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-07-1700

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Brookdale Senior Living, Inc., Et Al.

☒ Defendant.

Plaintiff's Attorney: Kelly M. Jolley, Bar No. 72573 Address: PO Drawer 3, Hilton Head Island, SC 29938 phone: 843-785-2171 fax: e-mail: kjolley@mcnair.net other:		Defendant's Attorney: Marc Manos/Manton Grier, Jr, Bar No. 011876/70525 Address: Post Office Drawer 2426, Columbia, SC 29202 phone: 803-540-2116 fax: 803-727-1439 e-mail: MGrier@nexsenpruet.com other: MManos@	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion To Reconsideration Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		September 2, 2011 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____		RECEIVED SEP 12 2011	

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

Defendants.

(Jury Trial Requested)

ORDER DENYING DEFENDANTS,
BROOKDALE SENIOR LIVING, INC.
AND SOUTHERN ASSISTED LIVING,
LLC'S MOTION TO DISMISS AND
COMPEL ARBITRATION

2011 OCT 28 PM 2:20
CLERK OF COURT
BEAUFORT COUNTY S.C.

This matter is before me on Defendants Brookdale Senior Living, Inc.'s Southern Assisted Living, LLC's (collectively the Defendants) Motion to Dismiss and Compel Arbitration on the claims asserted by Plaintiff Janet Sue Scheerle (Plaintiff or Mrs. Scheerle). A hearing was held on October 19, 2011 at 2:00 p.m. in which I heard oral arguments from Defendants' counsel, Manton R. Grier, Jr., and Plaintiff's counsel, Kelly M. Jolley.

The basis for Defendants' Motion is arbitration language found in the arbitration provision contained in the Residency Agreement between Janet Sue Scheerle and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head (Carolina House), signed by Mrs. Scheerle's daughter Julie Jones on July 9, 2010. Plaintiff opposed enforcement of the arbitration clause found in the Residency Agreement on three grounds: (1) the Federal Arbitration Act (FAA) does not apply to this action because the Residency Agreement does not involve interstate commerce, (2) the arbitration and limitation of liability clauses contained in the Residency Agreement are unconscionable, and (3) no one with the authority to bind Janet Sue Scheerle to arbitration executed the Residency Agreement on her behalf. The Court is persuaded by Plaintiff's arguments

opposing the Motion to Compel Arbitration and accordingly denies Defendants' Motion to Dismiss and Compel Arbitration.

Defendants have not attempted to compel arbitration under the South Carolina Arbitration Act. Instead, Defendants contend that the FAA preempts the South Carolina state statute and compels arbitration in this case. However, I find that the Residency Agreement between Janet Sue Scheerle and Carolina House does not involve interstate commerce. Therefore, this case is not subject to the FAA. The South Carolina Supreme Court in *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) held that the FAA was inapplicable to a similar contract for patient and residency services. The Court explained that the analysis must focus on the contract between the parties, and whether that contract involves interstate commerce. The Residency Agreement here is a contract for services—accommodations, meals, utilities, housekeeping, laundry and recreation—all of which were to be provided to Plaintiff in South Carolina. The provision of these contractual services to Mrs. Scheerle at the Carolina House facility in Hilton Head does not involve interstate commerce. Defendants argue that many of their suppliers are located out of state, as is their bank and their corporate office. However, the fact that Defendants choose to engage out of state suppliers does not change the location or purpose of the Residency Agreement. Moreover, the Affidavit of Timothy J. Caesar attached to Defendants' Motion does not contain any facts from which one could conclude that any of the basic services Carolina House contracted to provide to Mrs. Scheerle involve interstate commerce.

Defendants argued that *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) and *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995) changed the analysis previously supported in *Timms*. However, these cases clarify that a transaction occurring via a contract must in fact involve interstate commerce to enforce an arbitration provision in the

contract. Neither case alters our Supreme Court's holding in *Timms* that arbitration cannot be compelled pursuant to the FAA when the underlying transaction does not involve interstate commerce. The Residency Agreement does not involve interstate commerce and Defendants' Motion to Dismiss and Compel Arbitration is denied.

Even if the Residency Agreement did involve interstate commerce so as to bring it under the purview of the FAA, I find that the arbitration and limitation of liability clauses in the Residency Agreement are unconscionable and should be struck in their entirety from the contract. Among other provisions, the arbitration and limitation of liability clauses in the Residency Agreement significantly restrict discovery, limit compensatory damages, and prohibit punitive damages. Both the "Arbitration Provision" (V.A.) and the "Limitation of Liability Provision" (V.B.) are included in Section V of the Residency Agreement. Subsection V.A(13) expressly incorporates by reference the Limitation of Liability Provision into the Arbitration Provision. Accordingly, if the Limitation of Liability Provision is unconscionable, the arbitration Provision that expressly incorporates the Limitation of Liability Provision in its entirety must be unconscionable as well.

Taken together, these provisions restrict discovery, including a limitation on depositions to only those of experts, and limits liability for any "claims by, or on behalf of, a Resident ... arising out of the care or treatment received by the Resident...." For example, all "[n]et economic damages" awarded must be "offset by any collateral source payments such as payments made by medical insurance." Additionally, the provisions limit noneconomic damages, including pain and suffering, to "a maximum of \$250,000.00," prohibit payment of "[i]nterest and/or late fees on unpaid assisted living charges," and preclude any award for punitive damages. Generally, "courts will not enforce a contract which is violative of public

policy, statutory law, or provisions of the Constitution.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 28, 644 S.E.2d 663, 670 (2007). I find that the limitations on damages and discovery unilaterally imposed upon Mrs. Scheerle in the Residency Agreement are substantively unconscionable and violate public policy. Accordingly, even if the FAA were applied to the Residency Agreement, Sections V.A. and V.B. of the Residency Agreement (“Arbitration and Limitation of Liability Provision”) are unconscionable and unenforceable in their entirety. *See, e.g. Simpson*, 373 S.C. at 33–37, 644 S.E.2d at 673–74.

Finally, Plaintiff argues that Mrs. Scheerle’s acquiescence to the arbitration agreement in the Residency Agreement is invalid. Mrs. Scheerle argued that she did not execute the Residency Agreement, that Julie Jones, Mrs. Scheerle’s daughter executed the Residency Agreement as Mrs. Scheerle “Legal Representative.” However, Plaintiff produced evidence at the hearing showing that Julie Jones was not Mrs. Scheerle’s attorney-in-fact under Mrs. Scheerle’s durable power of attorney at the time the Residency Agreement was signed. Mrs. Scheerle presented an instrument designating Jacqueline E. Lynn, not Julie Jones, as Mrs. Scheerle’s attorney-in-fact when the Residency Agreement was signed. Accordingly, Ms. Jones did not have legal authority to bind Mrs. Scheerle to arbitration.

The proper forum for determining whether an arbitration clause is enforceable in South Carolina is the trial court rather than arbitration. *See, Simpson*, 373 S.C. at 23, 644 S.E.2d at 667–68 (“[T]he trial court should determine the threshold validity of the arbitration agreement.”); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.”); *Hous. Auth. of the City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct. App. 2003) (“The initial inquiry to be made by the

trial court is whether an arbitration agreement exists between the parties.”) To the extent that the parties contest whether Julie Jones had the authority to bind Mrs. Scheerle to arbitration, the parties must engage in discovery regarding the matter, precluding dismissal of this case at this time.

IT IS NOW THEREFORE ORDERED, this action shall proceed on the jury docket for the Fourteenth Judicial Circuit, Beaufort County, South Carolina. The Defendants shall have fifteen (15) days from the date of this Order to file responsive pleadings.

AND IT IS SO ORDERED.

By: 
Carmen T. Mullen
Circuit Court Judge
Fourteenth Judicial Circuit

October 28, 2011
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

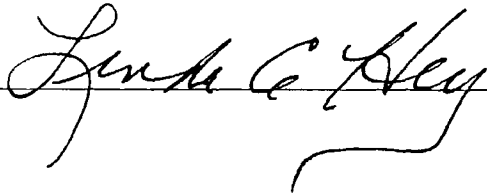
Defendants.

CERTIFICATE OF SERVICE

I, Linda C. Huey, an employee of McNair Law Firm, P.A., have this date served a copy of **ORDER DENYING DEFENDANTS, BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC'S MOTION TO DISMISS AND COMPEL ARBITRATION** on defendants in the above-referenced action by depositing a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this 15th day of November, 2011:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, and
SONIA S. KING,

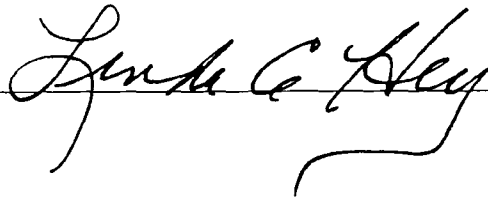
Defendants.

CERTIFICATE OF SERVICE

I, Linda C. Huey, an employee of McNair Law Firm, P.A., have this date served a copy of **ORDER DENYING DEFENDANTS, BROOKDALE SENIOR LIVING, INC. AND SOUTHERN ASSISTED LIVING, LLC'S MOTION TO DISMISS AND COMPEL ARBITRATION** on defendants in the above-referenced action by depositing a copy of the same in the U.S. Mail, first class postage prepaid, to the address shown below, this 15th day of November, 2011:

Manton R. Grier, Jr.
Nexsen Pruet
P.O. Drawer 2426
Columbia, SC 29202

Hilton Head Island, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JANET SUE SCHEERLE

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC d/b/a
CAROLINA HOUSE OF HILTON HEAD and
SONIA S. KING,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

SEP 19 PM 2:08
CLERK OF COURT
JANET SUE SCHEERLE
BROOKDALE SENIOR LIVING, INC.
AND SOUTHERN ASSISTED LIVING,
LLC d/b/a CAROLINA HOUSE OF
HILTON HEAD'S
MOTION TO DISMISS AND COMPEL
ARBITRATION ON
AMENDED COMPLAINT

This matter is before me on Defendants Brookdale Senior Living, Inc's. and Southern Assisted Living, LLC d/b/a Carolina House of Hilton Head's (collectively the Defendants) Renewed Motion to Dismiss and Compel Arbitration on the claims asserted by Plaintiff Janet Sue Scheerle (Plaintiff or Mrs. Scheerle) in her Amended Complaint.

Plaintiff filed her summons and complaint on June 4, 2011. On or about August 10, 2011, Defendants filed a motion to dismiss and compel arbitration. A hearing on that motion was held on October 19, 2011 and this court denied the motion by order dated October 28, 2011. Defendants filed a motion for reconsideration on November 11, 2011. However, Plaintiff filed an amended summons and complaint on June 26, 2012 prior to the motion being heard. Defendants filed a Renewed Motion to Dismiss on or about June 28, 2012. A hearing was held on September 4, 2012 at 1:00 p.m. in which I heard oral arguments from Defendants' counsel, Manton R. Grier, Jr., and Plaintiff's counsel, Kelly M. Jolley.

The basis for Defendants' Motion is arbitration language found in the arbitration provision contained in the Residency Agreement between Janet Sue Scheerle and Southern

Assisted Living, LLC, d/b/a Carolina House of Hilton Head (Carolina House), signed by Mrs. Scheerle's daughter Julie Jones on July 9, 2010. Plaintiff opposed enforcement of the arbitration clause found in the Residency Agreement on three grounds: (1) the Federal Arbitration Act (FAA) does not apply to this action because the Residency Agreement does not involve interstate commerce, (2) the arbitration and limitation of liability clauses contained in the Residency Agreement are unconscionable, and (3) no one with the authority to bind Janet Sue Scheerle to arbitration executed the Residency Agreement on her behalf. The Court is persuaded by Plaintiff's arguments opposing the Motion to Compel Arbitration and accordingly denies Defendants' Motion to Dismiss and Compel Arbitration.

Defendants have not attempted to compel arbitration under the South Carolina Arbitration Act. Instead, Defendants contend that the FAA preempts the South Carolina state statute and compels arbitration in this case. However, I find that the Residency Agreement between Janet Sue Scheerle and Carolina House does not involve interstate commerce. Therefore, this case is not subject to the FAA. The South Carolina Supreme Court in *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) held that the FAA was inapplicable to a similar contract for patient and residency services. The Court explained that the analysis must focus on the contract between the parties, and whether that contract involves interstate commerce. The Residency Agreement here is a contract for services—accommodations, meals, utilities, housekeeping, laundry and recreation—all of which were to be provided to Plaintiff in South Carolina. The provision of these contractual services to Mrs. Scheerle at the Carolina House facility in Hilton Head does not involve interstate commerce. Defendants argue that many of their suppliers are located out of state, as is their bank and their corporate office. However, the fact that Defendants chose to engage out of state suppliers does not change the location or

purpose of the Residency Agreement. Moreover, the Affidavit of Timothy J. Caesar attached to Defendants' Motion does not contain any facts from which one could conclude that any of the basic services Carolina House contracted to provide to Mrs. Scheerle involve interstate commerce.

Defendants argued that *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531 (2001) and *Allied Bruce Terminal Companies, Inc. v. Dobson*, 513 U.S. 265 (1995) changed the analysis previously supported in *Timms*. However, these cases clarify that a transaction occurring via a contract must in fact involve interstate commerce to enforce an arbitration provision in the contract. Neither case alters our Supreme Court's holding in *Timms* that arbitration cannot be compelled pursuant to the FAA when the underlying transaction does not involve interstate commerce. The Residency Agreement does not involve interstate commerce and Defendants' Motion to Dismiss and Compel Arbitration is denied.

Even if the Residency Agreement did involve interstate commerce so as to bring it under the purview of the FAA, I find that the arbitration and limitation of liability clauses in the Residency Agreement are unconscionable and should be struck in their entirety from the contract. Among other provisions, the arbitration and limitation of liability clauses in the Residency Agreement significantly restrict discovery, limit compensatory damages, and prohibit punitive damages. Both the "Arbitration Provision" (V.A.) and the "Limitation of Liability Provision" (V.B.) are included in Section V of the Residency Agreement. Subsection V.A(13) expressly incorporates by reference the Limitation of Liability Provision into the Arbitration Provision. Accordingly, if the Limitation of Liability Provision is unconscionable, the arbitration Provision that expressly incorporates the Limitation of Liability Provision in its entirety must be unconscionable as well.

Taken together, these provisions restrict discovery, including a limitation on depositions to only those of experts, and limits liability for any “claims by, or on behalf of, a Resident ... arising out of the care or treatment received by the Resident...” For example, all “[n]et economic damages” awarded must be “offset by any collateral source payments such as payments made by medical insurance.” Additionally, the provisions limit noneconomic damages, including pain and suffering, to “a maximum of \$250,000.00,” prohibit payment of “[i]nterest and/or late fees on unpaid assisted living charges,” and preclude any award for punitive damages. Generally, “courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 28, 644 S.E.2d 663, 670 (2007). I find that the limitations on damages and discovery unilaterally imposed upon Mrs. Scheerle in the Residency Agreement are substantively unconscionable and violate public policy. Accordingly, even if the FAA were applied to the Residency Agreement, Sections V.A. and V.B. of the Residency Agreement (“Arbitration and Limitation of Liability Provision”) are unconscionable and unenforceable in their entirety. *See, e.g. Simpson*, 373 S.C. at 33–37, 644 S.E.2d at 673–74.

