

EXHIBIT 1

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Apr 10 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS

Deonda Weldon, Individually and as)
 Personal Representative of the Estate)
 of Earline Cooley,) C.A. Number: 2021-CP-39-01127 &
) 2021-CP-39-01128
)

Plaintiff,)

v.)

Dominion Clemson, LLC d/b/a)
 Dominion Senior Living at Patrick)
 Square, Dominion Senior Living,)
 LLC, Dominion Clemson, II, LLC,)
 Dominion Management Group, LLC)
 And Dominion Group, LLC,)

Defendants.)

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL ARBITRATION
AND DISMISSING CASES

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This matter was before the Court on October 20, 2021, upon Defendants' Motion to Compel Arbitration and Protective Order from Discovery. Counsel of record for all parties were present, including Matthew W. Christian for Plaintiff and Joshua T. Thompson for Defendants. Having reviewed the submissions by counsel and hearing all arguments advanced, the Court hereby GRANTS Defendants' Motion to Compel Arbitration and ORDERS that this matter be dismissed and compelled to binding arbitration in accordance with the below findings.

FINDINGS OF FACT

The Court has extensively reviewed the submissions of the parties, including exhibits. Of particular note, the Court has reviewed the Affidavit of Deonda Weldon, the Affidavit of Debra Galloway, Earline Cooley's Durable Power of Attorney attached to Defendants' Memorandum in Opposition as Exhibit 1, Ms. Cooley's Healthcare Power of Attorney (the "Healthcare POA") attached to Defendants Memorandum in Opposition as Exhibit 2, Ms. Cooley's Resident Admission Agreement attached to Defendants' Memorandum in Opposition as Exhibit 3, information on Ms. Cooley's

Emergency Contacts attached to Defendants' Memorandum in Opposition as Exhibit 4, and the various exhibits submitted by the parties which chronical the timeline for Defendants providing notice of investigating the arbitration issue through filing the present motion. Based upon said the arguments presented and said exhibits, the Court makes the following findings of fact:

On January 10, 2006, Earline Cooley ("Ms. Cooley") executed both a Durable Power of Attorney (the "POA") and Healthcare Power of Attorney (the "Healthcare POA"). The POA was filed in Greenville County, SC on August 1, 2014. The POA named Ms. Cooley's daughter, Deonda Weldon ("Ms. Weldon"), as Ms. Cooley's agent. Additionally, Ms. Cooley named her daughters, Phyllis Robin Cooley Elliott ("Ms. Elliott") and Debra Galloway ("Ms. Galloway"), in that order, as substitute or successor agents if Ms. Weldon was unable, unwilling, or unavailable. The POA granted the available agent all lawfully delegated powers not specifically limited in the POA. Ms. Cooley did not limit the available POA's power to admit her to a community residential care facility or limit the available POA's power to agree to any terms relevant to such admission. The powers expressly included the power to arbitrate; the power to abandon and/or compromise claims; the power to sign and execute contracts, agreements, releases, and waivers; and the power to pay medical expenses. The POA also stated that Ms. Cooley expressly provided that all actions taken by the available agent pursuant to the POA shall "bind me and my estate and my personal representative."

In the Healthcare POA, Ms. Cooley named Ms. Elliott as her agent. Ms. Cooley named Ms. Galloway and Ms. Weldon, in that order, as substitute or successor agents if Ms. Elliott was unable, unwilling, or unavailable. The Healthcare POA granted the power to provide a place of residence and to make arrangements at any nursing home or similar establishment. Like the POA, Ms. Cooley stated within the Healthcare POA that all actions taken by the available agent shall "bind me and my estate and my personal representative."

On February 14, 2019, Ms. Galloway, as the available durable power of attorney, executed the

Admission Agreement on behalf of Ms. Cooley as part of the process for admitting Ms. Cooley to Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square (“Dominion Clemson”) for assisted living care. The Admission Agreement provided that Ms. Cooley was to be admitted to Dominion Clemson on March 8, 2019, for assisted living care that included accommodations, basic daily services such as meals, activities, and maintenance, and medication administration. The Admission Agreement also contained an arbitration clause within the same document, not as a separate document or exhibit. Based on the Admission Agreement, Ms. Cooley was admitted to Dominion Clemson for assisted living in March 2019. Ms. Cooley remained at Dominion Clemson until her discharge in March 2020.

In Paragraph 13 of the Admission Agreement, bolded and titled “**AGREEMENT TO ARBITRATE**,” Ms. Galloway agreed that any claim or dispute “amongst the Parties, involving an amount in excess of \$15,000, arising out of or related to this Agreement, the Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator.” Ms. Galloway likewise agreed that the Federal Arbitration Act “shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement.” Further, Ms. Galloway agreed that the parties would waive the right to be awarded punitive damages.

Likewise, Ms. Galloway agreed that the rights and obligations of the parties under the Admission Agreement “shall bind...the Parties hereto, their legal representatives, heirs, estates, successors and assigns. Ms. Galloway also agreed that should any provision of the Admission Agreement be found unenforceable, such unenforceable provisions would be severed and the remainder of the Admission Agreement would continue in full force and effect. Ms. Galloway agreed that “she was given the opportunity to read this Agreement before signing it.” Ms. Galloway agreed in the Admission Agreement that all information provided to Dominion Clemson as part of the admission process, including Ms. Cooley’s “application forms, health history and medical report, personal interview and emergency

information records, as applicable, is true and correct.”

On October 13, 2021, Plaintiff commenced actions 2021-CP-39-01127 and 2021-CP-39-01128, both alleging claims of negligence against all Defendants related to the care that Ms. Cooley received while she was a resident at Dominion Clemson. Defendants timely filed their Answer on December 21, 2021, expressly raising the arbitration provision within the Admission Agreement as an affirmative defense. Along with the filed Answer, Defendants simultaneously served Plaintiff on the same day with Defendants’ First Set of Interrogatories to Plaintiff and Defendants’ First Set of Requests for Production to Plaintiff. These discovery requests specifically sought all powers of attorney executed by Ms. Cooley.

Plaintiff responded to Defendants’ First Set of Interrogatories to Plaintiff and Defendants’ First Set of Requests for Production to Plaintiff on April 25, 2022, and included document production that contained the POA. On June 9, 2022, Defense counsel emailed Plaintiff’s counsel apologizing for a delayed response due to having Covid and informed Plaintiff’s counsel that Defendants searched Plaintiff’s county of residence, Pickens County, for a durable power of attorney and were unsuccessful in discovering such document. Defense counsel then stated that after reviewing Plaintiff’s Responses to Defendants’ First Set of Requests for Production Defendants, Defense counsel became aware of the Plaintiff’s POA and planned to move to compel arbitration pursuant to the admission agreement. Defendants filed their Motion to Compel Arbitration and Protective Order from Discovery on June 9, 2022, which is now present before the Court.

Since these claims expressly fall within the scope of the Admission Agreement that contain an arbitration provision, the Court finds this matter should be dismissed and compelled to arbitration.

CONCLUSIONS OF LAW

As an initial matter, the Court recognizes that both Federal and South Carolina law favor arbitrating disputes. See O’Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir. 1997) (“The FAA embodies a strong federal policy in favor of arbitration, and, accordingly, there is a strong presumption

in favor of the validity of arbitration agreements.”); Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (“Furthermore, it is the policy of this state to favor arbitration of disputes.”).

For this reason, both Federal and South Carolina courts have held that any doubts over arbitrability should be resolved in favor of compelling arbitration. See Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 – 25 (1983) (“The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.”); Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) (“[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.”).

Viewed through the lens of presumed enforceability outlined above, the Admission Agreement that contains an arbitration provision, by its terms and by law, are governed by the FAA, 9 U.S.C. §§ 1-16; Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

Pursuant to the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. The FAA provides, in pertinent part, as follows:

The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*

9 U.S.C. § 4 (emphasis added). “By its terms, the act leaves no place for the exercise of discretion by

a... court, but instead mandates that... courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). As discussed herein, the Admission Agreements satisfies these requirements, and the Court concludes that this matter should be dismissed and compelled to arbitration.

I. The arbitration provision in the Admission Agreement is not unconscionable.

As set forth above, the following facts are undisputed. Ms. Galloway was a competent adult on February 14, 2019. She reviewed a legal document based upon authority vested by Ms. Cooley’s Power of Attorney. The legal document, an Admission Agreement, concerned Ms. Cooley’s admission to an assisted living facility twenty-two (22) days later on March 8, 2019. The arbitration provision at issue was its own provision of the agreement, conspicuously bolded, and set forth in all capital letters. Ms. Galloway agreed she had time to review the document. Plaintiff, Ms. Cooley, and Ms. Galloway all benefited from the document for the year that Ms. Cooley was admitted to Dominion Clemson. Plaintiff and Ms. Galloway both presented Affidavits to this Court. Neither have claimed that Ms. Galloway did not sign the Admission Agreement. Neither have claimed that Ms. Galloway was suffering from mental infirmity at the time she signed the Admission Agreement. As detailed below, Ms. Galloway as Ms. Cooley’s agent is held to her contract in such a circumstance.

Plaintiff argues that the arbitration provision contained in the Admission Agreement is unconscionable because there was an absence of meaningful choice on the part of Ms. Galloway and that the terms of the Admission Agreement are so oppressive that no fair or honest person would accept them. Plaintiff further argued that despite the Admission Agreement containing a severability provision that severability is not proper for an unconscionable provision and the arbitration “agreement” should be invalidated.

The South Carolina Supreme Court recently issued an opinion regarding the severability of unconscionable provisions. Similar to this matter, in Damico, the Purchase and Sale Agreement

(“Agreement”) between the parties contained an arbitration provision that was governed by the FAA. Damico v. Lennar Carolinas, LLC, No. 2020-001048, 2022 WL 4231032, at *3 (S.C. Sept. 14, 2022). The South Carolina Supreme Court clearly stated that “[t]he validity of the arbitration clause is a matter for the courts, whereas the validity of the contract as a whole is a matter for the arbitrator” and that when “conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.” Damico, 2022 WL 4231032, at *4 (internal citations omitted). Thus, this Court’s analysis is limited to the arbitration provision contained within the Admission Agreement.

As to the arbitration provision, the party arguing unconscionability bears the burden of proving “(1) she lacked a meaningful choice as to whether to arbitrate because the Agreement’s provisions were one-sided, and (2) the terms were so oppressive no reasonable person would make them and no fair and honest person would accept them.” Doe v. TCSC, LLC, 430 S.C. 602, 612, 846 S.E.2d 874, 879 (Ct. App. 2020). “[C]ourts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties’ bargaining power; the parties’ relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.” Id.

Plaintiff attached the Affidavit of Ms. Galloway to her memorandum as an exhibit. In her Affidavit, Ms. Galloway testified that at the time of the execution of the Admission Agreement she was unaware that it contained an arbitration clause, that the admissions process was hurried, that this timeframe was extremely emotional for her family, and finally that had she been aware of the arbitration provision she would not have signed the Admission Agreement. Ms. Galloway fails to explain how she, as a competent adult, was unaware of the arbitration provision given that it was conspicuously set forth as a separate provision of the Admission Agreement under a bolded and capitalized heading that said, **“AGREEMENT TO ARBITRATE.”**

South Carolina law is clear that anyone who enters into a written contract has a duty to read the contract which she signs. Maw, 252 S.C. at 284-285, 166 S.E.2d at 204. Likewise, anyone who is capable of reading and understanding, but fails to read a contract before signing is bound by the terms thereof. Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981). Furthermore, arbitration clauses are not unconscionable and will be enforced if a person who can read fails to read the contract, regardless of whether he was advised of the arbitration terms by the contracting party. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (holding the plaintiff's failure to read an arbitration provision did not render it unconscionable even though the plaintiffs claimed they were not advised of those terms).

While Ms. Galloway claims that the admissions processed was hurried and an emotional time, Plaintiff fails to address the twenty-two (22) day time period between the execution of Ms. Cooley's Admission Agreement paperwork on February 14, 2019, and her admission on March 8, 2018. Plaintiff has not provided evidence showing that Ms. Galloway did not have the appropriate time to review the entire Admission Agreement that contained an arbitration provision during the twenty-two (22) day time period between the execution of the documentation and Ms. Cooley presenting to the facility for assisted living care.

The Court, therefore, finds and concludes the Plaintiff has failed to establish that the arbitration provision within the Admission Agreement is unconscionable. Pursuant to Damico, the Court declines to review the liability and damages limiting provisions of the Admission Agreement. Damico indicates that the arbitrator assigned to this matter will determine enforceability of those provisions.

II. The Defendants have not waived their right to compel arbitration.

The Plaintiff filed the Complaints against Defendants on October 13, 2021. After the Complaint was received, the parties corresponded via e-mail to discuss a 30-day extension for the responsive pleading. Defense counsel informed Plaintiff's counsel through e-mail that Defendants were aware of an

arbitration provision in the admission agreement but were only familiar with a healthcare power of attorney at that time and asked for an extension for filing a responsive pleading, including a motion to dismiss or compel arbitration. Defense counsel also stated that he was continuing to investigate the enforceability of the arbitration agreement. Plaintiff's counsel agreed to the request and said that he did not believe the arbitration agreement was "enforceable for several reasons." Plaintiff's counsel did not address whether a durable power of attorney existed.

Defendants timely filed their Answers to Plaintiff's Complaint on December 21, 2021, expressly raising the arbitration provision within the Admission Agreement as an affirmative defense. Along with the filed Answer, Defendants simultaneously served Plaintiff on the same day Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff. In Defendants' First Set of Requests for Production to Plaintiff, Defendants specifically requested "[a]ll powers of attorney, including but not limited to financial, durable, medical, and healthcare powers of attorney, executed by Earline Cooley at any time" in Request for Production No. 21. Over four (4) months later, Plaintiff responded to Defendants' First Set of Interrogatories to Plaintiff and Defendants' First Set of Requests for Production to Plaintiff on April 25, 2022. Plaintiff's response to Defendants' Request for Production No. 21 stated, "See Healthcare Power of Attorney and Durable Power of Attorney for Earline Cooley."

Defense counsel then emailed Plaintiff's counsel on June 9, 2022, apologizing for a delayed response due to being ill with coronavirus and informed Plaintiff's counsel that the Defendants searched Plaintiff's county of residence, Pickens County, for a durable power of attorney and were unsuccessful in discovering such document. Defense counsel then stated that after reviewing Plaintiff's Responses to Defendants' First Set of Requests for Production Defendants, he became aware of the Plaintiff's durable power of attorney and planned to move to compel arbitration pursuant to the admission agreement. Defendants filed the Motion to Compel Arbitration and Protective Order from Discovery at the earliest

possibility on June 9, 2022. Since filing the Motion to Compel Arbitration and Protective Order from Discovery all discovery in this matter ceased pending this Court's ruling on the above-mentioned motions.

Plaintiff argues that Defendants nonetheless waived the right to seek arbitration by serving discovery and subpoenas before learning of the POA. Plaintiff argues that this is true because Plaintiff's counsel attached a copy of the POA to a medical authorization sent to Dominion Clemson before the case was filed. Plaintiff argues that the attachment of the POA put the Defendants on notice of a the POA and that Defendants should not have had to wait for discovery production of the POA to know it existed.

As stated *supra*, both Federal and South Carolina law favor arbitrating disputes and there is no set rule as to what constitutes waiver of arbitration. See O'Neil; Liberty Builders. Even though there is no set rule regarding waiver, generally the factors South Carolina courts consider are:

whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others. Thus, a party may waive its right to compel arbitration if a substantial length of time transpires between the commencement of the action and the commencement of the motion to compel arbitration. What is a substantial length of time varies from one case to the next, depending on the extent of discovery conducted and the corresponding presence or absence of prejudice to the party opposing arbitration.

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (S.C. Ct. App. 2007).

Plaintiff cited to the recent U.S. Supreme Court decision, Morgan, in her memorandum and argued that the Supreme Court held that the prejudice requirement "was not appropriate in determining waiver..." and that "the prejudice requirement, no longer exists." See Plt's Mem. Opp. Page 6. However, this was not the Supreme Court's holding in Morgan. In Morgan, the Supreme Court granted

certiorari “to resolve the split over whether federal courts may adopt an arbitration-specific waiver rule demanding a showing of prejudice.” Morgan v. Sundance, Inc., 212 L. Ed. 2d 753, 142 S. Ct. 1708, 1709 (2022). The Supreme Court stated that “a court must hold a party to its arbitration contract just as the court would to any other kind.” Morgan, 142 S. Ct. 1708 at 1713. The Supreme Court held that prejudice is not a condition of finding that a party, by litigating too long, waived its right to stay litigation or compel arbitration under the FAA. Id. at 1714 (stating that the Supreme Court’s “sole holding today is that it may not make up a new procedural rule based on the FAA’s policy favoring arbitration.”).

In addition to Morgan, Plaintiff cited four (4) South Carolina cases regarding waiver in her memorandum. Plaintiff is correct in her argument that nursing homes can waive arbitration rights. However, South Carolina courts have focused considerably on whether a substantial length of time has commenced in litigation, whether excessive discovery has taken place, and if the Plaintiff was prejudiced in the delay seeking arbitration. See Rhodes. Plaintiff also argued in her memorandum that the South Carolina Court of Appeals held in Liberty “that the party moving to compel arbitration waived their right after filing initial pleadings and responding to discovery.” See Plt’s Mem. Opp. Page 7. But, in Liberty, the parties filed initial pleadings, conducted discovery, and were on the brink of trial before a motion to stay in favor of arbitration was filed; a timeframe of over 2.5 years. See Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (S.C. Ct. App. 1999). The Court of Appeals stated, “Liberty’s decision to file suit, participate in pretrial discovery, and engage in procedural maneuvering for ***two and one-half years*** is sufficient to support the trial court’s finding of waiver.” Liberty, 521 S.E.2d 749 at 754 (emphasis added).

Plaintiff’s memorandum further cites Johnson, stating “the South Carolina Supreme Court held that the defendant nursing home waived its right to compel arbitration after, among other things, answering the Complaint, seeking limited discovery issues, serving discover, and waiting approximately ten (10) months to file the motion to compel arbitration...” See Plt’s Mem. Opp. Page 7. Prior to the

filing of the Complaint, the parties in Johnson spent over a year and a half in litigation regarding a temporary restraining order and appointing a guardian *ad litem* and during that time the nursing home failed to exercise its arbitration provision. See Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 788 S.E.2d 216 (S.C. 2016). The South Carolina Supreme Court specifically stated in its analysis in Johnson that the plaintiff indicted they “intended to pursue a defense of waiver” two months after the Complaint was filed and despite this information and acknowledgement from the defense, a motion to compel arbitration was not filed for another eight (8) months, “all while appearing in court and conducting discovery.” Johnson, 788 S.E.2d 216 at 219.

Lastly, Plaintiff relied on Flexon in her memorandum in opposition and stated that “the South Carolina Court of Appeals recognized and affirmed the order that the party moving for arbitration waived its right to arbitration by engaging in discovery without reservation or limitation. See Plt’s Mem. Opp. Page 7. The Flexon holding is complex since it involved several defendants, including a former and subsequent parent company. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 776 S.E.2d 397 (S.C. Ct. App. 2015). In Flexon, a breach of contract action was filed in May 2009 against numerous defendants. Flexon, 776 S.E.2d 397 at 400. Two (2) months later, one of the defendants, a former subsidiary of one of the co-defendants, filed a motion to compel arbitration and a hearing was held on the matter where a non-moving co-defendant spoke supporting the motion and indicated that he would file his own motion to compel. Id.

In June 2010, the non-moving co-defendant filed his own motion to compel and subsequently the circuit court ruled on the initial motion to compel; denying it not based on time but because of a lack of interstate commerce language and that the parties agreed to litigate the matter in South Carolina. Id. at 401. The initial motion was appealed, upheld, and the second motion to compel was withdrawn without prejudice. Id. The parties then undertook depositions and after the depositions took place, a renewed motion to compel was filed. Id. The South Carolina Court of Appeals focused on the co-defendant

articulating to the court during the initial hearing that he would file a motion to compel, and that motion to compel was not filed for seven (7) months after it's co-defendant's initial motion to compel, and that the parties continued with discovery and depositions after the second motion to compel withdrawn. The Court of Appeals ultimately held that the co-defendant failed to take "the steps necessary to protect its own interests in a timely manner." Id. at 406.

In this matter, Defendants have moved swiftly to protect its interests in a timely manner. As detailed above, Defendants specifically requested from Plaintiff, during the initial discovery process, information regarding power of attorney documentation in December 2021. Defendants did not receive any documentation from Plaintiff, for over four (4) months, until April 2022 when Plaintiff produced her discovery responses. After receiving Plaintiff's discovery responses, the parties began corresponding regarding the scheduling of depositions. Unlike Flexon, no depositions were ever taken in this matter. Defendants specifically requested a stay in discovery pending the outcome of its Motion to Compel Arbitration.

