

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge
Case No.: 2024-CP-18-01431

Appellate Case No. 2025-001205

Marisol Kelly Respondent

v.

Mid America Apartments, L.P. d/b/a Water's Edge Apartments..... Appellant.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1801431

Marisol Kelly
 PLAINTIFF(S)

Mid America Apartments Lp 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **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:

This matter came before the Court on February 24, 2025. Sydney Catlett appeared on behalf of the Plaintiff and Kierra Brown appeared on behalf of the Defendant. After hearing the arguments of the parties and a review of the filings in this case, the Defendant's Motion to Stay and Compel Arbitration is Denied. The Plaintiff is to prepare a formal order within 10 days.

It Is So Ordered.

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 03/11/2025 .

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), SCRCF.

ELECTRONICALLY FILED - 2025 Mar 11 3:25 PM - DORCHESTER - COMMON PLEAS - CASE#2024CP1801431



Dorchester Common Pleas

Case Caption: Marisol Kelly VS Mid America Apartments Lp , defendant, et al
Case Number: 2024CP1801431
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-03-11 15:19:12 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	Civil Action No.: 2024-CP-18-01431
	)	
MARISOL KELLY,	)	
	)	
PLAINTIFF,	)	ORDER DENYING DEFENDANT'S
	)	MOTION TO STAY AND COMPEL
vs.	)	ARBITRATION
	)	
MID-AMERICA APARTMENTS, L.P.,	)	
d/b/a WATER'S EDGE APARTMENTS,	)	
	)	
DEFENDANT.	)	

This matter came before the Court on February 24, 2025, in regards to Defendant's Motion to Stay and Compel Arbitration. Having reviewed the Motion, memoranda from parties' counsel, and oral argument on February 24, 2025, the Court hereby **DENIES** the motion to stay and compel arbitration. This decision is based on the following:

This matter arises from an incident that occurred on February 20, 2023, when Plaintiff, Marisol Kelly (hereinafter "Plaintiff Kelly"), was walking down the stairs in the common area of the apartment owned by Defendant, Mid-America Apartments, L.P., d/b/a Water's Edge Apartments (hereinafter "Defendant Water's Edge"), when Plaintiff Kelly slipped and fell on trash that had accumulated on the stairs, causing Plaintiff Kelly to suffer significant injuries to her back. A Complaint was initiated against Defendant Water's Edge in this Court on August 30, 2024. Defendant Water's Edge filed an Answer on October 8, 2024, and proceeded to engage in discovery for several months. On January 15, 2025, Defendant Water's Edge filed a Motion to Stay and Compel Arbitration seeking to enforce the arbitration clause contained in a lease agreement between parties, which is the Motion.

This Court finds that Defendant's Motion shall be denied for two reasons.

1. **The Arbitration Clause in the lease agreement between Plaintiff Kelly and Defendant Water's Edge is unconscionable and therefore unenforceable.**

In South Carolina, unconscionability as it pertains to a contractual arbitration clause is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson v. MSA Myrtle Beach, Inc.* 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). While it is not per se unconscionable, a strong indication that an arbitration clause is unenforceable is when it is found in an adhesion contract. *Id.* In determining unconscionability South Carolina courts have also considered if the adhesion contract is between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in negotiating the arbitration agreement. *Id.*

Plaintiff Kelly argued that the arbitration clause contained in section 24 of the lease agreement between Plaintiff Kelly and Defendant Water's Edge is unconscionable and thus unenforceable because the lease agreement is a contract of adhesion in which Plaintiff Kelly lacked any meaningful choice in negotiating its terms and it contains several oppressive, one-sided terms. Plaintiff Kelly was presented with a 26-page standard form lease contract and was not given an opportunity to negotiate its terms, lacked significant bargaining power, and did not have an attorney present when signing. The arbitration clause between Plaintiff and Defendant included oppressive terms such as language which sought to bar all claims older than one year in clear contravention of S.C. Code section 15-3-140 (2005), the waiver of a jury trial, inability to appeal

the arbitration decision, inability to participate in a class action, and putting the burden on paying the arbitration filing fees on the Plaintiff.

2. **Defendant Water's Edge waived its ability to enforce arbitration by participating in litigation.**

South Carolina courts have held that the right to enforce arbitration can be waived and whether a waiver has occurred will depend on the facts of each case. *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 251 S.E.2d 749, 753 (1999). Historically, South Carolina courts have required a showing of prejudice to the party seeking waiver of the arbitration clause but the recent U.S. Supreme Court decision in *Morgan v. Sundance* suggests that simply participating in litigation can be considered a waiver of the right to arbitration, even without a showing of prejudice. 596 U.S. 411, 142 S.Ct. 1708, 212 L.Ed. 2d 753 (2022).

Plaintiff Kelly argued the Defendant Water's Edge's actions were inconsistent with the intent to enforce the arbitration clause and specifically that the following actions resulted in Defendant Water's Edge waiving its ability to enforce arbitration: (1) Defendant Water's filed the Motion to Stay and Compel Arbitration almost five months after Plaintiff Kelly filed her Complaint, (2) Defendant Water's Edge's answer to Plaintiff Kelly's Complaint did not raise the right to enforce arbitration as a defense, (3) Defendant Water's Edge served Plaintiff Kelly with written discovery requests, which were answered, and (4) Defendant Water's Edge had sent out eight subpoenas since the commencement of this action. This Court, therefore, finds that Defendant Water's Edge has significantly engaged in litigation and exhibited actions contrary to that of a party intending to enforce an arbitration agreement.

Based on the foregoing evidence, this Court determines Defendant Water's Edge's Motion to Stay and Compel Arbitration is **DENIED**.

AND IT IS SO ORDERED.

The Honorable William C. McMaster, III

Dorchester, South Carolina
March __, 2025



Dorchester Common Pleas

Case Caption: Marisol Kelly VS Mid America Apartments Lp , defendant, et al
Case Number: 2024CP1801431
Type: Order/Stay

So Ordered

William C. McMaster, III

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP1801431

Marisol Kelly
 PLAINTIFF(S)

Mid America Apartments Lp 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;
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- ☐ **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:

After careful consideration of the able argument and filings of counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Defendant's Motion to Reconsider is Denied.

It Is So Ordered.

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 05/19/2025 .

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.

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Dorchester Common Pleas

Case Caption: Marisol Kelly VS Mid America Apartments Lp , defendant, et al
Case Number: 2024CP1801431
Type: Order/Electronic Form 4

So Ordered

William C. McMaster, III

Electronically signed on 2025-05-19 14:18:32 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO: 2024-CP-18-_____
	)	
MARISOL KELLY,	)	
	)	
Plaintiff,	)	<u>SUMMONS</u>
	)	(Jury Trial Requested)
-vs-	)	
	)	
MID-AMERICA APARTMENTS, L.P.,	)	
d/b/a WATER'S EDGE APARTMENTS,	)	
	)	
Defendant.	)	
_____	)	

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

MILLER, DAWSON, SIGAL & WARD, LLC

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Attorneys for Plaintiff

North Charleston, SC
August 30, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO: 2024-CP-18-_____
	)	
MARISOL KELLY,	)	
	)	
Plaintiff,	)	<u>COMPLAINT</u>
	)	(Jury Trial Requested)
-vs-	)	
	)	
MID-AMERICA APARTMENTS, L.P.,	)	
d/b/a WATER’S EDGE APARTMENTS,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff above named by and for their Complaint allege and show as follows:

1. That Plaintiff, Marisol Kelly (hereinafter “Plaintiff”), is a citizen and resident of the County of Beaufort, State of South Carolina.
2. Upon information and belief, Mid-America Apartments, L.P., d/b/a Water’s Edge Apartments (hereinafter “Defendant”), Sakara Inc., is a domestic corporation, organized and existing under the laws of the State of South Carolina, and that at all times hereinafter mentioned held a South Carolina Business License and can be served through their registered agent CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.
3. Upon information and belief, at all times relevant herein, Defendant owned and operated the apartment complex, Water’s Edge Apartments located at 9989 Dorchester Road, Summerville, South Carolina 29485.

JURISDICTIONAL STATEMENT

4. The Court has jurisdiction over this action and venue is proper in Dorchester

County because the acts and omissions that are at issue in the present action occurred in Dorchester County and involve the business of Defendant, which is located in Dorchester County.

FACTUAL BACKGROUND

5. On or about, February 20, 2023 Plaintiff was a lawful resident of the premises, Water's Edge Apartments, located at 9989 Dorchester Road, in Summerville, South Carolina 29485.

6. Plaintiff resided in Unit #10L on the second floor.

7. On or about, February 20, 2023 Plaintiff left her apartment and was walking down the common area stairs from the second floor to the first floor while holding her daughter, when she slipped on trash that had accumulated in the area, causing her to fall down five stairs.

8. As a result of her fall, Mrs. Kelly experienced significant injuries and damages, including but not limited to medical bills, medical treatment, and pain and suffering.

FOR A FIRST CAUSE OF ACTION

(Negligence/Gross Negligence/Negligence Per Se)

12. Plaintiffs repeat and re-allege the allegations set forth in Paragraphs 1 through 8 above as fully as if said matters were set forth here verbatim.

13. At all times relevant to this complaint, Defendant had a duty to use reasonable care in maintaining its premises to ensure that the premise was safe for Plaintiff's reception.

18. At all times relevant to this complaint, Defendant had a duty to comply with the applicable building and safety code regulations.

19. At all times relevant to this complaint, Defendant had a duty to warn Plaintiff of any latent or hidden dangers, of which Defendant had knowledge or should have had knowledge.

20. At all times relevant to this complaint, Defendant had a duty to warn Plaintiff of any known or obvious dangers that Defendant should have reasonably anticipated would cause Plaintiff harm despite such knowledge or obviousness.

21. Defendant knew or should have known that the accumulation of trash in the hallway and stairwell presented a safety hazard.

22. Defendant knew or should have known that the condition of the hallway and stairwell created a latent, hidden, or unreasonably unsafe defect or condition that could cause someone to fall and be seriously injured.

21. Defendants knew or should have known that the condition of the hallway and stairwell was in violation of applicable building and safety code regulations.

22. Defendants caused and were responsible for the condition of the hallway and stairwell that created a latent, hidden, or unreasonably unsafe defect or condition.

23. Defendants failed to remedy or warn Plaintiff of this unreasonably dangerous defect or condition.

24. Plaintiff's injuries and damages were directly and proximately caused by the careless, negligent, grossly negligent, negligent per se, willful, wanton, reckless, and unlawful acts of Defendants or Defendants' agents or employees in one or more of the following particulars:

- a. Failing to safely and properly inspect and maintain the condition of the hallway and stairwell;

- b. Failing to remedy the dangerous defect or condition of the hallway and stairwell that caused Plaintiff to slip and fall;
- c. Failing to warn Plaintiff of the dangerous defect or condition of the hallway and stairwell that caused Plaintiff to slip and fall;
- d. Creating the condition of the hallway and stairwell that resulted in a latent, hidden, or unreasonably unsafe defect or conditions and;
- f. In such other and further particulars as the evidence may show.

25. Defendant breached South Carolina laws, statutes, applicable building codes, and safety regulations, which are designed to protect citizens, including Plaintiff, from injury due to a slip and fall accident on a commercial premise.

26. All of the above acts of negligence, negligence per se, willful, wanton, careless, and reckless conduct are in violation of the statutes, regulations, rules and laws of the State of South Carolina, and are the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

27. Plaintiff is informed and believes that she is entitled to judgment against Defendant in such sum of actual and general damages that a trier of fact may determine, together with the costs of this action and for such other relief as this Court may deem just and proper.

WHEREFORE, Plaintiff, Marisol Kelly, prays for judgment against the Defendant, Mid-America Apartments, L.P., d/b/a Water's Edge Apartments, on claims of negligence,

gross negligence, carelessness, recklessness, negligence per se, and willfulness in such sum of actual and general damages, as well as general damages, that a trier of fact may determine together with such other relief this Court may deem just and proper.

Respectfully submitted,

MILLER, DAWSON, SIGAL & WARD, LLC

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Attorneys for Plaintiff

North Charleston, SC
August 30, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2024-CP-18-01431
	)	
Marisol Kelly,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	(JURY TRIAL REQUESTED)
	)	
Mid-America Apartments, L.P., d/b/a	)	
Water's Edge Apartments,	)	
	)	
Defendant.	)	
	)	

COME NOW, Defendant Mid-America Apartments, L.P., d/b/a Water's Edge Apartments, by and through its undersigned counsel, and hereby answers Plaintiff's Complaint as follows:

FIRST DEFENSE

The Plaintiff, to the extent she seeks punitive damages or exemplary damages, if any, is in violation of Defendant's rights under the United States Constitution and the Constitution of the State of South Carolina, and therefore, fails to state a cause of action upon which either punitive or exemplary damages may be awarded.

SECOND DEFENSE

Some or all of Plaintiff's claims are or may be barred or, in the alternative, reduced to the extent of the comparative negligence of the Plaintiff.

THIRD DEFENSE

Whatever injury or damage incurred by the Plaintiff, if any, was due to or may have been caused by the sole negligence, recklessness, willfulness, wantonness, actions, and/or omissions of the Plaintiff.

FOURTH DEFENSE

The injuries and damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness, and wantonness of others. The acts of a person(s) other than Defendant were the sole and proximate cause of the incident complained of in the Complaint.

FIFTH DEFENSE

That any condition on the premises in question, which Plaintiff contend proximately caused her alleged injuries, was one which may have been open and obvious and known to the Plaintiff or should have been known in the exercise of reasonable and ordinary care despite being unknown to the Defendant.

SIXTH DEFENSE

Defendant, despite using the care required of it by law, had no notice of any dangerous condition on the premises in question, nor created any dangerous condition, which Plaintiff contends proximately caused their alleged injuries.

SEVENTH DEFENSE

The acts or omissions of a person or entity other than Defendant were the sole and proximate cause of the incident complained of in the Complaint.

EIGHTH DEFENSE

At all times relevant to the matters complained of in the Complaint, Defendant exercised the degree of skill and care required of it by law.

NINTH DEFENSE

There is no causal connection/proximate cause between any alleged act or omission on the part of Defendant and the damages or injuries claimed by Plaintiff.

TENTH DEFENSE

If Defendant is deemed responsible to the Plaintiff for any damages or injuries, which is strictly denied, then Defendant is entitled to contribution from all joint tortfeasors pursuant to the South Carolina Contribution Among Joint Tortfeasors Act, South Carolina Code of Laws § 15-38-10 *et. seq.* (Cum. Supp. 1989).

ELEVENTH DEFENSE

In the event that Plaintiff is awarded punitive or exemplary damages and to the extent that such an award is not in violation of Defendant's rights under the United States Constitution and the South Carolina Constitution, an award of punitive or exemplary damages is subject to the limitations as set forth in South Carolina Code Ann. § 15-32-530(A).

TWELFTH DEFENSE

Upon information and belief, the injuries, damages, and/or losses alleged to be sustained by Plaintiff, all of which are specifically denied, were not the direct and/or proximate cause of Defendant's negligence and, therefore, recovery should be barred in accordance with legal principles. To the extent that the Plaintiff is alleging in her Complaint injuries which are entirely inconsistent with the facts of this case, Defendant demands strict proof of any and all injuries claimed by the Plaintiff, and affirmatively allege that the injuries claimed by the Plaintiff is not the product of this incident and were not sustained as a proximate result of this incident.

THIRTEENTH DEFENSE

Defendant responds to the numbered allegations of the Complaint and show the Court as follows:

1. Defendant lacks sufficient information to form a belief as to the truthfulness of the allegations of Paragraph 1 of the Complaint. Therefore, those allegations can neither be admitted nor denied at this time. To the extent those allegations purport to allege acts of negligence on the

part of Defendant or can be construed to allege that Defendant is liable to Plaintiff, then those allegations are denied.

2. Defendant denies the allegations of Paragraph 2 of the Complaint.

3. Defendant admits the allegations of Paragraph 3 of the Complaint.

4. The allegations contained in Paragraph 4 of the Complaint constitute legal conclusions to which a response is not required. To the extent those allegations purport to allege acts of negligence on the part of Defendant or can be construed to allege that Defendant is liable to Plaintiff, then those allegations are denied.

5. Defendant admits the allegations of Paragraphs 5, and 6 of the Complaint. To the extent those allegations purport to allege acts of negligence on the part of Defendant or can be construed to allege that Defendant is liable to Plaintiff, then those allegations are denied.

6. Defendant denies the allegations of Paragraph 7 and 8 of the Complaint.

7. The Complaint contains no Paragraphs 9, 10, or 11.

8. Responding to Paragraph 12 of Plaintiff's Complaint, Defendant restates and realleges its responses to all Plaintiff's Paragraphs as if restated verbatim herein.

9. Defendant denies the allegations of Paragraph 13 of the Complaint as it contains inaccurate and/or incomplete statements of South Carolina law.

10. The Complaint contains no Paragraphs 14, 15, 16, or 17.

11. Defendant denies the allegations of Paragraphs 18, 19, and 20 of the Complaint, as they contain inaccurate and/or incomplete statements of South Carolina law.

12. Defendant denies the allegations of the Complaint's first Paragraphs 21, 22; the Complaint's second Paragraphs 21 and 22; and the Complaint's first Paragraphs 23, 24, 25, 26 and 27.

13. Defendant denies the WHEREFORE section of the Complaint.

14. Defendant denies each and every allegation of the Complaint not specifically responded to in the preceding paragraphs.

WHEREFORE, having fully responded to the Complaint, Defendant demands to be dismissed with costs taxed against the Plaintiff. Defendant further demands a trial by a jury of twelve.