Finally, Plaintiff argues that Mrs. Scheerle’s acquiescence to the arbitration agreement in the Residency Agreement is invalid. Mrs. Scheerle argued that she did not execute the Residency Agreement, that Julie Jones, Mrs. Scheerle’s daughter executed the Residency Agreement as Mrs. Scheerle “Legal Representative.” However, Plaintiff produced evidence at the hearing showing that Julie Jones was not Mrs. Scheerle’s attorney-in-fact under Mrs. Scheerle’s durable power of attorney at the time the Residency Agreement was signed. Mrs. Scheerle presented an instrument designating Jacqueline E. Lynn, not Julie Jones, as Mrs.

Scheerle's attorney-in-fact when the Residency Agreement was signed. Accordingly, Ms. Jones did not have legal authority to bind Mrs. Scheerle to arbitration.

The proper forum for determining whether an arbitration clause is enforceable in South Carolina is the trial court rather than arbitration. *See, Simpson*, 373 S.C. at 23, 644 S.E.2d at 667-68 ("[T]he trial court should determine the threshold validity of the arbitration agreement."); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise."); *Hous. Auth. of the City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct. App. 2003) ("The initial inquiry to be made by the trial court is whether an arbitration agreement exists between the parties.") To the extent that the parties contest whether Julie Jones had the authority to bind Mrs. Scheerle to arbitration, the parties must engage in discovery regarding the matter, precluding dismissal of this case at this time.

IT IS NOW THEREFORE ORDERED, this action shall proceed on the jury docket for the Fourteenth Judicial Circuit, Beaufort County, South Carolina. The Defendants shall have fifteen (15) days from the date of this Order to file responsive pleadings.

AND IT IS SO ORDERED.

By: 
Carmen T. Mullen
Circuit Court Judge
Fourteenth Judicial Circuit

September 13, 2012
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC and
SONIA S. KING,

Defendants.

SUMMONS

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2011 JUN 24 AM 10:13

TO: BROOKDALE SENIOR LIVING, INC., SOUTHERN ASSISTED LIVING, LLC.
and SONIA S. KING:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-referenced action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928, within thirty (30) days after the service thereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

Dated: June 23, 2011

MCNAIR LAW FIRM, P.A.

By

Kelly M. Jolley

Kelly M. Jolley, (SC Bar #72573)
E-Mail: kjolley@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07

JANET SUE SCHEERLE,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC and
SONIA S. KING,

Defendants.

COMPLAINT

(JURY TRIAL REQUEST)

2011 JUN 24 AM 10:13
ERIC A. ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff, herein, by and through her undersigned counsel of record will respectfully show onto the Court that:

1. Plaintiff Janet Sue Scheerle is a resident of Beaufort County, South Carolina.
2. Upon information and belief, Defendant Brookdale Senior Living, Inc. ("Brookdale") is a corporation organized and existing under the laws of one of the United States of America which transacts business in Beaufort County, South Carolina.
3. Upon information and belief, Defendant Southern Assisted Living, LLC is a limited liability company organized and existing under the laws of North Carolina.
4. Upon information and belief, at all times relevant hereto, Defendant Southern Assisted Living, LLC operated, managed, and / or owned a community residential care facility doing business as Carolina House of Hilton Head (hereinafter "Carolina House") located at 35 Beach City Road on Hilton Head Island in Beaufort County, South Carolina, which provided long term care for the facility's residents including Plaintiff.

5. Upon information and belief, Defendant Sonia S. King is a resident of Hampton County, South Carolina and at all times relevant hereto, Ms. King was employed by Defendant Southern Assisted Living, Inc. and worked in Defendant's Carolina House facility on Hilton Head Island in Beaufort County, South Carolina.

6. This Court has personal jurisdiction and venue over the parties and subject matter jurisdiction over this action.

BACKGROUND

7. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

8. On or about December 31, 2010, and for some time prior thereto, Janet Sue Scheerle was a resident of Carolina House as a result of progressive dementia and her inability to care for herself in an independent setting.

9. Mrs. Scheerle is seventy (70) years old and mentally incapacitated due to Alzheimer's disease.

10. At all time relevant hereto, Carolina House was required to maintain a safe environment free of abuse, accidents, and hazards for its residents, including Plaintiff.

11. On or about December 31, 2010 between the hours of 5:00 and 6:00 a.m., Defendant Sonia King physically and verbally abused Mrs. Scheerle.

12. Defendant King hit Mrs. Scheerle on the right side of her face, causing visible swelling.

13. Defendant King also verbally abused Mrs. Scheerle several times and told her she was crazy and to shut up.

14. The abuse was witnessed and recorded by Defendant King's co-worker, Shanada Young, who reported the abuse to the Carolina House Director of Nursing.

15. Upon information and belief, Defendant King was known to abuse the residents of Carolina House.

16. Prior to December 31, 2010, Ms. King was suspended from Carolina House for verbally abusing a senior resident.

17. Following an investigation by the Beaufort County Sheriff's Office, Defendant King was arrested and charged with elder abuse.

18. As a result of the physical and verbal abuse, Mrs. Scheerle suffered painful injury to her face and nose as well as emotion distress, mental anguish and fear.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT
AGAINST BROOKDALE and
CAROLINA HOUSE

19. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

20. Defendants Brookdale and Carolina House by and through their authorized agents and servants was negligent, wanton, reckless, careless, willful, and grossly negligent in the operation, management and/or ownership of its community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents and hazards;
- b. In allowing Defendant Sonia King to continue working at the facility following her suspension for previous verbal abuse of a resident;
- c. In failing to adequately investigate and resolve prior reports and / or concerns of abuse of residents by Defendant King and other employees of Carolina House;
- d. In failing to adequately supervise employees on all shifts at Carolina House;
- e. In failing to provide equal access to quality of care;
- f. In failing to employ necessary safety precautions for Plaintiff's safety and welfare;
- g. In failing to establish and / or require compliance with abuse or accident reporting procedures;
- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Defendant Carolina House's resident population, including Plaintiff;
- i. In failing to hire or contract with adequately trained and competent employees or agents to whom the care and wellbeing of patients such as Plaintiff was entrusted;

- j. In failing to take reasonable and prudent action to prevent Plaintiff from suffering abuse, physical injury, and emotional distress from the caregivers Defendant Carolina House provided to care for Carolina House's vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

21. As a direct and proximate result of Defendants' gross, willful, and wanton negligence, Mrs. Scheerle has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

22. Mrs. Scheerle is entitled to an award of compensatory and punitive damages.

FOR A SECOND CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST BROOKDALE AND CAROLINA HOUSE

23. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

24. Defendants Brookdale and Carolina House knew or should have known that subjecting its vulnerable adult residents with dementia, including Plaintiff, to employees with a history of abuse would result in further abuse and severe mental and emotion distress and anguish.

25. Despite a previous incident of abuse of resident and previous concerns about Defendant King's abuse of residents, Defendants continued to employ or otherwise retain Defendant King, to put her on the work schedule, and allow her contact with vulnerable residents without supervision.

26. By allowing Defendant King to have contact with Carolina House's vulnerable residents, Defendants intentionally or recklessly placed all of residents at Carolina House's facility, including specifically Plaintiff, at risk.

27. Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

28. Defendants' actions caused Plaintiff severe emotional distress.

29. By their actions, Defendants acted intentionally or recklessly.

30. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

31. As a direct and proximate result of Defendants' actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

32. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

33. As a direct and proximate result of Defendants' extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendants.

FOR A THIRD CAUSE OF ACTION
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
AGAINST BROOKDALE AND CAROLINA HOUSE

34. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

35. Defendants Brookdale and Carolina House publically assert and advertise that Carolina House "provides Personalized Assisted Living and Alzheimer's and Dementia care options for seniors".

36. Defendants also assert that Carolina House partners "with each resident to design an individualized, personal service plan" via a "service planning process, unique to Brookdale Senior Living communities, [that] bases service fees on delivering quality service and care to each individual."

37. Defendants claim that these "Personalized Service Plans are reviewed regularly by staff to ensure that we meet the changing needs of our residents. Our trained staff is there to assist with personal needs – bathing or showering, selection of clothing, dressing assistance, grooming, hygiene, mobility and transferring and dining assistance – 24 hours a day."

38. Upon information and belief, Defendants charge residents, including Plaintiff, variable fees for services, including grooming, bathing or showering, hygiene, without providing these services.

39. Upon information and belief, Defendants do not have adequately trained staff on hand 24 hours a day to supervise and assist its senior population living with Alzheimer's and dementia, to provide quality care, or to protect those same vulnerable adults, including but not limited to Plaintiff, from abuse.

40. Defendants have engaged in unfair and deceptive acts in offering and advertising of specialized services for individuals with Alzheimer's or dementia without having adequate trained staff on hand to provide for those individuals, charging and accepting payment for personalized services that are not in fact personalized or are not provided, and failing to protect

residents from abuse all constitute unfair trade practices under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. Section 39-5-10 to 39-5-250 (2010).

41. Defendants' unfair or deceptive acts or practices have an impact upon the public interest and have the potential for repetition. In fact, on or about December 31, 2010, two residents other than Plaintiff were physically and verbally abused in the Carolina House facility by Defendant King.

42. Plaintiff would not have entered Carolina House's community residential care facility if Brookdale and Carolina House had not held the facility out to the public as being a place specifically designed to provide high quality care to individuals with Alzheimer's or dementia.

43. Furthermore, Plaintiff would not have paid Carolina House for services in accordance with Plaintiff's "Personalized Service Plan" if Brookdale and Carolina House had not assured Plaintiff, Plaintiff's caregivers, and the public that Carolina House provided quality services in accordance with that plan.

44. Upon information and belief, Plaintiff did not receive a Personalized Service Plan wherein charges directly correlated to the services Carolina House agreed to provide. Plaintiff did not receive all services requested and paid for. Plaintiff did not consistently receive quality Alzheimer and dementia care services. Plaintiff was abused by staff at Carolina House.

45. As a direct and proximate result of Defendants' deceptive and unfair trade practices, Plaintiff has been damaged in not receiving services paid for and in paying for services and care not received. Plaintiff has also been physically and mentally injured through the abuse

perpetrated by Defendants' staff and Defendant's lack of supervision over and training regarding same.

46. Mrs. Scheerle is entitled to an award of compensatory and treble damages.

FOR A FOURTH CAUSE OF ACTION
ASSAULT AND BATTERY AGAINST SONIA S. KING

47. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

48. Defendant King, with force and violence, caused severe and painful injury to Plaintiff Janet Sue Scheerle.

49. Defendant King hit Mrs. Scheerle on the right side of her face, causing visible swelling to Mrs. Scheerle's face.

50. Defendant King also verbally abused Mrs. Scheerle and told her to shut up and that she was crazy.

51. By her words and acts, Defendant King caused Mrs. Scheerle reasonable apprehension of imminent harmful and offensive contact.

52. Additionally, Defendant King was rude, insolent and angry toward Plaintiff.

53. Defendant King's actions were offensive to any ordinary person.

54. By reason of Defendant King's words and acts, Plaintiff did reasonably believe that an offensive and harmful contact would occur.

55. Defendant did assault and batter Mrs. Scheerle.

56. As a direct and proximate result of Defendant King's assault and battery, Mrs. Scheerle has suffered pain, extreme emotional trauma, anxiety and distress. By reason Defendant's unlawful and unauthorized assault and battery, Mrs. Scheerle is entitled to recover punitive damages from the Defendant.

FOR A FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST SONIA S. KING

57. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

58. By her words and actions, Defendant King's conduct was extreme, reckless and outrageous and so severe as to cause emotional distress to Plaintiff.

59. By her words and actions, Defendant King acted intentionally or recklessly.

60. Defendant King's actions were substantially certain to cause severe emotional distress to Plaintiff.

61. Defendant King's actions were so extreme and outrageous as to exceed all possible bounds of decency, and must be regarded as atrocious and utterly intolerable in a civilized community.

62. As a direct and proximate result of Defendant King's actions and conduct, Plaintiff has suffered severe, extreme and continuing emotional distress and anxiety.

63. Plaintiff's emotional distress is so severe that no reasonable person could be expected to endure it.

64. As a direct and proximate result of Defendant King's extreme and outrageous conduct, Plaintiff has suffered extreme emotional distress and anxiety. Plaintiff is entitled to an award of punitive damages against Defendant King.

65. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

66. By her actions, Defendant King was grossly, willfully and wantonly negligent in executing her duties as a caregiver and / or med tech for Carolina House, including physically and verbally abusing Plaintiff in violation of the Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2010)

67. As a direct and proximate result of Defendant King's gross, willful, and wanton negligence, Mrs. Scheerle has suffered severe and painful personal injuries, emotional trauma, anxiety and stress.

68. Mrs. Scheerle is entitled to an award of compensatory and punitive damages.

WHEREFORE, the Plaintiff Janet Sue Scheerle prays this Honorable Court will find judgment for the Plaintiff as follows:

- (a) For actual punitive and treble damages;
- (b) Attorneys fees, costs and additional damages as provided by statute; and
- (c) For such other and further relief as the Court may deem just and proper.

[Signatures appear on the following page]

Dated: June 23, 2011

MCNAIR LAW FIRM, P.A.

By Kelly M. Jolley
Kelly M. Jolley (SC Bar #72573)
E-Mail: kjolley@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Janet Sue Scheerle,

Plaintiff(s),

vs.

Brookdale Senior Living, Inc., Southern Assisted
Living, LLC., and Sonia S. King,

Defendant(s).

COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CIVIL COVER SHEET

2011-CP-07- 2654

Submitted By: Kelly M. Jolley
Address: McNair Law Firm, P.A.
P.O. Drawer 3
Hilton Head Island, SC 29938

SC Bar #: 72573
Telephone #: 843-785-2171
Fax #: 843-341-9830
Other:
E-mail: kjolley@mcnair.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 <u>CP</u> ☐ Notice /File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☒ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Transfer of Structured ☐ Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture - Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Depositions (650) ☐ Motion to Quash Subpoena in Out-Of-County Action (660) ☐ Sexual Predator (610)		

Submitting Party Signature: Kelly M. Jolley

Date: 6/23/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC d/b/a
CAROLINA HOUSE OF HILTON HEAD and
SONIA S. KING,

Defendants.

SUMMONS

2012 JUN 27 AM 8:54
JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: BROOKDALE SENIOR LIVING, INC., SOUTHERN ASSISTED LIVING, LLC
d/b/a CAROLINA HOUSE OF HILTON HEAD and SONIA S. KING:

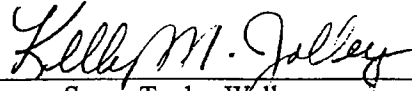
YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-referenced action of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 23-B Shelter Cove Lane, Suite 400, Hilton Head Island, SC 29928, within thirty (30) days after the service thereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

(Signature block appears on following page).