The defendants in Liberty, waited over 2.5 years to file a motion to compel, all while conducting discovery and appearing before the court regarding other matters. The defendants in Johnson went through a lengthy temporary restraining order and guardian *ad litem* process before the Complaint was filed and then waited an *additional year* after the Complaint was filed to compel arbitration. In stark contrast to those cases, Defendants' counsel put Plaintiff's counsel on notice of the potential arbitration issue and what Defendants' counsel was doing to investigate it within their first communication on the case. Defendants also raised arbitration as an affirmative defense in their Answers filed on December 21, 2021. Further, Plaintiff knew from email correspondence and discovery that Defendants were seeking information on any applicable durable powers of attorney during the discovery process.

Defendants informed Plaintiff less than six (6) weeks after receiving Plaintiff's document production, that produced a tangible durable power of attorney for the first time in litigation, that it would

be moving to compel arbitration. Additionally, during those six (6) weeks from Plaintiff's document production to Defendant's filing a Motion to Compel, Defense counsel was ill with coronavirus and yet was still able to file Defendants' Motion to Compel Arbitration months faster than any of the defendants did in Liberty, Johnson, and Flexon.

In accordance with Rhodes, the Plaintiff has failed to show that a substantial length of time transpired between the commencement of this action and Defendants' Motion to Compel Arbitration. Six (6) weeks from the discovery of the durable power of attorney to filing the Motion to Compel Arbitration hardly stacks up to the years of delay in the cases discussed *supra* that Plaintiff relied on to show the Defendants waived its right to compel arbitration. Rhodes also requires this Court to consider whether the party requesting arbitration engaged in extensive discovery prior to moving to compel. Unlike Liberty, Johnson, or Flexon, no additional discovery has taken place in this matter since Defendants filed its Motion to Compel Arbitration on June 9, 2022. Only the initial discovery responses have been produced and no witnesses in this matter have been deposed. The Plaintiff has failed to prove that extensive discovery was conducted prior to Defendants filing its motion.

Finally, Plaintiff's rely on Morgan to claim that the prejudice requirement no longer exists. While this is not how the U.S. Supreme Court articulated its holding, the Plaintiff has still failed to show any procedural preference to arbitration in this matter. Plaintiff has been unable to produce any evidence showing substantial delay, extensive discovery, or procedural prejudice by Defendants and therefore has failed to prove that the Defendants waived its right to compel arbitration.

The Court, therefore, finds and concludes that Plaintiff has failed to prove that the Defendants waived its right to compel arbitration.

III. All Defendants have the right to join in the request for arbitration pursuant to the Admission Agreement.

Plaintiff argues that the arbitration provision contained in the Admissions Agreement does not apply to the remaining Defendants in this matter. The court in Pearson v. Hilton Head Hosp., 400 S.C.

281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012), relying on International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000), held that “well-established common law principles dictate that in an appropriate case a non-signatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.” These include principles such as incorporation by reference, assumption, agency, veil piercing/alter ego, and equitable estoppel. International Paper, Id. Further, “[i]t does not follow . . . that under the [FAA] an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision.” Id. at 416.

Pearson cited and relied upon the South Carolina District Court’s opinion in Goer v. Jasco Indus., Inc., 395 F. Supp. 2d 308, 314 n.9 (D.S.C. 2005), which held that “equitable estoppel allows a non-signatory to compel arbitration . . . when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory.” The court also held that “application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise, arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration is effectively thwarted.” Id. at 295; see also, J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-321 (4th Cir. 1988).

In S.C. Pub. Serv. Authority v. Great Western Coal, et al., the plaintiff contracted with Great Western Coal for the provision of coal. 312 S.C. 559, 437 S.E.2d 22 (Ct. App. 1993). The contract contained an arbitration clause. The plaintiff later brought suit against Great Western Coal, its president, and another employee, alleging that they had increased coal prices while lowering quality. Id. at 561, 437 S.E.2d at 23 – 24. Defendant president, a non-signatory to the contract, filed a motion to dismiss and compel arbitration. Id. at 561, 437 S.E.2d at 24. The trial judge denied defendant president’s motion because he did not sign the contract in his individual capacity, and defendant president appealed. Id. at

563, 437 S.E.2d at 24 – 25.

The South Carolina Court of Appeals reasoned that “a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration.” Id. at 563, 437 S.E.2d at 24 - 25, citing Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990). The Court of Appeals further reasoned that “when the nonsignatory parties are willing to submit to arbitration, the case should be arbitrated.” Id. The Court of Appeals therefore, concluded, that the defendant president was seeking arbitration and held that the trial judge erred in denying the same simply because the defendant president did not sign the contract. Id.

Looking to (1) the language of the Admission Agreement, (2) the claims Plaintiff has raised against Defendants, and (3) applying this law, it is clear that any claims against Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC are substantially intertwined with Plaintiff’s pending claims against Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square, the other signatory to the Admission Agreement.

In Plaintiff’s Complaint, she has alleged that Ms. Cooley was a resident at Dominion Clemson, and that the actions of the remaining Defendants “directly affected resident care such as that of Earline Cooley,” and that the parties were engaged in a “joint enterprise.” Plaintiff thereafter refers to all Defendants as simply “Defendants” within the remaining allegations. Plaintiff’s own allegations of the substantially interdependent and concerted alleged misconduct of Defendants, through which Plaintiff alleges joint liability for those alleged wrongs, compels the construction of the arbitration provision of the Admission Agreement to be equally enforceable by all Defendants. Further, based upon the Motion to Compel Arbitration, it is clear that all Defendants join in the Motion.

The Court, therefore, finds that all Defendants have the right to join in the request for arbitration pursuant to the Admission Agreement.

IV. The arbitration agreement is enforceable as to the statutory beneficiaries' claims in the wrongful death action.

Plaintiff alleged wrongful death claims in case action number 2021-CP-39-01128. Plaintiff argues in her memorandum, citing Bennett, that “South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims.” Plaintiff further argues that even if Ms. Galloway had agreed to arbitration, she did not have the legal authority to bind the statutory beneficiaries who are not parties to the Arbitration Agreement.”

As discussed in more detail *infra*, Ms. Galloway, as Ms. Cooley’s available agent, had the authority under the POA to obligate Ms. Cooley’s wrongful death beneficiaries to arbitration based upon the plain language of the POA and Admission Agreement and because South Carolina’s Wrongful Death Statute is a derivative action. See S.C. Code Ann. § 15-51-10 (The South Carolina Wrongful Death Act requires, as a condition of any suit, that the decedent herself, had she lived, could have “maintain[ed] an action and recover[ed] damages.”); Estate of Stokes v. Pee Dee Family Physicians, LLP, 389 S.C. 343, 347 (2010) (“[O]ur law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued.” (cataloguing cases)); Rish v. Seaboard Air Line Ry., 90 S.E. 704, 704-05 (S.C. 1916) (“The [Wrongful Death Act] gives a right of action where none existed before, and limited the right of recovery to those cases in which the party injured would have been entitled to recover if death had not ensued.”)

Although the case law in South Carolina has not directly addressed the issue at hand, the court has not been hesitant to prohibit wrongful death actions in which the decedent had in some way barred herself from pursuing the underlying cause of action. In Price v. Richmond & D.R. Co., 33 S.C. 556, 12 S.E. 413 (1889), the court determined that a release executed by the decedent prior to his death prevented a wrongful death action brought by the decedent’s wife. The Court’s decision was premised upon the

limiting language of the wrongful death statute. The Price court held that if the defendant in some way deprived himself of the right to pursue a cause of action, “his administrator is, likewise, [also] barred of his right of action.” Id. at 560, 12 S.E. at 413.

Furthermore, the court in Reed v. Northeastern R. Co., 37 S.C. 42, 16 S.E. 289 (1892) affirmed the Price holding and found that “[a]nything that would have defeated [the decedent’s] recovery would defeat that in behalf of his family in case he failed to survive.” Reed at 53, 16 S.E. at 291. In Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988), the South Carolina District Court interpreted the Wrongful Death statute, and held that a survivor cannot bring an action under the wrongful death statute to recover for the same wrong sued upon earlier by the decedent, if the personal injury statute of limitations has expired, but the specific wrongful death limitations period has not expired. This clearly establishes that Wrongful Death cause of action is wholly derivative. The District Court, sitting in diversity, examined the issue as the highest court of South Carolina would if confronted with the same situation. It then traced the history of wrongful death claims starting with Lord Campbell's Act. It further held that the same defenses that would have been available to use against the decedent, had he lived, were also available against those asserting the wrongful death claim.

Based on the legal nature of a wrongful death claim, the South Carolina Supreme Court has found that where a decedent or her agent executes an arbitration agreement in connection with the decedent’s admission to a nursing home, wrongful death actions brought by the personal representative can be subject to binding arbitration. Dean, 408 S.C. 371, 759 S.E.2d 727 at n. 3. District Courts in South Carolina interpreting Dean have found that statutory beneficiaries are subject to arbitration. See, e.g., THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185, at *3 (D.S.C. Mar. 19, 2015) (“Additionally, the South Carolina Supreme Court made clear in Dean that, under South Carolina law, an arbitral agreement is still indeed binding on a decedent's estate for a claim in wrongful death.”)

Ms. Cooley authorized Ms. Galloway as her available agent under the POA to take acts which

“bind me and my estate and my personal representative.” Ms. Galloway as Ms. Cooley’s available agent then used that authority to sign an Admission Agreement containing an arbitration provision which bound “the Parties hereto, their legal representatives, heirs, estates, successors and assigns.”

Ms. Galloway’s execution of the Admission Agreement, as Ms. Cooley’s attorney-in-fact, defeated Plaintiff’s ability as the personal representative to later disavow her actions. Since the execution of the Admission Agreement, which contains an arbitration provision, lawfully bound Ms. Cooley to arbitrate any action arising from Dominion Clemson’s alleged negligence and expressly bound her estate, heirs, successors, and assigns, it also controls the availability of the wrongful death action to her heirs. Because Ms. Galloway signed the Admission Agreement in her legal capacity on behalf of Ms. Cooley with express authority to bind Ms. Cooley’s estate, heirs, and assigns—and not in her own capacity—she had every right to exercise her mother’s option and authority to bind her heirs to the decision to defer a wrongful death claim to arbitration. Courts across the country hold this premise true. See Diversicare Leasing Corp. v. Hubbard, 189 So.3d 24 (Ala. 2015) (holding that “an arbitration agreement that binds the nursing-home resident also binds the resident’s representative”), citing Entekin v. Internal Medicine Associates of Dothan, P.A., 689 F.3d 1248, 1259 (11th Cir. 2012).

The court in Diversicare further held that personal representatives of estates of deceased nursing home residents who properly signed arbitration agreements on behalf of residents “were bound to arbitrate the wrongful-death claims” of the resident’s estates. Id. at 28, 30; see also Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661 (Ala. 2004) (holding that personal representatives of nursing home residents were bound by arbitration provisions contained in admission contracts, arbitration provision was not unconscionable, and not a contract of adhesion); Owens v. Coosa Valley Heath Care, Inc., 890 So.2d 983 (Ala. 2004) (holding that arbitration agreement bound both resident and representative); Estate of Eckstein ex rel. Luckey v. Life Care Centers of America, Inc., 623 F. Supp. 2d 1235 (E.D. Wash. 2009) (holding that claims for neglect, corporate negligence, and wrongful death were

subject to arbitration based on arbitration agreement signed by resident's attorney-in-fact that was binding on the estate); Laizure v. Avante at Leesburg, Inc., 109 So.3d 752 (Fla. 2013) (arbitration agreement covered wrongful death claims, and estate and statutory heirs were bound by the arbitration agreement).

Plaintiff's argument that an Estate and Personal Representative cannot be bound to an arbitration provision in an Admission Agreement ignores the clear language and the practicalities of arbitration provisions in the long term care context. "[T]o hold otherwise would eviscerate a long term care provider's contractual rights when presented with a wrongful death claim of a resident, the very claim anticipated by the Agreement." Estate of Eckstein, 623 F. Supp. at 1239. See also Sanford v. Castleton Health Care Center, LLC, 813 N.E.2d 411, 420 (Ind. Ct. App. 2004) (holding the estate's wrongful death claim was subject to arbitration because "regardless of whether [the personal representative], was privy to the contract containing the arbitration clause, the Estate's survival and wrongful death claims arose out of [Defendant's] alleged negligent treatment of [the resident]").

The wrongful death statute is clearly derivative. A claim under it only arises if there is a wrongful act that would have been actionable by the decedent if she had not died. Likewise, if a wrongdoer dies, a wrongful death action survives against the personal representative subject to actions taken by – or not taken by – the decedent during his lifetime. Execution of a nursing home arbitration agreement by a party with the capacity to contract on behalf of the decedent binds the decedent's estate and statutory heirs in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement.

Plaintiff further relied on Boyle in her memorandum to argue that "wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants." However, Boyle does not mention the issue of whether a wrongful death claim can be subject to arbitration and the court's holding has no relevance to the issue of whether a decedent

can submit wrongful death claims to arbitration. Ultimately, a wrongful death claim is derivative and there would be no claim but for an injury to the decedent.

The Court, therefore, finds that the arbitration agreement is enforceable as to the statutory beneficiaries' claims in the wrongful death action.

V. Debra Galloway did possess the appropriate authority to execute the Arbitration Agreement on behalf of Earline Cooley.

Plaintiff argued that the arbitration provision, which is contained in Paragraph 13 of the Admission Agreement, was unenforceable because Ms. Galloway did not possess the appropriate authority to execute the Admission Agreement on behalf of Ms. Cooley.

On January 10, 2006, Ms. also executed a durable POA, which was filed in Greenville County, SC on August 1, 2014. The POA named Ms. Weldon as Ms. Cooley's agent. Additionally, Ms. Cooley named Ms. Elliott and Ms. Galloway, in that order, as substitute or successor agents if Ms. Weldon was unable, unwilling, or unavailable. The POA granted the available agent all lawfully delegated powers not specifically limited in the POA including the power to arbitrate, the power to abandon and/or compromise claims, the power to sign and execute contracts, agreements, releases, and waivers, and the power to pay medical expenses. Ms. Cooley did not limit the available POA's power to admit her to a community residential care facility or limit the available POA's power to agree to any terms relevant to such admission. Like the Healthcare POA, the POA clearly provided that all actions taken by the available agent pursuant to the POA shall "bind me and my estate and my personal representative."

On February 14, 2019, twenty-two (22) days before Ms. Cooley's admission to Dominion Clemson, Ms. Galloway, as a durable power of attorney, executed the Admission Agreement on behalf of Ms. Cooley as part of the process for admitting Ms. Cooley to Dominion Clemson for assisted living care. Based upon the information provided to Dominion Clemson during the admissions process, the Court finds and concludes that Ms. Galloway was an available agent under the POA and had the appropriate authority to execute the Admission Agreement, which contains an arbitration provision, on

behalf of Ms. Cooley.

VI. Plaintiff's Motion to Compel and Defendants' Request for a Protective Order from Discovery are denied as moot.

In addition to Defendants' Motion to Compel Arbitration, two (2) other related motions are pending before this Court in this matter, which are Plaintiff's March 22, 2022, Motion to Compel referencing Plaintiff's First Interrogatories and First Requests for Production to Defendants and the remainder of Defendant's June 9, 2022 Motion to Compel Arbitration requesting a Protective Order from Discovery.

At the Court's October 20, 2022, hearing, Defendants argued that they had to abstain from further discovery consultations and production once filing the Motion to Compel Arbitration at the risk of a waiver argument. Plaintiff indeed made this argument in her Memorandum in Opposition. As this Court instructed orally at the hearing on October 20, 2022, the Court only intends to rule on the Motion to Compel Arbitration and granted leave to re-file the Plaintiff's Motion to Compel and Defendants' Motion for a Protective Order pending the Court's ruling on the Motion to Compel Arbitration. Given the Court's ruling granting the Motion to Compel Arbitration and Dismissing these Actions, Plaintiff's Motion to Compel and Defendants' Motion for a Protective Order are now denied as moot.

CONCLUSION

For the reasons set forth herein, Defendants' Motion to Compel Arbitration is hereby **GRANTED** and this matter is **DISMISSED**. Should Plaintiff opt to pursue this claim in arbitration, she is **COMPELLED** to do so by initiating her claim pursuant to the procedures set forth in Paragraph 13 of the Admission Agreement entitled "AGREEMENT TO ARBITRATE".

IT IS SO ORDERED!



Pickens Common Pleas

Case Caption: Deonda Weldon , plaintiff, et al VS Dominion Clemson, Llc ,
defendant, et al
Case Number: 2021CP3901127
Type: Order/Compel

So Ordered

G.D. Morgan Jr.

EXHIBIT 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP3901127

Deonda Weldon et al
PLAINTIFF(S)

Dominion Clemson, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

See page two below.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/26/2022 .

Personal Representative Of The Estate Of Earline Cooley
Earline Cooley

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court on Defendants' Motion to Compel Arbitration. Based on a review of the file, the submissions of the parties and the extensive and thorough oral arguments of both parties, the Defendants' Motion is GRANTED.

The Court finds as follows:

- (1) The arbitration provision is not unconscionable. The Court may only analyze the arbitration provision itself when conducting an unconscionability inquiry. See *Damico v. Lennar Carolinas, LLC*, No. 2020-001048, 2022 WL 4231032 (S.C. Sept. 14, 2022). The Court may not go beyond the arbitration provision and look at the entirety of the contract. See *id.*;
- (2) the Defendants have not waived their right to compel arbitration;
- (3) that all Defendants have the right to join in the request for arbitration pursuant to the Admission Agreement;
- (4) that the arbitration agreement is enforceable as to the statutory beneficiaries' claims in the wrongful death action; and
- (5) that Debra Galloway did possess the appropriate authority to execute the Arbitration Agreement on behalf on Earline Cooley.

Defendants' counsel is to prepare a proposed order and submit it to the Court via e-mail.



Pickens Common Pleas

Case Caption: Deonda Weldon , plaintiff, et al VS Dominion Clemson, Llc ,
defendant, et al

Case Number: 2021CP3901127

Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

EXHIBIT 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
)
 Deonda Weldon, Individually and as)
 Personal Representative of the Estate)
 of Earline Cooley,)
)
)
 Plaintiff,)
)
 v.)
)
 Dominion Clemson, LLC d/b/a)
 Dominion Senior Living at Patrick)
 Square, Dominion Senior Living,)
 LLC, Dominion Clemson, II, LLC,)
 Dominion Management Group, LLC)
 And Dominion Group, LLC,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

C.A. Number: 2021-CP-39-01127 &
 2021-CP-39-01128

DEFENDANTS DOMINION CLEMSON, LLC
d/b/a DOMINION SENIOR LIVING AT
PATRICK SQUARE AND DOMINION
SENIOR LIVING, LLC'S MOTION TO
COMPEL ARBITRATION AND
PROTECTIVE ORDER FROM DISCOVERY

TO: PLAINTIFF AND HER ATTORNEY MATTHEW W. CHRISTIAN, ESQ.

YOU WILL PLEASE TAKE NOTICE that Defendants Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson"), Dominion Senior Living, LLC ("Dominion Senior Living"), Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC (collectively, "Defendants") through their undersigned attorneys, will move on the tenth (10th) day after service of this Motion, or as soon thereafter as this matter can be heard, for an Order compelling arbitration and for a protective order from discovery pursuant to Rule 12(b)(1), (2), (3) and (6), SCRCF, Rule 26(c), SCRCF, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable statutory and case law. As part of Defendants' Motion to Compel Arbitration, Defendants seek an Order requiring that arbitration be compelled subject to the limitations set forth in the Dominion Senior Living Resident Admission Agreement

(“Admission Agreement”), attached hereto as part of Exhibit A. The Admission Agreement limits awardable damages as follows:

1. Net economic damages shall be offset by any collateral source payments.
2. Non-economic damages shall be limited to a maximum of \$250,000.00.
3. Interest on unpaid fees shall not be awarded.
4. Punitive damages shall not be awarded.

More particularly, this Motion is based on the terms and provisions of the arbitration clause found in the Admission Agreement (see Exhibit A). The terms of the Admission Agreement expressly provide that all disputes for \$15,000.00 (Fifteen Thousand and 0/100) dollars or more between the parties will be resolved by binding arbitration in South Carolina. The Admission Agreement was executed at or around March 2019 at which time Earline Cooley was admitted to Dominion Clemson and was signed by Earline Cooley’s available and present Durable Power of Attorney and Durable Healthcare Power of Attorney. A copy of the Durable Power of Attorney recently produced by Plaintiff in discovery is attached hereto as Exhibit B. In addition to Exhibit A and Exhibit B, Earline Cooley’s Healthcare Power of Attorney is attached as Exhibit C.