This 8th day of October, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 1
COUNTY OF DORCHESTER) DOCKET NO. 2024-CP-18-01431

MARISOL KELLY,	)
Plaintiff,	)
versus	)
MID AMERICA APARTMENTS, LLC,	)
Defendant.	)

H E A R I N G
BEFORE THE HONORABLE WILLIAM C. MCMASTER, III

DATE: February 24, 2025.
TIME: ***
LOCATION: SOUTH CAROLINA CIRCUIT COURT 1
TRANSCRIBED BY: Latasha Jefferson

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Attorney for the Defendant.

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7 EXAMINATIONS

8 (None)

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10 EXHIBITS

11 PARTY DESCRIPTION PAGE

12 (None Marked)

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19

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22

23

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: All right. We've got another 2:00 hearing
2 now. We have a motion in stay -- motion in stay and compel
3 arbitration in the matter of 2024-CP-18-01431. It's Marisol
4 Kelly versus Mid America Apartments. If the parties will
5 identify themselves and who they represent, please.

6 MS. BROWN: Good afternoon, your Honor. My name is
7 Kierra Brown with Copeland, Stair, Valz, and Lovell. I will
8 be representing Defendant, MAA L.P., this afternoon.

9 MS. CATLETT: Good afternoon, your Honor. My name is
10 Sydney Catlett. I'm here on behalf -- I'm here on behalf of
11 the Plaintiff, Marisol Kelly.

12 THE COURT: All right. And this is the Defendant's
13 motion. I'll be happy to hear from you.

14 MS. BROWN: May it please the Court? My name is Kierra
15 Brown. I am representing Defendant Mid America Apartments in
16 this matter. Would the Court like a brief recitation of the
17 facts in this matter?

18 THE COURT: I've read the -- I've read your -- I've
19 read the motion. I've also read your memos as well.

20 MS. BROWN: All righty. So it does not appear that the
21 Plaintiff is disputing the fact that her personal injury
22 claim, wherein she is seeking over \$10,000 in monetary
23 damages, is arbitrable. So I will just -- and it's subject
24 to the arbitration clause in the lease. So I'll just focus
25 on Plaintiff's contention that Defendant has waived its right

1 to arbitration, and that the arbitration clause itself is
2 unconscionable.

3 South Carolina law governs the validity, revocability,
4 and enforceability of arbitration clauses. And while the
5 right to enforce arbitration can be waived, South Carolina
6 courts have always required a finding of prejudice to the
7 non-moving party before finding that a waiver of the right of
8 -- to arbitration has been waived.

9 Essentially, courts consider three factors: whether a
10 substantial length of time has transpired between the time,
11 that the action commenced and the time of the filing of the
12 motion to compel arbitration, whether the requesting party
13 has engaged in extensive discovery before moving to compel
14 arbitration, and whether the non-moving party has been
15 prejudiced by the delay in seeking arbitration.

16 Here, this action has been in litigation for roughly --
17 at the time the motion to compel arbitration was filed, this
18 action had been in litigation for roughly four and a half
19 months. Both the South Carolina Court of Appeals as well as
20 the South Carolina Supreme Court have found that -- periods
21 that are in excess of even a year were not sufficient alone
22 to find that the non-moving party had waived their rights to
23 -- to compel arbitration.

24 Very limited discovery has been had thus far. Most of
25 the Defendant's written discovery to Plaintiff has been

1 focused on investigating Plaintiff's exact claims as
2 regarding what her mechanism of injury was, and why Defendant
3 is allegedly liable for those -- for the claim, as well as
4 the extent of her economic and non-economic damages.

5 The Plaintiff says without explaining that our --
6 Defendant's discovery request went beyond basic requests
7 without more. However, even in arbitration, Defendant
8 would've been allowed to investigate the exact claims of what
9 caused the injury and the exact damages that Plaintiff was
10 seeking. Both South Carolina Court of Appeals, again, and
11 the South Carolina Supreme Court have had cases wherein they
12 find that limited discovery that did not include deposition
13 discovery was not -- did not necessitate a finding that the
14 moving party waived its right to arbitration.

15 Additionally, South Carolina courts, as said earlier,
16 have always required a determination that the non-moving
17 party was prejudiced by the delay in seeking arbitration.
18 Mere inconvenience is not sufficient to demonstrate prejudice
19 to the non-moving party. Plaintiff relies on persuasive
20 authority, Morgan v. Sundance, which was decided in 2022, to
21 advise the Court that it does not have to make a finding that
22 the Plaintiff was prejudiced in order to find that the
23 Defendant waived its right to compel arbitration.

24 However, in Morgan v. Sundance, the Court specifically
25 declined to address whether state courts could require a

1 showing of prejudice in determining whether a party's
2 litigation conduct could result in a loss of a contractual
3 right to arbitrate.

4 Additionally, the South Carolina Court of Appeals
5 actually decided a case, Palmetto Construction Group v.
6 Restoration Specialists, in 2024, wherein the Court
7 reiterated that a finding of prejudice was -- not a finding
8 of -- I'm sorry. The Court reiterated that prejudice is
9 still indeed a factor to be considered in South Carolina when
10 determining whether a party has waived its right to compel
11 arbitration.

12 In determining prejudice, courts consider whether the
13 moving party took advantage of the judicial system. Here,
14 like I said before, discovery was solely focused on
15 investigating Plaintiff's claims of liability as well as the
16 extent of her economic and non-economic damages. I find it
17 hard to believe that that information and the -- the
18 documents exchanged that Defendant would not have been
19 entitled to that information, and that in those documents,
20 during the course of arbitration, no depositions have been
21 taken, and this is the only motion that has been filed in
22 this case.

23 As it relates to this -- in that, we do not believe
24 that Defendant has waived its right to compel arbitration.
25 As it relates to Plaintiff's argument that the arbitration

1 clause contained in the applicable lease agreement was
2 unconscionable, South Carolina -- as it relates -- and as it
3 relates to arbitration provisions in South Carolina,
4 unconscionability is the absence of meaningful choice on the
5 part of one party due to one-sided contract provisions
6 together with terms that are so oppressive that no reasonable
7 person would make them, and no fair and honest person would
8 accept them.

9 In Gladden v. Boykin, cited by Plaintiff, the South
10 Carolina Supreme Court states that courts should not refuse
11 to enforce a contract on the grounds of unconscionability
12 even when the substance of the terms appear grossly
13 unreasonable unless the circumstances surrounding its
14 formation present such an extreme inequality of bargaining
15 power. Together with factors such as lack of basic reading
16 ability and the draft to evidence, intent to obscure the term
17 that the party against whom enforcement is sought cannot be
18 said to have consisted to the contract.

19 The arbitrating provision that we are discussing is
20 bolded and in capital letters. MAA cannot be said to be
21 tried to obscure or in any way hide that term. And there is
22 no allegation that the Plaintiff lacked the basic ability to
23 read. Additionally, pursuant to section 24.8 of the lease,
24 Plaintiff was able to opt out of the arbitration agreement
25 completely within 30 days of signing the lease. She did not

1 do that.

2 Thus, the terms of the arbitration agreement are
3 irrelevant to the determination of unconscionability because
4 she had that ability to opt out of it completely for 30 days
5 after signing the lease, and there would've been no impact on
6 her ability to continue leasing the unit. It just was if she
7 did not want to be subject to the arbitration provision, she
8 had to write a letter, and where the letter needed to go,
9 what -- what it needed to say is all in the lease, section
10 24.8.

11 THE COURT: All right. Thank you.

12 MS. BROWN: Additionally -- I'm sorry.

13 THE COURT: Go ahead -- go ahead.

14 MS. BROWN: Additionally, section 24.5 of the lease
15 states -- as a severability clause. So even if parts of the
16 arbitration clause is deemed not to be enforceable or are
17 invalid for any reason, section 24.5 does state that it
18 should -- such a finding that any other portion of the
19 arbitration clause is invalid or unenforceable should not
20 affect a complete invalidation or the unenforceability of the
21 entire arbitration agreement.

22 So this arbitration agreement is actually very
23 dissimilar to the one that is ruled upon in Huskins v. Mungo,
24 cited by the Plaintiff. The arbitration agreement in Huskins
25 v. Mungo, it shortened the statute of limitations period down

1 to 90 days, and it did not contain a severability clause,
2 such as the one we are dealing with in the applicable lease.
3 And so, the Court found that the arbitration clause was
4 unenforceable because there was no severability clause in the
5 contract that would allow the Court to go in and take parts
6 and pieces of it.

7 So based on my previous statements, it is clear that
8 Defendant did not waive its right to compel arbitration as
9 Plaintiff cannot demonstrate any sort of prejudice from the
10 delay in seeking arbitration, and the subject arbitration
11 clause is not unconscionable, and thus we would request that
12 the Court stay the instant litigation and compel Plaintiff to
13 participate in arbitration. Thank you, your Honor.

14 THE COURT: All right -- all right. Ms. Catlett, I'd
15 be happy to hear from you.

16 MS. CATLETT: Thank you, your Honor. May it please the
17 Court? We are here today to ask that the Court respectfully
18 deny Defendant's motion to compel arbitration for two
19 reasons. First, we would argue that the arbitration clause
20 is in fact unconscionable and therefore unenforceable.
21 Second, we would argue the Defendant has waived arbitration
22 by engaging in litigation.

23 To my first point, the arbitration clause in the lease
24 agreement is unconscionable under South Carolina law. The
25 test for unconscionability, as Mrs. Brown stated, is the

1 absence of meaningful choice, but on the part of one party
2 due to one-sided contract provisions, and second being the
3 present of -- presence of terms that are so oppressive that
4 no reasonable person would make them, and no fair and honest
5 person would accept them.

6 While it's not per se unconscionable, a strong
7 indication that there was an absence of meaningful choice is
8 when the arbitration clauses are included in an adhesion
9 contract as it is here. The Supreme Court has stated that --
10 or the South Carolina Supreme Court has stated that
11 arbitration clauses and adhesion contracts should be met with
12 considerable skepticism.

13 Other factors the courts have considered when they're
14 looking at whether or not there's an absence of meaningful
15 choice is whether the arbitration clause is included in an
16 adhesion contract between a sophisticated commercial entity
17 and a consumer, whether the consumer lacked the business
18 judgment necessary to make her aware of the implications of
19 the arbitration agreement, and whether the consumer had a
20 lawyer present to provide any assistance in the matter.

21 Here, your Honor, the lease agreement between the
22 Plaintiff and the Defendant was an adhesion contract, in
23 which the Plaintiff lacked any meaningful choice in agreeing
24 to the terms of the contract. The lease was presented to
25 Ms. Kelly and it was a 26-page standard form contract. The

1 arbitration clause is located on page 14 of that standard
2 form contract.

3 It was presented to her on a take it or leave it basis,
4 and she had no opportunity to negotiate the terms. She did
5 not have a lawyer present with her to assist in the
6 negotiation of the terms, or explain the effects of the
7 arbitration agreement. As an ordinary consumer, Ms. Kelly
8 did not have the business judgment to understand the full
9 effect of the arbitration clause to the point that there was
10 an opt-out provision stated by Ms. Brown.

11 There -- Ms. Kelly also did not have the business
12 judgment to understand that she needed to opt out of this
13 arbitration agreement. Furthermore, there's a significant
14 disparity, as I stated, in the bargaining power between the
15 Plaintiff, an ordinary consumer, and the Defendant, a
16 sophisticated corporate landlord. Housing is a necessity.
17 Plaintiff was trying to find housing for herself, her
18 husband, and her children.

19 The South Carolina Supreme Court has no -- taken
20 notice. There is significant disparity between the modern
21 buyer of residential housing and a normal -- and a normal
22 seller. That same principle can be applied with even -- even
23 -- even greater force when it comes to residential tenants
24 who typically even have less bargaining power than home
25 buyers. There's no question that this lease agreement is an

1 adhesion contract in which Ms. Kelly lacked meaningful choice
2 as to its terms.

3 In determining unconscionability, South Carolina courts
4 will also consider the presence of oppressive and one-sided
5 terms in the arbitration clause. In Huskins v. Mungo Homes,
6 that I stated -- or that I cited in my memo, the South
7 Carolina Supreme Courts found that an arbitration clause in a
8 contract which shortened the statute of limitations for any
9 claim brought was void and illegal as a matter of public
10 policy and thus unenforceable because it violated South
11 Carolina statutory law.

12 Specifically, it violates South Carolina Code Section
13 15-3-140. This code section forbids and renders void any
14 contract clauses attempting to shorten the legal statute of
15 limitations. Furthermore, the Supreme Court of South
16 Carolina has declined to -- to sever such provisions of an
17 arbitration clause that purport to shorten the legal statute
18 of limitations. The court in Damico v. -- sorry, Damico v.
19 -- versus Lennar Carolinas, held that these provisions that
20 shorten the statute of limitations are material to the whole
21 of the arbitration clause, and have found arbitration clauses
22 shortening the statute of limitations are unenforceable as a
23 whole.

24 The court in Damico went as far to say that severing
25 terms from an unconscionable contract of adhesion discourages

1 fair arms-length transactions and would encourage
2 sophisticated parties to intentionally insert unconscionable
3 terms in the contract. Here, the arbitration clause issue
4 contained several oppressive and one-sided terms, most
5 notably located in section 24.7 of the lease agreement. The
6 arbitration clause here is sought to shorten the statute of
7 limitations period to one year. Similar to that of the
8 arbitration clauses that the South Carolina Supreme Court has
9 found are unconscionable and unenforceable.

10 The limitation of the statute of limitations is clear
11 -- is a clear violation of South Carolina Code Section
12 15-3-140, and is not enforceable. Furthermore, this -- as
13 the Defense Counsel stated, there's a severability clause in
14 the arbitration clause. There is case law from Damico versus
15 Lennar that says that, "The statute of limitations provision
16 is the material, it's the whole of the arbitration clause,
17 and it cannot be severed." Similarly, here in Damico, there
18 was also a severability clause, and the Court still did not
19 enforce that arbitration agreement.

20 Other oppressive terms in the arbitration clause in
21 this lease agreement have included things such as waiving the
22 Plaintiff's right to a jury trial, making it so the Plaintiff
23 is unable to appeal the arbitration decision-making, so
24 there's an inability to participate in a class action.
25 There's also provision which would require Plaintiff to pay

1 arbitration filing fees, which often greatly exceed the
2 filing fees for the report, creating a significant financial
3 barrier to pursuing the claim for the Plaintiff.

4 As I previously stated, the arbitration clause
5 contained in an adhesion contract between a sophisticated
6 corporate landlord and an ordinary consumer who do not have
7 any meaningful choice, and there are several oppressive
8 one-sided terms. Therefore, your Honor, we're asking that
9 you find this arbitration clause unconscionable and thus
10 unenforceable.

11 Moving to my second point, even if this arbitration
12 provision were not unconscionable, Defendant has waived its
13 purported right to seek arbitration through its conduct in --
14 in this litigation. In South Carolina, the doctrine of
15 waiver focuses on whether a party has taken actions
16 inconsistent with the right to arbitrate. Here, Defendant's
17 actions have been wholly inconsistent with the intent to
18 enforce arbitration.

19 Up and until the filing of this motion, Defendant's
20 actions have been nothing but consistent with the intent to
21 litigate this case to the full extent. Defendant filed an
22 answer to Plaintiff's complaint, in which Defendant asserted
23 13 affirmative defenses and not a single one of them address
24 these -- this purported right to enforce arbitration. If the
25 Defendant wanted to seek arbitration, their first response of

1 pleading to Plaintiff's complaint should have addressed such
2 intent.

3 Furthermore, this motion was not filed until almost
4 five months after Plaintiff filed her complaint. During such
5 time, Defendant sent discovery, and which Plaintiff answered,
6 and she also sent eight different subpoenas. Thus,
7 reinforcing the Defendant's actions up and until the filing
8 of this motion have only been consistent with litigation.
9 Defendant has no excuse for waiting almost five months to
10 file this motion as Defendant wrote this lease agreement and
11 was fully aware that it contained an arbitration clause.

12 Defendant has been in possession of this lease
13 agreement since the commencement of this case, and did not
14 just learn of it during the discovery process. Like I
15 previously stated, the parties in this case have engaged in
16 discovery, and Defendant has benefited from court-supervised
17 discovery. Defense Counsel mentioned in her memorandum in
18 support of this motion that discovery was not completed and
19 has not been suspended. However, Plaintiff has fully
20 answered every single one of Defendant's 29 interrogatories
21 and 24 requests for production.

22 Furthermore, Plaintiff supplemented her answers in
23 response to a Rule 11 letter that was sent by Defense
24 Counsel. Defense Counsel used Rule 11 to enforce Plaintiff's
25 -- or to enforce Plaintiff's response to Defendant's

1 discovery, which is a benefit Defendant would not otherwise
2 receive in arbitration. Defense Counsel has also sent out
3 eight subpoenas in connection with this litigation. Most
4 notably, Defense Counsel sent out a subpoena on January 31st.
5 This motion was filed on January 15th. Two weeks after the
6 filing of this motion, Defense Counsel is consistently
7 staying with conduct that is consistent with litigation and
8 not that of the intent to arbitrate.

9 Furthermore, the Defendant cannot say for certain that
10 they would not have been -- that they would've been able to
11 gain access to all of the information provided by Plaintiff
12 during the discovery process. Nor can the Defendant say with
13 certainty that they would not have been able to issue -- that
14 they would've been able to issue all eight subpoenas. My
15 client has expended time and resources pursuing litigation,
16 and reliance on the Defendant's apparent choice to also
17 pursue litigation as their conduct clearly suggested up until
18 this point.

19 Defendant has obtained the benefit of court-supervised
20 discovery, sent out interrogatories, request for productions,
21 which Plaintiff has fully answered, thus obtaining
22 information from the judicial discovery process, and obtained
23 information with the subpoena power of litigation brings,
24 which may not have been otherwise available in arbitration.
25 Therefore, granting Defendant's motion would also impose

1 significant prejudice on my client.