Dated: June 26, 2012

McNAIR LAW FIRM, P.A.

By



Susan Taylor Wall

E-Mail: swall@mcnair.net

Post Office Box 1431

Charleston, SC 29402

(843) 723-7831

Kelly M. Jolley

E-Mail: kjolley@mcnair.net

Post Office Drawer 3

Hilton Head Island, SC 29938

(843) 785-2171

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC d/b/a
CAROLINA HOUSE OF HILTON HEAD and
SONIA S. KING,

Defendants.

AMENDED COMPLAINT

(JURY TRIAL REQUESTED)

JUN 27 AM 8:54
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff, herein, by and through her undersigned counsel of record will respectfully show onto the Court that:

1. Plaintiff Janet Sue Scheerle is a resident of Beaufort County, South Carolina.
2. Upon information and belief, Defendant Brookdale Senior Living, Inc. ("Brookdale") is a corporation organized and existing under the laws of one of the United States of America which transacts business in Beaufort County, South Carolina.
3. Upon information and belief, Defendant Southern Assisted Living, LLC ("Southern Assisted Living d/b/a Carolina House") is a limited liability company organized and existing under the laws of North Carolina.
4. Upon information and belief, at all times relevant hereto, Defendant Southern Assisted Living d/b/a Carolina House operated, managed, and / or owned a community residential care facility doing business as Carolina House of Hilton Head (hereinafter "Carolina House") located at 35 Beach City Road on Hilton Head Island in Beaufort County, South Carolina, which

provided long term care for the facility's residents including Plaintiff.

5. Upon information and belief, Defendant Sonia S. King is a resident of Hampton County, South Carolina and at all times relevant hereto, Ms. King was employed by Defendant Southern Assisted Living, Inc. and worked in Defendant's Carolina House facility on Hilton Head Island in Beaufort County, South Carolina.

6. This Court has personal jurisdiction and venue over the parties and subject matter jurisdiction over this action.

BACKGROUND

7. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

8. On or about December 31, 2010, and for some time prior thereto, Janet Sue Scheerle was a resident of Carolina House as a result of progressive dementia and her inability to care for herself in an independent setting.

9. Mrs. Scheerle is seventy (70) years old and mentally and physically incapacitated due to Alzheimer's disease.

10. At all time relevant hereto, Carolina House was required to maintain a safe environment free of abuse, accidents, and hazards for its residents, including Plaintiff.

11. On or about December 31, 2010 between the hours of 5:00 and 6:00 a.m., Defendant Sonia King physically and verbally abused Mrs. Scheerle.

12. Defendant King hit Mrs. Scheerle on the right side of her face, causing visible swelling.

13. Defendant King also verbally abused Mrs. Scheerle several times and told her she was crazy and to shut up.

14. The abuse was witnessed and recorded by Defendant King's co-worker, Shanada Young, who reported the abuse to her supervisor at Carolina House.

15. Upon information and belief, Defendant King was known by Defendant Southern Assisted Living d/b/a Carolina House and their employees to abuse residents of Carolina House.

16. Upon information and belief, Mrs. Scheerle was a victim of other incidents of painful physical and verbal abuse while a resident at Carolina House by Defendant King and others.

17. As a result of the physical and verbal abuse, Mrs. Scheerle suffered painful injuries including trauma to her head, face, and nose as well as ongoing emotional distress, mental anguish, humiliation and fear.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT
AGAINST BROOKDALE and SOUTHERN ASSISTED
LIVING D/B/A CAROLINA HOUSE

18. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

19. Defendants Brookdale and Southern Assisted Living d/b/a Carolina House by and through their authorized agents and servants, was negligent, careless, wanton, reckless, willful, and grossly negligent in the operation, management and/or ownership of its community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents and hazards;
- b. In allowing Defendant Sonia King to continue working at the facility following her suspension for previous verbal abuse of a resident;
- c. In failing to adequately investigate and resolve prior reports and / or concerns of abuse of residents by employees of Carolina House;
- d. In failing to adequately supervise employees on all shifts at Carolina House;
- e. In failing to provide equal access to quality of care to all residents;
- f. In failing to employ necessary safety precautions for the safety and welfare of residents, including Plaintiff;
- g. In failing to establish and / or require compliance with abuse or accident reporting procedures;
- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Defendant Carolina House's resident population, including Plaintiff;
- i. In failing to adequately train and supervise competent employees or agents to whom the care and wellbeing of patients such as Plaintiff was entrusted;

- j. In failing to take reasonable and prudent action to prevent Plaintiff from suffering abuse, physical injury, and emotional distress from the caregivers Southern Assisted Living d/b/a Carolina House provided to care for its vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

20. Upon information and belief, to save costs and increase its profits, Defendants Brookdale and Southern Assisted Living d/b/a Carolina House replaced trained and licensed personnel with untrained, unlicensed staff and overextended the staff by having them fulfill job responsibilities for several different positions at once, denying staff work breaks and vacation, threatening staff with reduced hours or termination if complaints about patient care were made and/or vacation taken, and routinely understaffing Carolina House, including specifically the Care Bridge Memory Care Unit where residents with Alzheimer's Disease and Dementia reside, including the Plaintiff, without adequate supervision and guidance.

21. By their actions, Defendants were grossly, willfully and wantonly negligent in executing their duties as caregivers in allowing the physical and verbal abuse and neglect of residents, including specifically Plaintiff, in violation of the Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2010) and other statutory, regulatory and legal obligations of Defendants as caregivers.

22. As a direct and proximate result of Defendants' negligence, gross negligence, and willful and wanton conduct, Mrs. Scheerle has suffered severe and painful personal injuries, emotional trauma, humiliation, anxiety and stress.

23. Mrs. Scheerle is entitled to an award of compensatory and punitive damages.

FOR A SECOND CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS / OUTRAGE
AGAINST BROOKDALE AND SOUTHERN ASSISTED
LIVING D/B/A CAROLINA HOUSE

24. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

25. Defendants Brookdale and Southern Assisted Living d/b/a Carolina House knew or should have known that subjecting the vulnerable adult residents suffering from Alzheimer's Disease or Dementia, including Plaintiff, living at Defendants' facility to employees with a history of and penchant for abuse would result in further abuse and severe mental and emotion distress and anguish to those residents, including Plaintiff.

26. Despite previous incidents of abuse of residents, including Mrs. Scheerle, and previous concerns about abuse and neglect of residents by employees, including Defendant King, Defendants Brookdale and Southern Assisted Living d/b/a Carolina House continued to employ or otherwise retain such employees, including Defendant King, scheduling them for work and placing them in a position to have contact with vulnerable residents without appropriate supervision.

27. Upon information and belief, to save costs and increase its profits, Defendants Brookdale and Southern Assisted Living d/b/a Carolina House replaced trained and licensed personnel with untrained, unlicensed staff and overextended staff by having them fulfill job responsibilities for several different positions at once, denying staff work breaks and vacation, threatening staff with reduced hours or termination if complaints about patient care were made and/or vacation taken, and routinely understaffing Carolina House, including specifically the

Care Bridge Memory Care Unit where residents with Alzheimer's Disease and Dementia reside, including Plaintiff, without adequate supervision and guidance.

28. By allowing untrained and overworked employees, including employees with a known history of abusing residents, including Defendant King, to have contact with Carolina House's vulnerable residents without adequate supervision, Defendants intentionally or recklessly placed the residents at Carolina House's aforesaid facility, including Plaintiff, at risk, disregarding their safety and wellbeing.

29. Defendants' intentional and / or reckless conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community. Defendants' behavior compromised the safety of vulnerable residents who are unable to care for themselves.

30. As a direct and proximate result of Defendants' actions and conduct, Plaintiff has suffered extreme and continuing physical and emotional distress and anxiety, so severe that no reasonable person could be expected to endure the cruel and callous treatment and Plaintiff is entitled to an award of punitive damages against Defendants.

FOR A THIRD CAUSE OF ACTION
VIOLATION OF THE UNFAIR TRADE PRACTICES ACT
AGAINST BROOKDALE AND SOUTHERN ASSISTED
LIVING D/B/A CAROLINA HOUSE

31. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

32. Defendants Brookdale and Southern Assisted Living d/b/a Carolina House publically assert and advertised that Carolina House “provides Personalized Assisted Living and Alzheimer's and Dementia care options for seniors”.

33. Defendants also asserted that Carolina House partners “with each resident to design an individualized, personal service plan” via a “service planning process, unique to Brookdale Senior Living communities, [that] bases service fees on delivering quality service and care to each individual.”

34. Defendants claimed that these “Personalized Service Plans are reviewed regularly by staff to ensure that we meet the changing needs of our residents. Our trained staff is there to assist with personal needs – bathing or showering, selection of clothing, dressing assistance, grooming, hygiene, mobility and transferring and dining assistance – 24 hours a day.”

35. Upon information and belief, Defendants charged residents, including Plaintiff, variable fees for services, including grooming, bathing or showering, hygiene, without adequately providing these services.

36. Upon information and belief, Defendants did not have adequately trained staff on hand despite its promises to provide a safe facility and quality care, to supervise and assist its employees in providing quality care to its senior population living with Alzheimer's Disease and Dementia, or to protect those same vulnerable adults, including but not limited to Plaintiff, from abuse.

37. Defendants have engaged in unfair and deceptive acts in offering and advertising specialized services for individuals with Alzheimer's Disease and Dementia without having adequate trained staff on hand to provide for those individuals, charging and accepting payment

for personalized services that are not in fact personalized and are not provided, and failing to protect residents from abuse.

38. All such acts or practices constitute unfair trade practices under the South Carolina Unfair Trade Practices Act, S.C. Code Ann. Section 39-5-10 to 39-5-250 (2010).

39. Defendants' unfair or deceptive acts or practices have an impact upon the public interest and have the potential for repetition. In addition to other known and suspected incidences of abuse and neglect, on or about December 31, 2010, two residents other than Plaintiff were physically and verbally abused by facility staff and Plaintiff was the victim of abuse on more than one occasion while a resident at Carolina House.

40. Plaintiff would not have entered Defendants' community residential care facility if Brookdale and Southern Assisted Living d/b/a Carolina House had not held the facility out to the public as being a place specifically designed to provide safe, high quality care to individuals with Alzheimer's Disease or Dementia.

41. Furthermore, Plaintiff would not have paid Defendants for services in accordance with Plaintiff's "Personalized Service Plan" if Brookdale and Southern Assisted Living d/b/a Carolina House had not assured Plaintiff, Plaintiff's caregivers, and the public that their facility provided safe, quality services in accordance with that plan.

42. Upon information and belief, Plaintiff did not receive a Personalized Service Plan wherein charges directly correlated to the services Defendants agreed to provide. Plaintiff did not receive all services requested and paid for. Plaintiff did not consistently receive quality Alzheimer and Dementia care services; rather, Plaintiff was abused by staff employed by Defendants.

43. As a direct and proximate result of Defendants' deceptive and unfair trade practices, Plaintiff has been damaged in not receiving services paid for and in paying for care services not received. Plaintiff has also been physically and mentally injured through the abuse perpetrated by Defendants' staff and Defendant's lack of supervision over and training regarding same and the public safety and welfare of vulnerable residents has been affected.

44. Mrs. Scheerle is entitled to an award of compensatory and treble damages and attorney fees and costs.

FOR A FOURTH CAUSE OF ACTION
CORPORATE NEGLIGENCE / NONDELAGABLE DUTY
AGAINST SOUTHERN ASSISTED LIVING D/B/A CAROLINA HOUSE

45. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

46. Southern Assisted Living d/b/a Carolina House is licensed as a community residential care facility by the State of South Carolina.

47. Additionally, Southern Assisted Living d/b/a Carolina House is licensed or otherwise authorized by the State of South Carolina to hold itself out as providing an Alzheimer's special care unit and to perform specialized services, care or treatment especially applicable to or suitable for residents with Alzheimer's Disease and Dementia.

48. Plaintiff and Plaintiff's family relied upon Southern Assisted Living d/b/a Carolina House's disclosures required by South Carolina Code Ann. Section 44-36-520 (Supp. 2011) (the "Alzheimer's Special Care Disclosure Act") regarding the safe environment and specialized services, care or treatment especially applicable to or suitable for residents with Alzheimer's Disease and Dementia that Southern Assisted Living d/b/a Carolina House asserted

it provided to vulnerable residents with Alzheimer's Disease and Dementia in choosing to place Plaintiff at the Carolina House facility.

49. Southern Assisted Living d/b/a Carolina House's responsibility to provide the safe environment and specialized services, care or treatment it promised to give to its vulnerable residents with Alzheimer's Disease and Dementia is so important to the community and public at large that Southern Assisted Living d/b/a Carolina House is not permitted to transfer or delegate its responsibility to its agents, servants, or contractors.

50. Defendant Southern Assisted Living d/b/a Carolina House was negligent and/or grossly negligent, and/or willful and reckless in the operation, management and/or ownership of its community residential care facility in one or more of the following particulars:

- a. In failing to provide an adequately safe environment to its residents reasonably free of abuse, accidents and hazards;
- b. In allowing employees, including Defendant Sonia King, to continue working at the facility despite a history of abuse and neglect of residents;
- c. In failing to adequately investigate and resolve prior reports and / or concerns of abuse of residents by employees of Southern Assisted Living d/b/a Carolina House;
- d. In failing to adequately supervise employees on all shifts at Southern Assisted Living d/b/a Carolina House;
- e. In failing to provide equal access to quality of care for all residents;

- f. In failing to employ necessary safety precautions necessary to protect the safety and welfare of residents with Alzheimer's Disease and Dementia, including specifically Plaintiff;
- g. In failing to establish and / or require compliance with abuse or accident reporting procedures;
- h. In failing to provide the necessary number of licensed nurses, registered nurses, aides, orderlies, and other staff members to adequately supervise and care for Southern Assisted Living d/b/a Carolina House's resident population, including Plaintiff;
- i. In failing to adequately train and supervise competent employees or agents to whom the care and wellbeing of patients such as Plaintiff was entrusted;
- j. In failing to take reasonable and prudent action to prevent Plaintiff from suffering abuse, physical injury, and emotional distress from the caregivers Southern Assisted Living d/b/a Carolina House provided to care for its vulnerable residents;

any and all of which were the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

51. Upon information and belief, to save costs and increase its profits, Defendant Southern Assisted Living d/b/a Carolina House replaced trained and licensed personnel with untrained, unlicensed staff and overextended the staff by having them fulfill job responsibilities for several different positions at once, denying staff work breaks and vacation, threatening staff with reduced hours or termination if complaints about patient care were made and/or vacation

taken, and routinely understaffing the facility, including specifically the Care Bridge Memory Care Unit where residents with Alzheimer's Disease and Dementia, including Plaintiff, reside, without adequate supervision and guidance.