Further, because this matter is required to be submitted to binding arbitration, Defendants respectfully request that this Court stay and protect Defendants from any requirement to file any further responsive pleadings, respond to any motions filed by Plaintiff, or respond to any discovery served by Plaintiff, in particular Plaintiff’s March 22, 2022 pending Motion to Compel with this Court. Alternatively, Defendants request that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the Federal Arbitration Act.

In support of this Motion, Defendants will rely on all attachments filed herewith, and any memoranda of law, affidavits, or exhibits that it might file before the hearing of the Motion.

s/Joshua T. Thompson
Joshua T. Thompson, Esq. (SC Bar #79137)
Ayla Luers Connor, Esq.(SC Bar # 103057)
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Attorney for Defendants

June 9, 2022

Spartanburg, South Carolina

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
Deonda Weldon, Individually and as	)	
Personal Representative of the Estate	)	
of Earline Cooley,	)	C.A. Number: 2021-CP-39-01127 &
	)	2021-CP-39-01128
	)	
Plaintiff,	)	
	)	
v.	)	<u>DEFENDANTS' MEMORANDUM IN</u>
	)	<u>SUPPORT OF MOTION TO COMPEL</u>
Dominion Clemson, LLC d/b/a	)	<u>ARBITRATION AND PROTECTIVE ORDER</u>
Dominion Senior Living at Patrick	)	<u>FROM DISCOVERY AND MEMORANDUM</u>
Square, Dominion Senior Living,	)	<u>IN OPPOSITION TO PLAINTIFF'S</u>
LLC, Dominion Clemson, II, LLC,	)	<u>MOTION TO COMPEL</u>
Dominion Management Group, LLC	)	
And Dominion Group, LLC,	)	
	)	
Defendants.	)	
	)	

On February 14, 2019, Earline Cooley's daughter and available durable power of attorney Debra Galloway ("Ms. Galloway") executed documents as part of the process for admitting Cooley to Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") for assisted living care twenty-two (22) days later on March 8, 2019. During the admission process, Galloway elected to sign the Admission Agreement which contains an arbitration clause as well as clauses limiting damages recoverable in any subsequent qualifying claim between the parties.

Plaintiff now brings claims against Defendants that are subject to this willing agreement to arbitrate as well as the damages limitation clauses. As such, Defendants respectfully request that the Court to compel arbitration pursuant to the Admission Agreement, Rule 12(b)(1), (2), (3), and (6), SCRCF, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable statutory and

case law. Additionally, pursuant to Rule 26(c), SCRCP, Defendants respectfully request protection from being required to answer Plaintiff's written discovery served in this improperly filed action.

BACKGROUND

On January 10, 2006, Cooley executed a Durable Power of Attorney (the "POA") which was filed in Greenville County, SC on August 1, 2014. See Ex. 1 – POA. Cooley named daughter Deonda Weldon as her agent. Additionally, Cooley named daughter Phyllis Robin Cooley Elliott and Galloway, in that order, as substitute or successor agents if Weldon was unable, unwilling, or unavailable. Ex. 1, p. 1. The POA granted the available agent all lawfully delegated powers not specifically limited in the POA. Ex. 1, p. 1. **Cooley did not limit the available POA's power to admit her to a community residential care facility or limit the available POA's power to agree to any terms relevant to such admission.** The powers expressly included the power to arbitrate (Ex. 1, p. 3, ¶ 7; p. 5, ¶ 13); the power to abandon and/or compromise claims (Ex. 1, p. 5, ¶ 13); the power to sign and execute contracts, agreements, releases, and waivers (Ex. 1, p. 7, ¶ 3); and the power to pay medical expenses (Ex. 1, p. 7, ¶ 4). The POA also stated that Ms. Cooley expressly provided that all actions taken by the available agent pursuant to the POA shall "bind me and my estate and my personal representative." (Ex. 1, p. 8, ¶ 2).

In addition to the Durable Power of Attorney, Cooley executed a Healthcare Power of Attorney on January 10, 2006 (the "Healthcare POA"). Cooley named Elliott as her agent. See Ex. 2 – Healthcare POA. Cooley named Galloway and Weldon, in that order, as substitute or successor agents if Elliott was unable, unwilling, or unavailable. Ex. 2, p. 1. The Healthcare POA granted the power to provide a place of residence and to make arrangements at any nursing home or similar establishment. Ex. 2, p. 3, ¶ (1). Like the POA, Cooley stated within the Healthcare POA that all actions taken by the available agent shall "bind me and my estate and my personal representative." Ex. 2, p. 11, ¶ (15).

On February 14, 2019, twenty-two (22) days before Cooley's admission to Dominion Clemson, Galloway executed the Admission Agreement on behalf of Cooley as part of the process to admit Cooley to Dominion Clemson for assisted living care. The Admission Agreement provided that Cooley was to be admitted to Dominion Clemson on March 8, 2019, for assisted living care that included accommodations, basic daily services such as meals, activities, and maintenance, and medication administration. The Admission Agreement defined "Community" as Dominion Clemson and "Resident" as Ms. Cooley. See Ex. 3 – Admission Agreement.

In the second paragraph of the Admission Agreement, Galloway stated that Weldon agreed to act as the financially responsible party and/or agreed to act as the resident's representative, accepting their respective rights and obligations as set forth in the Admission Agreement. Ex. 3, Bates # Dominion – Cooley 28. Thus, it would have appeared to Dominion Clemson that Galloway and Weldon were communicating about the Admission Agreement.

In Paragraph 13 of the Admission Agreement, bolded and titled "**AGREEMENT TO ARBITRATE**," Galloway agreed that any claim or dispute "amongst the Parties, involving an amount in excess of \$15,000, arising out of or related to this Agreement, the Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator." Ex. 3, Bates # Dominion – Cooley 39, ¶ 13. Galloway likewise agreed that the Federal Arbitration Act "shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement." Ex. 3, Bates # Dominion – Cooley 39, ¶ 13. Further, Galloway agreed that the parties would waive the right to be awarded punitive damages. Ex. 3, Bates # Dominion – Cooley 40, ¶ 13.

Additionally, in Paragraph 14 of the Admission Agreement, bolded and titled "**LIMITATIONS OF LIABILITY PROVISION**," Galloway agreed that for any claim arising

between the parties, the parties waived the right to jury trial, that net economic damages would be offset by collateral source payments, that non-economic damages would be capped at \$250,000, and that interest on unpaid fees would not be awarded. Ex. 3, Bates # Dominion – Cooley 40, ¶ 14, 15. Each of these points were numerated, spaced, and numbered in offset font from the other type in the Admission Agreement.

Likewise, Galloway agreed that the rights and obligations of the parties under the Admission Agreement “shall bind...the Parties hereto, their legal representatives, heirs, estates, successors and assigns. Ex. 3, Bates # Dominion – Cooley 42, ¶ 20(G). Galloway also agreed that should any provision of the Admission Agreement be found unenforceable, such unenforceable provisions would be severed and the remainder of the Admission Agreement would continue in full force and effect. Ex. 3, Bates # Dominion – Cooley 42, ¶ 20(F).

Importantly, Galloway agreed that “she was given the opportunity to read this Agreement before signing it.” Ex. 3, Bates # Dominion – Cooley 46, ¶ 22.

Also of great importance is that Galloway agreed in the Admission Agreement that all information provided to Dominion Clemson as part of the admission process, including Cooley’s “application forms, health history and medical report, personal interview and emergency information records, as applicable, is true and correct.” Ex. 3, Bates # Dominion – Cooley 46, ¶ 37

Building on Galloway’s representation that all information she provided to Dominion Clemson was true and correct, it appears that Galloway completed Cooley’s admission process and was the appropriate, available agent pursuant to the POA based on the geographic location of Weldon and Elliott. Galloway provided information to Dominion Clemson that Weldon was in Copenhagen, Denmark and that Elliott was in Trophy Club, Texas. Ex. 4 – Emergency Contacts.

Based on the Admission Agreement, Cooley was admitted to Dominion Clemson for assisted living in March 2019. Cooley remained at Dominion Clemson until her discharge in March 2020. In both actions, the Complaint was filed on October 13, 2021, and alleged negligence against all Defendants related to the care that Cooley received while she was a resident of Dominion Clemson. Since these claims expressly fall within the scope of the Admission Agreement that contain an arbitration provision, the Court should compel this matter to binding arbitration subject to the limitations on liability contained within the Admission Agreement.

ARGUMENT

I. Federal and State Law Favor Enforcing Arbitration.

As an initial matter, both Federal and South Carolina law favor arbitrating disputes. See O’Neil v. Hilton Head Hosp., 115 F.3d 272, 273 (4th Cir. 1997) (“The FAA embodies a strong federal policy in favor of arbitration, and, accordingly, there is a strong presumption in favor of the validity of arbitration agreements.”); Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (“Furthermore, it is the policy of this state to favor arbitration of disputes.”).

For this reason, both Federal and South Carolina courts have held that any doubts over arbitrability should be resolved in favor of compelling arbitration. See Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 – 25 (1983) (“The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.”); Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) (“[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay,

or a like defense to arbitrability.”).

II. The Federal Arbitration Act governs Admission Agreements and compels arbitration.

Viewed through the lens of presumed enforceability outlined above, the Admission Agreement that contains an arbitration provision, by its terms and by law, are governed by the FAA, 9 U.S.C. §§ 1-16. See Ex. 3, Dominion – Cooley 39, ¶ 13; Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

Pursuant to the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. The FAA provides, in pertinent part, as follows:

The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*

9 U.S.C. § 4 (emphasis added). “By its terms, the act leaves no place for the exercise of discretion by a... court, but instead mandates that... courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). As discussed herein, the Admission Agreements satisfies these requirements and requires that Plaintiff’s claims be compelled to arbitration.

(a) The Admission Agreement requires arbitration.

- i. Galloway, as Cooley’s available agent pursuant to the POA, executed a clear and valid contract that requires arbitration subject to the limitations on liability set forth therein.**

As set forth in the Background section, Cooley executed a January 10, 2006, Durable

Power of Attorney that was filed in Greenville County on August 1, 2014. See Ex. 1. Through the POA, Cooley gave her available agent—here, Galloway—the broadest lawful powers available to an agent and specifically authorized Plaintiff to agree to arbitration, sign and execute contracts, agreements, waivers, and releases, and pay for medical expenses. Ex. 1, p. 3, - 7. Cooley also specifically authorized the Durable POA Agent to bind her, her estate, and her personal representative. Ex. 1, p. 8.

Galloway, presumably due to the represented geographic unavailability of Weldon and Elliott, executed the Admission Agreement. As the available agent under the POA, Galloway had the authority to do so and to bind Cooley, her estate, and her personal representative to the same based on the agent powers set forth above.

In exchange for signing the Admission Agreement, Dominion Clemson offered Cooley assisted living care, including, accommodations, basic daily services such as meals, activities, and maintenance, and medication administration Ex. 3. Even for non-signatories, admission can serve as the direct benefit which supports arbitration where the admission and arbitration are governed by the same agreement as they are in these cases. See, e.g., Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 558, 813 S.E.2d 292, 299–300 (Ct. App. 2018) (“Restated, when a signatory seeks to enforce an arbitration agreement against a nonsignatory, the doctrine prevents the nonsignatory from averring he or she is not bound to the arbitration agreement when he or she receives a direct benefit from a contract that contains an arbitration clause.”). Cooley did receive the benefits of the Admission Agreement which Galloway bargained, residing at Dominion Clemson as a resident from March 2019 – March 2020.

Weldon now claims via Affidavit that she was the lawful agent under the POA and that Galloway did not have authority to act as Cooley’s agent. Interestingly, Weldon does not claim in her Affidavit that she was present and available to serve as Cooley’s agent at the time of

admission. Indeed, this would cause contact information for Weldon which Galloway agreed was truthful when provided to be false.

Galloway now claims that via Affidavit that she did not know what she was signing, did not know the Admission Agreement contained an arbitration provision, did not understand what she was signing, and was under stress. Interestingly, Galloway ***does not*** claim in her Affidavit that she was mentally incompetent at the time of execution or that she did not sign the Admission Agreement. All terms now at issue were contained in the Admission Agreement under capitalized and bolded titles, putting Galloway on notice. Likewise, Galloway agreed that she had been provided time to read the Admission Agreement. Ex. 3, Dominion – Clemson 46, ¶ 22. Finally, the admission agreement was signed twenty-two (22) days prior to admission on March 8, 2019. Ex. 3, p. 1. This was not a take-it-or-leave-it proposition. Galloway had time to study her decision and survey options for her mother’s placement twenty-two days later.

Just as any other competent adult entering a contract, Cooley, through the actions of her available agent Galloway, is bound by the terms of the Admission Agreement including the arbitration clause in paragraph 13. See J.B. Colt Co. v. Britt, 129 S.C. 226, 123 S.E. 845, 847 (1924) (a person who enters a valid contract is, “of course, bound by the terms and conditions thereof”); Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (“A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it.”); Maw v. McAlister, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969) (“The duty on the part of one who signs a written instrument to exercise reasonable care to protect himself requires that he read the contract which he signs....”).

ii. Plaintiff’s claims in both lawsuits are encompassed within the scope of the Admission Agreement.

Not only was a valid Admission Agreement executed, but the Estate's claims also are squarely governed by the arbitration provision in paragraph 13. Paragraph 13 of the Admission Agreement states that "any claim or dispute" as long as it is in "excess of \$15,000" that arises out of the Admission Agreement "shall be determined by arbitration in South Carolina" Ex. 4, p. 12, ¶ 13. "Any claim or dispute" includes the negligence allegations against all Defendants and wrongful death claims alleged in 2021-CP-39-01128 and Plaintiff's survival action in 2021-CP-39-01127.

Specifically as to the survival claims in 2021-CP-39-01127, Cooley's Estate is bound by the Admission Agreement because a survival action is a product of Cooley's alleged conscious pain and suffering. See Rutland v. S.C. Dep't of Trans., 390 S.C. 78, 83, 700 S.E.2d 451, 454 (Ct. App. 2010), aff'd as modified sub nom. Rutland v. S.C. Dep't of Transp., 400 S.C. 209, 734 S.E.2d 142 (2012) ("The test of a survival action in South Carolina is whether the decedent suffered conscious pain and suffering.").

As to the wrongful death claims in 2021-CP-39-01128, Galloway as Cooley's available agent, had the authority under the POA to obligate Cooley's wrongful death beneficiaries to arbitration because South Carolina's Wrongful Death Statute is a derivative action. See S.C. Code Ann. § 15-51-10 (The South Carolina Wrongful Death Act requires, as a condition of any suit, that the decedent herself, had she lived, could have "maintain[ed] an action and recover[ed] damages."); Estate of Stokes v. Pee Dee Family Physicians, LLP, 389 S.C. 343, 347 (2010) ("[O]ur law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued." (cataloguing cases)); Rish v. Seaboard Air Line Ry., 90 S.E. 704, 704-05 (S.C. 1916) ("The [Wrongful Death Act] gives a right of action where none existed before, and limited the right of recovery to those cases in which the party injured would have been entitled to recover

if death had not ensued.”)

Although the case law in South Carolina has not directly addressed the issue at hand, the court has not been hesitant to prohibit wrongful death actions in which the decedent had in some way barred herself from pursuing the underlying cause of action. In Price v. Richmond & D.R. Co., 33 S.C. 556, 12 S.E. 413 (1889), the court determined that a release executed by the decedent prior to his death prevented a wrongful death action brought by the decedent’s wife. The Court’s decision was premised upon the limiting language of the wrongful death statute. The Price Court held that if the defendant in some way deprived himself of the right to pursue a cause of action, "his administrator is, likewise, [also] barred of his right of action." Id. at 560, 12 S.E. at 413. Furthermore, the court in Reed v. Northeastern R. Co., 37 S.C. 42, 16 S.E. 289 (1892) affirmed the Price holding and found that “[a]nything that would have defeated [the decedent’s] recovery would defeat that in behalf of his family in case he failed to survive.” Reed at 53, 16 S.E. at 291.

In Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988), the South Carolina District Court interpreted the Wrongful Death statute, and held that a survivor cannot bring an action under the wrongful death statute to recover for the same wrong sued upon earlier by the decedent, if the personal injury statute of limitations has expired, but the specific wrongful death limitations period has not expired. This clearly establishes that Wrongful Death cause of action is wholly derivative. The District Court, sitting in diversity, examined the issue as the highest court of South Carolina would if confronted with the same situation. It then traced the history of wrongful death claims starting with Lord Campbell's Act. It further held that the same defenses that would have been available to use against the decedent, had he lived, were also available against those asserting the wrongful death claim.

Based on the legal nature of a wrongful death claim, the South Carolina Supreme Court has found that where a decedent or her agent executes an arbitration agreement in connection with

the decedent's admission to a nursing home, wrongful death actions brought by the personal representative can be subject to binding arbitration. Dean, 408 S.C. 371, 759 S.E.2d 727 at n. 3. District Courts in South Carolina interpreting Dean have found that statutory beneficiaries are subject to arbitration. See, e.g., THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185, at *3 (D.S.C. Mar. 19, 2015) ("Additionally, the South Carolina Supreme Court made clear in Dean that, under South Carolina law, an arbitral agreement is still indeed binding on a decedent's estate for a claim in wrongful death.")

It follows logically that Galloway's execution of the Arbitration Agreement as Cooley's attorney-in-fact defeated Plaintiff's ability as the personal representative to later disavow her actions, as she is attempting. Because the execution of the Arbitration Agreement lawfully bound Cooley to arbitrate actions arising from Dominion Clemson's alleged negligence, it also controls the availability of the wrongful death action to her heirs.

Because Galloway signed the Arbitration Agreement in her legal capacity on behalf of Cooley - and not in her own capacity - she had every right to exercise her mother's option and authority to bind her heirs to the decision to defer a wrongful death claim to arbitration. Courts across the country hold this premise true. See Diversicare Leasing Corp. v. Hubbard, 189 So.3d 24 (Ala. 2015) (holding that "an arbitration agreement that binds the nursing-home resident also binds the resident's representative"), citing Entekin v. Internal Medicine Associates of Dothan, P.A., 689 F.3d 1248, 1259 (11th Cir. 2012). The court in Diversicare further held that personal representatives of estates of deceased nursing home residents who properly signed arbitration agreements on behalf of residents "were bound to arbitrate the wrongful-death claims" of the resident's estates. Id. at 28, 30; see also Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661 (Ala. 2004) (holding that personal representatives of nursing home residents were bound by arbitration provisions contained in admission contracts, arbitration provision was not

unconscionable, and not a contract of adhesion); Owens v. Coosa Valley Heath Care, Inc., 890 So.2d 983 (Ala. 2004) (holding that arbitration agreement bound both resident and representative); Estate of Eckstein ex rel. Luckey v. Life Care Centers of America, Inc., 623 F. Supp. 2d 1235 (E.D. Wash. 2009) (holding that claims for neglect, corporate negligence, and wrongful death were subject to arbitration based on arbitration agreement signed by resident's attorney-in-fact that was binding on the estate); Laizure v. Avante at Leesburg, Inc., 109 So.3d 752 (Fla. 2013) (arbitration agreement covered wrongful death claims, and estate and statutory heirs were bound by the arbitration agreement).

Plaintiff's argument that an Estate and Personal Representative cannot be bound to an arbitration agreement ignores the clear language of the Arbitration Agreement and the practicalities of arbitration agreements in the long term care context. "[T]o hold otherwise would eviscerate a long term care provider's contractual rights when presented with a wrongful death claim of a resident, the very claim anticipated by the Agreement." Estate of Eckstein, 623 F. Supp. at 1239. See also Sanford v. Castleton Health Care Center, LLC, 813 N.E.2d 411, 420 (Ind. Ct. App. 2004) (holding the estate's wrongful death claim was subject to arbitration because "regardless of whether [the personal representative], was privy to the contract containing the arbitration clause, the Estate's survival and wrongful death claims arose out of [Defendant's] alleged negligent treatment of [the resident]").

The wrongful death statute clearly derivative. A claim under it only arises if there is a wrongful act that would have been actionable by the decedent, if he had not died. Likewise, if a wrongdoer dies, a wrongful death action survives against the personal representative subject to actions taken by – or not taken by – the decedent during his lifetime.