2 I do want to make reference to the recent US Supreme
3 Court decision in Morgan v. Sundance, where it suggests that
4 proving prejudice to the non-moving party is no longer
5 required in determining if the ability to enforce arbitration
6 has been waived. Their ruling suggests that simply
7 participating in litigation can be considered a waiver of the
8 right to arbitrate even if the non-moving party was not
9 harmed in seeking arbitration.

10 At a minimum, the Defendant has clearly participated in
11 this litigation which would allow the Court to find the
12 Defendant has waived their purported right to enforce
13 arbitration. Therefore, your Honor, for the foregoing
14 reasons, we are going to respectfully request that the Court
15 deny the Defendant's motion to compel arbitration.

16 THE COURT: Yes, ma'am. Unless you respond, if you'd
17 like, briefly. Ms. Brown?

18 MS. BROWN: Yes, sir.

19 THE COURT: If you'd like to respond, you can.

20 MS. BROWN: I would -- I would just reiterate that
21 South Carolina -- the South Carolina Court of Appeals decided
22 a case in 2024 after the Supreme Court precedent Morgan v.
23 Sundance. And in that case -- in the Morgan v. Sundance case
24 as Plaintiff articulate -- Plaintiff's attorney articulated,
25 the Supreme Court of the United States did indicate that

1 prejudice would not be a required -- a finding of prejudice
2 was not required in federal -- federal case -- federal waiver
3 law. It -- that case specifically declined to extend that
4 ruling to apply to a state court determination of whether a
5 party has decided -- has waived its right to compel
6 arbitration. Additionally -- that'll be it, actually.

7 THE COURT: All right. I'll give you the final word if
8 you'd like it, Ms. Catlett?

9 MS. CATLETT: I -- I think I have said everything I
10 need to. Thank you, your Honor.

11 THE COURT: All right. I'll take this matter under
12 advisement. I'll hopefully have a decision next week or so,
13 and I'll be contacting you through a Form 4 and -- at that
14 point in time, and I'll have one of the parties prepare a
15 formal order once I've made my decision. Thank you very
16 much.

17 MS. BROWN: Thank you, your Honor.

18 THE COURT: Appreciate you all being here.

19 MS. CATLETT: Thank you, your Honor.

20 THE COURT: Thank you -- thank you.

21 THE CLERK: Thank you.

22 THE COURT: All right.

23

24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

25

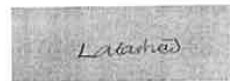
CERTIFICATE OF TRANSCRIBER

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I, LATASHA JEFFERSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 1 of Dorchester County, South Carolina, on February 24, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Apri 23, 2025.

A rectangular stamp containing a handwritten signature in cursive script that reads "Latasha".

LATASHA JEFFERSON
TRANSCRIBER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2024-CP-18-01431
	)	
Marisol Kelly,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT’S MOTION TO STAY AND
vs.	)	COMPEL ARBITRATION
	)	
Mid-America Apartments, L.P., d/b/a	)	
Water’s Edge Apartments,	)	
	)	
Defendant.	)	
	)	

Defendant Mid-America Apartments, L.P., d/b/a Water’s Edge Apartments (“Defendant”), by and through its undersigned counsel, hereby moves the Court to compel arbitration of Plaintiff’s claims against Defendant pursuant to the arbitration provision contained in the lease agreement between Plaintiff and Defendant, the Federal Arbitration Act (FAA), and the S.C. Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 et. seq. Defendant’s motion should be granted as this action commenced less than five months ago; only limited written discovery has been completed; and Plaintiff will not be prejudiced if arbitration is allowed. Carlson v. South Carolina State Plastering, LLC, 404 S.C. 250, 257, 743 S.E.2d 868, 872 (Ct. App. 2013).

This Motion will be supported by the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits, or other evidence that may be submitted before any hearing on this Motion, and any oral argument presented by counsel at any hearing on this matter.

This 15th day of January, 2025.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2024-CP-18-01431
	)	
Marisol Kelly,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT’S MEMORANDUM IN
	)	SUPPORT OF MOTION TO STAY AND
	)	COMPEL ARBITRATION
Mid-America Apartments, L.P., d/b/a	)	
Water’s Edge Apartments,	)	
	)	
Defendant.	)	
	)	

COMES NOW Defendant Mid-America Apartments, L.P., d/b/a Water’s Edge Apartments (“Defendant”), and respectfully submits this Memorandum in Support of its Motion to Stay and Compel Arbitration, pursuant to the arbitration provision contained in the lease agreement between Plaintiff and Defendant, the Federal Arbitration Act (FAA), and the S.C. Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 et. seq. Because (1) Plaintiff’s claims are arbitrable pursuant to her Lease Agreement; and (2) Plaintiff has not been prejudiced by Defendant’s delay in demanding arbitration, Defendant respectfully requests this Court grant its Motion to Stay this matter and Compel Arbitration.

STATEMENT OF THE CASE

Plaintiff Marisol Kelly filed her Complaint against Mid-America Apartments, L.P., d/b/a Water’s Edge Apartments in the Dorchester County Court of Common Pleas on August 30, 2024. Plaintiff alleges that she was injured when she fell down five stairs after slipping on trash which had accumulated along the exterior stairwell in the common area of her apartment building on February 20, 2023. Complaint ¶¶ 6, 7, 8. However, Plaintiff Marisol Kelly’s applicable Lease

Agreement is subject to arbitration pursuant to the Federal Arbitration Act and S.C. Code Ann. § 15-48-10 et. seq. (**Exhibit 1**: Lease Agreement).

Section 24.2 of the Lease Agreement states the following, in pertinent part:

ALL CLAIMS THAT ARISE BETWEEN YOU AND LANDLORD WILL BE RESOLVED THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE [Federal Arbitration Act, Title 9 of the United States Code] AND THE [Commercial Arbitration Rules of the American Arbitration Association]. YOU AND LANDLORD AGREE AND UNDERSTAND THAT WE MUTUALLY CHOOSE BINDING ARBITRATION INSTEAD OF LITIGATION TO RESOLVE ALL CLAIMS. THIS MEANS THAT UNLESS YOU OPT OUT OF THIS SECTION 24.2 (AGREEMENT TO ARBITRATE DISPUTES), NEITHER YOU NOR THE LANDLORD WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT EXCEPT TO THE EXTENT PROVIDED HEREIN WITH RESPECT TO EXCLUDED CLAIMS.

(Id.) Section 24.1 of the Lease Agreement defines a claim, in pertinent part, as

any claim, dispute, action, proceeding, cause of action or controversy of every kind and nature, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property).

However, an excluded claim is defined as

any action, proceeding, or cause of action by You or Landlord, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property) or otherwise, in which the aggregate amount of damages, including exemplary damages, punitive damages, attorneys' fees, and all other forms of monetary damages, sought does not exceed \$10,000.

(Id.)

Since being served with the Complaint in this matter, Defendant filed an appropriate and timely Answer in response to Plaintiff's allegations and began limited written discovery. Both parties served discovery requests and provided responses thereto. (**Exhibit 2**: Plaintiff's

Discovery Responses). No depositions have been taken. Shortly after exchanging this initial written discovery, Defendant halted all further discovery as Plaintiff's claims are subject to the arbitration provision contained in the Lease Agreement. Defendant filed the instant Motion to Stay and Compel Arbitration on January 15, 2025, less than five months after Plaintiff instituted this action, as the relevant terms of the Lease Agreement dictate that Plaintiff's personal injury claims are subject to mandatory and binding arbitration.

ARGUMENT

Unless otherwise provided by the parties, the question of arbitrability of a claim is an issue for judicial determination. Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 609, 571 S.E.2d 711, 713 (Ct. App. 2002). A trial court's decision of whether or not a matter is arbitrable is subject to *de novo* review and its findings of facts will not be overruled if there is any evidence reasonably supporting them. Id. at 609-10, 571 S.E.2d at 713. It is the policy of the United States and South Carolina to favor arbitration of disputes. Tritech Elec., Inc. v. Frank M. Hall & Co., 343 S.C. 396, 540 S.E.2d 864 (Ct. App. 2000). Thus, a motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute. Id.

I. Plaintiff's claims fall squarely within the arbitration provision of the Lease Agreement and thus, are arbitrable.

An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine the clause's applicability to a particular dispute, including those clauses governed by the Federal Arbitration Act. Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); see also Munoz v. Green Tree Financial Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001) (concluding that state law remains applicable if such laws arose to govern issues concerning the validity, revocability, and enforceability of contracts). Arbitration

rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement. Zabinski v. Bright Acres Assoc., 346 S.C. 580, 596-97, 553 S.E.2d 110, 118 (2001). In order to decide whether an arbitration agreement encompasses a dispute, the court must determine whether the factual allegations underlying the claim fall within the scope of the arbitration clause, regardless of the label assigned to it. Id. at 597, 553 S.E.2d at 118.

Here, Plaintiff entered a Lease Agreement with Defendant to lease Unit 10L of the property known as Waters Edge on June 9, 2022. (Exhibit 1). This Lease Agreement was effective through May 9, 2023. (Id.) Section 24.2 of Plaintiff's Lease Agreement states that **all claims that arise between Plaintiff and the Defendant** will be resolved through binding arbitration. (Id.) Section 24.1 of the Lease Agreement expressly includes personal injury claims in its definition of "claims." While certain claims are excluded from this arbitration provision, those "excluded claims" are specifically defined, in relevant part, as personal injury claims in which the monetary damages sought do not exceed \$10,000. (Id.)

Plaintiff brought this negligence action against Defendant to recover for personal injuries she sustained when she allegedly slipped and fell down five steps located in the common area of her building on February 20, 2023. (See Complaint). During discovery, Plaintiff disclosed that she was seeking \$16,222.12 in medical expenses alone. This amount does not include the monetary damages Plaintiff will seek to compensate her for the noneconomic claims she has lodged against Defendant. Given that Plaintiff has lodged personal injury claims for which she seeks more than \$10,000 in monetary damages, Plaintiff's claims are subject to the arbitration provision contained in the Lease Agreement. See Lewis v. Premium Inv. Corp., 351 S.C. 167, 568 S.E.2d 361 (2002) (holding that when a contract is clear and unambiguous, the language alone determines the force and effect); see also Erie Ins. Co. v. Winter Const. Co., 393 S.C. 455, 713 S.E.2d 318 (Ct. App.

2011) (holding that a court must construe the language of a contract according to its plain, ordinary, and popular meaning). Therefore, this Court should stay this litigation and compel the parties to participate in the arbitration which is mandated by the applicable Lease Agreement.

II. Defendant has not waived its right to arbitrate Plaintiff's claims.

South Carolina contract law governs issues concerning the validity, revocability, and enforceability of arbitration clauses. Munoz, 343 S.C. at 539, 542 S.E.2d at 364. The right to enforce an arbitration clause may be waived. See Carlson v. South Carolina State Plastering, LLC, 404 S.C. 250, 256, 743 S.E.2d 868, 872 (Ct. App. 2013). However, there is no set rule as to what constitutes a waiver of the right to arbitration as such is dependent upon the facts of each case. See Liberty Builders, Inc. v. Horton, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999).

In determining whether a party has waived its right to compel arbitration, South Carolina courts consider: (1) whether a substantial length of time has 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. Carlson, 404 S.C. at 257, 743 S.E.2d at 872; see also Palmetto Construction Group, LLC v. Restoration Specialists, LLC, 444 S.C. 328, 343, 907 S.E.2d 129, 137 (Ct. App. 2024) (confirming prejudice as a factor in South Carolina waiver law). Cf. Morgan v. Sundance, Inc., 596 U.S. 411, 416, 142 S. Ct. 1708, 1713 (2022) (explicitly declining to address the role state law might play in resolving when a party's litigation conduct results in the loss of a contractual right to arbitrate and whether prejudice should be considered thereunder).

a. Defendant filed the instant motion to compel arbitration less than five months after Plaintiff commenced this lawsuit.

At the time Defendant filed its motion to compel arbitration only four and a half months had elapsed since Plaintiff commenced the action on August 30, 2024. Four and a half months can hardly be considered a substantial length of time as South Carolina courts have found that waiver did not occur when litigation had gone on for a much longer periods of time on numerous occasions. Carlson, 404 S.C. at 257, 743 S.E.2d at 872 (finding a period of over two years did not demonstrate waiver); see also Rich v. Walsh, 357 S.C. 64, 72, 590 S.E.2d 506, 507 (Ct. App. 2003) (finding a thirteen-month period did not demonstrate waiver); Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (finding a thirteen-month period did not demonstrate waiver); Gen Equip. & Supply Co. v. Keller Rigging & Constr., Inc., 344 S.C. 553, 557, 544 S.E.2d 643, 645 (Ct. App. 2001) (finding an eight-month period did not demonstrate waiver).

b. Defendant has conducted very limited written discovery and thus, its brief delay in demanding arbitration did not prejudice Plaintiff.

Defendant has issued twenty-nine interrogatories and twenty-four requests for production, responded to Plaintiff's discovery requests, and issued seven subpoenas in this matter. To date, no depositions have been taken, and written discovery has not been completed. Instead, discovery has been suspended during the pendency of the instant motion. Toler's Cove Homeowners Ass'n, Inc., 355 S.C. at 612, 586 S.E.2d at 585 (finding waiver had not occurred where discovery was very limited in nature, the parties had not availed themselves of the court's assistance, and no depositions had been taken); Rich, 357 S.C. at 72, 590 S.E.2d at 507 (finding waiver did not occur where limited discovery was conducted and the party requesting arbitration took one deposition lasting fifteen minutes); Gen Equip., 344 S.C. at 557, 544 S.E.2d at 645 (finding no waiver

occurred when the litigation consisted of routine administrative matters and limited discovery which did not involve depositions).

To establish prejudice, the non-moving party must establish something more than “mere inconvenience. Evans v. Accent Manufactured Homes, Inc., 352 S.C. 544, 550, 575 S.E.2d 74, 76-77 (Ct. App. 2003). Courts examine whether the party requesting arbitration took advantage of the judicial system when it engaged in discovery. Evans, 352 S.C. at 548, 575 S.E.2d at 76. When the parties have conducted little or no discovery, then the party seeking arbitration has not taken advantage of the judicial system. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 127, 647 S.E.2d 249, 251 (Ct. App. 2007). As previously stated, the parties have begun written discovery but have not completed it. No motions have been filed aside from the instant motion to compel arbitration, and no depositions have been taken.

Moreover, much of the discovery which has been completed to date, would be available during the arbitration process; and thus, can hardly be considered an effort, by Defendant, to take advantage of the judicial system. Section 24.2 of the Lease Agreement specifically requires that arbitration be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association. (Exhibit 1; see also **Exhibit 3**: Commercial Arbitration Rules of the American Arbitration Association). The subject rules allow parties to request an administrative conference wherein the AAA addresses several topics including the manner in which the parties will exchange information. (See Exhibit 3: R.10 Administrative Conference). During the arbitration process, parties can issue requests for production and exchange documents and arbitrators can issue subpoenas upon a party’s request. (See Exhibit 3: P-2 Checklist (a)(vii); R-34 Evidence (d)). The rules further empower arbitrators to establish additional procedures to obtain information that is relevant and material to the outcome of disputed issues. (See Exhibit 3: P-2

Checklist (a)(viii)). These additional procedures could include allowing the parties to exchange interrogatories, if found to be appropriate.

Because the parties have engaged in only limited written discovery which would have been available thereto during the arbitration process, Plaintiff cannot demonstrate that she has been prejudiced by Defendant's delay in seeking to compel arbitration.

CONCLUSION

In conclusion, this Court should grant Defendant's Motion to Stay and Compel Arbitration as Plaintiff's claims are arbitrable pursuant to her Lease Agreement and Plaintiff has not been prejudiced by the less than five-month delay between the commencement of this lawsuit and the filing of Defendant's motion.

This 19th day of February, 2025.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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SOUTH CAROLINA RESIDENTIAL LEASE AGREEMENT

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND/OR SECTION 15-48-10 ET SEQ., OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS AMENDED.

THIS RESIDENTIAL LEASE AGREEMENT ("Lease" or "Agreement") is made this 9th of June, 2022 between Landlord and Resident(s). Subject to the Lease Summary and Specific Terms and General Terms and Conditions set forth below, Landlord leases to Resident(s), and Resident(s) leases from Landlord for the initial term beginning on the Lease Start Date and ending on the Lease End Date, the Apartment located at the Property.

LEASE SUMMARY AND SPECIFIC TERMS**EXHIBIT****1**

Property (also referred to as "Premises"): CV at Waters Edge

Property Address:
9989 Dorchester Road
Summerville, SC 29485

Landlord (referred to as "Landlord" "We" or "Our"): Mid-America Apartments, L.P., a Tennessee limited partnership

Resident(s) (referred to as "Resident", "You", or "Your"):
Marisol Kelly

Occupant(s):
Kenneth Kelly

Apartment:
9989 Dorchester Road #10L
Summerville, SC 29485

Lease Start Date: 06/10/2022

Lease End Date: 05/09/2023

Monthly Base Rent: \$1568.00

Security Deposit: \$0.00

SMAArt Savings Fee: \$784.00

Additional Deposits:

Additional Rentable Items:

Other Recurring Charges:
Monthly MAA Connect Fee: \$75.00 Per Month.
Monthly Pet Rent: \$10.00 Per Month.
Monthly MAA Connect Fee: \$10.00 Per Month.
Monthly Community Fee: \$18.00 Per Month.

Non-refundable Pet Fee: 330.00

You HAVE a pet at this time. In consideration for the privilege of having a pet on the Premises and in the Apartment, You agree to pay the Non-refundable Pet Fee set forth above. This Non-refundable Pet Fee is a fee not a deposit. The Non-refundable Pet Fee will not be returned to You and will not be applied to damages caused by the pet or for any other reason. The Non-refundable Pet Fee is payable, at Landlord's discretion, either in full when you move into Your Apartment or in two equal installments. If Landlord agrees to allow you to pay in installments, one-half of the Non-refundable Pet Fee will be due on Your move in date and the remaining one-half will be due on the first day of the following month. In addition to Base Monthly Rent, You agree to pay Monthly Pet Rent for each pet, payable each month in advance on the first day of the month without notice.