52. By its actions, Defendant Southern Assisted Living d/b/a Carolina House was grossly, willfully and wantonly negligent as a corporate body in executing its duties as caregiver in allowing the physical and verbal abuse and neglect of residents, including specifically Plaintiff, in violation of the Omnibus Adult Protection Act, S.C. Code Ann. Sections 43-35-5 through 43-35-350 (Supp. 2010).

53. As a direct and proximate result of Defendant's corporate negligence and gross negligence Mrs. Scheerle has suffered severe and painful personal injuries as well as ongoing emotional trauma, anxiety and stress.

54. Mrs. Scheerle is entitled to an award of compensatory and punitive damages.

FOR A FIFTH CAUSE OF ACTION
ASSAULT AND BATTERY AGAINST SONIA S. KING

55. Plaintiff reasserts the allegations contained in the preceding paragraphs as fully as if repeated verbatim herein.

56. Defendant King, with force and violence, caused severe and painful injury to Plaintiff Janet Sue Scheerle.

57. Defendant King hit Mrs. Scheerle on the right side of her face, causing visible swelling to Mrs. Scheerle's face.

58. Defendant King also verbally abused Mrs. Scheerle and told her to shut up and that she was crazy.

59. By her words and acts, Defendant King caused Mrs. Scheerle reasonable apprehension of imminent harmful and offensive contact.

60. Additionally, Defendant King was rude, insolent and angry toward Plaintiff.

61. Defendant King's actions were offensive to any ordinary person.

62. By reason of Defendant King's words and acts, Plaintiff did reasonably believe that an offensive and harmful contact would occur.

63. Defendant did assault and batter Mrs. Scheerle.

64. As a direct and proximate result of Defendant King's assault and battery, Mrs. Scheerle has suffered pain, extreme emotional trauma, anxiety and distress. By reason Defendant's unlawful and unauthorized assault and battery, Mrs. Scheerle is entitled to recover punitive damages from the Defendant.

WHEREFORE, the Plaintiff Janet Sue Scheerle prays this Honorable Court will find judgment for the Plaintiff as follows:

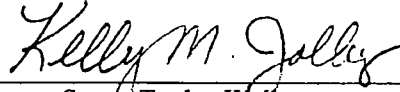
- (a) For actual damages, punitive damages and treble damages;
- (b) Attorneys fees, costs and additional damages as provided by statute; and
- (c) For such other and further relief as the Court may deem just and proper.

(Signature block appears on following page).

Dated: June 26, 2012

McNAIR LAW FIRM, P.A.

By



Susan Taylor Wall
E-Mail: swall@mcnair.net
Post Office Box 1431
Charleston, SC 29402
(843) 723-7831

Kelly M. Jolley
E-Mail: kjolley@mcnair.net
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Janet Sue Scheerle,
Plaintiff,

Case No. 2011-CP-07-2654

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

**MOTION TO DISMISS AND COMPEL
ARBITRATION**

11 AUG 11 PM 4:39
J. C. ROBERTS, JR.
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC move this Court for an Order dismissing the Complaint pursuant to Rule 12 and compelling the parties to arbitrate this dispute pursuant to the arbitration clause found in the plaintiff's residency agreement.

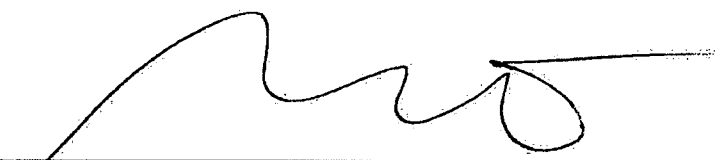
The grounds for this motion are as follows:

1. Plaintiff (or her responsible party) signed a Residency Agreement on July 9, 2010, which states that "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company . . . shall be submitted to binding arbitration[.]" (Residency Agreement, pp. 11, attached as **Exhibit A**).
2. The Residency Agreement states on the cover page, in capital letters, that it is subject to arbitration. Further, the arbitration provision heading is in bold typeface. Finally, the arbitration provision instructs the party to seek legal counsel before signing.
3. The arbitration provision states that the Federal Arbitration Act ("FAA") shall govern. The FAA preempts any state law to the contrary because the Defendants provide

supplies that are procured through interstate commerce, and the Agreement specifically provides that the Residents will receive certain things and supplies—such as meals—that are procured through interstate commerce. (See Affidavit of Timothy J. Cesar, attached as **Exhibit B**). Many of the residents at the Carolina House of Hilton Head are from out of state. Id. The contracting parties are a South Carolina resident (plaintiff) and a North Carolina Corporation (Southern Assisted Living). Residency fees are sent out-of-state to a Wells Fargo bank in Texas, and ultimately end up in accounts owned by Wisconsin Corporation (Brookdale Senior Living).

4. Therefore, Plaintiff's claims are governed by a valid and binding arbitration provision, and this Court should dismiss the Complaint and compel arbitration.

5. Finally, should the Court deny this Motion, Defendants reserve the right to file an Answer or otherwise respond to the Amended Complaint.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC

August 10 2011

Columbia, South Carolina

EXHIBIT A

CAROLINA HOUSE
BROOKDALE SENIOR LIVING
RESIDENCY AGREEMENT

THIS AGREEMENT IS SUBJECT TO ARBITRATION

This Agreement ("Agreement") dated July 10, 2010 is made by and between Southern Assisted Living, Inc. d/b/a Carolina House of Hilton Head (the "Company," "us," "we" or "our") a corporate affiliate of Brookdale Senior Living Inc., and Janet Scheerle ("Resident," "you" or "your").

We operate the community located at 35 Beach City Road, Hilton Head, South Carolina 29926 (the "Community") which is licensed by the State of South Carolina as a Community Residential Care Facility and residency in the Community has been requested by you or on your behalf. The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS.

A. BASIC SERVICES. We will provide you with the following Basic Services, which are included in the Basic Service Rate, subject to the terms of this Agreement:

- ♦ **Accommodations** – You have elected to live in the Suite described in Exhibit A and are entitled to the use of our property located in the Suite. You are also entitled to use and enjoy with all other residents the common areas of the Community. You may provide your own furnishings and personal property; however, we reserve the right to limit the number and type of furnishings/small appliances. You agree that you are responsible for the maintenance and repair of any personal belongings you bring to the Community.
- ♦ **Dining Services** – We will furnish three meals daily. Snacks are available 24 hours a day.
- ♦ **Utility Service** – The cost of gas, electric, heat, air conditioning and water service are included. The cost of basic cable, satellite or comparable television service is not included. You are responsible for paying any other utility charges including, but not limited to, telephone, internet or premium cable charges.
- ♦ **Housekeeping Service** – We will provide light housekeeping once a week.
- ♦ **Laundry and Linen Service** – We will launder your personal belongings and bed linens once a week.
- ♦ **Activities Program** – We will provide planned social and recreational programs.
- ♦ **Transportation** – We will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by us at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You

understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

- ♦ **Staffing 24 hours a day** – Associates are available 24 hours a day, seven days a week.

We will provide thirty (30) days written notice of any change in Basic Services.

- B. PERSONAL SERVICE PLAN.** Prior to moving in and periodically throughout your residency, we will use a personal service assessment to determine the personal services you require. The personal service assessment will be used to develop your Personal Service Plan. The results of the assessment and the cost of providing the additional personal services (the "Personal Service Rate") will be shared with you. Your initial Personal Service Rate is set forth in Exhibit A.
- C. AVAILABLE SELECT AND THERAPEUTIC SERVICES.** Select Services and Therapeutic Services are available to you at your request. Such additional services are not included in the Basic Service Rate or the Personal Service Rate. Where available, such services may include, but are not limited to guest meals, transportation beyond that which is included in the Basic Service Rate, transportation escort services, enhanced cable television, special events or certain clinical services. The available Select Services and Therapeutic Services as well as the associated prices are found on Exhibit X and Exhibit Y to this Agreement.
- D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT.** In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the Community. An outside agency or individual will be permitted to provide these services or any related personal services only if we have given prior approval.

You are responsible for obtaining and paying for all services that are not included in the Basic Services or Personal Service Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by us, our subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy, therapy, private companion, beauty/barber or other health care services. Fees for such services will be billed to you directly by the service provider, unless otherwise agreed to by the parties. All third party service providers (including, but not limited to, health care service providers) must agree to adhere to our standards for outside providers prior to being permitted to provide services in the Community.

You may not hire our current associates to provide services in the Community. You may contract with former associates to perform any services at the Community only with our consent. We reserve the right to refuse entry to (1) former associates; (2) persons whose actions may be disruptive to the Community; or (3) persons whose actions may threaten the safety of any resident or associate.

II. YOUR RESPONSIBILITIES AND REPRESENTATIONS.

- A. CARE OF SUITE.** You agree that the Community and the Suite are in satisfactory, habitable condition and we have made no promise to decorate, alter or improve the Community or Suite unless otherwise provided in writing and attached as part of this Agreement. You agree to maintain the Suite and to leave the Suite upon termination of this Agreement in good condition, except for normal wear and tear. You agree to pay all damages, beyond normal wear and tear, which you (including your agent, employee,

contractor, or other invitee) cause to our property. The Community may invoice you for the cost of such repairs.

B. ALTERATIONS. We, in our sole discretion, will permit reasonable alterations to the Suite if you have a disability and the proposed modification is necessary to afford you full enjoyment of the Suite. Structural or physical alterations, whether based on a handicap or not, may be made only upon our prior written approval. All structural or physical changes to the Suite shall remain at the Suite and be considered part of the Suite and the Community. Any changes or modifications to the Suite that require assistance of appropriately licensed and insured electricians, contractors or similar professionals must be approved in advance by us in our sole discretion. The cost of any alterations made by you shall be paid by you unless we otherwise agree in writing. You agree that you will bear the cost of restoring the Suite to its original condition, reasonable wear and tear excepted, upon the termination of this Agreement, unless we specifically exempt you from this requirement in writing. We may enter and make any modifications or alterations to the Suite to meet the requirements of any applicable law.

C. RIGHT OF ENTRY. For your safety and comfort, our associates must be permitted to enter your Suite to provide services under the terms of this Agreement, to respond to emergencies, to make repairs and improvements, or if there is reasonable belief that your safety or the safety of others is in question or that our policies and procedures are being violated, as we deem necessary or advisable. Therefore, it is not permissible to change the locks or add locks to the entrance door to your Suite. When feasible, our associates will attempt to give you reasonable notice before entering your Suite.

We reserve the right to relocate you to a more appropriate Suite within the Community as required for your health or safety, or because the residents of a companion Suite are incompatible.

D. HEALTH ASSESSMENT. You agree that we may assess your health to create and update a Personal Service Plan and/or to determine whether you are appropriate to remain at the Community. Not more than thirty (30) days prior to the date of this Agreement or upon our request, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree to undergo examination by a particular specialist, at your cost, as we determine is warranted by your current physical or mental status. You will request the examiner to provide us with recommendations, including a statement attesting to the appropriateness of your continued placement. Based upon the assessment(s) and our judgment, we may determine your appropriateness to remain in the Community. You will request the examiner to perform any tests and complete any forms required by us or applicable law.

E. HEALTH CARE PROVIDER NOTIFICATION. You authorize us to contact your legal representative/family, health care providers, and/or other persons listed in your records (1) if it is necessary to advise them of your situation; (2) to arrange for required health care services and other assistance; or (3) in case of an emergency.

If your designated health care providers are unavailable, you authorize us to arrange for the services of other health care providers. You agree we may provide such persons with copies of your records, including, but not limited to, resident records, advance directives, living will, and the names of persons empowered to make health care decisions.

F. SUBSTITUTE DECISION MAKERS/ADVANCE DIRECTIVES. You will provide us with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You will provide us with copies of any power of attorney, guardianship, living will, or conservator documents, or other legal documents relating to the making of health or financial decisions or decision-makers. You authorize us to rely on the instructions of such designees or appointees. You further agree to immediately notify us of changes relating to the information stated above.

It is strongly suggested that you have advance directives in place in the event you become incapacitated. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company). Neither we nor any of our associates or agents may be your guardian. If it is necessary for us to petition the court for appointment of a guardian, any costs associated therein shall be paid by you and we may invoice you for such costs.

G. ELECTRIC SCOOTERS. Electric scooters and similar vehicles may be used, subject to the following:

1. Your ability to walk is substantially limited due to a disability;
2. Your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
3. The vehicle is operated at a low speed setting; and
4. You agree to abide by our safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of you, the other residents, our associates or visitors.

You agree to pay for all damages to others or to the Community, which are caused by you or your scooter and that we may invoice you for such costs. You further understand and agree that we may, at our sole discretion, prohibit your further use of an electric scooter or similar vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION. You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that we may continue to charge you for the Basic Service Rate of your Suite, or have your belongings placed in storage at your cost. You further agree that we may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail. Termination will not release you or us from any liability or obligation to the other party under the terms of this Agreement.

I. EXAMINATION OF RECORDS. You acknowledge that we are licensed by the State of South Carolina as an Community Residential Care Facility. You understand that regulatory officials having jurisdiction over the Community may inspect your records as part of an evaluation of the Community. You have the right to review and access your health care records in accordance with the requirements of applicable law.

J. RULE AND REGULATION COMPLIANCE. You understand that the Community has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to our rules, regulations, handbook, policies and procedures as they now exist and as amended from time-to-time. You understand that failure to abide by such policies may result in your discharge from the Community.

- K. GUESTS.** You have the right to associate with your friends and family during reasonable hours. Because the Community is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the circumstances.

You acknowledge and understand that your guests are subject to our rules and regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to residents, our associates or others, we may request that they leave the Community until their behavior is under control or may restrict their visitation. Where circumstances warrant, we may exclude such individuals from the Community.

III. RATES.

- A. COMMUNITY FEE.** We require a one-time non-refundable Community Fee in an amount indicated in Exhibit A to be paid at the time this Agreement is signed. The Community Fee does not excuse you from financial responsibility for any damage caused to your Suite beyond normal wear and tear upon move-out.

B. MONTHLY SERVICE RATE.

1. **Rate.** You agree to pay the Basic Service Rate and, if applicable, the Personal Service Rate as indicated in Exhibit A (together the "Monthly Service Rate").
2. **Refund.** We will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - a. following written notice in accordance with Section IV;
 - b. because you require care that is not offered by us; or
 - c. by reason of death.

Refunds will be based on the actual number of days you were in the Community or a bed was held for you in the Community. A storage fee equal to the prorated (using 30.5 days to calculate the Daily Rate) share of the Monthly Service Rate will be charged until all of your property is removed from the Suite. Unless prohibited by law, you agree we may offset such refunds by any amount due under the terms of this Agreement.