Plaintiff's argument – taken to its logical end - would mean that the personal representative of an estate is personally liable for a decedent's wrongdoing, and that he - along with the other

heirs - must personally pay any resulting award. Such an outcome cannot be brooked, and such a ruling cannot stand and must be reversed.

Execution of a nursing home arbitration agreement by a party with the capacity to contract on behalf of the decedent binds the decedent's estate and statutory heirs in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement.

Plaintiff's on Boyle v. United States, 948 F. Supp. 2d 570 (D.S.C. 2012) is wholly misplaced. This case is cited only by name, and not citation, in the trial court order. Boyle does not appear to mention the issue of whether a wrongful death claim can be subject to arbitration. The Boyle Court's holding has no relevance to the issue of whether a decedent can submit wrongful death claims to arbitration. And the fact remains that the wrongful death claim is patently derivative – there would be no claim but for an injury to the decedent.

(b) Defendants have not waived their right to compel arbitration.

Plaintiff filed the Complaints against Defendants on October 13, 2021. After the Complaint was received, the undersigned and Plaintiff's Counsel corresponded via e-mail to discuss a 30-day extension for the responsive pleading between November 19 - 23, 2021. The e-mail correspondence between the parties is attached hereto as Exhibit 5. In Exhibit 5, Plaintiff's Counsel agreed to a 30-day extension on November 23, 2021, for the Answer. That same day, the undersigned informed plaintiff's counsel through e-mail that Defendants were aware of an arbitration provision in the admission agreement but were only familiar with a healthcare power of attorney at that time and asked for an extension for filing a responsive pleading, including a motion to dismiss or compel arbitration. See Ex. 5. The undersigned stated that he was continuing to investigate the enforceability of the arbitration agreement. Plaintiff's counsel agreed to the request and stated that he did not believe the arbitration agreement was "enforceable for several

reasons.” Plaintiff’s counsel did not address the undersigned’s point about whether a durable power of attorney existed. Ex. 5.

Defendants timely filed their Answers to Plaintiff’s Complaint on December 21, 2021, expressly raising the arbitration provision within the Resident Admission Agreement as an affirmative defense. Along with the filed Answer, Defendants simultaneously served Plaintiff on the same day Defendants’ First Set of Interrogatories to Plaintiff and Defendants’ First Set of Requests for Production to Plaintiff. The Certificate of Service for Defendants’ Answer and discovery requests to Plaintiff is attached hereto as Exhibit 6. In Defendants’ First Set of Requests for Production to Plaintiff, Defendants specifically requested “[a]ll powers of attorney, including but not limited to financial, durable, medical, and healthcare powers of attorney, executed by Earline Cooley at any time” in Request for Production No. 21, which is attached hereto as Exhibit 7.

Over four (4) months later, Plaintiff responded to Defendants’ First Set of Interrogatories to Plaintiff and Defendants’ First Set of Requests for Production to Plaintiff on April 25, 2022. A copy of the Certificate of Service of attached hereto as Exhibit 8. Plaintiff’s response to Defendants’ Request for Production No. 21 states, “See Healthcare Power of Attorney and Durable Power of Attorney for Earline Cooley.” which is attached hereto as Exhibit 9.

The undersigned counsel emailed plaintiff’s counsel on June 9, 2022, apologizing for a delayed response due to being ill with coronavirus and informed Plaintiff’s Counsel that the Defendants searched Plaintiff’s county of residence, Pickens County, for a durable power of attorney and were unsuccessful in discovering such document. The undersigned then stated that after reviewing Plaintiff’s Responses to Defendants’ First Set of Requests for Production Defendants, the undersigned became aware of the Plaintiff’s durable power of attorney and planned to move to compel arbitration pursuant to the admission agreement. Ex. 10. Defendants

filed the Motion to Compel Arbitration and Protective Order from Discovery at the earliest possibility on June 9, 2022. Since filing the Motion to Compel Arbitration and Protective Order from Discovery all discovery in this matter has ceased pending the Court's ruling on the above-mentioned motions.

As stated *supra*, both Federal and South Carolina law favor arbitrating disputes and there is not set rule as to what constitutes waiver of arbitration. See O'Neil; Liberty Builders. Even though there is no set rule regarding waiver, generally the factors South Carolina courts consider are:

whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. These factors, of course, are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others. Thus, a party may waive its right to compel arbitration if a substantial length of time transpires between the commencement of the action and the commencement of the motion to compel arbitration. What is a substantial length of time varies from one case to the next, depending on the extent of discovery conducted and the corresponding presence or absence of prejudice to the party opposing arbitration.

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (S.C. Ct. App. 2007).

Plaintiff cites to the recent U.S. Supreme Court decision, Morgan, in her memorandum. See Plt's Mem. Opp. Page 6. Plaintiff states that the Court held that the prejudice requirement "was not appropriate in determining waiver..." and that "the prejudice requirement, no longer exists." Id. This is a misrepresentation of the Court's holding in Morgan. In Morgan, the Supreme Court granted *certiorari* "to resolve the split over whether federal courts may adopt an arbitration-specific waiver rule demanding a showing of prejudice." Morgan v. Sundance, Inc., 212 L. Ed.

2d 753, 142 S. Ct. 1708, 1709 (2022). The Supreme Court stated that “a court must hold a party to its arbitration contract just as the court would to any other kind.” Morgan, 142 S. Ct. 1708 at 1713. The Supreme Court held that prejudice is not a condition of finding that a party, by litigating too long, waived its right to stay litigation or compel arbitration under the FAA. Id. at 1714 (stating that the Supreme Court’s “sole holding today is that it may not make up a new procedural rule based on the FAA’s policy favoring arbitration.”).

In addition to Morgan, Plaintiff cites four (4) South Carolina cases regarding waiver. As stated *supra*, Plaintiff is correct in stating that nursing homes can waive arbitration rights. However, South Carolina courts have focused considerably on whether a substantial length of time has commenced in litigation, whether excessive discovery has taken place, and if the Plaintiff was prejudiced in the delay seeking arbitration. See Rhodes.

Plaintiff states in her memorandum that the South Carolina Court of Appeals held in Liberty “that the party moving to compel arbitration waived their right after filing initial pleadings and responding to discovery. See Plt’s Mem. Opp. Page 7. Again, this is not a clear representation of the court’s holding. In Liberty, the parties filed initial pleadings, conducted discovery, and were on the brink of trial before a motion to stay in favor of arbitration was filed; a timeframe of over 2.5 years. See Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (S.C. Ct. App. 1999). The Court of Appeals stated “Liberty’s decision to file suit, participate in pretrial discovery, and engage in procedural maneuvering for ***two and one-half years*** is sufficient to support the trial court’s finding of waiver. Liberty, 521 S.E.2d 749 at 754 (emphasis added).

Plaintiff’s memorandum also cites Johnson, stating “the South Carolina Supreme Court held that the defendant nursing home waived its right to compel arbitration after, among other things, answering the Complaint, seeking limited discovery issues, serving discover, and waiting approximately ten (10) months to file the motion to compel arbitration...” See Plt’s Mem. Opp.

Page 7. Plaintiff does not mention that prior to the filing of the Complaint, the parties in Johnson spent over a year and a half in litigation regarding a temporary restraining order and appointing a guardian *ad litem* and during that time the nursing home failed to exercise its arbitration provision. See Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 788 S.E.2d 216 (S.C. 2016). The South Carolina Supreme Court specifically stated in its analysis in Johnson that the plaintiff indicted they “intended to pursue a defense of waiver” two months after the Complaint was filed and despite this information and acknowledgement from the defense a motion to compel arbitration was not filed for another eight (8) months, “all while appearing in court and conducting discovery.” Johnson, 788 S.E.2d 216 at 219.

Finally, Plaintiff relies on Flexon in her memorandum in opposition and states that “the South Carolina Court of Appeals recognized and affirmed the order that the party moving for arbitration waived its right to arbitration by engaging in discovery without reservation or limitation. See Plt’s Mem. Opp. Page 7. The Flexon holding is far more complex because it involved several defendants, including a former and subsequent parent company. Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 776 S.E.2d 397 (S.C. Ct. App. 2015). In Flexon, a breach of contract action was filed in May 2009 against numerous defendants. Flexon, 776 S.E.2d 397 at 400. Two (2) months later, one of the defendants, a former subsidiary of one of the co-defendants, filed a motion to compel arbitration and a hearing was held on the matter where a non-moving co-defendant spoke supporting the motion and indicated that he would file his own motion to compel. Id.

In June 2010, the non-moving co-defendant filed his own motion to compel and subsequently the circuit court ruled on the initial motion to compel; denying it not based on time but because of a lack of interstate commerce language and that the parties agreed to litigate the matter in South Carolina. Id. at 401. The initial motion was appealed, upheld, and the second

motion to compel was withdrawn without prejudice. Id. The parties then undertook depositions and after the depositions took place, a renewed motion to compel was filed. Id. The South Carolina Court of Appeals focused on the co-defendant articulating to the court during the initial hearing that he would file a motion to compel, and that motion to compel was not filed for seven (7) months after it's co-defendant's initial motion to compel, and that the parties continued with discovery and depositions after the second motion to compel withdrawn. The Court of Appeals ultimately held that the co-defendant failed to take "the steps necessary to protect its own interests in a timely manner." Id. at 406.

Defendants have moved swiftly to protect its interests in a timely manner. As detailed above, Defendants specifically requested from Plaintiff information regarding power of attorney documentation in December 2021. See Ex. 7. Defendants did not receive any documentation from Plaintiff, for over four (4) months, until April 2022 when Plaintiff produced her discovery responses. See Ex. 9. After receiving Plaintiff's discovery responses, the parties began corresponding regarding the scheduling of depositions. Unlike Flexon, no depositions were ever taken in this matter. Defendants specifically requested a stay in discovery pending the outcome of its Motion to Compel.

The defendants in Liberty, waited over 2.5 years to file a motion to compel, all while conducting discovery and appearing before the court regarding other matters. The defendants in Johnson went through a lengthy temporary restraining order and guardian *ad litem* process before the Complaint was filed and then waited an *additional year* after the Complaint was filed to compel arbitration. In stark contrast to those cases, Plaintiff's Counsel was aware of the arbitration provision in the admission agreement before Defendants' filed their Answer on December 21, 2021 and knew that the undersigned was seeking information on any applicable durable powers of attorney.

Defendants informed Plaintiff less than six (6) weeks after receiving Plaintiff's document production, that produced a tangible durable power of attorney for the first time in litigation, that it would be moving to compel arbitration. Additionally, during those six (6) weeks from Plaintiff's document production to Defendant's filing a Motion to Compel, the undersigned was ill with coronavirus and yet was still able to file Defendants' Motion to Compel Arbitration months faster than any of the defendants did in Liberty, Johnson, and Flexon.

In accordance with Rhodes, Plaintiff fails to show that a substantial length of time transpired between the commencement of the action and the motion to compel arbitration. Six (6) weeks from discovery of the durable power of attorney to filing the Motion to Compel Arbitration and Stay Pending Discovery hardly stacks up to the years of delay in the cases discussed *supra* that Plaintiff relies on to show the Defendants waived its right to compel arbitration. Rhodes also requires this Court to consider whether the party requesting arbitration engaged in extensive discovery prior to moving to compel. Unlike Liberty, Johnson, or Flexon, no additional discovery has taken place in this matter since Defendants filed their motion to compel. Only initial discovery responses have been produced and no witnesses in this matter has been deposed. Plaintiff has flatly failed to prove that extensive discovery was conducted prior to Defendants filing its motion. Finally, Plaintiff relies on Morgan to claim that the prejudice requirement no longer exists. While this is not how the U.S. Supreme Court articulated its holding, the Plaintiff has still failed to show any procedural preference to arbitration in this matter. Plaintiff has been unable to produce any evidence showing substantial delay, extensive discovery, or procedural prejudice by Defendants and therefore has failed to prove that the Defendants waived its right to compel arbitration.

III. All Defendants have the right to join in Dominion Clemson's request for arbitration pursuant to the Admission Agreement.

The court in Pearson v. Hilton Head Hosp., 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct.

App. 2012), relying on International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000), held that “well-established common law principles dictate that in an appropriate case a non-signatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.” These include principles such as incorporation by reference, assumption, agency, veil piercing/alter ego, and equitable estoppel. International Paper, Id. Further, “[i]t does not follow . . . that under the [FAA] an obligation to arbitrate attaches only to one who has personally signed the written arbitration provision.” Id. at 416.

Pearson cited and relied upon the South Carolina District Court’s opinion in Goer v. Jasco Indus., Inc., 395 F. Supp. 2d 308, 314 n.9 (D.S.C. 2005), which held that “equitable estoppel allows a non-signatory to compel arbitration . . . when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory.” The court also held that “application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise, arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration is effectively thwarted.” Id. at 295; see also, J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-321 (4th Cir. 1988).

In S.C. Pub. Serv. Authority v. Great Western Coal, et al., the plaintiff contracted with Great Western Coal for the provision of coal. 312 S.C. 559, 437 S.E.2d 22 (Ct. App. 1993). The contract contained an arbitration clause. The plaintiff later brought suit against Great Western Coal, its president, and another employee, alleging that they had increased coal prices while lowering quality. Id. at 561, 437 S.E.2d at 23 – 24. Defendant president, a non-signatory to the contract, filed a motion to dismiss and compel arbitration. Id. at 561, 437 S.E.2d at 24. The trial

judge denied defendant president's motion because he did not sign the contract in his individual capacity, and defendant president appealed. Id. at 563, 437 S.E.2d at 24 – 25.

The Court of Appeals reasoned that “a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration.” Id. at 563, 437 S.E.2d at 24 - 25, citing Arnold v. Arnold Corp., 920 F.2d 1269 (6th Cir. 1990). The Court of Appeals further reasoned that “when the nonsignatory parties are willing to submit to arbitration, the case should be arbitrated.” Id. The Court of Appeals therefore, concluded, that the defendant president was seeking arbitration and held that the trial judge erred in denying the same simply because the defendant president did not sign the contract. Id.

Looking to (1) the language of the Admission Agreement, (2) the claims Plaintiff has raised against Defendants, and (3) applying this law, it is abundantly clear that any claims against Dominion Senior Living, LLC, Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC are substantially intertwined with Plaintiff's pending claims against White Oak Estates, the other signatory to the Arbitration Agreement.

In fact, in Plaintiff's Complaint, she has alleged that Cooley was a resident at Dominion Clemson, and that the actions of remaining Defendants “directly affected resident care such as that of Earline Cooley,” and that the parties were engaged in a “joint enterprise.” Complaint, ¶ 36. Plaintiff thereafter refers to all Defendants as simply “Defendants” within the remaining allegations. See Complaint.

Plaintiff's own allegations of the substantially interdependent and concerted alleged misconduct of Defendants, through which Plaintiff alleges joint liability for those alleged wrongs, compels the construction of the Arbitration Agreement to be equally enforceable by all Defendants. To hold otherwise would gut the established federal policy in favor of arbitration and

result in inconsistent and unfair results of multiple proceedings in different forums, and a waste of judicial and party resources.

Plaintiff cannot avoid the Admission and Arbitration Agreements' provisions by naming non-signatories. Likewise, she cannot rely on the relationship created between Cooley and Dominion Clemson when the Agreements benefit her and repudiate those Agreements when they work to her alleged disadvantage. All Defendants thus are entitled to seek enforcement of the Agreements, and the trial court erred in holding otherwise.

IV. If not ordered to arbitrate, the FAA at a minimum requires that these actions be stayed while the parties submit to binding arbitration.

Should the Court elect not to compel arbitration with these two actions while the parties submit to binding arbitration, Defendants would alternatively request that these proceedings be stayed pending completion of arbitration. The FAA requires a stay under the following circumstances:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of action until such arbitration has been had in accordance with the terms of the agreement[.]

9 U.S.C. § 3.

Accordingly, Defendants respectfully request that the Court stay all judicial proceedings pending arbitration in accordance with the arbitration clause. See Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (holding “the FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties” (internal citation omitted)); 9 U.S.C. § 3.

V. Defendants are Entitled to Protection from Responding to Plaintiff's Written Discovery.

On February 22, 2022, Defendant Dominion Clemson, LLC d/b/a Dominion Senior Living at Patrick Square ("Dominion Clemson") served its responses to Plaintiff's First Interrogatories and Requests for Production. See Plaintiff's Motion to Compel at Ex. A. As indicated in the responses, these responses included the production of over 400 pages of documents.

On March 1, 2022, Plaintiff mailed the undersigned counsel a discovery consult letter in response to Dominion Clemson's discovery responses. See Plaintiff's Motion to Compel at Ex. B.

Also on March 1, 2022, Defendant Dominion Senior Living, LLC ("Dominion Senior Living") served its responses to Plaintiff's First Interrogatories and Requests for Production. See Plaintiff's Motion to Compel at Ex. A. Dominion Senior Living's discovery responses have not been the subject of a discovery consult correspondence and, therefore, cannot be at issue in Plaintiff's Motion to Compel.

By email exchange dated June 9, 2022, the undersigned advised Plaintiff's counsel that the undersigned was:

...not aware of you serving discovery on any of the other three defendants [Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC]. I had assumed that was because you were aware they had no connection to this matter. (They do not, and discovery responses on behalf of Dominion Clemson (Rogg 29) and Dominion Senior Living (Rogg 20) confirm that.) Those three entities have common ownership but have nothing to do with operation of senior living facilities.

Ex. 10. Plaintiff's counsel did not respond on this point and has not attached discovery requests on behalf of Dominion Clemson, II, LLC, Dominion Management Group, LLC, and Dominion Group, LLC to Plaintiff's Motion to Compel. Without having access to the alleged discovery requests at dispute—a point which the undersigned raised over four (4) months ago, the undersigned cannot respond to a motion to compel responses to the same.

As to Dominion Clemson's discovery responses which are subject to Plaintiff's March 1, 2022 discovery consultation letter, Dominion Clemson's position on each discovery request is briefly stated as follows:

Interrogatory #7 and # 15: Plaintiff seeks the identification of all employees who provided care to Cooley at Dominion Clemson, including the employees' title, employment status, and last known contact information. Dominion Clemson has objected on the grounds that the interrogatories are overly broad, vague and unduly burdensome. Cooley was a resident at Dominion Clemson from March 2019 – March 2020. To identify each employee who provided care 24 hours a day for over a year would be an enormous task and is not tailored to relevant evidence concerning the claims in this case. Nonetheless, Dominion Clemson responses referred Plaintiff to the identification of twelve employees of Dominion Clemson known to have been involved with or otherwise have information pursuant to the claims. Dominion Clemson likewise referred Plaintiff to any other providers identified in the medical records.

Request # 19: Plaintiff requests proposed and actual budgets for the years of Plaintiff's residency (2019 and 2020) as well as the two years preceding her residency. Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Dominion Clemson likewise objected on the basis that the documents sought contained confidential and proprietary business information. Dominion Clemson maintains that budgeting information from preceding years makes this request overly broad and lack relevancy. Preceding budgets have no impact on the present litigation.

Request # 21, 22, 23: Plaintiff requests timecards, schedules, punch detail reports, work schedules, sign-in sheets, timesheets, and numbers of available hours for the entire term of Cooley's year-long residency. Due to the fact that these requests sought shift-by-shift information for nearly a year, Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. While staffing information for particular dates of alleged events or injuries might be relevant, the burden imposed by gathering this information for each and every shift of a one-year residency is too great given the lack of relevancy.

Request # 25: Plaintiff requests all information related to staff training for the years of Plaintiff's residency (2019 and 2020) as well as the two years preceding her residency. Despite Plaintiff's allegations being limited, Plaintiff did not make any attempt to limit the training topics sought by this Request. As such, Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence. Again, the sheer burden imposed to gather any and all training information over a four-year course is not justified by the any purported relevancy.

Request # 36: Plaintiff initially requested all personnel files of former employees who

provided care to Cooley as well as former and current department heads. Again, Dominion Clemson objected on the grounds that the request was overly broad, vague and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant or admissible evidence, given the volume of persons at issue as well the request for personnel files of persons not involved with Cooley's care.

Nonetheless, Plaintiff's counsel and the undersigned participated in a discovery consultation phone conference on April 22, 2022. As a result of that phone conference, Plaintiff and Dominion Clemson agreed to compromise the outstanding issues as outlined in counsel's April 29, 2022 – May 2, 2022 email exchange attached as Exhibit 11. Dominion Clemson stands on its original objections to each of the discovery requests at issue but believes that the compromise reached by the parties was a workable solution.