SMAArt Savings Fee. We have made available to You the SMAArt Savings Program as a way to provide You with lower up-front move-in costs than the total cost associated with a traditional Security Deposit. The Security Deposit option has been explained to You, and You have made the choice to participate in SMAArt Savings Program. You will pay a nonrefundable fee in lieu of a Security Deposit or Additional Security Deposit. The SMAArt Savings Program fee is lower than the Security Deposit typically required for the Premises. The SMAArt Savings Program fee is not a deposit and is not intended to secure performance of Your obligations under the Lease, but rather to lower the total move-in cost for residents who choose to participate in the SMAArt Savings Program. You are responsible for the full amount of all damage to the Premises exceeding normal wear and tear, and any unpaid rent, utilities or any other amount owing by You under the Lease at the time of move out. You will receive a final account statement reflecting all charges owed at the time of move out. You further understand that through the SMAArt Savings Program there is no existing deposit held on hand to offset against potential damages, charges, or other outstanding balances. Any amount left owing at the end of Lease term is Your full responsibility to pay to Landlord. If You paid a Security Deposit as a part of Your Lease application with Landlord, You hereby acknowledge and agree that (i) as part of Your election to participate in the SMAArt Savings Program You directed Landlord to credit the amount of that Security Deposit to Your account as a prepaid balance; (ii) Landlord may apply the SMAArt Savings Program fee and any other charges against the amount credited; and (iii) You do not have a Security Deposit under this Lease.

GENERAL TERMS AND CONDITIONS:**1. RENT:**

1.1 You agree to pay Landlord the Monthly Base Rent, which is payable each month in advance on the first (1st) day of each month. You agree that not paying Rent on or before the first of each month is a material breach of this Lease. Rent is payable on Landlord's online payment portal or such other place as Landlord may designate. Rent paid after the first (1st) day of the month is late. If the Lease Start Date is not the first (1st) day of the month and this is the initial term of this Lease, then Your Monthly Base Rent for that month will be prorated and will be payable in advance on the Lease Start Date. If the Lease Start Date is not the first (1st) day of the month and this is a renewal of a prior lease between You and Landlord, then Your Monthly Base Rent for that month will be prorated and will be payable in advance on the first (1st) day of the month along with the prorated rent due under Your prior lease.

1.2 Any additional sums or charges due from You under this Lease including, but not limited to, sums for Storage Unit(s), Parking, Garage, trash, late fees, other fees, utilities, or because of a breach or violation of this Lease ("Additional Sums") shall be due as additional rent. Such Additional Sums shall also include, but are not limited to, damages exceeding normal wear and tear to the Apartment or Premises, when such damages are caused by You or Your Occupants, guests or invitees. You will receive a monthly billing statement that outlines your current monthly charges; however, it is Your responsibility to pay the balance owed each month, regardless of whether or not a statement is received. You can receive this statement via email at no charge or You may elect by written notice to Landlord, to receive this statement via US mail. You will be charged \$4.95 each month for a paper statement ("Paper Statement Fee") which will be mailed to the Apartment address or to such other address as You designate in writing to Landlord. The Paper Statement Fee is for administration, billing, overhead and similar expenses and charges incurred by us for providing and processing billing statements and also includes our profit margin. This Paper Statement Fee will be constant regardless of the number of other charges contained on your billing statement and may be changed (with thirty (30) days written notice provided to You) if our actual expenses increase. This Paper Statement Fee is not a charge for drinking water, wastewater, gas or electricity from the retail public utility from which such utility services are provided, and does not include any fees billed to us by that retail public utility for any deposit, disconnect, reconnect, late payment or other similar fees. If Landlord does not have a valid email account on file for You at the time statements are sent out for Your Apartment, You will be charged the Paper Statement Fee. You can elect to change your billing statement option at any time during your Lease term. Converting from Online/Electronic Statement to a paper statement may take two (2) billing cycles and You will not be charged the Paper Statement Fee until you actually receive the paper statement.

1.3 Only after Total Rent (which shall include Monthly Base Rent and the Additional Sums) is tendered will rent payment be accepted. Total Rent must be submitted in full. Landlord's acceptance of any partial payment does not waive Landlord's rights under this Lease or applicable State law nor its right to demand payment in full. Furthermore, Landlord's acceptance of any partial payment shall not be construed as a waiver of paying rent in full nor does it release You from your obligation to pay rent in full when due or demanded. Landlord reserves its rights to pursue any and all available civil remedies for You failing to pay rent in full when due or demanded.

1.4 All rent shall be paid by direct debit, ACH, or other electronic means established and approved by Landlord, personal check drawn on Your personal account, cashier's check, certified funds, other checks made payable to Landlord, or money order. You shall remain liable for any and all convenience fees associated with any electronic payments. You will not use and Landlord shall have the right to refuse cash for any payment due under this Lease.

1.5 You agree to pay to Landlord with your Monthly Base Rent, any sales, municipal or other rental tax due as a result of this Lease and charged by Landlord, including any increases in any such tax during the term of the Lease, and Landlord will remit such amounts to the appropriate taxing authority.

1.6 You waive all rights to deduct or offset any sums from rent, whether such rights exist now, arise after the Lease Start Date, or were created by statute or other laws. Notwithstanding the foregoing, nothing herein or elsewhere in the Lease shall be deemed to constitute a waiver of any right or remedy provided to You by applicable law, which right or remedy may not be waived pursuant to such law.

1.7 Monthly Community Fee. You shall pay to Landlord the Monthly Community Fee to reimburse Landlord for a portion of (i) the costs of operation, repair and maintenance of the Common Areas of the Premises, together with (ii) taxes and insurance associated with the Premises. "Common Areas" may include without limitation, green spaces, lawns, sidewalks, breezeways, parking lots, garages, the leasing office and other areas on the Premises that are common to Residents, Occupants and their guests. Costs incurred for the operation, repair and maintenance of the Common Areas may include without limitation, labor and material costs for, among other things, painting, cleaning, window cleaning, landscaping; inspection, repair and replacement work; and seasonal holiday decoration displays. Costs related to utilities (such as water, telephone, electric or gas), heating, air-conditioning and lighting of Common Areas are specifically excluded and will not be charged as part of the Community Fee.

1.8 Rent Increases: You agree that sixty (60) days prior to the Lease End Date, or at any time thereafter, Landlord shall have the right to increase the Monthly Base Rent and any other rent or sums due under this Lease by giving You no less than sixty (60) days' written notice (the "rent increase notice period"), and such increase shall not terminate this Lease.

1.8.1 You agree the rent increase notice period shall begin when Landlord either (a) delivers the notice regarding a rent increase personally to You or any one of You, (b) sends such notice to any email address on file with Landlord as provided by You or any one of You, (c) places such notice on the Apartment door, or (d) mails such notice by Registered or Certified Mail to the Apartment pursuant to South Carolina Code Section 27-40-240.

1.8.2 The rental increase shall be effective following the end of the initial Lease term or the sixtieth (60th) day after such notice was given, whichever shall occur later.

1.8.3 The terms of any renewal may specify rent greater than the Monthly Base Rent under this Lease, may incorporate Lease provisions that are different from the provisions of this Lease, and may specify rules that are different from the Rules in effect during the term of this Lease.

1.8.4 In the event that You have received a renewal offer from Landlord, have submitted a signed renewal letter to Landlord, or have entered into a renewal lease with Landlord prior to the expiration of this Lease and You breach or otherwise commit a default under this Lease, Landlord may, in its sole discretion, retract the pending renewal letter, reject the signed renewal letter received from You, or terminate the renewal Lease prior to the commencement of the renewal lease term by giving written notice to You.

2. LATE PAYMENTS; RETURNED CHECKS, ACH TRANSACTIONS, OR OTHER PAYMENTS:

Time is of the essence of this Lease. If Your rent is not paid on or before the First (1st) day of the month, an initial late fee in the amount of Seventy-Five Dollars (\$75.00) will be charged on the Second (2nd) day of the month and, beginning on the Third (3rd) of the month, a daily late fee of Ten Dollars (\$10.00) per day will be charged, not to exceed fifteen (15) days, until the rent amount due is paid in full. Such "full monthly rent" shall include all

additional monthly rent due for any Additional Rentable Item. The parties agree that these fees represent a reasonable estimate of uncertain damages to Landlord that are incapable of precise calculation that would result from Your late payment of rent.

Payments received any time after the office has closed for the day or on a holiday or other day when Landlord's office is not open for business will not be credited to Your account until the next business day and a late fee may be incurred.

2.1 If Landlord elects to accept late rent, you shall tender all late rents, late fees, dispossession warrant costs, administrative filing fees, and all other costs related to Your late payment to Landlord and such payment shall be made by cashier's check, certified check, or money order. Acceptance of late rent is not a waiver of the requirement that rent is due on the first (1st) day of the month.

2.2 In the event Your rent check or any other check written by You or any direct debit, ACH, or other electronic payment made by You or on Your behalf is dishonored, returned, or rejected by the bank or is otherwise unsuccessful through no fault of Landlord, You shall pay Landlord a service charge in the amount of \$30.00 in addition to the amount of the check or payment, any late charges, and any other amounts owed. Dishonored, returned, rejected, or unsuccessful checks, direct debits, ACH transactions, or other electronic payments shall be redeemed only by cashier's check, certified check or money order, and, after two dishonored, returned or rejected payments, You shall pay all future rents and charges due under this Lease only by cashier's check, certified check or money order.

2.3 Nothing in this Lease shall constitute a waiver or limitation of Landlord's right to institute legal proceedings for rent, damages and/or repossession of the Apartment for non-payment of any installment of rent when and as the same becomes due and payable.

2.4 FAILURE TO PAY RENT ON TIME. THIS IS YOUR NOTICE. IF YOU DO NOT PAY YOUR RENT WITHIN FIVE (5) DAYS OF THE DUE DATE, WE CAN BEGIN THE EVICTION PROCESS. WE ARE NOT REQUIRED TO PROVIDE YOU ANY ADDITIONAL NOTICE OTHER THAN AS SET FORTH IN THIS SECTION 2.4 FOR AS LONG AS YOU LIVE IN THE APARTMENT.

3. WRITTEN NOTICE TO VACATE REQUIREMENT AND AUTOMATIC RENEWAL TERM

3.1 Either party may terminate this Lease at the end of the initial Lease term by delivering to the other party sixty (60) days' written notice prior to the Lease End Date.

3.2 Without sixty (60) days' prior written notice, then this Lease will automatically renew on a month-to-month basis. During any month-to-month tenancy, in addition to any increase in Monthly Rent and Additional Sums, the terms of Landlord's then most current residential lease agreement will apply and You will be deemed to have agreed to such terms by continuing Your lease on a month-to-month basis. Landlord will make the most current residential lease agreement available to You upon Your written request. Your Lease will continue to automatically renew on a month-to-month basis until (a) the parties enter into a renewal lease for the Apartment; or (b) this Lease is terminated by either party providing to the other party not less than thirty (30) days' prior written notice of termination. If prior written notice of termination is provided, the Lease will terminate on the date indicated in the notice but in any event not less than thirty (30) days following the date of the notice.

3.3 THE FOLLOWING PROVISIONS REGARDING WRITTEN NOTICE BY YOU APPLY UNLESS PROHIBITED UNDER APPLICABLE LAW:

3.3.1 YOU UNDERSTAND AND AGREE THAT, IN ORDER FOR YOU TO TERMINATE THIS LEASE AT THE END OF THE INITIAL LEASE TERM, YOU MUST PROVIDE TO LANDLORD WRITTEN NOTICE AT LEAST SIXTY (60) DAYS PRIOR TO THE LEASE END DATE.

3.3.2 YOU UNDERSTAND AND AGREE THAT LANDLORD'S EMPLOYEES ARE NOT AUTHORIZED TO ACCEPT A VERBAL NOTICE OF A LEASE NON-RENEWAL, SURRENDER, TERMINATION, OR EARLY TERMINATION FROM YOU.

3.3.3 YOU HAVE NO RIGHT TO RELY ON ANY STATEMENT BY LANDLORD'S EMPLOYEES THAT A VERBAL NOTICE IS ACCEPTABLE.

3.3.4 YOUR NOTICE MUST BE IN WRITING, DATED, AND SIGNED BY AT LEAST ONE RESIDENT ON THIS LEASE, AND MUST SPECIFY THE MOVE-OUT DATE. NOTICE FROM ONE RESIDENT CONSTITUTES NOTICE FROM ALL RESIDENTS FOR PURPOSES OF THIS PARAGRAPH.

3.3.5 YOU SHOULD CONFIRM RECEIPT OF THE NOTICE BY LANDLORD WITH THE AUTHORIZED SIGNATURE OF A LANDLORD REPRESENTATIVE USING LANDLORD'S PRESCRIBED FORM.

3.3.6 YOU SHOULD KEEP A SIGNED RECEIPT OF THE WRITTEN NOTICE FOR YOUR PERSONAL RECORDS IN CASE OF ANY DISPUTE AS TO WHETHER SUCH NOTICE WAS GIVEN TO AND RECEIVED BY LANDLORD.

3.4 IF YOU DO NOT OBTAIN OR CANNOT PRODUCE A SIGNED RECEIPT OF THE WRITTEN NOTICE FROM LANDLORD, OR IF LANDLORD DOES NOT HAVE A SIGNED ORIGINAL NOTICE(S) FROM AT LEAST ONE RESIDENT, THEN A PRESUMPTION SHALL ARISE THAT YOU FAILED TO GIVE A PROPER NOTICE.

4. FAILURE TO FULFILL LEASE CONTRACT AND RESIDENT'S OPTION FOR EARLY LEASE TERMINATION, or TRANSFER TO ANOTHER LANDLORD APARTMENT OR PROPERTY:

4.1 Early Lease Termination Option ("Early Termination Option"): You may terminate this Lease before the expiration of the initial term if You are not in default under this Lease at the time of giving written notice or thereafter, and if You strictly comply with all of the provisions of this paragraph:

4.1.1 In order to terminate this Lease pursuant to this paragraph before the expiration of the initial term, You must:

4.1.1.1 Give Landlord sixty (60) days' written notice or pay an additional termination fee equal to rent for the period equal to sixty (60) days less the actual number of days' notice you provided ("Additional Termination Fee") (e.g., if you only give fifteen (15) days' notice you will pay your standard rent for fifteen (15) days plus an additional termination fee equal to rent for forty-five (45) days) at the time of giving notice; PLUS

4.1.1.2 Pay all monies due through date of termination, including, but not limited to, the payment of prorated rent; PLUS

4.1.1.3 Pay a fee in an amount equal to the sum of two times Your Monthly Base Rent ("Early Termination Fee") at the time of giving notice.

4.1.2 All terms and conditions of this paragraph must be satisfied before Your Lease will be terminated. Failure to comply with all terms and conditions of this paragraph will result in Your continued liability under the terms and conditions of this Lease. Additionally, Your election for early termination shall not relieve You of Your responsibilities and obligations regarding any damage beyond normal wear and tear to the Apartment.

4.2. Failure to Exercise Early Termination Option: If You do not exercise the Early Termination Option or You fail to fully satisfy your obligations under the Early Termination Option and You vacate Your Apartment or are evicted by Landlord during the term of Your Lease, You will be in material default of Your Lease and, in addition to Monthly Base Rent and Additional Sums (or prorated portions thereof) that You owe to Landlord, You will be charged and will be responsible to pay the Early Termination Fee and the Additional Termination Fee as defined in the paragraph above as liquidated damages. Landlord's damages from Your failure to fulfill the term of this Lease are uncertain and difficult to ascertain. Those damages include Our time, effort and expense in finding and processing a replacement resident such as making the Apartment ready, paperwork, advertising, showing vacant units, overhead and locator services. In addition, Landlord loses the rental income from Your Apartment until it is re-leased to another resident. While Landlord will make reasonably diligent efforts to re-lease Your Apartment if you vacate early, neither Landlord nor You know exactly how long the Apartment will remain vacant if you fail to fulfill Your lease term. You agree that the Early Termination Fee and the Additional Termination Fee are reasonable estimates of Landlord's damages and that these fees are due regardless of when the Apartment is re-leased.

4.3 Military Termination: You may terminate this Lease, pursuant to 50 App. USCA § 535 or other applicable state law ("Military Relief Laws"), if You (a) enter military service (active or reserve) after the signing of the Lease; (b) while in military service, receive military orders for a permanent change of station or to deploy with a military unit (or as an individual in support of a military operation) for a period of at least 90 days, or (c) meet any other conditions for an early termination of this Lease by military personnel under applicable law ("Military Cause").

4.3.1 To terminate this Lease under this paragraph, You must deliver to Landlord a written termination notice and a copy of the service member's military orders or a signed letter, confirming the orders, from Your commanding officer, confirming a Military Cause (collectively, "Military Termination Notice") either by hand delivery directly to Landlord by private business carrier, or by placing the written notice in an envelope with sufficient postage and with return receipt requested and addressed as designated in this Lease and depositing the written notice in the United States mail. Upon Our receipt of the Military Termination Notice and supporting documents, the Lease will terminate thirty (30) days following the date on which your next rental payment is due, provided that all criteria required by law are met ("Military Termination Date"), and the Military Termination Date will become the new Lease End Date.

4.3.2 You must perform all of Your obligations under this Lease through the Military Termination Date, including but not limited to, paying all Monthly Base Rent and any Additional Sums accruing or incurred through the Military Termination Date when due and You must vacate the Apartment by the Military Termination Date. The Military Termination Notice shall be effective as to all Residents and Occupants under this Lease.