C. ABSENCES.

1. **Notice of Absence.** Except for an emergency medical absence, if you will be absent from the Community for any period of time, you must inform us of your plans prior to leaving and sign the Sign In/Sign Out Book upon exiting and re-entering the Community. We assume no responsibility or liability for your welfare during times that you are away from the Community.
2. **Fees During Absence.** If you are absent from the Community for any reason, such as, for a hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate. If you provide written notice of your intent to terminate the Agreement pursuant to Section IV, termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. **SELECT & THERAPEUTIC SERVICES.** In addition to the Monthly Service Rate, you agree to pay the established charges for any Select Services or Therapeutic Services provided to you by us.

E. **PAYMENT.** We will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for Select Services and Therapeutic Services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be prorated (using 30.5 days to calculate the Daily Rate).

We will charge a \$250.00 late fee if we have not received all fees when due. We will also charge a \$30.00 returned payment fee for each check or automatic withdrawal that is returned or denied for any reason. After two such occurrences, you agree to pay all amounts due by cashiers check or such other method specified by us. You also agree to pay interest on all outstanding amounts based upon the lesser of 1.5% per month or the highest rate permitted by law.

F. **RATE CHANGES.** We will provide thirty (30) days written notice of any change in the rates for Basic Services, Personal Services, Select Services or Therapeutic Services. We may offer or require a change in the Personal Service Plan when we determine additional services are requested or required. **The new Personal Service Rate resulting from a change in your Personal Service Plan is effective immediately after written notice is given.**

IV. TERM AND TERMINATION.

A. **TERM.** This Agreement begins on the date set forth above and continues until terminated as provided below.

B. **TERMINATION BY RESIDENT.** You may terminate this Agreement upon thirty (30) days written notice to us. Termination occurs shall be effective the day after your last day of residence. You will be charged a storage fee equal to the Monthly Service Rate until all of your belongings are removed from the Community.

C. **TERMINATION BY THE COMPANY.** We may terminate this Agreement, upon providing you or your legal representative thirty (30) days written notice, for any of the following events, as determined by us:

1. You require care or services that we are unable to provide or which requires staff that are not available at the Community;
2. Your or your visitors' behavior impairs the well-being, care or safety of yourself or others, creates unsafe conditions, is physically or verbally abusive to others, or otherwise interferes with the orderly operation of the Community.
3. For your welfare or the welfare of others in the Community;
4. You or your third party payor fail to pay fees and charges when due.

We may, upon written notice to you, immediately terminate this Agreement, and transfer or discharge you for emergency medical or welfare reasons that would endanger the health and safety of yourself or others. If the emergency requires your immediate transfer, we will notify your legal representative as soon as practical, but not later than twenty-four (24) hours

following the transfer. We will provide a written explanation for termination with less than thirty (30) days notice.

- D. TERMINATION BY EITHER PARTY.** Either party may terminate this Agreement immediately upon written notice in the event of your death or if a physician certifies to us in writing, based upon an examination prior to moving out, that you must be relocated due to your health. You will be charged a storage fee equal to the Monthly Service Rate until all of your belongings are removed from Community.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION. Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

A. ARBITRATION PROVISION.

1. Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The South Carolina Revised Code concerning arbitration shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. A demand for Arbitration by you, your legal representative, a person or organization acting on your behalf with your consent, or the personal representative of the estate of your estate (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by us shall be made in writing and submitted to you or your agent, representative, successor or assign and/or your legal representative via certified mail, return receipt requested.
3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then each party will select an arbitrator. These arbitrators will act only for the purpose of appointing a sole arbitrator to hear the case, subject to the criteria above. If

either party fails to select their arbitrator within the (20) days mentioned above, they effectively forfeit their right to choose an arbitrator. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the South Carolina Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide us with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and we shall reimburse Resident Party \$0.25 per page).
 - b. We shall provide the Resident Party with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse us \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. We shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.
 - f. We shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
 - g. Resident Party shall have thirty (30) days after our expert designation is received in which to depose such experts.
 - h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
 - i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 - (1) List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witness' intended testimony;
 - (2) List of documents to be relied upon at the arbitration hearing;
 - (3) Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
 - j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.

7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
8. The arbitrator shall apply the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, South Carolina law except as otherwise stated in this Arbitration Provision.
9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
10. The arbitrator's decision shall be final and binding without the right to appeal.
11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.
12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further, the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision.
14. The Arbitration Provision and the Limitation of Liability Provision below shall survive your death.

B. LIMITATION OF LIABILITY PROVISION. *Read Carefully Before Signing*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by us for unpaid Basic Service Rate or Personal Service Rate or other charges, or a claim by, or on behalf of you, Resident Party or your estate, agent or legal representative, arising out of the care or treatment received by you or your occupancy or presence at the Community, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Non-economic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.

- c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.
3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS.

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, we are better able to offer our services and accommodations at a rate that is more affordable to you. In terms of the time-savings offered by selecting arbitration, the parties recognize that selecting a quick method of resolution is potentially to a Resident's advantage.

You or your legal representative understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

The parties to this Agreement further understand that a jury will not decide their case.

VI. MISCELLANEOUS.

- A. WAIVER OF TRIAL BY JURY.** If a court determines that the Arbitration Provision provided above is invalid, the parties express their desire to waive a jury trial and resolve any claims in the appropriate court solely before a judge.
- B. NON-DISCRIMINATION.** We operate on a non-discriminatory basis and afford equal treatment and access to services to eligible persons regardless of race, religion, color, national origin, sex, disability or any other category protected by applicable law.
- C. RISK AGREEMENT.** You are responsible for your personal, financial and health care decisions. You are also responsible for maintaining health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance in an amount adequate to cover your personal property and your general liability. You acknowledge that we do not insure your person or property. You understand and agree that:
 - 1. We may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
 - 2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
 - 3. The standard of service for an assisted living community does not include one-on-one care, assistance or supervision, e.g., one resident assistant for each Resident, or immediate response to non-emergent needs. There may be short and long periods of time

in which you will be left alone, unsupervised such as while watching television, listening to music, reading, and sleeping at night;

4. We make no representations or guarantees that our associates can prevent falls. We do not represent or guarantee that your health condition will not change or deteriorate;
5. We make no representations or guarantees that our associates can prevent the onset of skin break down or the worsening of existing skin break down.
6. Our services may not meet all of your personal, social, or health care needs and we will attempt to assist you in arranging for such services which are not included in this Agreement;
7. Many residents suffer from cognitive impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior such as wandering, forgetfulness, agitation towards others and confusion. We make no representations or guarantees that we can predict the behavior of our residents. Therefore, we also make no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another resident;
8. We make no representations or guarantees that we can prevent the loss of personal items, including but not limited to clothing, dentures, hearing aides or other medical equipment. We will not be responsible for the loss of such items. We make no representations or guarantees that we can prevent theft or other criminal acts perpetrated by another resident or person; therefore, we recommend that valuables such as jewelry and large sums of money, not be kept at the Community. If you choose to bring in valuables, you do so at your own risk and we will not be held responsible for any theft or loss of such items;
9. Due to state regulations and fire code, we may not lock our exterior doors against exiting. Therefore, we cannot guarantee that a resident will not wander from the Community. Some buildings have exterior doors that are alarmed with a delayed egress feature and our systems are designed to alert our associates to respond and assist a resident if they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold us, our associates and agents harmless for any damages, injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action by a third party, fire, water, theft or the elements; or (3) loss of personal property.

- D. **PETS.** You may have a household pet in your Suite, subject to (1) our prior written approval, (2) execution of a Pet Agreement, which is available upon request and (3) payment of any applicable pet fee or deposit. You agree to pay for any damage to our property or the property of others caused by your pet. We reserve the right to require the permanent removal of your pet for failure to adhere to the Pet Agreement or our applicable policies and rules, or if we have reason to believe that your pet poses a threat to others or the Community.
- E. **SMOKING.** Except for grandfathered residents, smoking is not permitted in any part of the Community.

- F. **WEAPONS.** Weapons, as defined by us, are not allowed in the Community or on Community property. This includes but is not limited to firearms, explosive materials, and collectible or antique weapons.
- G. **NO TENANCY INTEREST.** You have none of the rights of a tenant under this Agreement, subject to applicable state law.
- H. **ASSIGNMENT.** This Agreement is not assignable without our prior written consent. Our rights and obligations may be assigned to any person or entity which will be responsible to ensure our obligations under this Agreement are satisfied in full from the date of notification. We may engage another person or entity to perform any or all of the services under this Agreement.
- I. **AMENDMENTS.** This Agreement and any written amendments constitute the entire agreement between the parties and supersede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written. Except for our right to modify fees, rates and charges, amend services provided and establish and modify reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.
- J. **SEVERANCE.** Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.
- K. **FINANCIAL RESPONSIBILITY.** You have designated a Guarantor, who has agreed to the terms of the attached Statement of Financial Responsibility.
- L. **SUBORDINATION.** This Agreement and the parties' rights hereunder are subordinate to any lease, mortgage or deed of trust placed upon the Community, but you may remain in your Suite so long as you comply with the provision of this Agreement.
- M. **REPRESENTATION AND WARRANTY.** By executing this Agreement you represent and warrant that all representations made by you or on your behalf, whether written or verbal, with respect to your application for admission to the Community were true when made. You understand that we rely upon the truthfulness of this information in making our decision to enter into this Agreement. Your application forms, including personal data forms, statement of financial condition (if applicable), health history and medical reports submitted by you or on your behalf to us, are incorporated by reference into this Agreement and made an express part of it. You understand and agree that any material misrepresentation or omission made by you or on your behalf in connection with these documents shall make this Agreement voidable at our option, the extent permitted by law.
- N. **CHOICE.** You have a choice of providers for private sitters, therapy, rehabilitation, home health and other health care services. As part of the complement of services offered by the Company and its affiliates, therapy, rehabilitation, home health or other services may be available at the Community through Innovative Senior Care or other corporate affiliates. If you require such services, Community associates will assist you in obtaining such services from Innovative Senior Care or another service provider of your choice.
- O. **ASSIGNMENT OF BENEFITS.** To the extent that the Community participates in a government payor program, long term care insurance program or other insurance program ("Third Party Payor") of which you are a beneficiary, you authorize us to disclose any medical or administrative information and request payment. You certify that the information given in applying for payment from such Third Party Payor is correct. You authorize release

of all medical and administrative records required to act on this request and request that payment of authorized benefits be made on your behalf. You authorize us to disclose any medical or administrative information required in the processing of applications for financial coverage for services rendered. To the extent permitted by your Third Party Payor, you authorize direct payment of all benefits to us.

- P. **NOTICES.** Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

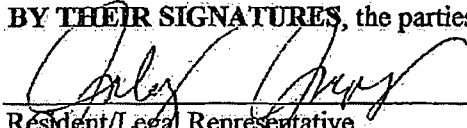
Company:
Executive Director at Community
(At the Community)

Resident:
(At the Community)

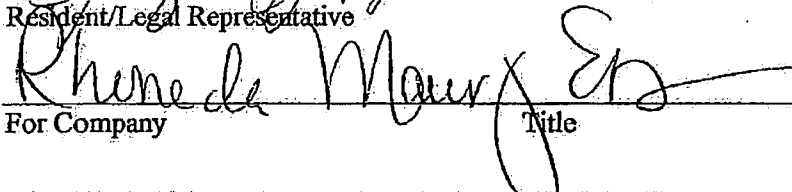
Legal Representative/Responsible Party:
(as noted below)

We believe it is important to disclose all services and fees to the best of our ability and in accordance with the law. We recommend that you consult with legal counsel to ensure understanding of this Agreement before signing.

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.


Resident/Legal Representative

Date


For Company

Title

Date

LEGAL REPRESENTATIVE/RESPONSIBLE PARTY ADDRESS:

Name: Julie Jones

Address: 80 Wedgefield Dr., Hilton Head, SC 29926

Phone Nos.: 843-342-9216 (H) 843-247-2108 (C)

Email: j.jones9968@aol.com

Globalcolor@aol.com

OTHER RELATED MATERIALS:

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package
5. Medical Records Release
6. Personal Service Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Statement of Financial Responsibility

C. Pharmacy Services Agreement

ADDITIONAL EXHIBITS TO ATTACH AS PART OF THE AGREEMENT:

- X. Select Services List
- Y. Therapeutic Services List
- Z. Assessment Price Schedule

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident

Suite Type and Number

Janet Scheerle
0411 A - Sp

Services Included in the Basic Service Rate

- ♦ **Parking.** – Each Suite (whether occupied by one or two Residents) will have access to shared and uncovered parking spaces, provided you own and drive an automobile.

COMMUNITY FEE (Prior to Move-in)

\$ 1000.00

1x only

BASIC SERVICE RATE

\$ _____

(Check below if applicable)

- ☐ The Basic Service Rate above is the Basic Service Rate for a Companion Suite. If the Companion Suite converts to single occupancy, the Basic Service Rate will adjust to the then current single occupancy Basic Service Rate for such Suite.

PERSONAL SERVICE RATE

\$ 2550

(The current Personal Service Price Schedule is attached as Exhibit Z)
(See attached Personal Service Rate Report)

MONTHLY SERVICE RATE

\$ 3131

(Add Basic Service Rate and Personal Service Rate)

PSR - \$ 581

SELECT SERVICES AND THERAPEUTIC SERVICES

\$ _____ *

(The Select Service List and Therapeutic Services List are attached as Exhibits X and Y)

*Amount varies based upon monthly usage.

I acknowledge receipt of Exhibits X, Y and Z and agree to the above Schedule of Services and Rates to commence as of July 10, 2010. I understand and agree that the Company has the right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

Resident/Legal Representative

Date

For Company

Title

Date

Janet Scheerle Mary E... 7/9/10
July 9, 2010

EXHIBIT B
STATEMENT OF FINANCIAL RESPONSIBILITY

Julie Jones ("Guarantor" or "you") and Southern Assisted Living, Inc.
d/b/a Carolina House of Hilton Head (the "Company," "us," "we" or "our"), agree as follows:

The Resident named in the attached Residency Agreement desires to live at the Community and we are willing to enter into the Residency Agreement if the Resident has an individual who is willing to fulfill the conditions of this Statement of Financial Responsibility; and

In consideration for our accepting the Resident into the Community, you agree to fulfill the provisions of this Statement of Financial Responsibility, if and as necessary.

Therefore, in consideration of the mutual covenants contained in this Statement of Financial Responsibility, the parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such assistance, and upon our request, you will assist Resident or legally responsible person, as necessary by:

- A. Participating with our associates in evaluating Resident's needs and in planning and implementing an appropriate plan for Resident's care;
- B. Maintaining Resident's welfare and fulfilling Resident's obligations under the Residency Agreement;
- C. Relocating Resident following termination and removing the Resident's property;
- D. Transferring Resident to a hospital, nursing home, or other facility in the event that Resident requires care we do not offer;
- E. Making necessary arrangements for funeral services and burial in the event of death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to us under the Residency Agreement, you agree to pay us such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. You acknowledge that you have received and reviewed a copy of the Residency Agreement, and have had an opportunity to ask questions.