However, the undersigned received for the first time the Durable Power of Attorney in May 2022. At that point, Dominion Clemson had no choice but to cease participating in written discovery so as not to create an argument that it waived the right to enforce arbitration once the undersigned was aware of an applicable Durable Power of Attorney. The undersigned informed Plaintiff's counsel of the same on June 9, 2022. Indeed, the undersigned concern in continuing to participate in discovery was warranted as Plaintiff now asserts a waiver argument based on participation in litigation. See Plaintiff's Memorandum in Opposition to Motion to Compel Arbitration, p. 6 – 10.

For the reasons set forth in previous arguments, the appropriate next step is for the parties to submit to arbitration as clearly stated in the Admission Agreement. Defendants, therefore, are entitled to an order from this Court that Defendants are not required to respond further to Plaintiff's discovery requests pursuant to Rule 26(c), SCRCF.

CONCLUSION

Debra Galloway, as Earline Cooley's legally authorized and available agent, freely bound Cooley, her estate, her personal representative, her heirs, and her beneficiaries to arbitrate any

claims against Defendants. Defendants, therefore, respectfully request that this Court dismiss this case, compel arbitration pursuant to the Admission Agreement, Rule 12(b)(1), (2), (3) and (6), SCRCF, the Federal Arbitration Act (9 U.S.C. § 1, et seq.), and all applicable statutory and case law and that these proceedings be stayed pending the outcome of arbitration pursuant to Section 3 of the Federal Arbitration Act. Defendants further respectfully request that this Court protect Defendants from further participating in written discovery considering that arbitration is the next appropriate step for Plaintiff's claims.

s/Joshua T. Thompson
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Attorneys for Defendants

October 19, 2022

Spartanburg, South Carolina

EXHIBIT 5

1 matters. Being that Ms. Cooley, through her power of
2 attorney, authorized her available agent to act on
3 behalf of the PR, her successors, her estate. And so
4 those are kind of our high level points, Your Honor.
5 We've briefed all of those points and I'll cover them
6 quickly as we go through the arguments. And I
7 respond to some of the arguments raised by The
8 Plaintiff. Happy to answer any questions that the
9 court may have along the way as well, Your Honor.

10 THE COURT: All right.

11 MR. THOMPSON: For those six core points, we
12 argued that this action should be dismissed and that
13 arbitration should be compelled pursuant to the
14 Federal Arbitration Act, contract law, Rules
15 12(b)(1); 12(b)(3); 12(b)(6). Common law of this
16 state, as well as federal law surrounding arbitration
17 agreements. First, as I mentioned above, I think the
18 background is very important here. Unlike many of
19 the reported decisions concerning arbitration, Your
20 Honor, this case does not involve a matter where the
21 arbitration agreement and the admission agreement are
22 separate documents. We often see in the appellate
23 decisions that there are discussions about whether
24 that is appropriate, whether the consideration
25 supplied through the form of admission to the

EXHIBIT 6

EXHIBIT A

Dominion Senior Living

RESIDENT ADMISSION AGREEMENT

This Resident Admission Agreement (the "Agreement") dated this 14th day of 2018 (the "Effective Date") is made by and between Dominion Clemson, LLC doing business as **Dominion Senior Living of Clemson** ("Community"), located at 100 Pershing Ave., Clemson, SC 29631 (the "Establishment"), Lindsey Daugherty ("Manager") and Earline Cooley ("Resident").

In consideration of the Community's acceptance of the undersigned as a resident at the Establishment, Deonda Weiden agrees to act as the "**Financially Responsible Party**" and/or agrees to act as the "**Resident's Representative**," accepting their respective rights and obligations as set forth in this Agreement. Community, Manager, Resident, Financially Responsible Party and/or Resident's Representative are collectively referred to herein as the "Parties," or individually as a "Party".

1. TERM.

This Agreement shall become effective on 3/18/19 and shall have a term of one (1) month (the "Term") unless terminated earlier as provided below. Following the end of a Term, and provided that the Resident is not in default under this Agreement, this Agreement shall automatically renew for an additional one (1) month Term, unless either Party sends a written notice of termination as provided below.

2. ACCOMMODATIONS.

- A. **Room.** The Resident will reside in Room Number 4A1 at the Establishment (the "Room"). The Resident is encouraged to furnish the room with the resident's own furniture. The community may provide a twin bed, linens, pillows, compartmentalized nightstand, and a chair for sitting if needed.
- B. **Common Areas.** The Resident can use the general-purpose rooms of the Establishment, such as lounges, library, and meeting rooms, as applicable.
- C. **Dual Occupancy.** Only two residents may occupy the Room. If only one resident has signed this Agreement, a second person may move into the Room with the prior approval of the Community. The second occupant must meet all of the Community's admission requirements and sign their own Resident Admission Agreement. The fees due under



this Agreement will be adjusted to reflect the then-current double occupancy rate. If two persons reside in the Room with dual occupancy and one of the occupants passes away or vacates the Room (whether voluntary or involuntary) during the Term of this Agreement, this Agreement shall continue in full force and effect with respect to the remaining resident less any adjustments to fees as a result of the loss of the dual occupancy.

- D. **Personal Residence.** The Resident agrees to occupy the Room only as a personal residence and will not use the Room for any unlawful purpose. The Resident will not create or allow in the Room a nuisance or a condition that is a potential fire, safety or health hazard. The Resident will not store or possess at the Establishment or in the Room any explosives, firearms, noxious chemicals or hazardous substances. The Resident will be the only occupant of the Room unless stated otherwise herein.
- E. **Maintenance and Alterations.** The Resident agrees to maintain the Room in a clean, sanitary and orderly condition. When the Resident vacates the Room, it shall be in as good condition as on the Effective Date, excluding normal wear and tear. The Resident can decorate the Room as the Resident wishes provided that the Resident complies with the rules of the Community. The Community must give prior written approval for any changes or alterations to the Room that require the assistance of electricians, contractors or similar professionals; and the Resident will be responsible for restoring the original décor when the Resident vacates the Room. Any alterations or improvements shall become the property of the Community. The Resident may not change any lock or add any lock or locking device to the Room.
- F. **Liability for Damage.** The Resident agree to reimburse the Community for any loss of, or damage to, the Community's real or personal property, inside or outside of the Room, caused by the Resident, the Resident's guests, or Private Duty Assistant (defined below).
- G. **Move to New Room.** If the Resident wishes to change rooms within the Establishment and the Community's executive director approves the Resident's request for a room change, the Resident shall pay a relocation fee of Five Hundred (\$500.00). The Resident will be responsible for making arrangements for the move and for handling related expenses.
- H. **Pets.** Residents are allowed to have small pets in their room provided that the pet deposit has been paid, the pet regularly receives yearly vaccinations and are kept on file in the business office, and the resident can safely care for the pet without the assistance of community staff members. Visiting pets are allowed provided that the pet's vaccinations are kept on file in the business office and the pet is under supervision by the visitor at all times during the pets visit. Community staff can deny the entry of visiting pets and personal in house pets if these requirements are not met and if the pet poses a threat

to safety.

- I. **Smoking.** The Establishment is a smoke-free and tobacco free campus. No tobacco products or smoking of any kind is permitted on the campus or parking areas.
- J. **Guests.** Overnight guests are not permitted.
- K. **Absences from the Establishment.** If the Resident is absent from the Establishment for a period less than thirty (30) days, the Resident will continue to be responsible for the Rent and other charges due under this Agreement. If the Resident is absent from the Establishment for a period longer than thirty (30) days without written notice to the Community as to the basis for such absence as required by Section 11(i), Community shall be permitted, in its sole discretion, to terminate this Agreement and re-let the Room to another resident.

3. SERVICES.

- A. **Services.** Exhibit A to this Agreement details the basic services provided at the Establishment as part of the Rent. Exhibit B to this Agreement describes additional services that the Resident may request for an additional fee.
- B. **Meals.** The Establishment will make available three (3) nutritionally well-balanced meals per day. Basic modified diets will be available to the Resident if prescribed by a physician as a medical necessity, or if otherwise requested by the Resident, at no additional charge. Tray service is not permitted. Residents may have meals delivered to their rooms due to temporary illness or other health reasons. The Resident may invite guests to any meal for an extra charge, but the Establishment requests four (4) hours advance notice.
- C. **Activities.** The Establishment will provide planned activities and opportunities for community participation subject to the Resident's physical ability to participate. Participation in some exercise or fitness programs may require a liability waiver. An additional charge may apply to activities outside of the Establishment.
- D. **Transportation.** As part of the Resident's Rent, the Community will provide regularly scheduled transportation services or arrange for the Resident's transportation to planned social events, local attractions, shopping destinations and to the Resident's medical, dental, nursing, or mental health appointments within a 25 mile radius. The Community's staff can provide the Resident with schedules and destinations for the regular transportation service. Residents requesting transportation beyond a 25 mile radius will be charged accordingly. See exhibit B. All other transportation is the Resident's responsibility.
- E. **Maintenance.** The Community shall maintain in good order and repair all plumbing, toilet facilities and other fixtures installed for the general supply of hot and cold water, and

HVAC.

- F. **Laundry and Housekeeping Services.** Laundry and housekeeping services will be provided by the community as set forth in exhibit A.
- G. **Resident Funds.** The community will maintain up to \$100 of Resident Personal Funds at the request of the resident. The funds will be kept locked in the business office and available upon request. An account balance will be provided to the resident quarterly. In Situations where residents are unable to manage their funds, the administrator will notify a family member or probate court regarding a need for a court-appointed guardian or conservator.
- H. **Personal Supplies.** The Resident shall provide your own supplies for personal care and hygiene. The community will provide soap, paper towels, and toilet tissue in all resident restrooms.
- I. **Parking.** If the Resident owns a car and maintains a current valid driver's license, registration and insurance, the Community will provide the Community (subject to availability) with the use of a parking space to accommodate a standard size vehicle. The Community assumes no responsibility for loss or damage to the vehicle or its contents, parked on Establishment property, however caused.
- J. **Notification of Third Parties.** In the event that the Resident requires emergency services or experiences a significant change in condition, the Establishment will attempt to contact the Resident's Representative and/or Responsible Party timely, using best efforts. The Resident is responsible for ensuring that the Establishment has current telephone numbers for the individuals to be notified. The Resident's Representative and/or Responsible Party will also be contacted in the event that this Agreement is being terminated.
- K. **No Discrimination.** The Community will provide care and services without discriminating based on age, gender, race, physical or mental disability, religion, sexual orientation, national origin, marital status, or the source of payment for the Contractual Services.

4. **WELLNESS SERVICES.**

- A. **Required Medical Evaluation.** The Resident agrees to have a medical assessment completed by a physician no more than thirty (30) days prior to the Resident's physical move in date. The Resident must also have a medical assessment completed by a physician when he/she experiences a significant change in condition. The Resident also agrees to have a medical assessment completed by a physician yearly and will provide a copy of the Resident's annual medical evaluation to the Community. Failure to have a medical assessment completed will result in termination of the Agreement.

- B. **Resident Care Plan.** A care plan will be developed based on the medical assessment completed by the Resident's physician and the evaluation completed by the Establishment. The Resident's care plan will be developed with the Resident and/or any individual the Resident designates with the Establishment staff. The care plan will outline the services the Resident is to receive. The care plan will be reviewed every six (6) months and whenever the Resident experiences a significant change in condition. The care plan will be revised as necessary. The Resident may examine his/her care plan at any time.
- C. **Assistance with Activities of Daily Living.** The Community will provide to the Resident the assisted living services agreed upon and described in Exhibit A. The Community will conduct an initial assessment to determine the resident's appropriateness for the community before admission and a seventy-two (72) hour assessment. Within seven (7) days of admission, the community will have developed a care plan for the resident. The care plan will be reviewed and updated as needed every six (6) months or when there is a change in condition.
- D. **Observation.** The Community's staff, in the ordinary course of their daily interaction with the Resident, shall periodically observe the Resident's health condition, activities and diet, in order to identify changes in the Resident's health and the Resident's physical, mental, and emotional functioning. *The Resident will not be under constant observation or supervision.*
- E. **Arranging for Outside Services.** The staff will assist the Resident in making needed appointments with professionals offering medical, dental, nursing, or mental health services and with accessing community resources and transferring to outside facilities as needed and prescribed by the Resident's physician.
- F. **Medications.** Medication administration / management is offered by the community. If the resident chooses to self-administer medications, The resident is responsible for obtaining his/her medications and must ensure that the community has up to date and active physician orders on file. The resident must also agree to quarterly self-administration assessments completed by the community due to state requirements.
- G. **Resident Records.** The Community maintains certain records on each of its residents that may contain medical and other personal information. The Resident has the right to review the Resident's records or to authorize, in writing, members of the Resident's family to review the Resident's records. All resident information and records are confidential and are not released without the Resident's written consent or the written consent of the Resident's authorized legal representative. Copies of records are normally provided within thirty(30) days of the written request for copies. The Resident's right to refuse release of personal and medical records does not apply when the Resident is transferred

to another health care facility or record release is required by law or third party payment contract. The state has the authority to examine such records as part of its licensing activities without the Resident's consent.

H. **Medical or Other Emergency.** In the event of an emergency, the Resident shall contact the staff and, if appropriate, the staff will summon emergency service personnel to assist the Resident. If the situation is not deemed an emergency by the staff, the staff has the discretion to instead contact the Resident's Financially Responsible Party, Resident Representative and/or the Resident's physician as appropriate. Where the staff judges a situation to be a possible medical emergency (and the Resident does not agree), the staff has the right (but not the obligation) to take whatever steps are necessary to meet the Resident's emergency medical needs, including summoning emergency service personnel. Any costs incurred, even if the staff ordered the emergency medical services, will be the Resident's sole responsibility.

I. **Excluded Services.** The Community shall not be responsible for furnishing or paying for any supplies or services not expressly included in this Agreement, including, without limitation, hospital services, physicians' services, nursing services, skilled nursing facility services, private duty assistants, medications, personal supplies, toiletries, vitamins, eyeglasses, eye examinations, hearing aids, ear examinations, dental work, dental examinations, orthopedic appliances, laboratory tests, x-ray services, rehabilitative services, or any other care or equipment beyond the Community's routine levels of staffing and equipment. The Community has no express or implied duty to provide services not listed in Exhibits A, B or C (the "Contractual Services").

5. RENT.

The Resident agrees to pay in advance on the first (1st) day of each month during the Term the amount of Three thousand nine hundred ninety and 00 /100 Dollars (\$ 3990.00) (the "Rent"). When there are charges for less than one full month, the Rent will be pro-rated based on the number of days in the given month. The Community anticipates that the Rent will be adjusted annually, but reserves the right to adjust the Rent upon thirty (30) days prior written notice to the Tenant. The fees resulting from Exhibit B services are also due on the first of the month. The Community may adjust the fees as it deems necessary to reflect the costs of providing the facilities, programs, and services described in this Agreement. The Community will provide at least thirty (30) days' written notice to the Resident and the Financially Responsible Party and/or Resident's Representative (if any) prior to any fee changes.

6. PAYMENT AND LATE CHARGES.

The Resident's stay at the Establishment will be paid for by Deonda Weiden if a third party pays the Resident's bills, their non-payment of any amounts due pursuant to this Agreement shall not relieve the Resident of any obligation to pay such amounts. If the Rent, Establishment Service Fee or any other amount due under this Agreement is not paid on the first of the month, the Community may charge the Resident One-Hundred Fifty Dollars (\$150.00) to cover administrative expenses. Failure to make timely payments may result in the Community terminating this Agreement. Medicaid nor Medicare pays for services provided for by the Community.

7. ESTABLISHMENT SERVICE FEE.

The Resident shall pay a non-refundable Community Fee of Fifteen Hundred dollars (\$1,500.00) (the "Community Fee") to the Community concurrently with the execution of this Agreement, which covers administrative costs regarding the Resident's application and other administrative fees.

8. ASSISTED LIVING.

- A. Admission/Retention Criteria.** The criteria applied by the Community for the admission and discharge of assisted living residents are set forth in The Resident Handbook, a copy of which is provided to all Residents.
- B. Licensing.** The Establishment is licensed as a Community Residential Care Facility (Assisted Living) governed by the State of South Carolina. The State of South Carolina conducts annual, unannounced, on-site visit of the Establishment to determine compliance with applicable licensure requirements and standards. Additional visits may be conducted without prior notice to the Community. During on-site reviews, State representatives may observe staff and residents in the common areas of the Assisted Living Section of the Establishment, communicate privately with any resident who consents, and inspect the residents' clinical and administrative records. State representatives may only enter a resident's Room if the resident grants permission and entry.
- C. Assisted Living.** The Establishment consists of residential rooms for seniors who are capable of living on their own, provided they have assistance with certain activities of daily living ("Assisted Living"). The Establishment is not licensed to provide 24-hour

skilled nursing care or care for serious psychiatric disorders and is not intended as a substitute for a Skilled Nursing Facility. The Community has no duty to provide, or obtain for the Resident, nursing or health care services other than what is agreed to in Exhibit A. The Resident agrees that the Community has no duty to assess, diagnose, examine or treat any medical, psychological or health care condition the Resident might have or develop.

- D. **Release and Assumption of Risk.** With the freedom and independence of Assisted Living come certain risks of personal injury, such as falls or broken bones. The Resident knowingly and voluntarily agrees to assume all risks related to or arising from living in the Establishment, and not a facility that offers a higher level of care. The Resident agrees to waive, release, indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from their failure to obtain or furnish services beyond the Contractual Services.
- E. **Injury by Others.** The Resident agrees that the Community, its Manager, and their employees and affiliates are not responsible or liable for injury or loss sustained by the Resident as a result of the act or omission of other residents, their guests or Private Duty Assistant (as such term is defined below).
- F. **Transfer to Meet Care Needs.** If at any time, the Community's staff or a physician determines that the Establishment cannot meet your needs, this Agreement will be terminated and the Resident agree to transfer to another facility that is appropriate for the Resident's needs. Upon determination by the Community that the Resident needs services beyond those provided by the Establishment, the Resident (together with the Resident's Representative and/or Responsible Party) shall be notified in writing that the Agreement is terminated and the Resident shall be transferred to an appropriate care setting. The notification will serve as a thirty (30) day notice. The Establishment shall assist the Responsible Party and/or Resident's Representative with discharge planning and referrals.

9. PRIVATE DUTY ASSISTANTS.

- A. **Services from Third Parties.** All third party contractors, outside caregivers, companions, private duty aides and other personnel (collectively "Private Duty Assistants") employed or engaged by the Resident to render services to the Resident at the Establishment can do so only if both the Resident and the Private Duty Assistant comply with the Community's policy on Private Duty Assistants and complete the forms and agreements

referenced therein. The Private Duty Assistant needs the prior permission of the Community, which may be revoked by the Community in its sole discretion. It is the Resident's responsibility to ensure that the Resident's Private Duty Assistant complies with the Community's rules, regulations, Resident Handbook and general policies, together with any specific policies and rules governing Private Duty Assistants. The Resident hereby authorizes and directs that the records regarding the Resident kept by the Resident's Private Duty Assistant will be released to the Community upon request. The community shall not be held responsible for costs or fees associated with hiring or employing any third party or private duty assistants.

- B. Injury Caused by Private Duty Assistant.** The Resident is responsible for all injury or damage caused by a Private Duty Assistant, including injury to the Resident. The Community has no responsibility for the care (or lack thereof) provided by the Private Duty Assistant. The Resident hereby indemnifies, holds harmless and releases Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from the acts or omissions of the Private Duty Assistant.

10. ACCESS TO ROOMS.

The staff may enter the Resident's Room for any reasonable purpose, including, but not limited to, performing housekeeping, maintenance and other services described in this Agreement. The Community will attempt to notify the Resident in advance that a staff member will enter the Room for non-routine events. If the Resident has delivered written notice to the Community of the Resident's intent to terminate the Agreement at the end of the then existing Term, the Resident agrees to allow the Community to show the Room during reasonable hours to prospective residents.

11. RESIDENT'S RIGHTS AND RESPONSIBILITIES.

- A. Rules, Regulations and Resident Handbook.** The Resident agrees to abide by the Community's Rules, Regulations and Resident Handbook as they now exist and as amended. A copy of the Community's rules, regulations, Resident Bill of Rights, and the Resident Handbook has been provided to the Resident as evidenced by the Resident's signature on Exhibit D attached hereto. The Resident, the Resident's guests and Private

Duty Assistant shall conduct themselves in a manner that is peaceful and harmonious, and will not engage in conduct that interferes with or jeopardizes the health, safety, or peaceful lodging of the residents, staff and others at the Establishment.