4.4 Transfer to Another Landlord Apartment or Landlord Property: You may terminate this Lease and transfer to another apartment at the Property or to an apartment at another Landlord property before the expiration of the initial term, if You are not in default under this Lease at the time of giving written notice or thereafter, You have lived in the Apartment for at least six (6) months, You strictly comply with all the provisions of this paragraph, and Landlord, in its sole discretion, approves the termination.

4.4.1 In order to terminate this Lease pursuant to this paragraph before the expiration of the initial term, You must:

4.4.1.1 Give Landlord thirty (30) days' written notice; PLUS

4.4.1.2 Pay all monies due through date of termination, including, but not limited to, the payment of prorated rent; PLUS

4.4.1.3 Acknowledging that transfers cost Landlord additional administrative and maintenance time, which creates costs that are both varied and difficult to ascertain, pay a Transfer Fee of Five Hundred Dollars (\$500) for the administrative and maintenance costs incurred as a result of the transfer when You give the required written notice; PLUS

4.4.1.4 Participate with Landlord in a pre-transfer inspection of the Apartment; PLUS

4.4.1.5 Complete a new application and/or submit to all or part of the application approval process, involving, in part, credit, criminal, employment, and resident history background check or screening; PLUS

4.4.1.6 Pay any required fees (in addition to the Transfer Fee) and deposits associated with leasing the Landlord apartment to which You will be transferring; PLUS

4.4.1.7 Execute a Transfer Agreement and a lease for the Landlord apartment to which You will be transferring.

4.4.2 Landlord, in its sole discretion, may deny any transfer.

4.4.3 If this Lease requires You or any one of You to have an approved Guarantor(s), You agree that Landlord, in its sole discretion, may elect to deny any transfer if Your Guarantor(s) decline(s) to execute a new Guarantor Agreement associated with such transfer.

4.4.4 All terms and conditions of this paragraph must be satisfied before Your Lease will be terminated. Failure to comply with all terms and conditions of this paragraph will result in Your continued liability under the terms and conditions of this Lease. Additionally, transfer to another apartment shall not relieve You of Your responsibilities and obligations regarding any damage beyond normal wear and tear to the Apartment.

4.5 You understand that, unless and until all necessary and corresponding forms required for any termination under this paragraph are completed and signed by both You and Landlord, such termination is considered incomplete, regardless of when, or if, You gave notice to Landlord.

5. NO ASSIGNMENT OR SUBLETTING; RELEASE, SUBSTITUTION, OR ADDITION OF RESIDENT:

5.1 You may not sublet the Apartment or assign this Lease without prior written consent of Landlord which consent may be withheld in Landlord's sole discretion. You may not rent or license, or advertise, market or list the Apartment, or any portion thereof, for rent or license to any third party for lodging or other purposes, including, for example, through a website or other service that allows people to rent out lodging. This prohibition applies to daily, weekly, monthly, or any other period of usage of the Apartment by a third party or entity on a fee basis or for any other consideration. Landlord

reserves the right to provide, and to advertise, market and list the availability of, short term rentals and corporate housing programs at the Property. Further, Landlord may enter into business arrangements with third parties who provide short term rentals or corporate housing programs or who host websites where short term rental and corporate housing programs are advertised, marketed or listed, allowing them to promote and/or enter into rental or licensing arrangements at the Property for a fee.

5.2 Roommate Release Procedure:

5.2.1 Landlord may, in its sole discretion, allow for the release of one, but not all Residents from this Lease, if You are not in default under this Lease and You strictly comply with all the provisions of this paragraph. Before Landlord will release one (1) Resident, but not all Residents, from this Lease, You must:

5.2.1.1 Complete Landlord's Roommate Release Form or other application documentation required by Landlord; PLUS

5.2.1.2 Pay all monies due through date of release; PLUS

5.2.1.3 Pay a Roommate Release Fee of Three Hundred Fifty Dollars (\$350.00); PLUS

5.2.1.4 Complete a new application and/or submit to all or part of the application approval process (including payment of an application fee in addition to the Roommate Release Fee), involving, in part, credit, criminal, employment background check or screening, and resident history; PLUS

5.2.1.5 Execute a new lease for the Apartment, if required by Landlord, in the name of the remaining (and, if allowed by Landlord, any additional) roommate(s).

5.2.2 Landlord, in its sole discretion, may deny any release.

5.2.3 If this Lease requires You or any one of You to have an approved Guarantor(s), You agree that Landlord, in its sole discretion, may elect to deny any release if Your Guarantor(s) decline(s) to execute a new Guarantor Agreement associated with such release.

5.2.4 All terms and conditions of this paragraph must be satisfied before a Resident may be released. After completion of the roommate release process, the departing Resident will no longer have a right to occupy the Apartment or any other rights under this Lease or be entitled to any portion or a refund of any Security Deposits regardless of which Resident originally paid such Security Deposits. Failure to comply with all terms and conditions of this paragraph will result in the continued liability of all Residents under the terms and conditions of this Lease.

5.2.5 You understand that, unless and until all necessary and corresponding forms required for release of a Resident under this paragraph are completed and signed by both You and Landlord, such release is considered incomplete, regardless of when, or if, You gave notice to Landlord.

5.3 Addition of Resident: The Apartment shall be occupied only by the person(s) named in this Lease as a Resident or Occupant. Substitution or addition of any Resident(s) or Occupant(s) will be allowable only with prior written consent of Landlord, which may be withheld in Landlord's sole discretion and may require the execution of a new Lease, an increase in the total Security Deposits required, the use of one or more Guarantors, the successful completion of the application approval process (including payment of an application fee), involving, in part, credit, criminal, employment, and resident history background check or screening.

6. HOLD OVER:

6.1 If You fail to return possession of the Apartment to Landlord on or before the date that Your right of occupancy or possession ends or the date on which Your Lease terminates, is non-renewed, or expires, then:

6.1.1 You are deemed to be holding possession over beyond the term of the Lease ("Hold Over");

6.1.2 Your legal status is that of a Hold Over tenant at sufferance;

6.1.3 You shall be obligated to immediately remove all of Your property and property of the Occupants from the Apartment, return all keys to Landlord, and deliver possession of the Apartment to Landlord in a clean condition and good order and repair; and

6.1.4 You shall pay Landlord an amount equal to two (2) times the then existing Monthly Base Rent (without concession), prorated by the day for each day in Hold Over and beyond the termination, non-renewal or expiration of this Lease, plus any Additional Sums due from You to Landlord.

6.2 If Your Hold Over prevents a new resident from occupying the Apartment, You may also be liable to Landlord for any and all damages incurred by Landlord as a result of Your Hold Over, including but not limited to, all rent for the new resident's full lease term, subject to Landlord's obligation, if any, to mitigate damages.

7. JOINT AND SEVERAL LIABILITY:

Each person who signs this Lease, or who enters into a Continuing Guaranty of Payment ("Guaranty Agreement") with Landlord on behalf of the Resident(s) who signed this Lease ("Guarantor"), understands and agrees that his/her liability is both joint and several with every other person who signs this Lease or signs a Guaranty Agreement. This means that Landlord may seek to recover the full amount due from any Resident or Guarantor without first seeking to collect from the other Resident(s) or Guarantor(s). Landlord is not required to seek recovery of money owed by the Resident(s) before seeking recovery from a Guarantor. Landlord is not required to seek recovery of money owed by the Guarantor(s) before seeking recovery from the Resident(s).

8. SECURITY DEPOSIT:

8.1 You agree to pay to Landlord any Security Deposit and Refundable Pet Deposit due under this Lease (collectively "Security Deposits") before taking possession of the Apartment as security for Your fulfillment of the conditions of this Lease. Your Security Deposits will be returned to You, less Lawful

Deductions, after possession of the Apartment has been returned to Landlord if:

8.1.1 The Lease term has expired or this Lease has been terminated; AND

8.1.2 You provide and fulfill a written notice to vacate as required under this Lease; AND

8.1.3 All monies due Landlord have been paid in full; AND

8.1.4 The Apartment is clean, is not damaged and is left in its original condition, normal wear and tear excepted. Damages beyond normal wear and tear include, but are not limited to: broken or missing door locks; stained or burned carpeting; badly scratched floors; burns and cuts in countertops; stains on another resident's ceilings from Your overflowed tub or sink; unapproved holes; painting on walls performed by anyone other than Landlord or its vendor which requires more than one (1) coat of paint to return to move-in condition; bent or broken blinds; odor or stains throughout the Apartment due to an animal, smoke, or other source; and any fixtures missing from the Apartment. Any of Your Security Deposits may be applied by Landlord to satisfy all or part of Your obligations under this Lease, including, but not limited to, unpaid rent, late fees, utilities, damages, cleaning costs, and other charges specified in Paragraph 8.9 below. Withholding Your Security Deposits shall not prevent Landlord from claiming damages in excess of the Security Deposits.

8.2 You acknowledge and agree that You are not permitted to apply any Security Deposits to any past-due rent payment or payment that shall come due in the future.

8.3 You agree and acknowledge that, prior to or at the time of signing this Lease, You have been given a properly signed list of any existing damages to the Apartment, have been given the right to inspect the Apartment and have approved this list except as specified in writing to Landlord.

8.4 You acknowledge that any interest earned on such Security Deposits shall belong to Landlord. You further acknowledge that Landlord has complied with the South Carolina Security Deposit Law.

8.5 You will provide Landlord with a forwarding address so Landlord may forward Your Security Deposits, or any remaining balance thereof, to You. Landlord may disburse a refund of Your Security Deposits by one check, jointly payable to all named as Residents or to any one named Resident, and may send a refund of Your Security Deposits, and deduction itemizations, to only one Resident named on this Lease.

8.6 At Landlord's sole discretion, any named Resident on this Lease, if more than one is named, may be designated as agent for all Residents for purposes of receiving any applicable refund of Your Security Deposits, or any other balance owed or accounted at the time of Lease termination. You agree to look to said Resident for payment of any portion of the amount refunded.

8.7 If Landlord sells or transfers the Premises to a new owner, You agree that, once the sale or transfer has occurred, Landlord will be released from liability related to Your Security Deposits and that You will look solely to the successor owner for satisfaction of claims relating to Your Security Deposits.

8.8 If this Lease constitutes a renewal or revised Lease, then You agree to pay to Landlord only the amount, if any, by which the Security Deposits shown in this Lease exceed the amount of Security Deposits Landlord is already holding.

8.9 You will be liable for, including but not limited to, the following charges, if applicable, as Lawful Deductions: unpaid rent; unpaid utilities; unreimbursed service charges; Early Termination Fees; Additional Termination Fees; cancellation fees; revoked conditional rent concession credits; repairs or damages caused by Your, Your Occupant's, Your invitees' or Your Occupants' invitees' use of the Apartment or Property, Your, Your Occupant's, Your invitees' or Your Occupants' invitees' negligence, carelessness, accident, or abuse, including stickers, scratches, tears, burns, stains, or unapproved holes; replacement cost of Our property that was in or attached to the Apartment and is missing; replacing dead or missing smoke detector batteries at any time; replacing missing or burned out light bulbs at any time; utilities for repairs or cleaning; unreturned keys, parking identifiers (e.g. hangtags, decals, etc.), and access control devices; removing or rekeying unauthorized security devices or alarm systems; packing, removing or storing property removed or stored under this Lease; removing illegally parked vehicles; animal-related charges; late-payment and returned-check charges; attorney's fees, court costs and filing fees actually paid; government fees or fines against Landlord for violation by You, Your Occupants, guests, or invitees of local ordinances relating to detection devices, false alarms, recycling or other matters; trips to the Apartment to allow removal of Your telephone or TV cable services or other rental items (if You so request or have moved out); special trips for trash removal caused by parked vehicles blocking dumpsters; false security alarm charges unless due to Landlord's negligence; and any other sums due under this Lease.

8.10 You agree that Landlord also may, but shall not be obligated to, make deductions from Your Security Deposits for any Lawful Deductions to Landlord under this Lease while You are still in possession of the Apartment. Landlord shall provide You with written notice of such deduction, itemizing the amounts deducted. Upon receipt of such notice, You agree to pay to Landlord, on or before the next rent due date, an amount sufficient to bring Your Security Deposits to the original amount, and You further agree that failure to do so constitutes a material breach of this Lease.

9. UTILITIES:

9.1 You must pay charges for all utilities provided to the Apartment, including but not limited to, electricity, natural gas, water and sewer, internet, cable TV and telephone, except as may otherwise be set forth in this Lease. Where applicable, Your utility bills may include a one-time deposit, flat fees, and other charges and any increases as billed by the utility provider. In addition, You will be billed each month for common area charges which represent a proportional share of common area water, sewer, stormwater, electricity, and/or natural gas charges and such amounts shall be due and payable as Additional Rent. These charges may be reflected on our bill to you as, for example, "Common Area Electric," "Common Area Gas", etc., depending on the service(s) provided.

9.1.1 Water and sewer service will be billed to Landlord by the service provider and Landlord will allocate those bills to You based on a combination of the square footage and the number of Occupants and Residents of Your Apartment. As a result of this allocation method, You may pay for water and sewer used in other apartment units or in the common areas of the Property. You agree that this allocation method is fair and reasonable even though it may not reflect accurately Your water consumption. Landlord will provide additional information regarding the calculation of your water and sewer bill upon request.

9.2 You must have all utility services transferred to Your name immediately upon signing this Lease, except for those utilities which are submetered or billed pursuant to an allocation method by Landlord. You must pay all utility bills promptly and by any applicable due date. You must provide to Landlord proof of transferring utility services into Your name prior to move-in. If You fail to transfer utility service into Your name prior to taking possession of the Apartment or otherwise fail to ensure that the utility services remain in Your name during this Lease term, such failure(s) will be a material breach and You will be in default under this Lease. In the event that the utilities are not in Your name at move-in or at any time during Your possession of the Apartment, Landlord may charge You and You agree to pay as liquidated damages, due to the uncertainty and difficulty of ascertaining Landlord's damages, a fee in the amount of Fifty-Five dollars (\$55.00) for every month during which, at any time, one or more utilities are not in Your name, plus the actual or estimated cost of utility services billed to Landlord. The fee and such costs are due as additional rent. Upon move-out, but not before, You shall transfer, or cooperate in the transfer of, all utility service back into Landlord's name. You hereby agree that Landlord will not reimburse You for any costs related to utilities left in Your name after You move out.

9.3 You must not allow Your utilities to be disconnected, terminated or interrupted for any reason, including for a failure to pay Your bills. Breach of this provision shall constitute a material default by You under this Lease.

9.4 If Landlord incurs any utility charges or late fees associated with Your utility bills or use, such charges or fees will be due from You to Landlord as additional rent. If Landlord bills You for any utility services You shall receive such bills at least once per month, and payments by You shall be considered past due if not paid before the twenty-fifth (25th) day of the month and shall incur a late fee of Ten Dollars (\$10.00).

9.5 Landlord may modify the method by which utilities are furnished to the Apartment and/or billed to You during the term of this Lease and any extension or renewal thereof or hold over period, including, but not limited to, direct metering and/or use of a ratio utility billing system, energy allocation equipment, and submetering equipment. In the event Landlord chooses to so modify any utility service to the Apartment and/or billing methods, Landlord shall give You not less than thirty-five (35) days' prior written notice of such modification.

9.6 You agree and consent that Landlord has the right to designate who Your utility providers will be.

9.7 Landlord is not liable for any interruption, outage, or fluctuation of any utility provided to You by others even if Landlord has designated who the provider of that utility would be. You release Landlord from any liability for such interruption, outage or fluctuation.

9.8 You will notify Landlord immediately of any known or suspected leak of water from any pipe in the Apartment, or any continually running or otherwise malfunctioning fixture in the Apartment. You will at all times be responsible for Your entire water bill, including any and all increases, even if unexpected, in Your water bill that may result from a leak or abnormally running fixture, even if, and after, such leak or running is reported to Landlord.

9.9 In keeping with Landlord's commitment to sustainable operations and climate-friendly practices, we strive to lower the impact of Property operations by, among other things, actively monitoring utility usage. To assist in this effort, You agree that, not less than annually, Landlord may obtain from your utility provider(s) information regarding Your resource consumption, including, but not limited to, service dates, base rate and non-base rate adjustments, taxes on services, total amounts invoiced and amounts paid by You. Utility providers include but are not limited to providers of water, wastewater/sewer, trash service, electricity, natural gas, steam and any other fuel and utility. Landlord will use or share Your information with third parties only on an aggregated basis for purposes of tracking, analyzing and reporting resource consumption and efficiency at the Property. You consent to such use and hereby authorize Your utility provider(s) to release such information and data to Landlord.

9.10 Landlord has engaged a provider ("Provider") to provide: (a) high-speed Internet access services ("Bulk Internet Services"); and (b) multi-channel video services (the "Bulk Video Services") to the Premises. The Bulk Internet Services and Bulk Video Services at times are collectively referred to as the "MAA Connect Bulk Services", and will be provided to Your Apartment, subject to the terms contained in this Lease. If You enter into Your Lease before MAA Connect Bulk Services become available to Your Apartment, You will receive the bulk video services then offered by Landlord. Your fee for bulk video services will be Landlord's then current monthly fee for such services, prorated for the number of days of the month that bulk video services are provided to Your Apartment. As of the date that MAA Connect Bulk Services become available to Your Apartment, Your monthly fee will become the MAA Connect Bulk Services Fee. You will be charged a prorated amount for the number of days in the initial month in which MAA Connect Bulk Services become available to Your Apartment. Your Use of the MAA Connect Bulk Services is subject to the following terms and conditions:

9.10.1 You acknowledge that the MAA Connect Bulk Services will be provided to You directly from the Provider. Landlord is not a provider, and Landlord has no liability to You for equipment failure, quality, quantity, availability, or outages of the MAA Connect Bulk Services.