BY THEIR SIGNATURES, the parties have executed this Agreement to be effective as of

July 10 2010
JULIE JONES 275-74-8542 7/9/10
Guarantor Social Security No. D.L. No. Date
Rhonda Maurer July 9, 2010
For the Company Title Date

SEND NOTICES TO GUARANTOR AT:

Address: 80 Wedge Field Dr, Hilton Head, SC 29926
Home and Work Phone Nos.: 843-342-9216
Cell Phone No.: 843-247-2808
Email Address: jlones9968@aol.com

EXHIBIT C
PHARMACY SERVICES AGREEMENT

We work closely with pharmacy providers to meet the needs of our residents. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions and offering generic substitutions when appropriate
- Providing competitive pricing for comparable packaging
- Alerting our associates and physicians when there is a duplication of prescriptions
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets our safety standards

Palmetto Long Term Care Pharmacy is our preferred provider for pharmacy services ("Preferred Provider"). The Preferred Provider will review your current medications upon your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Preferred Provider, it will be required to meet our medication management standards.

Please review and sign the following statement acknowledging you understand our expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Preferred Provider, I will be charged a service fee, which is set forth on Exhibit X.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Company's Regional Director of Operations. I understand there is a packaging exemption fee as set forth in Exhibit X associated with a packaging exemption due to the additional administrative oversight required. If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.

If I do not use the Community's Preferred Provider, I also understand that I will have the responsibility for reordering medications. If medications are not delivered **within two days prior to their depletion**, the Community will reorder my medications with the Preferred Provider. I agree to **pay for the medications and any associated service charges**. The fees associated with reordering medications from the Preferred Provider are determined by the Preferred Provider, and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Resident/Legal Representative Signature

Date

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Janet Sue Scheerle,
Plaintiff,

Case No. 2011-CP-07-2654

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
COUNTY OF MILWAUKEE)

Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, ("Affiant"), who having been duly sworn, deposes and states:

1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.
2. I am Counsel and Vice-President of Legal for Brookdale Senior Living, a Wisconsin Corporation, and the Carolina House of Hilton Head, South Carolina.
3. Carolina House of Hilton receives goods, services, and supplies from out-of-state vendors, including but not limited to, One Source, a vendor of supplies from Wisconsin; Sysco, a corporation with its corporate office located in Houston Texas; and a vendor of carpeting from North Carolina.
4. The goods, services, and supplies procured through interstate commerce are part of the Residency Agreement that the Plaintiff signed. For example, the food from Sysco is delivered to the resident in the form of daily meals, which the resident has contracted to receive under the

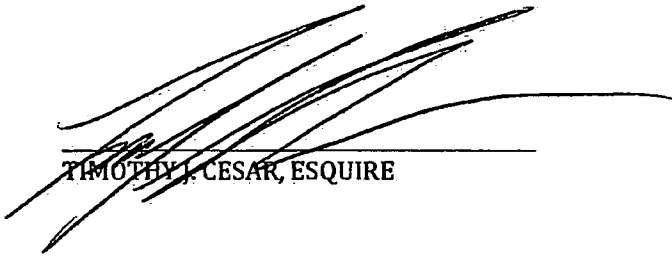
Residency Agreement. Whenever a resident is to receive medical assistance under the Residency Agreement, the resident receives supplies procured through One Source.

5. Carolina House of Hilton Head orders supplies from out-of-state vendors by mail, electronic mail, telephone and facsimile transmissions. Those supplies are then shipped over various state lines to Carolina House of Hilton Head.

6. Carolina House of Hilton Head receives and admits out-of-state residents as residents at Carolina House of Hilton Head. Currently, there are residents from Connecticut, Florida and New York.

7. Payments received from Ms. Scheerle and other residents are through checks written out to Brookdale Senior Living, which are sent to a Wells Fargo bank in Texas. The checks are deposited into accounts owed by Brookdale Senior Living, which ultimately receives that money at its corporate offices in Milwaukee, Wisconsin.

FURTHER this Affiant sayeth naught.

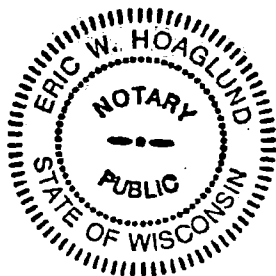

TIMOTHY J. CESAR, ESQUIRE

STATE OF WISCONSIN)

COUNTY OF MILWAUKEE)

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced N/A as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 9th day of August, 2011.




NOTARY PUBLIC, State of Wisconsin

My Commission Expires is permanent

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Janet Sue Scheerle,
Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

IN THE COURT OF COMMON PLEAS

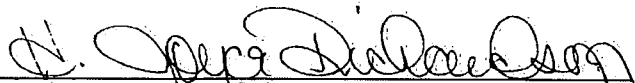
Case No. 2011-CP-07

**MOTION TO DISMISS AND COMPEL
ARBITRATION**

11 AUG 11 PM 4:39
JENNIFER ROSENE
CLERK OF COURT
BEAUFORT COUNTY, SC

The undersigned certifies that a copy of the foregoing **Motion To Dismiss And Compel Arbitration** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 10th day of August, 2011, to the address shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUBT, LLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Janet Sue Scheerle

☐ Plaintiff

Brookdale Senior Living, Inc., Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-07-2654

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

11 AUG 11 PM 4:39
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiff's Attorney: Kelly M. Jolley, Bar No. 72573 Address: Post Office Drawer 3, Hilton Head, SC 29938 phone: 843-785-2171 fax: e-mail: other:		Defendant's Attorney: Manton M. Grier, Jr., Bar No. 70525 Address: Post Office Drawer 2426, Columbia, SC 29202 phone: 803-540-2116 fax: 803-727-1439 e-mail: MGrier@nexsenpruet.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss and Compel Arbitration Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		August 10, 2011 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Janet Sue Scheerle,

Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-072654

**MOTION TO RECONSIDER OR TO
ALTER OR AMEND THE JUDGMENT**

11 NOV 15 PM 1:57
BEAUFORT COUNTY
COURT OF COMMON PLEAS

Pursuant to South Carolina Rules of Civil Procedure, including Rule 59, Defendants Brookdale Senior Living Inc. and Southern Assisted Living, LLC ("Defendants") move this Court to reconsider or alter or amend its Order Denying Defendants Motion to Dismiss and Compel Arbitration, received by Defendants' counsel on November 3, 2011.

The grounds for this motion are as follows:

The FAA governs the Residency Agreement

1. The Court failed to apply the Federal Arbitration Act ("FAA") to a Residency Agreement that involves interstate commerce. (The Residency Agreement is attached as Exhibit A to Defendants' Original Motion). The United States Supreme Court expanded the scope of the FAA in Allied-Bruce Terminix Cos. Inc. v. Dobson, 513 U.S. 265, 269 (1995). There is no requirement that interstate commerce be "substantially involved," or that the parties contemplate an interstate transaction at the time they entered the agreement. To satisfy the FAA, an agreement must simply "involve commerce." The courts have held that this is a relatively easy threshold to meet.

2. In this case, the Residency Agreement involves interstate commerce because it specifies that residents are to receive meals from the facility, and the food to prepare those meals comes from a Texas corporation. Further, medical supplies administered to the residents come from a Wisconsin Corporation. Finally, the payments made on Ms. Scheerle's behalf are addressed to Brookdale Senior Living Inc. ("Brookdale"), a Delaware corporation, and sent to a Wells Fargo bank in Texas, where they ultimately end up in Brookdale's corporate offices in Milwaukee, Wisconsin.

The Arbitration Agreement is Not Unconscionable and, In the Alternative, is Severable

3. The arbitration agreement found in the Residency Agreement is not unconscionable. The contract was entered into knowingly by Ms. Scheerle, with full knowledge that she and her responsible party should consult with an attorney before signing. Considering the time and expenses saved through arbitration, the terms are not unconscionable. In the alternative, the arbitration stands alone and is severable. The portions of the Residency Agreement that this Court found unconscionable were not part of the actual, specific arbitration clause. Because the Court would not need to re-write the arbitration clause, there was no basis for failing to sever the parts of the Residency Agreement that the Court found unconscionable.

Ms. Scheerle is Bound by the Residency Agreement

4. Finally, Ms. Scheerle is bound by the Residency Agreement because either she signed it, or a responsible party signed on her behalf and with her authority. To the extent an issue exists over whether Ms. Scheerle is bound by the Residency Agreement, such issues must be decided by an arbiter not a court.

5. Defendants, therefore, respectfully ask the Court to reconsider its Order Denying Defendants' Motion to Dismiss and Compel Arbitration.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900
MManos@nexsenpruet.com
MGrier@nexsenpruet.com

Attorneys for Defendants Brookdale Senior
Living, Inc. and Southern Assisted Living, LLC

November 11, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Janet Sue Scheerle

☐ Plaintiff

v.

Brookdale Senior Living, Inc., Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-07-2654

11 NOV 15 PM 1:57

BEAUFORT COUNTY S.C.
CLERK OF COURT

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Kelly M. Jolley, Bar No. 72573 Address: Post Office Drawer 3, Hilton Head, SC 29938 phone: 843-785-2171 fax: e-mail: other:		Defendant's Attorney: Manton M. Grier, Jr., Bar No. 70525 Address: Post Office Drawer 2426, Columbia, SC 29202 phone: 803-540-2116 fax: 803-727-1439 e-mail: MGrier@nexsenpruet.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Reconsider Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. November 11, 2011 Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted			
SECTION III: Motion Fee ☒ PAID – AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____			

RECEIVED

NOV 18 2011

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Janet Sue Scheerle,
Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-072654

CERTIFICATE OF SERVICE

11 NOV 15 PM 1:57
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The undersigned certifies that a copy of the foregoing **MOTION TO RECONSIDER OR, TO ALTER OR AMEND THE JUDGMENT** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail on the 11th day of November, 2011, to the address shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUET, LLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Janet Sue Scheerle,

Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, Inc. and Sonia S. King,

Defendants.

Case No. 2011-CP-07-2654

**BROOKDALE DEFENDANTS' RENEWED
MOTION TO DISMISS**

12 JUL -2 PM 3:11
CLERK OF COURT
SOUTH CAROLINA

In response to Plaintiff's Amended Complaint, Defendants Brookdale Senior Living, Inc. and Southern Assisted Living, LLC ("Brookdale Defendants") renew their Motion to Dismiss and request that this Court grant an Order dismissing the Amended Complaint pursuant to Rule 12 and compelling the parties to arbitrate this dispute pursuant to the arbitration clause found in the Plaintiff's Residency Agreement.

The grounds for this Motion are as follows:

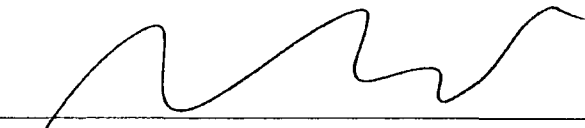
1. Plaintiff (or her responsible party) signed a Residency Agreement on July 9, 2010, which states that "[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Resident's stay at the Company ... shall be submitted to binding arbitration[.]" (Residency Agreement, pp. 11, attached as **Exhibit A**).

2. The Residency Agreement states on the cover page, in capital letters, that it is subject to arbitration. Further, the arbitration provision heading is in bold typeface. Finally, the arbitration provision instructs the party to seek legal counsel before signing.

3. The arbitration provision states that the Federal Arbitration Act ("FAA") shall govern. The FAA preempts any state law to the contrary because the Defendants provide supplies that are procured through interstate commerce, and the Agreement specifically provides that the Residents will receive certain things and supplies-such as meals-that are procured through interstate commerce. (See Affidavit of Timothy J. Cesar, attached as **Exhibit B**). Many of the residents at the Carolina House of Hilton Head are from out-of-state. Id. The contracting parties are a South Carolina resident (Plaintiff) and a North Carolina Corporation (Southern Assisted Living). Residency fees are sent out-of-state to a Wells Fargo Bank in Texas, and ultimately end up in accounts owned by Wisconsin Corporation (Brookdale Senior Living).

4. Therefore, Plaintiff's claims are governed by a valid and binding arbitration provision, and this Court should dismiss the Amended Complaint and compel arbitration.

5. Finally, should the Court deny this Motion, Defendants reserve the right to answer the Amended Complaint.



Marcus A. Manos
Manton M. Grier, Jr.
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900 / 803.253.8277
MManos@nexsenpruet.com
MGrier@nexsenpruet.com

Attorneys for Defendants
Brookdale Senior Living, Inc., Southern Assisted
Living, Inc. and Sonia S. King

June 28, 2012

Columbia, South Carolina

EXHIBIT A

CAROLINA HOUSE
BROOKDALE SENIOR LIVING
RESIDENCY AGREEMENT

THIS AGREEMENT IS SUBJECT TO ARBITRATION

This Agreement ("Agreement") dated July 10, 2010 is made by and between Southern Assisted Living, Inc. d/b/a Carolina House of Hilton Head (the "Company," "us," "we" or "our") a corporate affiliate of Brookdale Senior Living Inc., and Janet Scheerle ("Resident," "you" or "your").

We operate the community located at 35 Beach City Road, Hilton Head, South Carolina 29926 (the "Community") which is licensed by the State of South Carolina as a Community Residential Care Facility and residency in the Community has been requested by you or on your behalf. The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS.

A. BASIC SERVICES. We will provide you with the following Basic Services, which are included in the Basic Service Rate, subject to the terms of this Agreement:

- ♦ **Accommodations** – You have elected to live in the Suite described in Exhibit A and are entitled to the use of our property located in the Suite. You are also entitled to use and enjoy with all other residents the common areas of the Community. You may provide your own furnishings and personal property; however, we reserve the right to limit the number and type of furnishings/small appliances. You agree that you are responsible for the maintenance and repair of any personal belongings you bring to the Community.
- ♦ **Dining Services** – We will furnish three meals daily. Snacks are available 24 hours a day.
- ♦ **Utility Service** – The cost of gas, electric, heat, air conditioning and water service are included. The cost of basic cable, satellite or comparable television service is not included. You are responsible for paying any other utility charges including, but not limited to, telephone, internet or premium cable charges.
- ♦ **Housekeeping Service** – We will provide light housekeeping once a week.
- ♦ **Laundry and Linen Service** – We will launder your personal belongings and bed linens once a week.
- ♦ **Activities Program** – We will provide planned social and recreational programs.
- ♦ **Transportation** – We will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by us at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You

understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

- ♦ **Staffing 24 hours a day** – Associates are available 24 hours a day, seven days a week.

We will provide thirty (30) days written notice of any change in Basic Services.

- B. PERSONAL SERVICE PLAN.** Prior to moving in and periodically throughout your residency, we will use a personal service assessment to determine the personal services you require. The personal service assessment will be used to develop your Personal Service Plan. The results of the assessment and the cost of providing the additional personal services (the "Personal Service Rate") will be shared with you. Your initial Personal Service Rate is set forth in Exhibit A.