- B. **Loss/Theft and Insurance.** The Resident is responsible for providing at the Resident's own expense insurance to protect the Resident and the Resident's personal belongings against loss or injury. The Resident is strongly urged to procure insurance including health, life, disability, property, renter's and, if applicable, motor vehicle insurance for the Resident's own protection. The Community shall not be responsible for the loss of any property belonging to the Resident due to theft or any other reason, unless such loss is directly caused by the Community's staff.
- C. **Resident's Liability to Others.** The Resident accepts sole responsibility for any loss, injury or damage to others, to the Resident, the Room, the Establishment and the Community caused by or resulting from, in whole or in part, the Resident's acts or omissions, or those of the Resident's guests and Private Duty Assistant. The Resident agrees to indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from such loss, injury or damage.
- D. **Admission Information.** The Resident represents that the information set forth on the Resident's application forms, health history and medical report, personal interview and emergency information records, as applicable, is true and correct. Any substantive inaccurate statement made by the Resident, including the Resident's age, finances, resources and health history may render this Agreement voidable and/or immediately terminated at the option of the Community. The Resident agrees to submit updated copies of the above forms upon request from the Community, when required by state regulations or when the Resident become aware of a change in the Resident's medical condition.
- E. **Resident Rights.** The Resident has been advised and received a copy of Resident Rights. The Community shall not deprive Residents of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of South Carolina, or the Constitution of the United States solely on account of his or her status as a resident.
- F. **Complaint Resolution Procedure.** All Residents are encouraged to exercise their rights as a resident and citizen. Grievances, and recommendations for changes in policies and services, may be voiced to facility staff or outside representatives without interference, discrimination, reprisal, coercion, or restraint. Residents are encouraged to bring their concerns to the Executive Director. The following Parties are also available to assist the Resident with resolution of complaints:

Dominion Senior Living

3612 Henson Rd.
Knoxville, TN 37919

- G. **Resident's Copy of the Agreement.** The Resident will be given a duplicate original of this Agreement.
- H. **Bed Hold Policy.** The Community will not reserve a bed for you if you are temporarily admitted to a nursing home, health care facility or psychiatric facility. You are still responsible for payments unless the agreement is terminated.
- I. **Notice of Absences.** When the Resident is going to be absent from the Establishment for more than twenty four (24 hrs), the Resident agrees to give prior notice to the Community's staff of such absence the purpose thereof. The Resident agrees to let the Community's staff know the Resident's general whereabouts at all times. The resident is expected to sign out and sign in when leaving and returning to the community at any time.

12. TERMINATION OF AGREEMENT.

- A. **Termination by Resident.** The Resident may terminate this Agreement for any reason by giving the Community at least fourteen(14) days prior written notice of termination. Where a physician certifies that it is proper for the Resident to relocate to a facility that provides greater care than provided at the Community, the Resident may terminate this Agreement by giving the Community written notice of termination, together with a copy of the physician's certification. The Resident will continue to be responsible for the Rent and any other fees payable under this Agreement until the notice period has expired or until the Resident has vacated the Room as described below, whichever is later.
- B. **Termination by the Landlord.** The Community may terminate this Agreement for any reason by giving thirty (30) days prior written notice to the Resident. The Resident will continue to be responsible for the Rent and any other fees payable under this Agreement until the thirty (30) day period has expired or until the Resident has vacated the Room as described below, whichever is later.
- C. **Landlord's Termination for Health or Safety Reasons.** Based upon the discharge criteria set forth in the Resident Handbook, the Community may terminate this Agreement immediately upon written notice and require the Resident's immediate transfer from the Establishment. The Resident will continue to be responsible the Rent, and any other fees payable under this Agreement until the Resident has vacated the Room as described below.
- D. **Termination by Mutual Agreement.** The Agreement may be terminated immediately at

any time upon agreement of the Parties.

- E. **Termination by Resident's Estate.** This Agreement shall terminate immediately after the Community receives written notification that the Resident has passed away, or date that the Room is vacated as described below, whichever is later.
- F. **Vacating the Apartment.** The Resident shall remain liable for the Rent and the Room shall not be considered vacated, until all of the Resident's property is removed from the Room. If the Resident's property is not removed from the Room, the Community may, upon fourteen (14) days advance written notice (i) remove the Resident's property from the Room and charge for the actual costs of moving and storage or (ii) dispose of the Resident's property in accordance with state law.
- G. **Refund of Prepaid amounts.** Amounts that the Resident has prepaid will be returned to the Resident pro rata within thirty (30) days following the Resident vacating the Room, minus all sums owing to the Community, including (i) unpaid Rent, and other charges that the Resident owes to the Community under this Agreement; (ii) the costs of repairing any of the Community's property that was damaged by the Resident, the Resident's guests, or the Resident's Private Duty Assistant; and (iii) any expense incurred by the Community to remove and/or store any of the Resident's property that was not removed. If the amount the Resident owes to the Community exceeds the sum of the prepaid amounts, the Community shall bill the Resident for the difference.
- H. **Holding Over.** If either the Resident or the Community gives notice of termination and the Resident remains in the Room after the notice period, the Rent and shall increase to 150% of its current level until the Room is vacated.

13. AGREEMENT TO ARBITRATE.

The Parties desire to resolve disputes between them as expeditiously and economically as possible. Therefore, any claim or dispute (including those based on contract, negligence or statute) amongst the Parties, involving an amount in excess of \$15,000, arising out of or related to this Agreement, the Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator. The arbitration shall be administered by JAMS (formerly Judicial Arbitration and Mediation Services) pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The Parties agree that this Agreement evidences a transaction involving interstate commerce. The U. S. Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement. The arbitrator may award economic and non-economic

damages, but shall have no authority to award punitive damages to any Party. Each side shall bear an equal share of the arbitrator's fees and the costs of the arbitration.

14. WAIVER OF JURY TRIAL.

In any dispute arising between the Parties, each Party hereto waives its right to a trial by jury in any action, proceeding or counterclaim brought by any Party against any other Party. The prevailing Party shall be entitled to an award of reasonable costs and attorneys' fees.

15. LIMITATIONS OF LIABILITY PROVISION.

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. Liability for any claim brought by a party of this Agreement against the other party, including but not limited to a claim by the Community for unpaid charges, or a claim by the Resident, Resident's Representative or by the Resident's estate, arising out of the care or treatment received by the Resident at the Establishment, including without limitation, claims for medical negligence or violation(s) of South Carolina Statutes, arising from simple or gross negligence, shall be limited as follows:

- (1) Net economic damages shall be awardable, including, but not limited to, past and future medical expenses, offset by any collateral source payments.
- (2) Non-economic damages shall be limited to a maximum of \$250,000.
- (3) Interest on unpaid fees shall not be awarded.
- (4) Punitive damages shall not be awarded.

16. ADVANCE DIRECTIVES.

If the Resident has executed an advance directive or if the Resident executes such documents after the Resident moves into the Establishment, it is the Resident's responsibility to inform the Community's staff and supply a copy to the Community. (The term "advance directive" includes health care powers of attorney, living wills, or other documents that describe the amount or type of health care that the Resident would want to receive at a time when the Resident can no longer communicate those

decisions directly to a physician or other health care professional.) If the Resident provides a copy of an advance directive to the Community, the Community will endeavor to provide it to health care professionals who are called to assist the Resident in the event of an emergency or otherwise. The Community does not guarantee that the Resident's advance directive will be given to such health care professionals nor does it guarantee that such health care professionals will abide by its terms. It is also the Resident's responsibility to inform the Community if the Resident revokes or changes the Resident's advance directive.

17. FINANCIALLY RESPONSIBLE PARTY.

The "Financially Responsible Party" is jointly and severally liable with the Resident for all monetary obligations under this Agreement; including the payment of the Rent, and all other amounts that become due to the Community under this Agreement. The Financially Responsible Party may also be the Resident's Representative.

18. RESIDENT'S REPRESENTATIVE.

"Resident's Representative" means an individual designated by the Resident to assist the Resident in making decisions about the Resident's care or has been designated to make decisions on the Resident's behalf regarding the Resident's care. This may include an individual that holds a power of attorney or guardianship. The Resident's Representative may also be the Financially Responsible Party.

19. OWNERSHIP and NO RELIGIOUS AFFILIATION.

The Establishment is owned by Dominion Clemson, LLC with its principal place of business located at 100 Pershing Ave, Clemson, SC 29631. The Establishment is not affiliated with any religious organization.

20. MISCELLANEOUS.

- A. **Fire or Casualty.** If the Resident's Room or the Establishment is damaged or destroyed by fire or casualty so as to make it uninhabitable, the Community may terminate this Agreement immediately upon delivery of notice to the Resident or may abate the Rent until the Room is restored to habitable condition. The Community shall have no obligation to repair or restore the Room or the Establishment in the event of a fire or other casualty.
- B. **No Waiver.** The failure by any Party to enforce any of its rights under this Agreement shall not be deemed a waiver of any right, which that Party has under this Agreement.
- C. **Entire Agreement.** This Agreement, along with the attached exhibits, constitute the entire agreement between the Parties hereto, and may be amended only in writing signed by Community.
- D. **Assignment or Subletting.** The Resident shall not let, sublet, assign or transfer this Agreement, or all or any part of the Room, without the prior written consent of the Community. This Agreement may be freely assigned by the Community to any of its affiliates, parents, subsidiaries, successors or assigns.
- E. **Notice.** Notices required by this Agreement shall be in writing and delivered either by personal delivery, overnight delivery service or U.S. mail (certified or registered mail, return-receipt-requested, with all postage and charges prepaid). Notice to the Community and/or Manager shall be sent to the attention of the executive director at the Establishment's address listed above. Notice to the Resident shall be sent to the Room at the Establishment's address listed above, with a copy to the Financially Responsible Party and/or Resident's Representative (if there is one) at the following address:

Debra Galloway
304 East 2nd Ave
Easley SC 29640

- F. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, this Agreement shall be read as if such unenforceable provision was not included and all other provisions of this Agreement shall continue in full force and effect.
- G. **Successors.** The respective rights and obligations provided in this Agreement shall bind

and shall inure to the benefit of the Parties hereto, their legal representatives, heirs, estates, successors and assigns.

- H. **Survival.** The rights and obligations of the Parties set forth shall survive the termination of this Agreement; together with all rights of indemnification.
- I. **Governing Law.** Except as noted above this Agreement shall be governed by and construed under the laws of the State of South Carolina without regard for its conflict of laws or principles.
- J. **Headings.** The headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any provision of this Agreement.
- K. **Authorization to Release Medical Information.** The Resident hereby authorizes the Resident's health care providers to release the Resident's medical information and medical records to the Landlord as needed.
- L. **Incompetence.** If the Resident becomes legally incompetent, or is unable to properly care for him or herself or his or her property, and the Resident has made no other designation of a person or legal entity to serve as the Resident's guardian or conservator; the Resident hereby grants authority to the Community to apply to a court of competent jurisdiction for the appointment of a conservator or guardian.
- M. **Risk Management Process.** The Community maintains a risk management process to identify and reduce potential liability, which includes providing the Resident with the following information:

General Provisions

- i. **No One-On-One Care.** The Resident understands that the community will not be providing the Resident with one-on-one staff assistance at all times. Rather, at limited time periods during the day, the Resident will receive supervision or assistance from the Community's staff as defined by the level of service under this Agreement. There will be times that the Resident will be in the Resident's Room, hallway or common areas of the Establishment, including outdoors, without a staff member present to supervise, observe or assist the Resident. This is all part of the Establishment's Assisted Living goal of allowing the Resident to live as independently as possible, and with as much personal privacy, dignity, and personal decision-making as possible, and in the least restrictive environment.
- ii. **Staff Response Time.** The Resident and the Resident's Representative also fully understand and appreciate the fact that, because the Resident will not be receiving one-on-one staff supervision or assistance, the Resident's requests

for non-emergency staff assistance will often *not* be responded to immediately. In fact, the Resident and the Resident's Representative understand that a non-emergency request, for example a request to be assisted with changing into the Resident's nightgown, assisted with a shower or bath, assisted to the bathroom, etc., may take approximately 5-10 minutes to be responded to. If the Resident desires quicker response time, the Resident and the Resident's Representative understand that the Resident will need to hire a private helper/companion. If the Resident desires quicker response time and the Resident is not willing to pay for a private helper/companion, then the Resident should consider a different facility.

iii. **Independence.** The Resident and the Resident's Representative understand that because the Resident will be given as much independence, privacy and personal decision-making as possible, there may be times when the Resident is injured trying to independently perform the Resident's activities of daily living such as walking, getting dressed, bathing, transferring from the Resident's bed to bathroom, chair to bed, etc. The Resident and the Resident's Representative hereby agree that injuries, including those from falls, which occur while the Resident is performing an activity that the Resident's physician has designated as an activity that the Resident can perform independently, cannot reasonably be prevented.

iv. **Activities Done Without Supervision/Assistance.** The Resident and the Resident's Representative also agree that for any activity designated by the Resident's physician as requiring supervision or assistance, which the Resident decides to perform *without* reasonably requesting or waiting for staff supervision or assistance and which thereby results in an injury to the Resident, shall not be the liability of the Community.

N. **FURTHERMORE**, the Resident and the Resident's Representative agree that the following events may occur, and result in injury to the Resident, which cannot be reasonably prevented by the Community:

- i. The Resident may choose not to request staff supervision or assistance before attempting to perform an activity of daily living such as walking, dressing, transferring, bathing, etc.
- ii. The Resident may forget to request staff supervision or assistance before attempting to perform an activity of daily living such as walking, dressing, transferring, bathing, etc.
- iii. The Resident may request staff supervision or assistance but then decide to perform an activity of daily living before the staff member has been able to

reasonably respond to the Resident's request.

- iv. The Resident may choose to exercise the Resident's right to refuse medications or refuse to follow the Resident's physician's advice.
- v. The Resident may refuse to comply with staff's recommendation to use a cane, walker, wheelchair, or other safety precautions.
- vi. The Resident may exercise the Resident's right to refuse therapy.
- vii. The Resident may exercise the Resident's right to refuse to have a private helper/companion.

O. Falls. Generally, as individuals age, they begin to experience an increase in falls, often due to decreased eyesight, weaker muscles, slower response time, shuffling gait and/or side effects of medications. The Resident and the Resident's Representative understand that the Community cannot guarantee that the Resident will not experience a fall, or an injury from a fall, at the Establishment.

P. Role of the Resident's Physician. The Resident and the Resident's Representative understand that *only* the Resident's physician can do the following: (1) prescribe any medications or treatments for the Resident; (2) diagnose any medical condition that the Resident may have; (3) order any lab work, therapy or limitations on the Resident's activities that the physician deems appropriate and (4) determine if any follow-up action is necessary based on the results of the Resident's lab work. The Community's staff cannot prescribe medications, nor can they make a medical diagnosis or order lab work, physical, speech or occupational therapy, etc.

21. **Alzheimer's Disclosure act**

A. SECTION 44-36-520 Information respecting form of Alzheimer's care or treatment provided. A nursing home, community residential care facility, or day care facility for adults licensed by the Department of Health and Environmental Control which offers to provide or provides an Alzheimer's special care unit or program must include in its policies and procedures and disclose to the responsible party seeking a placement within the Alzheimer's special care unit or program, the form of care or treatment provided that distinguishes it as being especially applicable to or suitable for persons with Alzheimer's disease. The information that distinguishes the form of care or treatment shall include criteria for admission, transfer, and discharge; care planning; staffing patterns; staff training; physical environment; resident and participant activities; family role in care; and unique costs to the resident or participant associated with specialized service delivery.

B. Dominion Senior Living offers Tapestry to its residents. Tapestry is a special program designed for the care of Alzheimer's and other related Dementia. See Tapestry Mission and Philosophy attachment.

22. OPPORTUNITY TO READ AGREEMENT.

The Resident acknowledges that he or she was given the opportunity to read this Agreement before signing it. The Resident acknowledges that if he or she was unable to read the Agreement, the Community took special steps to assure communication of its contents to the Resident.

[Remainder of this page intentionally left blank; signatures on the following page]

IN WITNESS WHEREOF, this Assisted Living Establishment Contract is entered into as of the date set forth above.

Community:

DOMINION CLEMSON, LLC
dba DOMINION SENIOR LIVING AT PATRICK
SQUARE

By: [Signature]

Name: Lindsey Daugherty

Title: Principal / ED

Resident:

By: _____

Name: _____

Financially Responsible Party:

By: _____

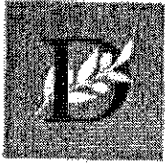
Name: _____

Resident's Representative:

By: Debra C. Galloway
Medical Power of Attorney

Name: Debra C. Galloway

ELECTRONICALLY FILED - 2022 Oct 10 10:48 AM - PROKERS COMMON PLEAS - CASE # 2021 CP 3901127



TAPESTRY MISSION AND PHILOSOPHY

Our mission is to enrich lives by supporting independence, autonomy and preferences for how care is delivered, based upon the resident's abilities, interests, and values. We provide the opportunity for each resident to demonstrate independence based on his or her experience. Programming thoughtfully guided by our staff will center on meaningful and useful activities that are rewarding and successful for the resident.

1) PHILOSOPHY

- We enhance the quality of life for each resident by recognizing that each person is an individual with unique talents, abilities and life history.
- We create an environment that feels like home, with familiar people and objects, comfortable surroundings and pleasant sounds and aromas.
- Our staff approach each residents needs individually, based on that person's preferences for how care is provided.
- Our families are an integral part of the care process, providing a partnership in the caring for their loved one.
- We provide education to our staff and families in order to create a better understanding of how to meet the needs of each resident, and a better understanding of the disease process.
- In Tapestry, we make each resident's present as meaningful as their past.

2) ADMISSION AND SCREENING CRITERIA

Prior to admission, each resident is assessed by our Wellness Director (WD) or designee to determine eligibility and the type of services and care required. Additionally, DHEC requires a medical evaluation to be completed and signed by a physician. Tapestry residents must have a primary diagnosis of Alzheimer's disease, dementia or dementia-related disorders and the physician must determine that admission to a secured unit is warranted.

Eligibility Criteria:

- Physician determination that admission to a secured unit is warranted.
- Diagnosis of Alzheimer's disease or related dementia.
- Requires 24 hour supervision and ADL care due to cognitive and/or physical impairment.
- Ability to ambulate, or be mobile non-ambulatory.
- Ability to bear weight and transfer independently or with assistance.
- Ability to communicate verbally or non-verbally to indicate needs and ability to respond to direction and cueing.
- Ability to participate in personal care and mealtimes, either independently or with assistance. Assistance may include such actions as cueing, reminders, and prompting.
- Incontinence, bladder and bowel, should be manageable. Unmanageable bowel incontinence will preclude admission.
- No Stage 1 or higher decubitus.

- Hospice residents may be admitted or be permitted to continue to reside if state regulations permit
- The following care needs must be met with an outside agency in order for a resident to be admitted:
 - Complicated wound care such as stage 2 or lower decubitus, new amputations, vascular or non-healing wound
 - Physical, Occupational, or Speech Therapy
 - Catheter care
 - Colostomy/Ileostomy care
 - Cutting of Diabetic toenails

Ineligibility Criteria: The following care needs preclude admission to Tapestry.

- Ventilator Care
- Schedule 1 or 2 injectable drugs
- Total Parenteral Nutrition (TPN)
- Suctioning
- Gastronomy tubes
- Total assist with all aspects of care.
- Inability to participate and benefit from an individualized care plan and the programming provided.
- Continuous nursing care or skilled care that cannot be provided by outside agency or that is not permissible under state regulations.
- Inability or unwillingness to pay for services.
- Behaviors that cannot be redirected by the environment, behavior methods, or appropriate medical intervention; behaviors that repeatedly pose a threat to the individual resident or other residents

3) TRANSFER / DISCHARGE CRITERIA AND PROCEDURES

Discharge criteria will follow state regulations established by DHEC for Assisted Living Facilities. For residents who may require a skilled service beyond the supervision of special diets, applications of dressings or medication administration, a licensed home health agency may be selected by the resident. If the needs of a resident can no longer be met in our community, a 30-day discharge notice will be given. For residents who pose an immediate danger to themselves or others, an immediate discharge can be made. For all discharges, management will work with family in providing assistance with new placement. Additionally, residents who require hospice may continue to reside as long as the continued residency is compliant with state regulations.

- Resident develops an inappropriate diagnosis (such as treatable illness (or untreatable) or psychosis due to mental illness)
- Resident becomes non-ambulatory and cannot benefit from assistive devices such as walkers or manual/motorized wheelchairs that can be propelled independently.
- Resident's cognitive impairment progresses so that needs cannot be understood, either verbally or non-verbally.
- Resident is no longer able to benefit from the special programming and environment.
- Resident experiences unmanageable issues related to bowel or bladder incontinence.
- Resident develops a Stage 1 or higher decubitus.