9.10.2 You agree to pay all sales, use or other rental tax due as a result of the provision of MAA Connect Bulk Services, including any increases in any such tax(es) during the term of the Lease, and Landlord will remit such amounts to the appropriate taxing authority.

9.10.3 You agree to contact Provider directly referencing the contact information provided to You for all concerns involving the connection, reception, or repair of the MAA Connect Bulk Services, and to order any additional video-related or Internet-related services other than the MAA Connect Bulk Services described in this Lease.

9.10.4 LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE MAA CONNECT BULK SERVICES. LANDLORD DISCLAIMS, AND RESIDENT WAIVES, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE MAA CONNECT BULK SERVICES. LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE MAA CONNECT BULK SERVICES WILL BE AVAILABLE, UNINTERRUPTED, OR ERROR-FREE, OR THAT THE MAA CONNECT BULK SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. YOU HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY CLAIM THAT YOU MIGHT HAVE OR MAKE AGAINST LANDLORD AS A RESULT OF YOUR USE OF THE MAA CONNECT BULK SERVICES AND YOU WAIVE ANY LIABILITY THAT LANDLORD MIGHT HAVE (WHETHER SUCH LIABILITY IS FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES) FOR ANY SUCH CLAIM. SOME STATES DO NOT ALLOW THE LIMITATION OF IMPLIED WARRANTIES SO SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU.

9.10.5 LANDLORD IS NOT LIABLE FOR INTERRUPTIONS, INABILITY TO CONNECT, OR FAILURE OF PROVIDER TO PROVIDE THE MAA CONNECT BULK SERVICES, NOR FOR ANY LOSSES, DAMAGES, OR EXPENSES, DIRECTLY OR INDIRECTLY, RELATED TO THE MAA CONNECT BULK SERVICES. NO CHANGE, FAILURE, INTERFERENCE, DISRUPTION, DEFECT, UNAVAILABILITY, OR UNSUITABILITY OF OR IN THE MAA CONNECT BULK SERVICES CONSTITUTES OR MAY BE DEEMED TO CONSTITUTE AN ACTUAL OR CONSTRUCTIVE EVICTION, IN WHOLE OR IN PART, OR IN ANY WAY ENTITLE YOU TO ANY ABATEMENT OR DIMINUTION OF RENT OR IN ANY WAY RELIEVE YOU FROM ANY OBLIGATION UNDER THE

LEASE. LANDLORD IS ALSO NOT LIABLE FOR, AND YOU AGREE TO TAKE SOLE RESPONSIBILITY FOR, AND TO INDEMNIFY, DEFEND, AND HOLD LANDLORD, AND ITS EMPLOYEES AND AGENTS HARMLESS FROM, ANY DAMAGES OR CLAIMS YOU OR ANY OTHER PERSON MAY SUFFER OR HAVE AS A RESULT OF YOUR USE OF, OR INABILITY TO USE, THE MAA CONNECT BULK SERVICES, INCLUDING, BUT NOT LIMITED TO, COMPUTER VIRUSES, LOSS OF DATA, INVASION OF PRIVACY, DEFAMATION, FRAUD, AND COPYRIGHT AND TRADEMARK INFRINGEMENT. LANDLORD ASSUMES NO RESPONSIBILITY FOR THE CONTENT OF THE MAA CONNECT BULK SERVICES OR INFORMATION OTHERWISE AVAILABLE THROUGH THE MAA CONNECT BULK SERVICES.

9.10.6 Any televisions, computers, and other hardware or software that are necessary to utilize the MAA Connect Bulk Services must be supplied by You at Your expense. You must comply with any terms of use or acceptable use policies published by Provider. Violation of the terms of use or acceptable use policies may result in termination of Your right to access the MAA Connect Bulk Services.

9.10.7 To provide the MAA Connect Bulk Services, certain equipment, including a video receiver and a cable modem, may need to be installed in Your Apartment. You shall allow Provider's service personnel reasonable access to Your Apartment for purposes of installing, maintaining, repairing, replacing, or removing this equipment.

9.10.8 You agree not to damage the equipment described in Section 9.10.7 above, and agree to indemnify, defend, and hold Landlord harmless from and against any and all claims, demands, costs, expenses (including legal fees and court costs), and causes of action arising out of, or in any way relating to, actions or inactions by You, including, but not limited to, any amounts Landlord is required to pay to cover the costs of any such damage to any Provider.

9.10.9 Landlord reserves the right to change providers at any time for any reason, change the quantity and quality of the MAA Connect Bulk Services provided, or discontinue the MAA Connect Bulk Services to the Property and the Apartment at any time and for any reason at its sole discretion with thirty (30) days' prior written notice of such change or termination. Should Landlord exercise its right to discontinue the MAA Connect Bulk Services under this paragraph, Your obligation to pay the fee set forth in this Lease will terminate on the date specified by Landlord in the notice.

9.10.10 Any breach of Your obligations related to MAA Connect Bulk Services is a default under the Lease. Additionally, if any portion of Your rent is delinquent, and Landlord provides You written notice of the delinquency, and You fail to pay the delinquent amounts within the time prescribed in the notice to You, Landlord may be permitted by applicable laws to request that Provider interrupt or terminate the provision of MAA Connect Bulk Services to Your Apartment (even if You subscribe to enhanced services beyond those MAA Connect Bulk Services covered by this Addendum until all delinquencies are brought current).

9.10.11 You shall not install network devices, whether wireline or wireless, to enable any person who does not reside in Your Apartment to access the MAA Connect Bulk Services. Any wireless network device installed by You must comply with applicable FCC rules and regulations, and must not interfere with the MAA Connect Bulk Services or wireless systems operated by Landlord or any service provider at the Property.

10. RISK OF LOSS:

10.1 Landlord does not carry any personal property insurance on Your personal possessions or property. You may obtain insurance protecting the personal possessions or property owned by You or Your Occupants. You agree to look only to Your insurance for any loss or damage to Your personal possessions or property.

10.2 Landlord does not carry any liability insurance for Your actions that may cause harm to You or other persons or loss or damage to real or personal property owned by Landlord or other persons. You (or each of You if there is more than one Resident) agree to maintain insurance, in an amount of not less than one hundred thousand dollars (\$100,000), protecting against liability of You, Your family, Your guests (including social guests), invitees, and Your Occupants for claims involving harm, including bodily injury, to other persons or loss or damage to real or personal property owned by Landlord or other persons, arising out of the negligence or other acts of You, Your family, Your guests (including social guests), invitees, and the Occupants of the Apartment.

10.3 The insurance required under this paragraph shall (i) be maintained by You for Your benefit as well as for the benefit of Landlord; (ii) be from a carrier with an AM Best rating of A-VIII or better, licensed to do business in the state of South Carolina; and (iii) provide notice to Landlord within thirty (30) days of any cancellation or non-renewal. Your liability policy must not have any exclusions for property damage resulting from Fire, Smoke, Explosion or Water Damage.

10.4 Your right to possession of the Apartment is contingent upon You first obtaining and maintaining the insurance provided for in this paragraph, and providing Landlord with evidence of required insurance. If this Lease is a renewal lease, You must provide evidence of insurance for the new lease term. Your obligation to obtain such insurance and Your liability under this Lease or otherwise is not waived even if You do not provide such evidence of insurance.

10.5 Landlord shall not be liable for damage, theft, vandalism, breakage of glass, or other loss of any kind to Your personal property or the personal property of Your Occupants, guests, or invitees, except where such damage is due to Landlord's gross negligence or intentional misconduct by Landlord.

10.6 It is understood and agreed that Landlord shall not be responsible for or liable to You or to those claiming by, through, or under You for any loss or damage to either person or property that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining apartments, or by or through the acts or omissions of third parties, including independent contractors retained by Landlord.

10.7 You hereby consent that, in the event that You or Your Occupants, guests, or invitees cause harm, loss, or damage, by act or omission, to the property or person of another resident, occupant, guest, or invitee, Landlord has the right to share Your name, Your contact information, and information concerning Your insurance with any such injured person or his/her insurer.

10.8 Your renters insurance policy declarations page must list "Mid-America Apartments, L.P. – CV at Waters Edge, P.O. Box 115009, Carrollton, TX 75011-5009" as interested party or certificate holder. Your failure to provide evidence to Us of Your maintenance of the required minimum level of insurance coverage is a breach of this Lease and, due to the uncertainty and difficulty of ascertaining Landlord's damages, You will incur a fee of Forty Dollars (\$40.00) per month as liquidated damages for any month in which We do not have proof of the required insurance, in addition to any other

remedies which We may have under this Lease.

11. ANIMALS:

11.1 No animals of any kind including, but not limited to, mammals, reptiles, birds, fish, rodents, amphibians, arachnids, or insects are permitted in the Apartment or on the Premises without Landlord's prior written consent. Disability assistance animals required as a reasonable accommodation pursuant to a disability-related need must also be disclosed to Landlord. You certify that You have no animals except as specifically referenced in this Lease. Landlord may request information in writing from a qualified professional verifying the need for an assistance animal. You will be in material breach of this Lease if You misrepresent the need for an assistance animal.

11.1.1 You affirmatively represent and warrant that as of the date of this Lease and throughout the term of the Lease each of the animals described below in Paragraph 11.1.2 (if any): is suited for living in an apartment community; does not pose a danger or threat of any kind to any person or property; has not displayed vicious, aggressive or dangerous behavior; and has never before injured You or any other person or animal or caused any damage to Your or another person's property. You affirmatively represent and warrant that You have never had a claim or lawsuit filed against You or anyone else for an injury or damage caused by or related to Your ownership or possession of the animal. You understand and agree that Our approval of the animal to live in the Apartment is expressly conditioned upon truthful disclosures and representations above, that nothing occurs during the term of the Lease that would make the disclosures or representations inaccurate or untrue and that We would not have approved the animal had You disclosed that it was dangerous, unsuited for apartment living, or had previously injured someone or damaged property. If there is no Paragraph 11.1.2 below, You affirmatively represent and warrant that as of the date of this Lease Landlord has not given written consent for any animals to live in the Apartment.

11.1.2 DESCRIPTION OF ANIMAL(S). You may keep only the animal(s) described below. You may not substitute any other animal(s).

Animal One				
Type	Breed	Weight	Color	Age
Dog	German Shepard	90.00	Brown and black	7

Animal Two				
Type	Breed	Weight	Color	Age
Dog	Alaskan Malamute	50.00	Red	2

11.2 Any animal, including the animal of a guest, that visits the Apartment for any part of one (1) day shall be considered Your animal. Without prior written permission from Landlord and the payment of the then required Non-refundable Pet Fee or Refundable Pet Deposit, as applicable, the presence of that animal on the Premises shall constitute a material breach of this Lease. If You fail to remove an unauthorized animal within twenty-four (24) hours after Our request, You shall be in default of this Lease. A disability assistance animal is subject to the same rules in Section 11.3 as other animals except to the extent You request and receive an accommodation for relief from such rules.

11.3 You are fully responsible for Your animal's actions at all times while the animal is on the Premises and You agree to abide by these rules:

11.3.1 You must keep Your animal on a leash when You are outside the Apartment and control and prevent the animal from engaging in behaviors or creating excessive noise, e.g. barking, jumping, running, which disrupts or interferes with another resident's quiet enjoyment of the Premises or disrupts Landlord from carrying out its day-to-day business at the Premises, regardless of whether the animal is inside or outside the Apartment.

11.3.2 Inside, the animal may urinate and defecate only in a litter box with a kitty litter-type mix. You must prevent Your animal from urinating or defecating on the floors, walls, doors, or fixtures of the Apartment and keep the premises in clean, hygienic condition. In no event is an animal permitted to urinate or defecate on a patio or balcony.

11.3.3 Outside, the animal may urinate or defecate only in natural, wooded areas or other area specifically designated by Landlord for that purpose. You must properly dispose of any animal excrement from the Apartment or Premises.

11.3.4 You may not tie the animals to any fixed object outside the Apartment.

11.3.5 You must not let an animal into the management/leasing office, clubhouse/community room, laundry room, fitness or spa space, swimming pool, tennis courts, and any recreational area or amenity on the Premises. The foregoing notwithstanding, disability assistance animals may go anywhere on the Premises that is not prohibited by law (e.g., into the swimming pool).

11.3.6 You must only feed Your animal inside the Apartment.

11.3.7 Your animal must wear a collar with an identification tag showing Your name, phone number, and address.

11.3.8 You may only have and keep a pet or animal that is considered a common domesticated household animal that is suitable for living in an apartment community. Common domesticated animals are domestic dogs, cats, fish, and birds.

11.3.9 You may have no more than (a) a total of two (2) dogs, cats, or birds and/or (b) fish contained in one twenty (20) gallon or less fish tank. For example, You may have two dogs or one dog and one cat but may not have two dogs and one bird.

11.3.10 Wild, exotic, poisonous, endangered, or prohibited species of animals are not allowed.

11.3.11 You may not have or keep any animal which the ownership or possession of is illegal under any applicable federal, state, or local law.

11.3.12 Your animal may not be left for extended periods of time without proper feeding, care, and supervision.

11.3.13 You must keep Your animal secured when You are not in Your Apartment and shall not leave Your animal unattended on Your patio or balcony in case Our personnel must enter Your Apartment as permitted by the terms of Your Lease.

11.3.14 You must obey all applicable state and local laws for owning and controlling Your animal or pet.

11.3.15 You must promptly notify us if the animal injures a person or animal, causes property damage, or if the animal behaves in a manner that exhibits a direct threat to others, whether or not such injury, damage, or behavior occurs on Our property.

11.4 If You, Your guest, or any Occupant violates any rule or provisions of this Section 11 or if the representations in Section 11.1.1 cease to be completely true, accurate and correct (in each case based upon Our judgment) and We give You written notice, You must remove the animal immediately and permanently from the Premises. We also have all other rights and remedies set forth in the Lease, including damages, eviction, and attorney's fees.

11.5 In some circumstances, We may allow animal control or local humane society to enter the Apartment and remove the animal in accordance with applicable law if, in Our sole judgment, You have: abandoned the animal; left the animal in the Apartment for an extended period of time without food or water; or failed to care for a sick animal.

11.6 You will be solely liable for the entire amount of all damages to the Apartment or Premises caused by the animal. You agree that any Non-refundable Pet Fee or Refundable Pet Deposit does not limit Your liability for property damages, cleaning, deodorizing, defleaing, replacements, or personal injuries caused by the animal.

11.7 You will indemnify us and any Landlord Parties and hold us and any Landlord Parties harmless from and defend us against all costs of litigation, attorney's fees, damages, or injuries in any claims, lawsuits, and judgments against us which were caused in whole or in part, directly or indirectly, by Your animal or by Your negligence or intentional acts as relates to Your ownership or possession of the animal.

11.8 In addition to any other remedies set forth herein, if You fail to immediately dispose of animal excrement as set forth in Section 11.3.3 above, You will pay Landlord a fee in the amount of Fifty Dollars (\$50.00) as liquidated damages due to the uncertainty and difficulty of ascertaining Landlord's damages.

12. PACKAGE RELEASE:

Landlord is not required to accept packages for You. It is within Landlord's sole discretion whether to accept packages for You. By signing this Lease, You authorize Landlord, in its sole discretion, to accept on Your behalf any packages which are delivered by mail, or otherwise addressed to You. You understand that Landlord may not accept any package: (1) shipped COD or having postage due; (2) weighing over forty (40) pounds; (3) larger than three (3) feet wide or two (2) feet tall; or (4) that is perishable, other than non-food flowers or plants. If Landlord does accept a package for You, You agree that Landlord will have no responsibility to provide a signature to the carrier, examine the condition, determine the contents, inform You that a package has been delivered, or take any precautions in the handling and storage of the package. Packages not claimed within a reasonable time as determined by Landlord may be (but are not required to be) returned to the delivery agent. Landlord may not accept packages on Your behalf if the accumulation of packages has an unfavorable impact on the office work area. If Landlord, in its sole discretion, accepts packages, it does so solely as a favor to You, without consideration, and, You release Landlord from any claim You might otherwise have for loss or damage suffered as a result of Landlord's accepting, refusing to accept, holding, storing, handling or disposing of any such package, even if such loss or damage is due to the negligence or other act of omission of Landlord. Additionally, You agree to indemnify Landlord for any such claims made by a third party. You, and not Landlord, absolutely assume all risks of damage, theft, destruction, or loss for any reason of any package received or held by Landlord. The term "package" includes, but is not limited to, any parcels, goods, or other items of value. You agree that Landlord may curtail or eliminate such service in its sole discretion, and You will not be relieved from the terms of this Lease or entitled to any reduction in rent if such service is curtailed or eliminated.

13. RIGHT OF ACCESS:

13.1 You agree and consent that Landlord shall have a right of access to the Apartment without consent or notice:

- a. In case of emergency or in weather conditions that pose a threat to the property;
- b. Between 9:00a.m. and 6:00p.m. for regularly scheduled periodic services i.e. A/C filter changes and pest treatment provided Landlord knocks and announces Landlord's intent to enter;
- c. Between 8:00am and 8:00p.m. for responding to maintenance requests and provided Landlord knocks and announces Landlord's intent to enter
- d. By court order;
- e. When accompanied by law enforcement for the purpose of serving legal paperwork/notices i.e. paperwork related to eviction proceedings
- f. You fail to properly care for or keep the Apartment in acceptable condition after being sent a right to cure notice which materially affects health and safety; or
- g. You abandon the Premises.

In all other cases Landlord may provide a 24 hour notice of Landlord's intent to enter.

13.2 You authorize Landlord to show the Apartment to prospective renters at any time after You have given notice of termination.

13.3 In the event of a power outage that lasts more than 8 hours, Landlord has the right, but not an obligation, to dispose of the contents of Your refrigerator. You shall not have a right of recovery against Landlord for interruption of power that results in disposal, loss, or spoilage of refrigerated food.