- C. AVAILABLE SELECT AND THERAPEUTIC SERVICES.** Select Services and Therapeutic Services are available to you at your request. Such additional services are not included in the Basic Service Rate or the Personal Service Rate. Where available, such services may include, but are not limited to guest meals, transportation beyond that which is included in the Basic Service Rate, transportation escort services, enhanced cable television, special events or certain clinical services. The available Select Services and Therapeutic Services as well as the associated prices are found on Exhibit X and Exhibit Y to this Agreement.

- D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT.** In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the Community. An outside agency or individual will be permitted to provide these services or any related personal services only if we have given prior approval.

You are responsible for obtaining and paying for all services that are not included in the Basic Services or Personal Service Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by us, our subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy, therapy, private companion, beauty/barber or other health care services. Fees for such services will be billed to you directly by the service provider, unless otherwise agreed to by the parties. All third party service providers (including, but not limited to, health care service providers) must agree to adhere to our standards for outside providers prior to being permitted to provide services in the Community.

You may not hire our current associates to provide services in the Community. You may contract with former associates to perform any services at the Community only with our consent. We reserve the right to refuse entry to (1) former associates; (2) persons whose actions may be disruptive to the Community; or (3) persons whose actions may threaten the safety of any resident or associate.

II. YOUR RESPONSIBILITIES AND REPRESENTATIONS.

- A. CARE OF SUITE.** You agree that the Community and the Suite are in satisfactory, habitable condition and we have made no promise to decorate, alter or improve the Community or Suite unless otherwise provided in writing and attached as part of this Agreement. You agree to maintain the Suite and to leave the Suite upon termination of this Agreement in good condition, except for normal wear and tear. You agree to pay all damages, beyond normal wear and tear, which you (including your agent, employee,

contractor, or other invitee) cause to our property. The Community may invoice you for the cost of such repairs.

B. ALTERATIONS. We, in our sole discretion, will permit reasonable alterations to the Suite if you have a disability and the proposed modification is necessary to afford you full enjoyment of the Suite. Structural or physical alterations, whether based on a handicap or not, may be made only upon our prior written approval. All structural or physical changes to the Suite shall remain at the Suite and be considered part of the Suite and the Community. Any changes or modifications to the Suite that require assistance of appropriately licensed and insured electricians, contractors or similar professionals must be approved in advance by us in our sole discretion. The cost of any alterations made by you shall be paid by you unless we otherwise agree in writing. You agree that you will bear the cost of restoring the Suite to its original condition, reasonable wear and tear excepted, upon the termination of this Agreement, unless we specifically exempt you from this requirement in writing. We may enter and make any modifications or alterations to the Suite to meet the requirements of any applicable law.

C. RIGHT OF ENTRY. For your safety and comfort, our associates must be permitted to enter your Suite to provide services under the terms of this Agreement, to respond to emergencies, to make repairs and improvements, or if there is reasonable belief that your safety or the safety of others is in question or that our policies and procedures are being violated, as we deem necessary or advisable. Therefore, it is not permissible to change the locks or add locks to the entrance door to your Suite. When feasible, our associates will attempt to give you reasonable notice before entering your Suite.

We reserve the right to relocate you to a more appropriate Suite within the Community as required for your health or safety, or because the residents of a companion Suite are incompatible.

D. HEALTH ASSESSMENT. You agree that we may assess your health to create and update a Personal Service Plan and/or to determine whether you are appropriate to remain at the Community. Not more than thirty (30) days prior to the date of this Agreement or upon our request, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree to undergo examination by a particular specialist, at your cost, as we determine is warranted by your current physical or mental status. You will request the examiner to provide us with recommendations, including a statement attesting to the appropriateness of your continued placement. Based upon the assessment(s) and our judgment, we may determine your appropriateness to remain in the Community. You will request the examiner to perform any tests and complete any forms required by us or applicable law.

E. HEALTH CARE PROVIDER NOTIFICATION. You authorize us to contact your legal representative/family, health care providers, and/or other persons listed in your records (1) if it is necessary to advise them of your situation; (2) to arrange for required health care services and other assistance; or (3) in case of an emergency.

If your designated health care providers are unavailable, you authorize us to arrange for the services of other health care providers. You agree we may provide such persons with copies of your records, including, but not limited to, resident records, advance directives, living will, and the names of persons empowered to make health care decisions.

F. SUBSTITUTE DECISION MAKERS/ADVANCE DIRECTIVES. You will provide us with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You will provide us with copies of any power of attorney, guardianship, living will, or conservator documents, or other legal documents relating to the making of health or financial decisions or decision-makers. You authorize us to rely on the instructions of such designees or appointees. You further agree to immediately notify us of changes relating to the information stated above.

It is strongly suggested that you have advance directives in place in the event you become incapacitated. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company). Neither we nor any of our associates or agents may be your guardian. If it is necessary for us to petition the court for appointment of a guardian, any costs associated therein shall be paid by you and we may invoice you for such costs.

G. ELECTRIC SCOOTERS. Electric scooters and similar vehicles may be used, subject to the following:

1. Your ability to walk is substantially limited due to a disability;
2. Your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
3. The vehicle is operated at a low speed setting; and
4. You agree to abide by our safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of you, the other residents, our associates or visitors.

You agree to pay for all damages to others or to the Community, which are caused by you or your scooter and that we may invoice you for such costs. You further understand and agree that we may, at our sole discretion, prohibit your further use of an electric scooter or similar vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION. You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that we may continue to charge you for the Basic Service Rate of your Suite, or have your belongings placed in storage at your cost. You further agree that we may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail. Termination will not release you or us from any liability or obligation to the other party under the terms of this Agreement.

I. EXAMINATION OF RECORDS. You acknowledge that we are licensed by the State of South Carolina as an Community Residential Care Facility. You understand that regulatory officials having jurisdiction over the Community may inspect your records as part of an evaluation of the Community. You have the right to review and access your health care records in accordance with the requirements of applicable law.

J. RULE AND REGULATION COMPLIANCE. You understand that the Community has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to our rules, regulations, handbook, policies and procedures as they now exist and as amended from time-to-time. You understand that failure to abide by such policies may result in your discharge from the Community.

- K. GUESTS.** You have the right to associate with your friends and family during reasonable hours. Because the Community is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the circumstances.

You acknowledge and understand that your guests are subject to our rules and regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to residents, our associates or others, we may request that they leave the Community until their behavior is under control or may restrict their visitation. Where circumstances warrant, we may exclude such individuals from the Community.

III. RATES.

- A. COMMUNITY FEE.** We require a one-time non-refundable Community Fee in an amount indicated in Exhibit A to be paid at the time this Agreement is signed. The Community Fee does not excuse you from financial responsibility for any damage caused to your Suite beyond normal wear and tear upon move-out.

B. MONTHLY SERVICE RATE.

1. **Rate.** You agree to pay the Basic Service Rate and, if applicable, the Personal Service Rate as indicated in Exhibit A (together the "Monthly Service Rate").
2. **Refund.** We will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - a. following written notice in accordance with Section IV;
 - b. because you require care that is not offered by us; or
 - c. by reason of death.

Refunds will be based on the actual number of days you were in the Community or a bed was held for you in the Community. A storage fee equal to the prorated (using 30.5 days to calculate the Daily Rate) share of the Monthly Service Rate will be charged until all of your property is removed from the Suite. Unless prohibited by law, you agree we may offset such refunds by any amount due under the terms of this Agreement.

C. ABSENCES.

1. **Notice of Absence.** Except for an emergency medical absence, if you will be absent from the Community for any period of time, you must inform us of your plans prior to leaving and sign the Sign In/Sign Out Book upon exiting and re-entering the Community. We assume no responsibility or liability for your welfare during times that you are away from the Community.
2. **Fees During Absence.** If you are absent from the Community for any reason, such as, for a hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate. If you provide written notice of your intent to terminate the Agreement pursuant to Section IV, termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. **SELECT & THERAPEUTIC SERVICES.** In addition to the Monthly Service Rate, you agree to pay the established charges for any Select Services or Therapeutic Services provided to you by us.

E. **PAYMENT.** We will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for Select Services and Therapeutic Services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be prorated (using 30.5 days to calculate the Daily Rate).

We will charge a \$250.00 late fee if we have not received all fees when due. We will also charge a \$30.00 returned payment fee for each check or automatic withdrawal that is returned or denied for any reason. After two such occurrences, you agree to pay all amounts due by cashiers check or such other method specified by us. You also agree to pay interest on all outstanding amounts based upon the lesser of 1.5% per month or the highest rate permitted by law.

F. **RATE CHANGES.** We will provide thirty (30) days written notice of any change in the rates for Basic Services, Personal Services, Select Services or Therapeutic Services. We may offer or require a change in the Personal Service Plan when we determine additional services are requested or required. The new Personal Service Rate resulting from a change in your Personal Service Plan is effective immediately after written notice is given.

IV. TERM AND TERMINATION.

A. **TERM.** This Agreement begins on the date set forth above and continues until terminated as provided below.

B. **TERMINATION BY RESIDENT.** You may terminate this Agreement upon thirty (30) days written notice to us. Termination occurs shall be effective the day after your last day of residence. You will be charged a storage fee equal to the Monthly Service Rate until all of your belongings are removed from the Community.

C. **TERMINATION BY THE COMPANY.** We may terminate this Agreement, upon providing you or your legal representative thirty (30) days written notice, for any of the following events, as determined by us:

1. You require care or services that we are unable to provide or which requires staff that are not available at the Community;
2. Your or your visitors' behavior impairs the well-being, care or safety of yourself or others, creates unsafe conditions, is physically or verbally abusive to others, or otherwise interferes with the orderly operation of the Community.
3. For your welfare or the welfare of others in the Community;
4. You or your third party payor fail to pay fees and charges when due.

We may, upon written notice to you, immediately terminate this Agreement, and transfer or discharge you for emergency medical or welfare reasons that would endanger the health and safety of yourself or others. If the emergency requires your immediate transfer, we will notify your legal representative as soon as practical, but not later than twenty-four (24) hours

following the transfer. We will provide a written explanation for termination with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY. Either party may terminate this Agreement immediately upon written notice in the event of your death or if a physician certifies to us in writing, based upon an examination prior to moving out, that you must be relocated due to your health. You will be charged a storage fee equal to the Monthly Service Rate until all of your belongings are removed from Community.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION. Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

A. ARBITRATION PROVISION.

1. Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The South Carolina Revised Code concerning arbitration shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. A demand for Arbitration by you, your legal representative, a person or organization acting on your behalf with your consent, or the personal representative of the estate of your estate (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by us shall be made in writing and submitted to you or your agent, representative, successor or assign and/or your legal representative via certified mail, return receipt requested.
3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then each party will select an arbitrator. These arbitrators will act only for the purpose of appointing a sole arbitrator to hear the case, subject to the criteria above. If

either party fails to select their arbitrator within the (20) days mentioned above, they effectively forfeit their right to choose an arbitrator. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the South Carolina Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide us with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and we shall reimburse Resident Party \$0.25 per page).
 - b. We shall provide the Resident Party with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse us \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. We shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.
 - f. We shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
 - g. Resident Party shall have thirty (30) days after our expert designation is received in which to depose such experts.
 - h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
 - i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 - (1) List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witness' intended testimony;
 - (2) List of documents to be relied upon at the arbitration hearing;
 - (3) Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
 - j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.

7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
8. The arbitrator shall apply the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, South Carolina law except as otherwise stated in this Arbitration Provision.
9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
10. The arbitrator's decision shall be final and binding without the right to appeal.
11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.
12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further, the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision.
14. The Arbitration Provision and the Limitation of Liability Provision below shall survive your death.

B. LIMITATION OF LIABILITY PROVISION. *Read Carefully Before Signing*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by us for unpaid Basic Service Rate or Personal Service Rate or other charges, or a claim by, or on behalf of you, Resident Party or your estate, agent or legal representative, arising out of the care or treatment received by you or your occupancy or presence at the Community, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Non-economic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.

- c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
- d. Punitive damages shall not be awarded.

3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS.

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, we are better able to offer our services and accommodations at a rate that is more affordable to you. In terms of the time-savings offered by selecting arbitration, the parties recognize that selecting a quick method of resolution is potentially to a Resident's advantage.

You or your legal representative understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

The parties to this Agreement further understand that a jury will not decide their case.

VI. MISCELLANEOUS.

- A. **WAIVER OF TRIAL BY JURY.** If a court determines that the Arbitration Provision provided above is invalid, the parties express their desire to waive a jury trial and resolve any claims in the appropriate court solely before a judge.
- B. **NON-DISCRIMINATION.** We operate on a non-discriminatory basis and afford equal treatment and access to services to eligible persons regardless of race, religion, color, national origin, sex, disability or any other category protected by applicable law.
- C. **RISK AGREEMENT.** You are responsible for your personal, financial and health care decisions. You are also responsible for maintaining health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance in an amount adequate to cover your personal property and your general liability. You acknowledge that we do not insure your person or property. You understand and agree that:
 - 1. We may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
 - 2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
 - 3. The standard of service for an assisted living community does not include one-on-one care, assistance or supervision, e.g., one resident assistant for each Resident, or immediate response to non-emergent needs. There may be short and long periods of time

in which you will be left alone, unsupervised such as while watching television, listening to music, reading, and sleeping at night;

4. We make no representations or guarantees that our associates can prevent falls. We do not represent or guarantee that your health condition will not change or deteriorate;
5. We make no representations or guarantees that our associates can prevent the onset of skin break down or the worsening of existing skin break down.
6. Our services may not meet all of your personal, social, or health care needs and we will attempt to assist you in arranging for such services which are not included in this Agreement;
7. Many residents suffer from cognitive impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior such as wandering, forgetfulness, agitation towards others and confusion. We make no representations or guarantees that we can predict the behavior of our residents. Therefore, we also make no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another resident;
8. We make no representations or guarantees that we can prevent the loss of personal items, including but not limited to clothing, dentures, hearing aides or other medical equipment. We will not be responsible for the loss of such items. We make no representations or guarantees that we can prevent theft or other criminal acts perpetrated by another resident or person; therefore, we recommend that valuables such as jewelry and large sums of money, not be kept at the Community. If you choose to bring in valuables, you do so at your own risk and we will not be held responsible for any theft or loss of such items;
9. Due to state regulations and fire code, we may not lock our exterior doors against exiting. Therefore, we cannot guarantee that a resident will not wander from the Community. Some buildings have exterior doors that are alarmed with a delayed egress feature and our systems are designed to alert our associates to respond and assist a resident if they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold us, our associates and agents harmless for any damages, injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action by a third party, fire, water, theft or the elements; or (3) loss of personal property.

D. PETS. You may have a household pet in your Suite, subject to (1) our prior written approval, (2) execution of a Pet Agreement, which is available upon request and (3) payment of any applicable pet fee or deposit. You agree to pay for any damage to our property or the property of others caused by your pet. We reserve the right to require the permanent removal of your pet for failure to adhere to the Pet Agreement or our applicable policies and rules, or if we have reason to believe that your pet poses a threat to others or the Community.