- Resident needs exceed 120 calendar days of skilled care
- Resident is no longer able to assist with any personal care, and requires total assist with all aspects of care.
- Resident is unable or unwilling to pay.
- Resident or responsible party does not abide by the Residency Agreement
- Resident becomes a danger to him/herself or others.

4) STAFFING

- The Community employs a manager, the Tapestry Leader, specifically dedicated to the secured unit. The Tapestry Leader works full-time, 5 days per week. The Tapestry leader is primarily responsible for the supervision of resident care and programming.
- Resident Assistants (RA) are scheduled 24 hours per day, 7 days per week according to the number of residents and acuity. It is the practice of Dominion that the staffing within Tapestry is a higher staff to resident ratio as compared to the non-secured portion of the Community. There is always at least one RA at duty at all times.

5) PROGRAMMING AND ACTIVITIES

The Tapestry activity program is a separate and distinct program offered exclusively to our Tapestry residents. Our programming is built around each individual's life history, current abilities and interests and is geared toward maintaining abilities. We strive to provide a balance of spiritual, emotional, physical, intellectual and social activities.

Examples of common Tapestry activities

- Listening to Music
- Exercising
- Food Preparation
- Crafts
- Gardening
- Solo Activities
- Reminiscence

6) COSTS AND SERVICES

The accommodations and services fee for residents residing in the Tapestry range in price from \$4800 per month Rates vary depending upon the accommodations chosen, levels of care are inclusive. There is a New Resident Application/Assessment Fee in the amount of \$1,500.00 charged upon move-in. Additional fees apply for optional services provided by the Community or another third party, including but not limited to: private duty care, personal telephone service, beauty and barber services, personal and medical supplies, pharmacy supplies, medications, and other medical services or emergency transportation.

Dominion Tapestry Supplemental Services and other Ancillary Charges:

Guest Meals

Breakfast	\$6.00/Meal
Lunch	\$6.00/Meal
Dinner	\$6.00/Meal
Holiday Meals	\$12.00/Meal

Incontinence Supplies

Tena Pull on	Per 3 rd party
Gloves	Per 3 rd party
Tena Wipes	Per 3 rd party

Other Supplies

Room Replacement Key	\$5.00
Furniture Rental	Not applicable
Basic Cable Television Services	\$30.00/Month
Telephone Service (Call BellSouth)	
Pharmacy Service	Per Blue Ridge Pharmacy
Beauty & Barber PS Salon	Per Salon Charges
Pet Fee	\$1000 non-refundable
Motorized Cart Fee	\$500 one time non-refundable

Personal Transportation Service

(Please schedule at least 7 days in advance to ensure escort availability)

Free for transportation to or from our Medical Director/Designated Physicians office.

25 Miles or less on designated days	No Charge
On non-designated days	\$20/hour + \$.75/mile
In excess of 25 miles	\$20/hour + \$.75/mile
Escort Service	\$20.00 / hr

Respite Fees

Daily (up to 8hrs)	\$125/Day
Weekly	\$1200/Week

7) SPECIALIZED STAFF TRAINING

Tapestry associates receive at least 6 hours of Dementia specific training within the first 14-days of hire. Such training includes: Introduction to Alzheimer's disease, communication with residents with Alzheimer's diseases, providing care for confused residents, communication skills, managing challenging behaviors, behavior assessment and response strategy, and programming. Annually, Dominion Tapestry associates are required to complete 4 hours of Alzheimer's continuing education program. In addition, there are also hourly monthly mandatory staff meetings held to discuss issues arising from resident incidents/concerns.

8) ASSESSMENT PROCESS – PROVISION OF SERVICES AND ALTERING SERVICES

Prior to admission, residents are assessed by the Wellness Director or designee for assistance needs with Activities of Daily Living (ADLs), as well as any healthcare needs. This assessment is updated at least semi-annually and is also updated when there is a change in condition. Families and residents are encouraged to participate in care conferences with our staff to discuss changes in a resident's condition and level of care.

9) BEHAVIORAL HEALTH CARE NEEDS

This community practices a Behavior Assessment and Response Strategy (BARS) when working with residents with inappropriate behaviors. This strategy is discussed in the staff training program. Incidents of inappropriate behaviors are reviewed among the staff to try and understand possible antecedents of the behavior. If an antecedent is recognized or there is a pattern as to when an inappropriate behavior occurs, plans are formulated to reduce such behavior. Such plans or interventions may include re-direction or reduction of environmental stimuli. In specific cases, family and resident's physician may also be involved in behavioral interventions.

10) PHYSICAL ENVIRONMENT

Our Tapestry is a secured unit with 15 apartments. The unit is secured by a key pad and magnetic locking mechanism on all exit doors. Residents, staff and visitors are not capable of entering or exiting the unit without the security code. The Tapestry has a common space utilized for activities and living room. Additionally, there is a separate common area utilized for dining. The apartments are private with a private, full bathroom. Apartments also may be rented as semi-private if such a demand exists. All apartments are handicap accessible and equipped with an emergency call system that activates staff pagers.

11) FAMILY INVOLVEMENT AND FAMILY SUPPORT PROGRAMS

Families are encouraged to be as involved in the resident's care as they would like to be and are able. Staff is available to answer any questions that may come up involving the resident. Families will be notified of any changes in condition or behavior that occur with the resident. Support groups are held monthly and families are encouraged to attend all family functions planned each month.

12) OTHER SERVICE PROVIDED

Physical, Occupational, and Speech therapy are available on-site through Dominion's preferred partner. The resident and/or family can also choose a provider of their choice.

(Exhibit A)

Rate Sheet

Private Room or Companion Room Fee

\$ 3990.00

Establishment Service Fee

\$ 1500.00 (one time charge)

Services Include:

- 24 Hour/Day Supervision and Assistance with Personal Care
- Personal Laundry
- Linen Service
- Three Nutritious Meals a Day
- Daily Snacks
- Daily Recreational Program
- Transportation Services
- Trained Staff Members
- Full Time Licensed Nurse
- Maintenance and Housekeeping Services

(Exhibit B)

Supplemental Rate Sheet

Below is a list of services and pricing that are referred to in the Resident Handbook. These charges are for services not included in your monthly rental rate. When arranging the following services, the charges can be paid for upfront or be assessed on your monthly rental statement. Please contact management with any questions.

Administrative/Community Living

Apartment Transfer Fee	\$500.00
Key Duplication	\$5.00/key

Food Service**Guest Meal Tickets**

Breakfast	\$6.00
Lunch	\$6.00
Dinner	\$6.00
Holiday/Theme Meal	\$12.00

Room Service	Not provided
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Housekeeping/Maintenance

Additional Housekeeping/Maintenance	\$ 15.00/hr
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Transportation

Transportation – Medical appointments	No Charge (within a 25 mile radius)
Escort Service	\$15.00/hour

(Exhibit C)

ADDENDUM TO THE ASSISTED LIVING ESTABLISHMENT AGREEMENT

TRANSPORTATION GUIDELINE

Dominion Senior Living at Patrick Square has vehicles available for transporting residents from scheduled activities, outings and on assigned days, physician or clinic appointments. Routinely, trips are scheduled to banks, stores, pharmacies, etc. Residents can see a specific schedule printed on the activity calendar. Transportation is managed through the community leadership. If a Resident wishes to be "dropped-off" at an appointment destination or unsupervised shopping trip, the Resident must be capable of navigating buildings unassisted, record the method of contacting the driver when it is time for "pick-up" and/or remembering the location of a pre-determined "pick-up" point.

Physicians and clinic appointments will be scheduled within reasonable proximity of the facility not to exceed a 25 mile radius and is approved by the management. Appointments are scheduled on a first come, first serve basis.

The facility will provide chauffeur services at an additional fee of \$15.00 each way. A fee of \$15/hr will be charged for an escort service to stay in attendance (if needed) with the resident during the appointment. Residents must inform the management of their need for these services well enough in advance to avoid conflict with the residence's activity schedule and to ensure availability to staff to perform escort services.

LIABILITY INSURANCE

Dominion Senior Living at Patrick Square carries liability insurance with T.I.S. of Knoxville and complies with all state regulations.

Dominion Senior Living

RESIDENT RIGHTS

Receipt and Acknowledgement

I/We Earl Lee Cooley acknowledge that we have read and understand the Contents of Resident Bill of Rights for the State of South Carolina. I/we further acknowledge that the Resident Bill of Rights have been explained in person. I/we were given an opportunity to ask questions relating to the Resident Bill of Rights and those questions were answered.

Debra C. Holloway
Resident Signature

2.14.2019
Date

[Signature]
Community Representative

2.14.19
Date

Dominion Senior Living

RECEIPT AND ACKNOWLEDGEMENT

I/We Forlino Cooley acknowledge that we have read and understand the Contents of the attached Resident Handbook & House Rules, which is a part of our entire agreement with the community, and will abide by the policies stated. Management has the right to take the necessary action as stated in the lease agreement if policies are not followed. Any questions relating to the information contained in this handbook should be directed to the Executive Director or appropriate department.

Debra C. Hallaway
Resident Signature

2.14.2019
Date

[Signature]
Community Representative

2.14.19
Date

ITEMS PROHIBITED IN THE COMMUNITY

- Heating Pads
- Electric Blankets
- Toaster or Toaster Oven
- Egg Crate Mattresses
- Rice-filled Heating Pads
- Coffee Makers without Auto-off feature
- Non-fused extension cords
- Prescribed medications in resident rooms
- Over-the-Counter medications in resident rooms
- Non-consumable liquids, including toiletry items, stored in resident rooms
- Alcoholic beverages in resident rooms without proper documentation.
- Anything illegal or unlawful
- Weapons or items that poses threats to the overall safety of themselves or others.

Other items may also be prohibited if, in the opinion of the management, they pose a threat to any resident.

I have read and understand this list.

Resident/Responsible Party signature: _____

Libia C. Holloway

Community Representative: _____

[Signature]

Date: _____

2.14.19

Dominion Senior Living

MEDICATION ADMINISTRATION WAIVER

Dominion Senior Living (DSL) recognizes that residents have the choice of receiving their medications from various sources; for example, the VA. DSL is committed to resident safety, and demonstrates this commitment by adhering to the "Gold Standard" for safe medication administration, which is the *unit dose system*. This means that all medications provided by our contracted pharmacy and administered to our residents are packaged in a unit dose dispensing system. If you choose to receive your medications from a source that does not provide a unit dose dispensing system, please be aware that you are choosing a medication dispensing option which does not conform to the highest standards of practice, and does not allow our staff to practice medication administration at the established and recognized "Gold Standard" of resident safety for medication administration. DSL will manage those issues within our control to promote the administration of medication safely and effectively; however, the most important feature of safe medication administration and protection from human error is a unit dose dispensing system. If you choose a pharmacy that does not provide this "Gold Standard" approach to medication administration safety, you are actively choosing an increased risk for medication errors and the associated outcomes. Therefore, you assume the risk associated with your choice.

Our contracted pharmacy guarantees the timely availability of our resident's medications in an appropriate unit dose dispensing system. By choosing an outside pharmacy provider (a pharmacy other than our contracted pharmacy, including the VA), you agree to the following terms for medications received from you or your pharmacy.

- 1.) If DSL cannot administer up to 3(three) doses of any non-critical medication due to its not being available, we will contact your physician to receive a new prescription to be filled via our contracted pharmacy in unit dose packaging. This will be at the resident's expense.
- 2.) If DSL cannot administer 1(one) dose of any critical medication due to its not being available, we will contact your physician to receive a new prescription to be filled via our contracted pharmacy in unit dose packaging. This will be at the resident's expense.

I, Emma Cooley, have read this waiver with full understanding of the context. I have been given the opportunity to ask any questions and clear up any misunderstandings I may have had. Furthermore, I agree to the above waiver and I agree to do whatever is necessary to ensure that DSL has my medications available timely and appropriately for administration per my physician's orders.

Debra C. Haeloway
Resident Signature

2.14.2019
Date

Resident Surrogate Signature

Date

[Signature]
DSL Representative Signature

2.14.19
Date

EXHIBIT 7

DATE **AUG -1 2014**
CERTIFIED TO BE A TRUE AND CORRECT COPY
OF DOCUMENT ON FILE IN THIS OFFICE
Timothy J. Hamann
REGISTER OF DEEDS, GREENVILLE COUNTY

BOOK 2185 PAGE 732

FILED
GREENVILLE, SC

2006 JAN 19 12 34 42

**DURABLE POWER OF ATTORNEY
OF
EARLINE S. COOLEY**

Introductory Provision. I, **EARLINE S. COOLEY**, as principal, (the "Principal") have this day appointed **DEONDA MICHELLE COOLEY WELDON** to serve as my agent ("Agent") and to exercise the powers and discretions set forth below. If **DEONDA MICHELLE COOLEY WELDON** shall be unable or unwilling or unavailable to serve or to continue to serve, then I appoint **PHYLLIS ROBIN COOLEY ELLIOTT** as substitute or successor Agent to serve with the same powers and discretions as set forth below. If **PHYLLIS ROBIN COOLEY ELLIOTT** shall be unable or unwilling or unavailable to serve or to continue to serve, then I appoint **DEBRA ALISON COOLEY GALLOWAY** as substitute or successor Agent to serve with the same powers and discretions as set forth below.

Statement of Intent to Create Durable Power of Attorney Under State Statute. By this instrument I intend to create a Durable Power of Attorney under South Carolina law.

THIS POWER OF ATTORNEY SHALL NOT BE AFFECTED BY ANY PHYSICAL DISABILITY OR MENTAL INCOMPETENCE WHICH RENDERS ME INCAPABLE OF MANAGING MY OWN ESTATE.

Revocation of Prior Powers of Attorney. I hereby revoke all powers of attorney, general and/or limited, heretofore created by me as principal and terminate all agency relationships created thereunder, including those of all successor Agents named therein, if any.

Delegation of All Powers Lawful to Delegate. I herewith delegate to my Agent each and every power that I may lawfully delegate, subject only to those limitations specifically set forth in this instrument, giving and granting unto my Agent full power and authority to do and perform all and every act, deed, matter, and things 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 specially enumerated powers herein being in aid and exemplification of the full and complete and general power herein granted and not in limitation or definition thereof, and I hereby ratify all that my Agent shall lawfully do or cause to be done by virtue of these presents.

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ARTICLE I**ASSET POWERS**

Introduction. My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time, with respect to any and all of my property and interests in property, real, personal, intangible and mixed, as follows:

(1) **Power to Sell.** To sell any and every kind of property that I may own now or in the future, real, personal, intangible and/or mixed, including without being limited to contingent and expectant interests, marital rights and any rights of survivorship incident to joint tenancy or tenancy by the entirety, on such terms and conditions and security as my Agent shall deem appropriate and to grant options with respect to sales thereof; to make such disposition of the proceeds of such sale or sales, including expending such proceeds for my benefit, as my Agent shall deem appropriate.

(2) **Power to Buy.** To buy every kind of property, real, personal, intangible and/or mixed, on such terms and conditions as my Agent shall deem appropriate; to obtain options with respect to such purchases; to arrange for appropriate disposition, use, safekeeping and/or insuring of any such property.

(3) **Power to Invest.** To invest and reinvest all or any part of my property in any property or interests, including undivided interests, in property, real, personal, intangible and/or mixed, wherever located, including without being limited to securities of all kinds, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell, including short sales, and terminate any investments whether made by me or my Agent; to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds; to establish, utilize and terminate accounts with securities brokers and in such accounts, to make short sales and to buy on margin and, for such purposes, my Agent may pledge any securities so held or purchased with such brokers as security for loans and advances made to the account; to establish, utilize and terminate agency accounts with corporate fiduciaries; to employ, compensate and terminate the services of financial and investment advisors and consultants.

(4) **Power to Manage Real Property.** With respect to real property, including but not limited to any real property I may hereafter acquire or receive and my personal residence, my Agent is authorized to lease, sublease, release; to eject and remove tenants or other persons from, and recover possession of by all lawful means; to accept real property as a gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize any and all of such rents, profits and receipts for the purposes described in this paragraph; to do any act of

management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connection therewith; to employ laborers; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build on, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien; to sell and to buy real property.

(5) **Power to Manage Personal Property.** With respect to personal property; to lease, sublease, and release; to recover possession of by all lawful means; to collect, sue for, receive and receipt for rents and profits therefrom; to maintain, protect, repair, preserve, insure, alter or improve all or any part thereof; to sell and to buy the same or other personal property.

(6) **Power to Exercise Rights in Securities.** To exercise all rights with respect to corporate securities which I now own or may hereafter acquire, including the right to sell, grant security interests in and to buy the same or different securities; to establish, utilize and terminate brokerage accounts, including margin accounts; to make such payments as my Agent deems necessary, appropriate, incidental or convenient to the owning and holding of such securities; to receive, retain, expend for my benefit, invest and reinvest or make such disposition of as my Agent shall deem appropriate all additional securities, cash or property, including the proceeds from the sales of my securities, to which I may be or become entitled by reason of my ownership of any securities; to vote at all meetings of security holders, regular or special.

(7) **Power to Demand and Receive.** To demand, arbitrate, settle, sue for, collect, receive, deposit, expend for my benefit, reinvest or make such other appropriate disposition of as my Agent deems appropriate, all cash, rights to the payment of cash, property, real, personal, intangible and/or mixed, debts, dues rights, accounts, legacies, bequests, devises, dividends, annuities, rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved, including but not limited to benefits payable to or for my benefit by any governmental agency or body, such as Supplemental Social Security (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI) and for the purposes of receiving Social Security benefits, my Agent is herewith appointed my "Representative Payee"; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf, and to compromise claims and grant discharges in regard to the matters described herein; to utilize all lawful means and methods to recover such assets and/or rights, qualify me for such benefits and claim such benefits on my behalf. The authority herein granted shall include but not be limited to converting my assets into assets that do not disqualify me from receiving such benefits or divesting me of such assets. In any divestment actions or asset conversions, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent whether or not such estate plan is embodied in a will, a trust, non-probate property, or otherwise. If it is necessary to disrupt such plan, then my Agent is directed to use my

Agent's best efforts to restore such plan as and when the opportunity to do so is available to my Agent. If a transfer of cash by my Agent is made to a pecuniary legatee under my will, my Agent shall ensure that such transfer is deemed a satisfaction of such legacy, pro tanto.

(8) **Power to Exercise Elective Share Rights.** To elect to take against any will and conveyances of my deceased spouse and/or any other person, if appropriate; to retain any property which I have the right to elect to retain; to file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments; and to take all other actions that my Agent deems appropriate in order to effectuate the election; provided, however, that if any such actions by my Agent require the approval of any court, my Agent is authorized to seek such approval.

(9) **Power with Respect to Employment Benefits.** To create and contribute to an employee benefit plan, including a plan for a self-employed individual, for my benefit; to elect retirement on my behalf; to select any payment option under any IRA or employee benefit plan in which I am a participant, including plans for self-employed individuals, or to change options I have selected; to make voluntary contributions to such plans; to make "roll-overs" of plan benefits into other retirement plans; to apply for and receive payments and benefits; to waive rights given to nonemployee spouses under state or federal law.

(10) **Power with Respect to Bank Accounts.** To establish accounts of all kinds, including checking and savings, for me with financial institutions of any kinds, including but not limited to banks and thrift institutions; to modify, terminate, make deposits to and write checks on or make withdrawals from and grant security interests in all accounts in my name or with respect to which I am an authorized signatory, except accounts held by me in a fiduciary capacity, whether or not any such account was established by me or for me by my Agent, to negotiate, endorse or transfer any checks or other instruments with respect to any such accounts; to contract for any services rendered by any bank or financial institution, and to execute, on my behalf as principal, agency or power of attorney forms furnished by any bank with respect to accounts with such bank, appointing as my Agent or any other person or persons.

(12) **Power with Respect to Safe-Deposit Boxes.** To contract with any institution for the maintenance of a safe-deposit box in my name; to have access to all safe-deposit boxes in my name or with respect to which I am an authorized signatory, whether or not the contract for such safe-deposit box was executed by me, either alone or jointly with others, or by my Agent in my name; to add to and remove from the contents of any such safe deposit box and to terminate any and all contracts for such boxes. In addition, I do hereby authorize and direct my Agent as Attorney-in-Fact under this durable power of attorney, to have access at any time or times to any safe deposit box rented by me, wherever located, in order to remove the original durable power of attorney; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a

result of permitting the acting Agent under this durable power of attorney to exercise this power. This power is exercisable without: (i) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (iv) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (v) any inquiry.