14. USE:

14.1 The Apartment shall be used by You for residential purposes only and shall be occupied only by the person(s) named in this Lease as a Resident or Occupant. An "Occupant" is defined as any person listed in this Lease as an Occupant. A "guest" is defined as any person who enters the Apartment, or upon the Premises, by Your expressed or implied invitation or by an Occupant's expressed or implied invitation and includes social guests. Only the Residents and Occupants named in this Lease may continuously occupy the Apartment. Persons who are not a Resident or Occupant named in this Lease who visit the Apartment must be accompanied by You, will be considered guests or "invitees" and are not permitted to continuously occupy the Apartment. Guests may not occupy the Apartment in excess of fourteen (14) days, or portion thereof, during any twelve (12) month period.

14.2 You, an Occupant, or any guest or invitee shall not engage in any disorderly, loud, dangerous, violent or threatening behavior or in any manner so as to interfere with another resident's quiet enjoyment of his, her, or their apartment(s) or with the operation or management of the Premises.

14.2.1 You, an Occupant, or any guest or invitee shall not engage in criminal conduct in violation of any federal, state or local laws, regardless of whether or where arrest or conviction occurs, including but not limited to, while on the Premises or in the Apartment. You, an Occupant, or any guest or invitee shall not possess, display or discharge a weapon in violation of applicable law.

14.2.2 You must notify us within 5 calendar days if You, an Occupant, or any guest or invitee of either is convicted of a crime that involves a controlled substance, violence to person(s), or destruction of property. You must also notify us within 5 calendar days if You, an Occupant, or any guest or invitee of either registers as a sex offender.

14.3 You, an Occupant, or any guest or invitee shall not distribute petitions, flyers, or solicitation notices to other residents in any manner other than through lawful use of the U.S. mail.

14.4 You, an Occupant, or any guest or invitee shall not commit business libel or slander or make untruthful, unfair, or misleading statements to others about Landlord or its employees.

14.5 You, an Occupant, or any guest or invitee shall not commit waste to the Apartment or Premises and shall not commit any act or fail to take any action that would endanger the life, health, safety, welfare, or property of any person in the Apartment or Premises.

14.6 You agree that no "garage sales" shall be permitted in or around the Premises, parking areas or common areas and nothing shall be sold out of or around the Premises, parking areas or common areas without express written permission by Landlord.

14.7 Any violation of this Section 14 by You, an Occupant, or any guest or invitee is a material breach of this Lease and grounds for termination of this Lease or right of occupancy by Landlord demanding possession or filing a dispossessory action or an eviction.

14.8 In the event that Your tenancy at the Property is terminated or You are evicted, You shall not return to any portion of the Premises for any reason, including at the invitation of another resident or occupant. This provision shall survive the expiration or earlier termination of this Lease.

14.9 You, any Occupant, guest or invitee shall not invite or allow individuals who have been evicted from, or had their tenancies or right of access terminated at, the Property to return as Your guest.

14.10 Any Resident or Occupant who is under court order prohibiting entry to the Apartment or Premises is no longer entitled to occupancy, keys, or other access devices while the order is in effect.

14.11 You agree that any recreation, service, and amenities areas, if they are available at the Premises, are merely ancillary to this Lease and may be used by You only with the permission of Landlord. You also agree that Landlord may curtail or eliminate such services or facilities in its sole discretion, and You will not be relieved from the terms of this Lease or entitled to any reduction in rent if such services or facilities are curtailed or eliminated.

14.12 Any violation by You, an Occupant, a guest or invitee of the Rules and Regulations which are now in effect or which may hereinafter be enacted will be considered a violation of this Lease by You.

14.13 The Rules are part of this Lease and enforceable as terms and conditions of this Lease.

14.14 Landlord may exclude any person that Landlord determines, in its sole discretion, to be violating the law, violating the Lease, violating the Rules, or disturbing any other residents, visitors, or Our representatives. Landlord may exclude any person who refuses to properly identify himself or herself or identify which Resident or Occupant gave permission for him/her to be on the Premises.

14.15 You may have a home office in order to operate a business in the Apartment, if You comply with the following conditions: (1) Your home business must comply with all applicable laws; (2) You cannot employ anyone at the Apartment besides You or anyone named as an Occupant on this Lease; (3) You do not require receipt or delivery of merchandise, goods, or equipment other than by parcel or letter carrier mail service; (4) You must not be a nuisance; (5) You must not display stock in trade in the Apartment or on the Premises; (6) Your home business must not require any special permit or license; (7) You must not cause additional vehicles of suppliers, vendors, delivery services, customers or clients to park in the Premises; (8) Your customers and/or clients of the home business may not come to the Apartment or on the Premises to receive goods or services; and (9) You may not display signage relating to or identifying the home business. Landlord will not sign or otherwise agree to any business license or similar application. A home business permitted by this Lease includes, by way of example and not by limitation, an internet-based company, legal service provider, or a consulting service provider, to the extent they are also permitted by applicable law and conform to each of the requirements listed herein. A business not permitted by this Lease includes, by way of example and not by limitation, massage therapy, retail sales or a home child care service.

15. DEFAULT BY YOU:

15.1 If You fail to pay any rent or other charges as and when due hereunder, or if any facts or representations contained in Your or any Occupant's rental application (Residential Lease Application) or any request for an assistance animal are untrue or misleading, You shall be in default. To the extent permitted by law, You agree that such notice period shall be twenty-four (24) hours unless Landlord, in its sole discretion, chooses a longer period. To the extent permitted by law, You expressly waive notice of default and an opportunity to cure.

15.2 You shall surrender possession of the Apartment and any Storage Unit, Parking, or Garage area to Landlord upon the effective date of such termination and You shall be liable to Landlord for, and shall indemnify Landlord against, all rent loss and other expenses (for re-letting, cleaning or otherwise making the Apartment suitable for re-letting) suffered or incurred by Landlord as a result of Your default and the termination of the Lease.

15.3 Landlord's application of Your Security Deposits (if any) shall not relieve You of liability for any other rent, Additional Sums, charges, damages or other costs or obligations until the term of this Lease expires, or the Apartment is re-rented, whichever comes first. Accepting money does not waive Landlord's rights to damages, past or future rent or other sums, or, if allowed by law, to continue with the eviction proceedings. Exercising one remedy will not constitute an election or waiver of other remedies.

15.4 Once You have vacated the Apartment, You will be sent a statement of deposit that may indicate a balance due to Landlord. Any such balance outstanding thirty (30) days after mailing of the statement shall bear interest at the rate of sixteen percent (16%) per annum or, if such rate is usurious, the highest non-usurious interest rate permitted by applicable law. Interest on the debt evidenced by this Lease shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law and any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. You understand that Landlord's or its debt collectors' right to collect on any debt owed by You hereunder includes, and You expressly consent to receive, communications sent to You via email, pre-recorded/artificial voice messages, telephone call on a recorded line, and text message (including automated texts and telephone calls sent or made using an automatic telephone dialing system) from Landlord and debt collection agents at the email or telephone number (whether wireless or landline) that You have provided to Landlord or at any number forwarded or transferred from that number regarding information relating to Your financial obligations, including, but not limited to, payment reminders, delinquent notifications, instructions and links to billing information.

15.5 Notwithstanding the filing of a dispossessory proceeding or an eviction and the issuance and execution of a writ of possession or similar court order on account of any default by You, You shall remain liable to Landlord for all rent and other charges accrued through the date on which possession is obtained by Landlord and shall continue to be liable for any rent accruing thereafter until the earlier of (a) the expiration of the term of this Lease; or (b) date the Apartment is re-rented and the new tenant commences paying rent.

16. REPAIRS:

16.1 You accept the Apartment and any Garage, Parking, or Storage Unit in "AS IS" condition as suited for the use intended. You understand and agree that the Apartment equipment and fixtures will be under the control of You, and agree to keep the Apartment and any Garage, Parking, or Storage Unit, together with the fixtures and equipment therein, in a clean, slightly and sanitary condition. You agree to provide notice to Landlord of the existence of any water intrusion, mold, damage, or imminently dangerous, hazardous, unsanitary, or unhealthy condition in the Apartment or on the Premises immediately upon discovery of such condition by You.

16.2 Landlord will make necessary repairs to the Apartment and any Garage, Parking, or Storage Unit with reasonable promptness after receipt of notice from You. Any delay by Landlord in making necessary repairs shall not be deemed unreasonable if the delay is due to circumstances falling outside of Landlord's control, including the availability of necessary parts, personnel, or contractors, or the effects of adverse weather. If You feel Landlord has failed to make repairs with reasonable promptness, Landlord shall be deemed to have no knowledge of such failure until Landlord receives written notice from You detailing the failure.

16.3 If any damage, beyond normal wear and tear, is caused by You or Your Occupants, guests or invitees, You agree to pay Landlord the cost of repair as additional rent with the next rent payment or, if this Lease has been terminated, immediately upon presentation of such costs to You.

16.4 You may not remodel or structurally change the Apartment and any Garage, Parking, or Storage Unit, nor remove any fixture or equipment therefrom.

16.5 You may not custom paint any or part of the Apartment and any Garage, Parking, or Storage Unit unless You provide to Landlord advance written notice of the name and brand of paint color and obtain Landlord's written permission to proceed. You will be responsible for any cost associated with returning the Apartment and any Garage, Parking, or Storage Unit to the original color or other color of Landlord's choosing.

16.6 Insect or Bug Infestation

16.6.1 You agree that You have inspected the Apartment and that there are no insect or bug infestations currently in the Apartment and that You will immediately notify Landlord of any insect or bug infestation in the Apartment or affecting You or Your personal property, specifically including, but not limited to, "bed bugs" (including *Cimex Lectularius* and all other name variants).

16.6.2 You agree to reimburse any costs incurred by Landlord to treat the Apartment for bed bugs or any other pest, including any costs Landlord incurs associated with treating the Premises, neighboring apartments, and personal property arising out of pests which You introduced to the Apartment or for which You are otherwise responsible. All costs of extermination of bed bugs and other pests for which You are responsible shall be considered damages exceeding normal wear and tear and shall be due as additional rent. A determination of the cause or source of the infestation or presence may occur after treatment.

16.6.3 You agree to comply with any reasonable plan to treat, exterminate, or otherwise eradicate insects, bugs, pests, rodents, or other vermin from the Apartment or Premises. Such a plan may require: (a) treatment by You, with heat, cold, chemicals, or otherwise (as specified by Landlord), of some or all of Your personal property; (b) immediate temporary or permanent removal by You of some or all personal property from the Apartment or Premises; or (c) treatment of personal property which is allowed to remain in the Apartment or Premises. Your failure to comply with any such plan shall constitute a material breach of this Lease.

16.6.4 Although You may be required to treat some or all of Your personal property, You agree that You will not try to treat the Apartment or Premises for any infestation on Your own and that Landlord has the full right to select a qualified exterminator.

16.6.5 You agree not to bring any personal property into the Apartment that You know or reasonably should know or suspect contains bed bugs.

16.7 You are hereby notified and understand that, during the term of this Lease, including any extension or renewal hereof, rehabilitation, repair, and

maintenance projects may be conducted on the Premises, including in the Apartment, common areas, amenities, parking areas, and on the exterior and interior of buildings. Landlord is not obligated to undertake or continue any particular project. The possibility of any project has not impacted Your decision to enter into this Lease. If a project occurs, such project will continue for as long as necessary until terminated or completed in Landlord's sole discretion. Such projects may, at times, create unfavorable conditions, including but not limited to: obstruction of common hallways and breezeways; obstruction of parking areas; obstruction of balconies, decks, and windows; temporary or permanent closing or changes to amenity areas; limited use of elevators; and dust, debris, odors, and noise. You acknowledge that You may experience unfavorable conditions related to such projects and You agree that such conditions, individually or collectively, will in no way constitute a breach of this Lease, including the covenant of quiet enjoyment, or serve as a basis for any claim by You against Landlord for constructive eviction or a reduction in rent, except to the extent the Apartment is rendered untenantable due to Landlord's alterations. You further acknowledge that, even in the absence of construction, there is still the potential for dust, noise, odor, and other unfavorable conditions and that these circumstances will in no way constitute a breach of this Lease, including the covenant of quiet enjoyment, or serve as basis for any claim by You against Landlord for constructive eviction or a reduction in rent. You further agree, that in any of the instances described in this Section 16.7, Landlord reserves the right to terminate Your Lease and/or relocate you to another Apartment.

17. SECURITY ACKNOWLEDGMENT:

17.1 You have responsibility for Your safety and security. Landlord does not market, represent, or guarantee that the Apartment or the Premises are safe from crime or that Landlord provides security services and devices that ensure the safety of You, Your Occupants, guests, or invitees or for Your or their property. You agree that Landlord is not responsible for the crimes of others, the actions of third parties, or any damages or injuries caused by other residents, guests, intruders, or trespassers. You are aware of the risk of crime against You and, to the greatest extent allowed by law, choose to assume all such risk.

17.2 While Landlord may choose to provide notices of crimes or offenses believed to have been committed on or near the Premises, Landlord is not obligated by any specific provision of law to warn You of crime, to provide specific kinds of security, or to take specific steps to reduce the risk of crime on the Premises. Landlord is not required to research and notify You of what crimes may have occurred at the Premises and will not necessarily have actual knowledge of every crime committed or reported to law enforcement agencies.

17.3 You agree that Landlord may send You notices of crimes or other incidents believed to have occurred on or near the Premises via email or electronic communication, despite any election that You may have made, or may in the future make, to opt out of other email or electronic communication from Landlord. In the alternative or in addition to email, You agree that Landlord, in its sole discretion, may provide notices of crimes (as an alternative or in addition to email notices) by posting such notice in certain common areas of the Premises, on Your door, and/or on the Resident Portal.

17.4 Landlord has no obligation to obtain criminal background checks on any person living, working, or visiting on the Premises. If Landlord obtains a criminal background check on a person on the Premises, it does not imply that Landlord will obtain any other background check on any other people on the Premises and does not obligate Landlord to notify You that Landlord obtained a criminal background check or to notify You of the contents or information contained in any such report. Landlord makes no representation or warranty, and cannot make any representation or warranty, that any resident, occupant, worker, guest, or invitee on the Premises does not have a criminal background.

17.5 You agree that You will inspect the Apartment continuously after occupancy to make sure that any Landlord-provided smoke detector(s), fire extinguisher, and door and window locks are adequate and in good working order. You specifically agree to test all smoke detector(s) in the Apartment no less frequently than monthly. You promise to give immediate written notice to Landlord if You determine that any of these items, or any other item affecting safety or security of the Apartment or Premises, need repair or replacement. Provision of any items or services that could relate to community safety does not in any way obligate Landlord to provide for the safety or security of You, Your Occupants, Your guests, Your invitees, or Your personal property.

17.6 While courtesy officers may reside within the Premises or temporary guard patrols may take place, these individuals, while acting in that capacity, do not have any law enforcement powers and they are not provided for Your personal safety or security. Courtesy officers engaged by Landlord have limited hours and limited duties specifically related to protecting Our property and enforcing the laws that keep an orderly community. We have the right at any time to modify, reduce, or cease the use of courtesy officers without notice to You. You should not rely upon the presence of Landlord's courtesy officers for your personal safety and You agree to look solely to public police authorities for the security and protection of You, the Occupants and any Guests. You agree to take reasonable steps to protect Your own safety and property from damage or injury. In the event of loss or injury due to criminal activity in the Apartment or on the Premises, You agree to look solely to Your insurance against such losses and agree to hold Landlord harmless from any claims for damage due to criminal acts.

17.7 If the Apartment has an individual security system in it, Landlord did not necessarily install, design, or manufacture the security system, and Landlord does not activate, operate, maintain, or monitor the security system. You agree that Landlord shall have no liability whatsoever with respect to the installation, design, manufacture, use, operation, maintenance, monitoring, effectiveness, or functionality of the security system. It is Your decision whether to activate the system, and any such activation must be arranged through an independent security company under an agreement with it. In the event You activate an individual security system, You shall without delay provide Landlord with the name of the security company that has installed, will install, or monitors the system, any codes or passwords, as well as any other information that Landlord may request regarding the system, its operation, or maintenance. You agree that it is Your responsibility to learn from the security company how to properly operate the security system, and You understand that the security company is solely responsible for all aspects of the security system. Whatever amounts the security company charges You for the use of the security system are payable directly to that company and You, not Landlord, are responsible for the payment of such charges. Landlord is not responsible for the acts or omissions of the security company and does not guarantee or warrant the services of the security company in any respect. You agree to hold Landlord harmless from any and all claims for losses of any type arising from any aspect of the security system, and You agree to look to Your own insurance for any loss due to personal injury, death, or property damage.

18. SURRENDER; ABANDONMENT:

18.1 You will have surrendered the Apartment if (1) all keys to the Apartment have been delivered to Landlord or Landlord, exercising its reasonable judgment in accordance with applicable law, determines that the Apartment is not being occupied and (2) the Lease End Date has passed or the Lease has been terminated by You or by Landlord according to its terms.

18.2 You will have abandoned the Apartment if You have not paid Landlord all monies due and Landlord, exercising its reasonable judgment, determines that (1) the Apartment is not being occupied and (2) You have no intention of returning.

18.2.1 You will have abandoned the apartment ten (10) days after it becomes known to Landlord that you, as the sole resident, are deceased.

18.3 You agree that, for purposes of both surrender and abandonment, Landlord may use any or all of the following indicia in determining whether the Apartment is not being occupied: removal of substantially all personal property from the Apartment, failure to pay rent or other charges, discontinuance of any utility service, failure to respond to any notices, phone calls, correspondence, or other communications from Landlord, reduction or lack of use of controlled access devices associated with the Apartment or Premises.