E. SMOKING. Except for grandfathered residents, smoking is not permitted in any part of the Community.

- F. **WEAPONS.** Weapons, as defined by us, are not allowed in the Community or on Community property. This includes but is not limited to firearms, explosive materials, and collectible or antique weapons.
- G. **NO TENANCY INTEREST.** You have none of the rights of a tenant under this Agreement, subject to applicable state law.
- H. **ASSIGNMENT.** This Agreement is not assignable without our prior written consent. Our rights and obligations may be assigned to any person or entity which will be responsible to ensure our obligations under this Agreement are satisfied in full from the date of notification. We may engage another person or entity to perform any or all of the services under this Agreement.
- I. **AMENDMENTS.** This Agreement and any written amendments constitute the entire agreement between the parties and supersede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written. Except for our right to modify fees, rates and charges, amend services provided and establish and modify reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.
- J. **SEVERANCE.** Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.
- K. **FINANCIAL RESPONSIBILITY.** You have designated a Guarantor, who has agreed to the terms of the attached Statement of Financial Responsibility.
- L. **SUBORDINATION.** This Agreement and the parties' rights hereunder are subordinate to any lease, mortgage or deed of trust placed upon the Community, but you may remain in your Suite so long as you comply with the provision of this Agreement.
- M. **REPRESENTATION AND WARRANTY.** By executing this Agreement you represent and warrant that all representations made by you or on your behalf, whether written or verbal, with respect to your application for admission to the Community were true when made. You understand that we rely upon the truthfulness of this information in making our decision to enter into this Agreement. Your application forms, including personal data forms, statement of financial condition (if applicable), health history and medical reports submitted by you or on your behalf to us, are incorporated by reference into this Agreement and made an express part of it. You understand and agree that any material misrepresentation or omission made by you or on your behalf in connection with these documents shall make this Agreement voidable at our option, the extent permitted by law.
- N. **CHOICE.** You have a choice of providers for private sitters, therapy, rehabilitation, home health and other health care services. As part of the complement of services offered by the Company and its affiliates, therapy, rehabilitation, home health or other services may be available at the Community through Innovative Senior Care or other corporate affiliates. If you require such services, Community associates will assist you in obtaining such services from Innovative Senior Care or another service provider of your choice.
- O. **ASSIGNMENT OF BENEFITS.** To the extent that the Community participates in a government payor program, long term care insurance program or other insurance program ("Third Party Payor") of which you are a beneficiary, you authorize us to disclose any medical or administrative information and request payment. You certify that the information given in applying for payment from such Third Party Payor is correct. You authorize release

of all medical and administrative records required to act on this request and request that payment of authorized benefits be made on your behalf. You authorize us to disclose any medical or administrative information required in the processing of applications for financial coverage for services rendered. To the extent permitted by your Third Party Payor, you authorize direct payment of all benefits to us.

- P. NOTICES.** Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

Company:
Executive Director at Community
(At the Community)

Resident:
(At the Community)

Legal Representative/Responsible Party:
(as noted below)

We believe it is important to disclose all services and fees to the best of our ability and in accordance with the law. We recommend that you consult with legal counsel to ensure understanding of this Agreement before signing.

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.

Resident/Legal Representative

For Company

Title

Date

Date

LEGAL REPRESENTATIVE/RESPONSIBLE PARTY ADDRESS:

Name: Jillie Jones

Address: 80 Wedge Field Dr., Hilton Head, SC 29926

Phone Nos.: 843-342-9216 (H) 843-247-2108 (C)

Email: J.Jones9968@aol.com
Globalcolor@aol.com

OTHER RELATED MATERIALS:

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package
5. Medical Records Release
6. Personal Service Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Statement of Financial Responsibility

C. Pharmacy Services Agreement

ADDITIONAL EXHIBITS TO ATTACH AS PART OF THE AGREEMENT:

X. Select Services List

Y. Therapeutic Services List

Z. Assessment Price Schedule

**EXHIBIT A
SCHEDULE OF SERVICES AND RATES**

Resident

Suite Type and Number

Services Included in the Basic Service Rate

- ♦ **Parking.** – Each Suite (whether occupied by one or two Residents) will have access to shared and uncovered parking spaces, provided you own and drive an automobile.

COMMUNITY FEE (Prior to Move-in)

\$ 1000.00

1X only

BASIC SERVICE RATE

\$ _____

(Check below if applicable)

- ☐ The Basic Service Rate above is the Basic Service Rate for a Companion Suite. If the Companion Suite converts to single occupancy, the Basic Service Rate will adjust to the then current single occupancy Basic Service Rate for such Suite.

PERSONAL SERVICE RATE

(The current Personal Service Price Schedule is attached as Exhibit Z)
(See attached Personal Service Rate Report)

\$ 2550

MONTHLY SERVICE RATE

(Add Basic Service Rate and Personal Service Rate)

PSR - \$ 581

\$ 3131

SELECT SERVICES AND THERAPEUTIC SERVICES

(The Select Service List and Therapeutic Services List are attached as Exhibits X and Y)

\$ _____ *

*Amount varies based upon monthly usage.

I acknowledge receipt of Exhibits X, Y and Z and agree to the above Schedule of Services and Rates to commence as of July 10, 2010. I understand and agree that the Company has the right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

Resident/Legal Representative

For Company

Title

Date

Date

EXHIBIT B
STATEMENT OF FINANCIAL RESPONSIBILITY

Julie Jones ("Guarantor" or "you") and Southern Assisted Living, Inc. d/b/a Carolina House of Hilton Head (the "Company," "us," "we" or "our"), agree as follows:

The Resident named in the attached Residency Agreement desires to live at the Community and we are willing to enter into the Residency Agreement if the Resident has an individual who is willing to fulfill the conditions of this Statement of Financial Responsibility; and

In consideration for our accepting the Resident into the Community, you agree to fulfill the provisions of this Statement of Financial Responsibility, if and as necessary.

Therefore, in consideration of the mutual covenants contained in this Statement of Financial Responsibility, the parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such assistance, and upon our request, you will assist Resident or legally responsible person, as necessary by:

- A. Participating with our associates in evaluating Resident's needs and in planning and implementing an appropriate plan for Resident's care;
- B. Maintaining Resident's welfare and fulfilling Resident's obligations under the Residency Agreement;
- C. Relocating Resident following termination and removing the Resident's property;
- D. Transferring Resident to a hospital, nursing home, or other facility in the event that Resident requires care we do not offer;
- E. Making necessary arrangements for funeral services and burial in the event of death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to us under the Residency Agreement, you agree to pay us such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. You acknowledge that you have received and reviewed a copy of the Residency Agreement, and have had an opportunity to ask questions.

BY THEIR SIGNATURES, the parties have executed this Agreement to be effective as of

July 10, 2010.
JULIE JONES 275-74-8542 7/9/10
Guarantor Social Security No. D.L. No. Date
Rhonda Mann Jr July 9, 2010
For the Company Title Date

SEND NOTICES TO GUARANTOR AT:

Address: 80 Wedge Field Dr, Hilton Head, SC 29926
Home and Work Phone Nos.: 843-342-9216
Cell Phone No.: 843-247-2108
Email Address: jones9968@aol.com

EXHIBIT C
PHARMACY SERVICES AGREEMENT

We work closely with pharmacy providers to meet the needs of our residents. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions and offering generic substitutions when appropriate
- Providing competitive pricing for comparable packaging
- Alerting our associates and physicians when there is a duplication of prescriptions
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets our safety standards

Palmetto Long Term Care Pharmacy is our preferred provider for pharmacy services ("Preferred Provider"). The Preferred Provider will review your current medications upon your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Preferred Provider, it will be required to meet our medication management standards.

Please review and sign the following statement acknowledging you understand our expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Preferred Provider, I will be charged a service fee, which is set forth on Exhibit X.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Company's Regional Director of Operations. I understand there is a packaging exemption fee as set forth in Exhibit X associated with a packaging exemption due to the additional administrative oversight required. If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.

If I do not use the Community's Preferred Provider, I also understand that I will have the responsibility for reordering medications. If medications are not delivered **within two days prior to their depletion**, the Community will reorder my medications with the Preferred Provider. I agree to **pay for the medications and any associated service charges**. The fees associated with reordering medications from the Preferred Provider are determined by the Preferred Provider, and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Resident/Legal Representative Signature

Date

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Janet Sue Scheerle,
Plaintiff,

Case No. 2011-CP-07-2654

vs.

AFFIDAVIT OF TIMOTHY J. CESAR

Brookdale Senior Living, Inc., Southern
Assisted Living, LLC, and Sonia S. King,
Defendants.

STATE OF WISCONSIN)
)
COUNTY OF MILWAUKEE)

Before me, the undersigned authority, personally appeared, TIMOTHY J. CESAR, ("Affiant"), who having been duly sworn, deposes and states:

1. I am over the age of eighteen, am competent to make this Affidavit, and have personal knowledge of the matters set forth herein.

2. I am Counsel and Vice-President of Legal for Brookdale Senior Living, a Wisconsin Corporation, and the Carolina House of Hilton Head, South Carolina.

3. Carolina House of Hilton receives goods, services, and supplies from out-of-state vendors, including but not limited to, One Source, a vendor of supplies from Wisconsin; Sysco, a corporation with its corporate office located in Houston Texas; and a vendor of carpeting from North Carolina.

4. The goods, services, and supplies procured through interstate commerce are part of the Residency Agreement that the Plaintiff signed. For example, the food from Sysco is delivered to the resident in the form of daily meals, which the resident has contracted to receive under the

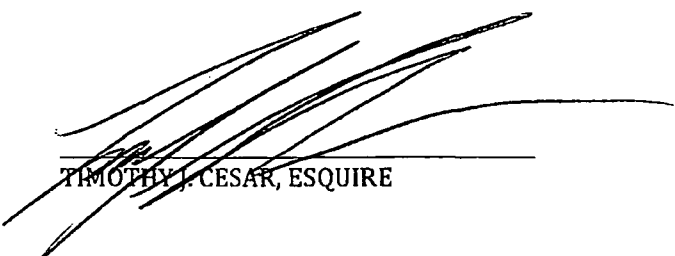
Residency Agreement. Whenever a resident is to receive medical assistance under the Residency Agreement, the resident receives supplies procured through One Source.

5. Carolina House of Hilton Head orders supplies from out-of-state vendors by mail, electronic mail, telephone and facsimile transmissions. Those supplies are then shipped over various state lines to Carolina House of Hilton Head.

6. Carolina House of Hilton Head receives and admits out-of-state residents as residents at Carolina House of Hilton Head. Currently, there are residents from Connecticut, Florida and New York.

7. Payments received from Ms. Scheerle and other residents are through checks written out to Brookdale Senior Living, which are sent to a Wells Fargo bank in Texas. The checks are deposited into accounts owed by Brookdale Senior Living, which ultimately receives that money at its corporate offices in Milwaukee, Wisconsin.

FURTHER this Affiant sayeth naught.

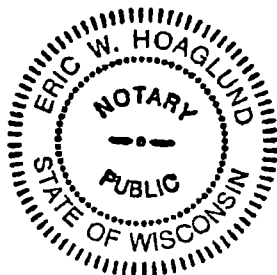

TIMOTHY J. CESAR, ESQUIRE

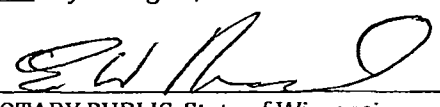
STATE OF WISCONSIN)

COUNTY OF MILWAUKEE)

BEFORE ME, the undersigned authority, personally appeared TIMOTHY J. CESAR, ESQUIRE, who is personally known to me or who produced N/A as identification, and deposes and says that the foregoing is true and correct in all aspects.

SWORN TO AND SUBSCRIBED before me this 9th day of August, 2011.




NOTARY PUBLIC, State of Wisconsin

My Commission Expires is permanent

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Janet Sue Scheerle,

Plaintiff,

vs.

Brookdale Senior Living, Inc., Southern
Assisted Living, Inc. and Sonia S. King,

Defendants.

Case No. 2011-CP-072654

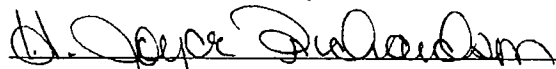
CERTIFICATE OF SERVICE

12 JUL -2 PM 3:11
RECEIVED
CLERK'S COURT
BEAUFORT COUNTY, S.C.

The undersigned certifies that a copy of the foregoing **Brookdale Defendants' Renewed Motion To Dismiss** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 28th day of June, 2012, to the addresses shown below.

Susan Taylor Wall, Esquire
McNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402

Kelly M. Jolley, Esquire/Amber Martella, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUET, LLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Janet Sue Scheerle

☐ Plaintiff

v.

Brookdale Senior Living, Inc., Et Al.

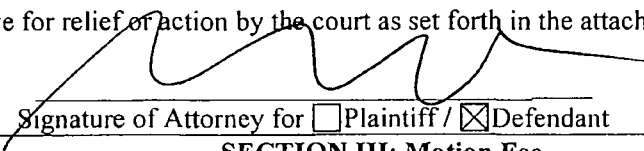
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-07-2654

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Kelly M. Jolley, Bar No. 72573 Address: Post Office Drawer 3, Hilton Head, SC 29938 phone: 843-785-2171 fax: e-mail: other:	Defendant's Attorney: Manton M. Grier, Jr., Bar No. 70525 Address: Post Office Drawer 2426, Columbia, SC 29202 phone: 803-540-2116 fax: 803-727-1439 e-mail: MGrier@nexsenpruet.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Renewed Motion to Dismiss Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: June 28, 2012	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: Date Filed: ☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE:	

RECEIVED

JUL - 9 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleas of Beaufort County, South Carolina
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-199666

Elizabeth O'Meara,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Yvonne Carrie Pruett,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Janet Sue Scheerle,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

CERTIFICATE OF COUNSEL

RECEIVED
JUN 04 2013
SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Marcus A. Manos, SC Bar #011876
Manton M. Grier, Jr., SC Bar #70525
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
PHONE: 803.771.8900
FACSIMILE: 803.253.8277
MManos@nexsenpruet.com
MGrier@nexsenpruet.com

Attorneys for Appellants, Brookdale
Senior Living, Inc. and Southern Assisted
Living, LLC

May 15, 2013

Columbia, South Carolina

RECEIVED

JUN 04 2013

SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Court of Common Pleas of Beaufort County, South Carolina
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-199666

Elizabeth O'Meara,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Yvonne Carrie Pruett,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

Janet Sue Scheerle,.....Respondent,

v.

Brookdale Senior Living, Inc., Southern Assisted Living, LLC
and Sonia S. King,.....Defendants,

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
.....are the Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the **Record On Appeal** has been

served upon counsel of record by depositing a copy of the same, first-class postage prepaid in the United States Mail, on the 15 day of May, 2013, to the address shown below.

Susan Wall, Esquire
McNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, South Carolina 29938


NEXSEN PRUET, LLC

Columbia, South Carolina