(13) **Power with Respect to Legal and Other Actions.** To institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments, arrests or distresses, involving me in any way, including but not limited to claims by or against me arising out of property damages or personal injuries suffered by or caused by me or under such circumstances that the loss resulting therefrom will or may be imposed on me and otherwise engage in litigation involving me, my property or any interest of mine, including any property or interest or person for which or whom I have or may have any responsibility.

(14) **Power to Disclaim, Renounce, Release, or Abandon Property Interests.** To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in property or powers which I may now or hereafter own, including any interests in or rights over trusts, including the right to alter, amend, revoke or terminate, and to exercise any right to claim an elective share in any estate or under any will. In exercising such discretion, my Agent shall consider any reduction in estate or inheritance taxes that may be due on my death, and the effect of such renunciation or disclaimer on persons interested in my estate and persons who would receive the renounced or disclaimed property; provided, however, that my Agent shall make no disclaimer that is expressly prohibited by other provisions of this instrument.

(15) **Power with Respect to Insurance.** To purchase, maintain, surrender, collect, or cancel (a) life insurance or annuities of any kind on my life or the life of any one in whom I have an insurable interest, (b) liability insurance protecting me and my estate against third party claims, (c) hospital insurance, medical insurance, Medicare supplement insurance, custodial care insurance, and disability income insurance for me or any of my dependents, and (d) casualty insurance insuring assets of mine against loss or damage due to fire, theft or other commonly insured risk; to pay all insurance premiums, to select any options under such policies; to increase coverage under any such policy, to borrow against any such policy, to pursue all insurance claims on my behalf, to adjust insurance losses, and the foregoing powers shall apply to private and public plans, including but not limited to Medicare, Medicaid, SSI and Worker's Compensation.

(16) **Power with Respect to Taxes.** To represent me in all tax matters; to prepare, sign, and file federal, state, and/or local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns,

claims for refunds, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts, including the tax court, regarding tax matters, and any and all other tax related documents, including but not limited to consents and agreements under Section 2032A of the Internal Revenue Code or any successor section thereto and consents to split gifts, closing agreements and any power of attorney form required by the Internal Revenue Service and/or any state and/or local taxing authority with respect to any tax year; to pay taxes due, collect and make such disposition of refunds as my Agent shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and/or any state and/or local taxing authority; to exercise any elections I may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which I am entitled, and generally to represent me or obtain professional representation for me in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and/or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have or may have an interest or responsibility; and on my behalf to execute IRS Form 2848 and appoint my Agent or any suitable person selected by my Agent as my representative before the Internal Revenue Service.

(17) **Power to Make Gifts.** Having adopted and implemented a plan of making gifts to my children and others in the past, my Agent is specifically empowered to make gifts to herself and other of my children and my issue in order to take maximum advantage of any provisions of state and/or federal tax laws which allows for the making of gifts without any resulting gift tax. This Power of Attorney shall enable my Agent to take full advantage of these laws including the utilization of the annual exclusion and the exemption equivalent at her discretion. Provided however, my children are to be treated equally in the making of these gifts so that no one child will receive more than another. This equality provision shall not apply to my issue other than children. Furthermore this power to make gifts includes the power to create trusts for the benefit of a donee into which a gift authorized hereunder may be placed and administered if my Agent in her/his discretion deems it advisable for the benefit of a donee. No person, firm or business relying upon this Power of Attorney shall have any duty to see to the application of the proceeds or items of value.

ARTICLE II

INCIDENTAL POWERS

Introduction. In connection with the exercise of the powers and discretions herein described, my Agent is fully authorized and empowered to perform any acts and things and to execute and deliver any documents, instruments, affidavits, certificates, and papers necessary or appropriate, to such exercise or exercises, including without limitation the following:

(1) **Resort to Courts.** To seek on my behalf and at my expense:

(a) a declaratory judgment from any court of competent jurisdiction interpreting the validity of this instrument and any of the acts authorized by this instrument, but such declaratory judgment shall not be necessary in order for my Agent to perform any act authorized by this instrument.

(b) a mandatory injunction requiring compliance with my Agent's instructions by any person, organization, corporation, or other entity obligated to comply with instructions given by me.

(c) actual and punitive damages and the recoverable costs, fees and expenses of such litigation, against any person, organization, corporation or other entity obligated to comply with instructions given by me who negligently or willfully fails or refuses to follow such instructions.

(2) **Hire and Fire - All Personnel.** To employ, compensate and discharge such domestic, health care and professional personnel including lawyers, accountants, doctors, nurses, brokers, financial consultants, advisors, consultants, companions, servants and employees as my Agent deems appropriate.

(3) **Sign Documents and Incur Costs in Implementing the Agent's Instructions.** To sign, execute, endorse, seal, acknowledge, deliver and file or record instruments and documents, including but not limited to contracts, agreements and conveyances of real and personal property, instruments granting and perfecting security instruments and obligations, orders for the payment of money, receipts, releases, waivers, elections, vouchers, consents, satisfactions and certificates. In addition, any Agent of mine who has the authority to incur costs on my behalf may render the bills for such costs to any Agent of mine who has been granted the authority to pay such costs or to any trustee of any revocable living trust of mine, or guardian, committee or conservator who has authority to pay such costs I request that costs be paid promptly. Any recipient thereof (i.e. my Agent with authority to pay or my trustee) shall promptly pay such costs.

(4) **Payment of Medical Expenses.** My Agent is directed to pay, or cause to be paid, all bills incurred and presented by any agent representing me under a Durable Power of Attorney for Health Care.

(5) **Borrow, Spend, Liquidate, Secure.** To expend my funds and to liquidate my property or to borrow money to produce such funds and to secure any such borrowings with security interests in any property, real, personal, or intangible that I may now or hereafter own.

(6) **Power to Do Miscellaneous Acts.** To open, read, respond to and redirect my mail; to represent me before the U.S. Postal Service in all matters relating to mail service; to establish, cancel, continue or initiate my membership in organizations and associations of all kinds, to take and give or deny custody of all of my important

documents, including but not limited to my will, codicils, trust agreements, deeds, leases, life insurance policies, contracts and securities and, bearing in mind the confidential nature of such documents, to disclose or refuse to disclose such documents; to obtain and release or deny information or records of all kinds relating to me, to any interest of mine or to any person for whom I am responsible; to house or provide for housing, support and maintenance of any animals or other living creatures that I may own and to contract for and pay the expenses of their proper veterinary care and treatment; and if the care and maintenance of such animals or other living creatures shall become unreasonably expensive or burdensome in my Agent's opinion, to irrevocably transfer such animals to some person or persons willing to care for and maintain them.

ARTICLE III

THIRD PARTY RELIANCE

Introduction. For the purpose of inducing all persons, organizations, corporations and entities including but not limited to any physician, hospital, nursing home, health care provider, bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or other party (all of whom will be referred to in this Article as a "Person") to act in accordance with the instructions of my Agent as authorized in this instrument, I hereby represent, warrant and agree that:

(1) **Third Party Liability for Revocation and Amendments.** If this instrument is revoked or amended for any reason, I, my estate, and my personal representative will hold any person, organization, corporation or entity, hereinafter referred to in the aggregate as "Person", harmless from any loss suffered, or liability incurred by such Person in acting in accordance with the instructions of my Agent acting under this instrument prior to the receipt by such Person of actual written notice of any such revocation or amendment.

(2) **Agent Has Power to Act Alone.** The powers conferred on my Agent by this instrument may be exercised by my Agent alone and my Agent's signature or act under the authority granted in this instrument may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. Consequently, all acts lawfully done by my Agent hereunder are done with my consent and shall have the same validity and effect as if I were personally present and personally exercised the powers myself, and shall inure to the benefit of and bind me and my estate and my personal representative.

(3) **No Liability to Third Parties for Reliance on Agent.** No Person who relies in good faith on the authority of my Agent under this instrument shall incur any liability to me, my estate or my personal representative. In addition, no Person who acts in reliance on any representations my Agent may make as to (a) the fact that my Agent's powers are then in effect, (b) the scope of my Agent's authority granted under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been revoked or amended, or (e) the fact that my Agent

continues to serve as my Agent shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent. Any party dealing with any Person named as Agent (including any Person named as an Alternate Agent hereunder) may rely on as conclusively correct an affidavit or certificate of such Agent that (i) my Agent's powers are then in effect, (ii) the action my Agent desires to take is within the scope of my Agent's authority granted under this instrument, (iii) I was competent at the time this instrument was executed, (iv) this instrument has not been revoked, and/or (v) my Agent continues to serve as my Agent.

(4) Alternate Agent May Give Affidavit or Certificate That He or She Currently Serves. Any party dealing with any person named as Alternate Agent hereunder may rely on as conclusively correct an affidavit or certificate under penalties of perjury of such Alternate Agent that those persons named as prior Agents are no longer serving.

(5) Affidavits or Certificates Given by Agent Bind Principal. No Person who relies on any affidavit or certificate under penalties of perjury that this instrument specifically authorizes my Agent to execute and deliver to such person shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent.

(6) Authorization to Release Information to Agent. All Persons from whom my Agent may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate or my personal representative for complying with my Agent's requests.

(7) Authorization to Release Medical Information. I hereby authorize all physicians and psychiatrists who have treated me, and all other providers of health care, including hospitals, to release to my Agent all information or photocopies of any records which my Agent may request. If I am incapacitated at the time my Agent shall request such information, all Persons are authorized to treat any such request for information by my Agent as the request of my legal representative and to honor such requests on that basis. I hereby waive all privileges which may be applicable to such information and records and to any communication pertaining to me and made in the course of any confidential relationship recognized by law. My Agent may also disclose such information to such Persons as my Agent shall deem appropriate.

ARTICLE IVRESTRICTION ON POWERS

Introduction. Notwithstanding any provision herein to the contrary, my Agent:

(1) Prohibition on Power Over Life Insurance on Agent's Life. Shall have no power or authority whatsoever with respect to any interest in or incidents of ownership in any policy of insurance I may own on the life of my Agent.

(2) Prohibition on Power Over Prior Transfers. Shall have no power or authority whatsoever with respect to (a) any irrevocable trust created by my Agent as to which I am a trustee or a beneficiary or (b) any asset given to me by my Agent.

(3) Prohibition on Power to Benefit Agent. Shall be prohibited, except as specifically authorized in this instrument, from (a) appointing, assigning or designating any of my assets, interests or rights directly or indirectly to my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, (b) exercising any power of appointments I may hold in favor of my Agent, my Agent's estate, my Agent's creditors, or the creditors of my Agent's estate, (c) disclaiming assets to which I would otherwise be entitled if the effect of such disclaimer is to pass assets directly or indirectly to my Agent or his or her estate, or (d) using my assets to discharge any of my Agent's legal obligations, including any obligation of support which my Agent may owe to others, excluding those whom I am legally obligated to support.

(4) Prohibition on Exercise of Fiduciary Powers. Shall be prohibited from exercising any discretionary fiduciary powers that I now hold or may hereafter acquire.

(5) Avoid Disrupting Principal's Estate Plan. If it becomes necessary for my Agent to liquidate my assets to provide support for me, or if liquidation or conversion of assets becomes necessary for any other reason, whether specified in this instrument or otherwise, or such liquidation is deemed by my Agent to be appropriate or convenient, I direct that my Agent, to the extent reasonably possible, avoid disrupting the dispositive provisions of any estate plan of mine known to my Agent, whether or not such estate plan is embodied in a will, a trust, non-probate property, or otherwise. If it is necessary to disrupt the dispositive provisions of such plan, then my Agent is directed to use my Agent's best efforts to restore the dispositive provisions of such plan as and when the opportunity to do so is available to my Agent. My Agent shall make reasonable efforts to obtain and review my estate plan and any person having knowledge thereof or possession of any documents implementing such estate plan is authorized to make disclosure thereof to my Agent, and to furnish my Agent with copies of such documents.

ARTICLE V**ADMINISTRATIVE PROVISIONS**

Introduction. The following provisions shall apply:

- (1) **Reimbursement and Compensation of Agent.** My Agent shall be entitled to reimbursement for all reasonable costs and expenses, including reasonable attorney's fees, actually incurred and paid by my Agent on my behalf at any time under any provision of this instrument. My Agent shall not be entitled to compensation for services rendered hereunder but shall be entitled to reimbursement for reasonable expenses.
- (2) **Waiver of Acts of Omission and Commission.** My Agent (and my Agent's estate and personal representative), acting in good faith, are hereby released and forever discharged from any and all civil liability and from all claims or demands of all kinds whatsoever by me or my estate and personal representative arising out of the acts or omissions of my Agent, except for willful misconduct or gross negligence.
- (3) **Waiver of Duty to Produce Income, Authority for Transactions between Agent as Agent and Agent as Individual and Eligibility of Agent to Serve in Other Fiduciary Capacities for Principal.** My Agent shall have no responsibility to make my property productive of income, to increase the value of my estate or to diversify my investments. My Agent shall have no liability for entering into transactions authorized by this instrument with my Agent in my Agent's individual capacity as long as my Agent believes in good faith that such transactions are in my best interests or the best interests of my estate and those persons interested in my estate. My Agent shall be eligible to serve in all other fiduciary capacities, for me or my benefit (but not in my place where I may serve as a fiduciary for others), including but not limited to serving as Trustee, Guardian, Conservator, Committee, Personal Representatives.
- (4) **No Duty to Monitor Health.** My Agent shall have no responsibility to monitor on any regular basis the state of my physical health or mental capacity to determine if any actions need be taken under this instrument.
- (5) **Severability.** If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.
- (6) **This Instrument Unaffected by Lapse of Time.** This power of attorney shall be legally unaffected by reason of lapse of time or staleness.
- (7) **Agent Authorized to Sign Power of Attorney Forms.** In carrying out the authorizations set forth in this instrument, if in the sole opinion of my

Agent it is necessary or convenient for my agent to sign my name, as principal, on forms of powers of attorney (the "Forms") required by governmental agencies, corporations or other entities in transactions with me, my agent is authorized to execute such Forms, and to appoint an agent or other person on the Forms to represent me.

(8) **Agent Authorized to Employ Principal's Attorney.** The Principal requests and authorizes the Agent to employ the attorney who prepared this power of attorney or other attorneys employed by the Principal in connection with the Principal's estate plan and business matters and hereby (a) waives any and all conflicts of interest that might arise through such employment, (b) authorizes all such attorneys to make full disclosure of the Principal's estate plan and business to the Agent and (c) authorizes such attorneys to accept such employment.

(9) **Governing Law and Applicability to Foreign Jurisdictions.** This instrument shall be governed by the laws of the State of South Carolina in all respects, including its validity, construction, interpretation and termination. To the extent permitted by law, this power of attorney shall be applicable to all property of mine, real, personal, intangible or mixed, wherever and in whatever state of the United States or foreign country the situs of such property is at any time located and whether such property is now owned by me or hereafter acquired by me or for me by my Agent. In addition, in regard to health care treatment affecting me, I intend for this Power of Attorney to be honored in any jurisdiction in which it may be presented and given the most liberal interpretation available for purposes of granting my Agent the fullest amount of discretion in making health care decisions on my behalf. I also intend that any such jurisdiction refer to the laws of the state referred to above to interpret and determine the validity of this instrument and any of the powers granted hereunder. Should any physician or health care provider fail to honor this Power of Attorney, then my Agent is authorized to terminate the services of such persons and to transfer my care to another physician or health care provider that will honor the instructions of my Agent.

(10) **Definitions.** Whenever the word:

(a) "Agent" or any modifying or equivalent word or substituted pronoun therefor is used in this instrument, such word or words shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof.

(b) "Guardian" or "Conservator" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively the fiduciary, appointed by a court of competent jurisdiction or by other lawful means, responsible for the person and/or the property of an individual.

(11) **Revocation, Amendment and Resignation.** This instrument may be amended or revoked by me at any time by the execution by me of a written instrument of revocation or amendment, delivered to my Agent and to all Alternate Agents. If this

instrument has been filed or recorded in the public records, then the instrument of revocation or amendment shall be filed or recorded in the same public records. My Agent and any Alternate Agent may resign by the execution of a written resignation delivered to me or, if I am mentally incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me or, in the case of an Agent's resignation, by delivery to the Alternate Agent. If my spouse has been appointed my Agent or an Alternate Agent hereunder and subsequent to the execution of this instrument my spouse and I are legally separated or divorced, or in the event that such an action is pending, such legal separation, divorce, or pending action shall automatically and without notice remove my spouse as Agent or Alternate Agent.

(12) Substitute/Successor Agent Appointed by Court. If at any time there is no person serving as Agent named herein, my successor or substitute Agent shall be some suitable person or institution, appointed by the court having jurisdiction over this instrument, ex parte, without the necessity of a hearing.

(13) Appointment of Ancillary Agent. If at any time my Agent deems it necessary or desirable in my Agent's discretion to appoint one or more Agents to act in another jurisdiction under this power of attorney (such Agent or Agents being hereinafter referred to in the aggregate as my "Ancillary Agent") my Agent from time to time and at any time may appoint one or more such Ancillary Agents. In making such appointment my Agent may execute and deliver such documents and instruments including living wills, Declarations of Desire for Natural Death, Health Care Declarations or Powers of Attorney as may be necessary, desirable, convenient or proper to effectuate any such ancillary appointment, and my Agent may grant to any Ancillary Agent, some or all of the powers and duties and authorities granted to my Agent hereunder, but may not grant to any such Ancillary Agent powers which are inconsistent with or different from those powers granted to my Agent hereunder.

(14) Agent's Resignation and Selection of Substitute. If my Agent desires to resign as my Agent, and there is no successor Agent named in this instrument who is willing and able to serve as my Agent, and I am incapacitated at the time of such resignation, then on such resignation my Agent is authorized and empowered to appoint a substitute Agent to act and serve as my Agent, such appointment to be made in a written instrument that shall be (i) signed by my Agent, (ii) delivered to my substitute Agent, and (iii) attached to this instrument.

(15) Agent's Death, Incapacity, or Resignation and Selection of Substitute. At any time after my incapacity, my Agent at any time may appoint a future successor Agent to act and serve as my Agent in the event that my Agent shall die or become mentally incapacitated or shall resign prior to my death, and my Agent at any time during my Agent's service as Agent may also revoke any such appointment theretofore made by my Agent, provided, however, that my Agent may not revoke, modify or supersede any appointment of a successor Agent made by me in this power of attorney. Any appointment made by my Agent shall be made in a written instrument that shall (i) specify the event or events on which such substitution shall become effective, (ii)

be signed by my Agent, (iii) be delivered to my substitute Agent, and (iv) be attached to this instrument.

(16) **Counterpart Originals.** If this instrument has been executed in multiple counterpart originals, each such counterpart original shall have equal force and effect.

(17) **Photocopies.** My Agent is authorized to make photocopies of this instrument as frequently and in such quantity as my Agent shall deem appropriate. Each photocopy shall have the same force and effect as any original.

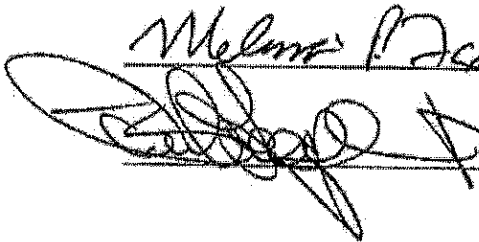
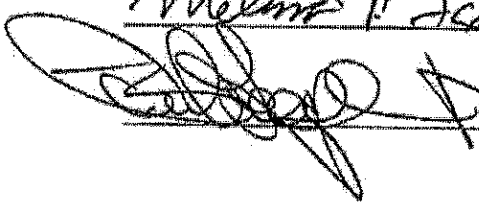
(18) **Binding Effect.** This instrument and actions taken by my Agent properly authorized hereunder shall be binding on me, my estate and my personal representative.

IN WITNESS WHEREOF, I have executed this Power of Attorney this 10 day of January, 2006, and I have directed that photographic copies of this power be made which shall have the same force and effect as an original.


EARLINE S. COOLEY, Principal

ATTESTATION

The foregoing Durable Power of Attorney was this 10 day of January, 2006, signed, sealed, published and declared by the said Principal as and for the Principal's Durable Power of Attorney in our presence, and at the Principal's request and in the Principal's presence, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

 of Greenville, SC
 of Greenville, SC

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

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PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Principal duly authorized, sign, seal and as the Principal's act and deed deliver the within Durable Power of Attorney and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Melanie P. Fox

SWORN to before me this
12 day of January, 2006

[Signature]
Notary Public for South Carolina
My Commission expires: 7/18/13

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 03:42 PM
01 18 06 RECORDED IN DEED
BOOK 2185 PAGE 0732 THRU 0746
DOC # 2006008888
[Signature]