18.4 Surrender or abandonment of the Apartment without properly ending this Lease and without giving proper notices to end this Lease is a serious default and terminates Your right of possession to the Apartment, as well as Your right to use any Parking, Garage, or Storage Unit rented under this Lease. Following surrender or abandonment, Landlord may exercise any and all legal rights and remedies without limiting any other rights or remedies and You shall remain liable for all Lease obligations through the expiration of the Lease term or the Lease End Date, whichever is later. Any damages caused by surrender or abandonment of the Apartment will be due as additional rent under this Lease.

18.5 Following surrender or abandonment, Landlord shall have the right, without notice, to: (1) secure the Apartment, Garage, or Storage Unit with new locks; (2) store or dispose of any personal property or possessions left on the Premises by You or Your Occupants, guests or invitees; or (3) re-rent the Apartment, Parking, Garage, or Storage Unit for new residency. Landlord may perform any of these options without filing a court action seeking a dispossession warrant, writ of possession, or similar court order.

18.6 You agree that Landlord shall have no liability for any actions taken to secure the Apartment, Garage, or Storage Unit; obtain possession of the Apartment, Garage, or Storage Unit; or store or dispose of any personal property or possessions found in the Apartment, Parking, Garage, or Storage Unit after Landlord deems the Apartment, Parking, Garage, or Storage Unit to have been surrendered or abandoned.

18.7 You acknowledge and agree that Landlord's acts or failure to act with regard to securing the Apartment, Parking, Garage, or Storage Unit; obtaining possession of the Apartment, Parking, Garage, or Storage Unit; or storing or disposing of any personal property or possessions found in the Apartment, Parking, Garage, or Storage Unit under circumstances which are, or may indicate, surrender or abandonment, are a contractual matter to which You have given Your consent, and any alleged breach shall not give rise to a claim in tort nor to a claim for punitive damages.

18.8 Animals removed after surrender, abandonment, or eviction may be kennelled at Your expense or turned over to local authorities or humane societies.

19. LANDLORD'S PERMISSION OR CONSENT:

If any provision of this Lease requires the permission or consent of Landlord as a condition to any act by You, such permission or consent must be in writing and may be granted or withheld in the sole discretion of Landlord, may contain such conditions as Landlord deems appropriate, shall be effective only so long as You comply with such conditions, and may be modified, revoked, or withdrawn by Landlord at any time at Landlord's sole discretion, upon written notice to You.

20. DISCLOSURE:

20.1 Mid-America Apartments, L.P., whose address is 6815 Poplar Ave., Suite 500, Germantown, TN 38138 is either the Premises owner or is authorized to act on behalf of the Premises owner with respect to this Lease, to manage the Apartment and the Premises, and is the Premises owner's duly designated agent for service of process with respect to any matter arising under this Lease.

20.2 You agree that Landlord (periodically, at any time, and from time to time during the term of this Lease or any extension or renewal hereof) may obtain a background report on You, an Occupant, or any guest, including but not limited to, information as to Your credit and criminal history, in connection with this Lease and that the Lease may be non-renewed based on information contained in the reports. During and after the term of this Lease, You consent to Landlord furnishing data about You and Your relationship with Landlord to one or more credit reporting agencies.

20.2.1 Landlord may provide to any third party Your contact information, including, without limitation, Your name, email address, phone number and Apartment address, as well as any additional information regarding the Apartment or Your use of the Apartment, including, without limitation, the apartment community at which the Apartment is located, the number of bedrooms in the Apartment, the size or measured area of the Apartment, whether You keep an animal in the Apartment, the date Your Lease or the term of Your Lease or Your occupancy of the Apartment commences or expires, the date you surrender possession of the Apartment, whether You or Landlord have notified the other of an election not to renew the term of this Lease, and whether You become a former resident of the Apartment. By signing this lease, to the fullest extent permitted by applicable law, You knowingly and voluntarily waive and release any and all claims that You may now or hereafter have against Landlord with regard to any such disclosure of any such information. Further, If You elect to engage with any such third party, including without limitation, participation with any vendor or service provider who offers or advertises goods or services through such third party, such engagement is solely between You and the applicable third-party, vendor and/or service provider. Landlord shall have no liability, obligation or responsibility for any such interaction or transaction between You and any such third-party, vendor and/or service provider. You should make whatever investigation You feel is necessary or appropriate before proceeding with any online or offline transaction with any third party, vendor and/or service provider. You are solely responsible for Your dealings with any third party, vendor and/or service provider, including, without limitation, the delivery of and payment for goods and services.

21. FIRE OR OTHER CASUALTY:

If the Apartment is made uninhabitable by fire or other casualty not the fault or negligence of You, Your Occupants, guests, or invitees, this Lease may, at Our sole discretion, be terminated if you immediately vacate the Apartment and provide written notice within seven (7) days of your intent to terminate the Lease, Your Security Deposits will be returned to You (less any amount of damage attributable to You, as described above), and no Early Termination Fee or Additional Termination Fee shall be due from You. If the Apartment and/or Premises are made uninhabitable by fire or other casualty caused by You, Your Occupants, guests, or invitees, You must surrender possession of the Apartment, but You may still remain liable for damages and future rent under this Lease.

22. INDEMNIFICATION:

You release Landlord from liability for and agree to indemnify and hold harmless Landlord, any of its employees, managers, agents, officer, director,

shareholders, property managers, owners and their respective successors and assigns (collectively "Landlord Parties") against all losses incurred by Landlord as a result of:

22.1 Failure by You, Your Occupants, guests or invitees to fulfill any condition of this Lease;

22.2 Any damage or injury, happening in or about the Apartment or Premises, to You, Your Occupants, guests, or invitees or such person's property unconnected with Landlord's or Landlord's parent, subsidiary, and affiliate companies' gross negligence, fault, or violation of any applicable laws;

22.3 Your failure to comply with any requirements imposed by any governmental authority; and/or

22.4 Any judgment, lien or other encumbrance filed against the Apartment or Premises as a result of Your actions.

22.5 Nothing herein or elsewhere in this Lease shall be deemed to exempt Landlord from liability or limit the liability of Landlord from damages to person or property caused by or resulting from the negligence of Landlord (or Landlord's agents, servants or employees) in the operation, care or maintenance of the Apartment or any facility upon or portion of the Premises of which the Apartment is a part.

23. FAILURE OF LANDLORD TO ACT:

Failure of Landlord to insist upon strict compliance with the terms of this Lease shall not constitute a waiver of any violation or default by You or limit Landlord's rights or remedies in any way.

24 ARBITRATION; CLASS ACTION WAIVER; WAIVER OF A JURY TRIAL; ATTORNEY FEES.

24.1 *Definitions.* For purposes of this Section 24, the following terms will have the meanings specified:

The term "**AAA**" means the American Arbitration Association.

The term "**Claim**" means and includes any claim, dispute, action, proceeding, cause of action or controversy of every kind and nature, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property) or otherwise (whether for damages or for injunctive or other legal, equitable or other relief, or whether arising under federal, state, local, common, statutory, regulatory, constitutional or other law) whether now existing or arising in the future between You and Landlord arising from or relating to Your Lease or any prior lease between the parties, the Apartment, the Property, use of Your Apartment and/or common areas, as well as the relationship resulting from this Lease, including the validity, enforceability, or scope of this Section 24, and also including Claims by or against any third party providing any product, service or benefit in connection with the Lease (including, but not limited to, debt collectors and all of their agents, employees, directors and representatives), but does not mean or include Excluded Claims (defined below). As used in this Section 24, "You" and "Landlord" also includes any parent, wholly or majority owned subsidiaries, affiliates, any licensees, predecessors, successors, assigns, and purchasers of any accounts, all agents, employees, directors, and representatives of any of the foregoing and any third party providing any apartment, product, service, or benefit in connection with this Lease.

The term "**Excluded Claims**" means any action, proceeding or cause of action by Landlord for Your eviction from the Apartment, to recover possession of the Apartment, or any action, proceeding or cause of action by You or Landlord, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property) or otherwise, in which the aggregate amount of damages, including exemplary damages, punitive damages, attorneys' fees and all other forms of monetary damages, sought does not exceed \$10,000.00. **An action on an Excluded Claim shall be brought in a court of competent jurisdiction in the state and judicial district in which the Property is located.** You further agree that any Excluded Claims brought by you shall be on an individual basis and not on a class representative basis as more fully set forth in Section 24.3 (Class Action Waiver).

The term "**Rules**" means the Commercial Arbitration Rules of the American Arbitration Association.

The term "**FAA**" means the Federal Arbitration Act, Title 9 of the United States Code.

24.2 *Agreement to Arbitrate Disputes.* This Lease is made pursuant to a transaction involving interstate commerce. **ALL CLAIMS THAT ARISE BETWEEN YOU AND LANDLORD WILL BE RESOLVED THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE FAA AND THE RULES. YOU AND LANDLORD AGREE AND UNDERSTAND THAT WE MUTUALLY CHOOSE BINDING ARBITRATION INSTEAD OF LITIGATION TO RESOLVE ALL CLAIMS. THIS MEANS THAT UNLESS YOU OPT OUT OF THIS SECTION 24.2 (AGREEMENT TO ARBITRATE DISPUTES), NEITHER YOU NOR LANDLORD WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT EXCEPT TO THE EXTENT PROVIDED HEREIN WITH RESPECT TO EXCLUDED CLAIMS. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE OR MAY BE LIMITED IN ARBITRATION, INCLUDING YOUR RIGHT TO APPEAL AND YOUR ABILITY TO PARTICIPATE IN A CLASS ACTION.** In the event that this Section 24.2 (Agreement to Arbitrate Disputes) is found to be invalid and/or unenforceable for any reason whatsoever, any and all Claims shall be brought in a court of competent jurisdiction in the state and judicial district in which the Property is located and shall be tried without a jury.

24.2.1 *Initiation of Arbitration Proceeding/Selection of Arbitrator.* Any Claim will be resolved, upon the election by You or Landlord, by arbitration pursuant to this Section 24.2 and the Rules, except to the extent the Rules conflicts with this Lease, in which case, the provisions of this Lease shall control. For a copy of the Rules, to file a Claim or for other information about the AAA, You may contact AAA at 335 Madison Avenue, New York, NY 10017, www.adr.org. In addition to the AAA, Claims may be referred to any other arbitration organization that is mutually agreed upon in writing by You and Landlord, or to an arbitration organization or arbitrator(s) appointed pursuant to Section 5 of the FAA, provided that any such arbitration organization and arbitrator(s) will enforce the terms and restrictions set forth herein. If You and Landlord cannot agree on the selection of an arbitrator within fifteen (15) days after the request for arbitration, the AAA shall select an arbitrator. The determination of the arbitrator in such arbitration shall be final and binding and may be enforced in any court of competent jurisdiction.

24.2.2 *Arbitration Procedures.* The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations as modified by this Lease and will honor claims of privilege recognized by law. Federal or state rules of civil procedure or evidence will not apply. Written requests to expand the scope of discovery rest within the arbitrator's sole discretion and will be determined pursuant to the applicable Rules. The arbitrator will take reasonable steps to preserve the privacy of individual, and of business matters. Judgment upon the written arbitral award may be

entered in any court having jurisdiction. Subject to the right of appeal under the FAA and/or Section 15-48-130 and Section 15-48-140 of the South Carolina Code of Laws (1976), as amended, the arbitrator's written decision will be final and binding unless You or we take an appeal from the award by making a dated, written request to the arbitration organization within thirty (30) days from the date of entry of the written arbitral award. A three-arbitrator panel administered by the same arbitration organization will consider anew any aspect of the award objected to by the appellant, conduct an arbitration pursuant to its Rules and issue its decision within one hundred twenty (120) days of the date of the appellant's written notice. The panel's majority vote decision will be final and binding.

24.2.3 Location of Arbitration / Payment of Fees. The arbitration will take place in the federal judicial district where the Property is located. Initially, You will only be responsible for paying Your share, if any, of the arbitration fees required by the applicable Rules, which amount will not exceed the filing fees that You would have incurred if the Claim had been brought in the appropriate state or federal court closest to where the Property is located. Initially, Landlord will pay the remainder of any arbitration fees. Notwithstanding the foregoing, the arbitrator shall assess the cost of arbitration against the party which is not the substantially-prevailing party in such arbitration.

24.3 Class Action Waiver and Other Restrictions. You agree that You shall not have the right to participate as a representative or a member of any class of claimants pertaining to any Claim or Excluded Claim regardless of whether any such Claim or Excluded Claim must be arbitrated or may be pursued in any court. Arbitration or litigation of any Claim or Excluded Claim will proceed solely on an individual basis without the right for any Claims or Excluded Claims to be arbitrated or litigated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. As to Claims subject to mandatory arbitration, the arbitrator's authority to resolve and make written awards is limited to Claims between You and Landlord alone. Neither Claims nor Excluded Claims may be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have a preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration.

24.4 Waiver of Jury Trial. Landlord and You agree that any action, proceeding or cause of action on an Excluded Claim or any action, proceeding or cause of action in which Section 24.2 (Agreement to Arbitrate Disputes) is found to be invalid and/or unenforceable shall be brought in a court of competent jurisdiction in the state and judicial district in which the Property is located and shall be governed by and construed in accordance with the laws of the state where the Property is located, without giving effect to the principles of conflict of laws thereof and **THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL, THE INSTITUTION AND MAINTENANCE OF AN ACTION FOR JUDICIAL RELIEF IN A COURT SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY TO COMPEL ARBITRATION OF CLAIMS OTHER THAN EXCLUDED CLAIMS, INCLUDING THE FILING OF A COUNTERCLAIM IN A SUIT BROUGHT BY YOU PURSUANT TO THIS PROVISION.**

24.5 Survival. The provisions of this Section 24 will survive termination of this Lease, as well as voluntary payment in full of Your account, any debt collection proceeding by or between You and Landlord, and any bankruptcy by You or Landlord. If any portion of this Section 24 is deemed invalid or unenforceable for any reason, it will not invalidate the remaining portions of this Section 24 or the Lease, each of which will be enforceable regardless of such invalidity.

24.6 Attorney's Fees. The prevailing party in any Claim or Excluded Claim shall be entitled to receive from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs in such proceedings, including, without limitation, its reasonable attorneys' fees and expenses.

24.7 Limitation of Claims. You agree that any Claim or Excluded Claim that You have against Landlord shall be barred unless commenced in arbitration (or, if applicable, in court) within one (1) year of the date that you suffered any alleged harm, damage or injury, regardless of the date that you discovered or should have discovered your alleged harm, damage or injury. You waive any statute of limitations to the contrary.

24.8 Opt-Out Process. You may choose to opt out of and not be subject to the provisions of Section 24.2 (Agreement to Arbitrate Disputes) but only by following the process set forth below. If You do not wish to be subject to Section 24.2 (Agreement to Arbitrate Disputes), then You must notify Landlord in writing within thirty (30) calendar days of the date of this Lease at the following address: **Mid-America Apartments, L.P., 6815 Poplar Avenue, Ste. 500 Germantown, TN 38138 Attention: Opt Out Coordinator.** Your written notice must include Your name, address, Property name, last four digits of your social security number, Your Lease Start Date, and a statement that You wish to opt out of Section 24.2 (Agreement to Arbitrate Disputes). Your notice to opt out will be effective only upon receipt by Landlord and will only apply to this particular Lease and not to subsequent or previous agreements.

25. NOTICES:

25.1 Except as otherwise required by applicable law or set forth in this Lease, any notice required by this Lease shall be in writing and shall be deemed to be given:

25.1.1 By Landlord to You if (a) delivered personally, (b) sent to any email address on file with Landlord as provided by You, (c) mailed by Registered or Certified Mail to the Apartment pursuant to South Carolina Code Section 27-40-240, or (d) if You have vacated, mailed by U.S. First Class Mail to the last known address for You or any one of You.

25.1.2 By You to Landlord if delivered to and received by a Landlord employee on duty in the property management office for the Premises listed in this Lease.

25.2 If at any time You provide an email address or telephone number (whether wireless or a landline) to Landlord, You give Your permission and consent to receive emails, pre-recorded/artificial voice messages, telephone calls on a recorded line, and text messages (including automated texts sent using an automatic telephone dialing system, mobile push notifications, or notices and messages through other services made available by Landlord or one of its vendor partners at the email or telephone number (whether wireless or landline) that You have provided to Landlord or its vendor partners, or at any number forwarded or transferred from that number. These communications may include, but not be limited to: information, promotions and offers about Landlord's communities, Your apartment unit, maintenance or other services you have requested, security alerts, lease renewal offers and options, reminder messages or information regarding upcoming events, requested services, amenities schedules or opening/closing dates and times, rental payment due dates, other payment due dates, and information about events, programs and services that might be of interest to You. You understand that providing Your consent to receive such communications is not a condition of receiving services or entering a rental agreement with Landlord and that message and data rates may apply. By providing Your email address or telephone number, You represent that You have the authority to receive text messages on the email address or telephone number that You provided or from which You contact Landlord. You agree to notify Landlord regarding any changes to Your telephone number. You understand that You may choose to opt out of certain communications should You elect to do so; however, You understand that Your opt-out will not apply to and You may continue to receive certain time-sensitive and relevant communications regarding Your lease, account, transactions, requested

services, community safety, and amenities closures.

25.3 Any notice that Landlord gives to any Resident in this Lease, or any adult Occupant, or sent to any email address on file as provided by You, constitutes notice to all persons named as a Resident in this Lease.

26. POSSESSION:

If Landlord causes a delay in delivery of possession of the Apartment until after the Lease Start Date, rent shall be abated on a daily basis until possession is granted. If such delay extends beyond seven (7) days after the Lease Start Date, then You may terminate this Lease and receive full refund of any deposit and prepaid rent. Landlord shall not be liable for damages for delay in possession. If Landlord is repairing or cleaning the Apartment and/or Premises on the Lease Start Date in a manner that does not prevent You from occupying the Apartment, You will occupy the Apartment, rent will not be abated, and You will not have the right to terminate this Lease, except as otherwise set forth herein. The Apartment will be considered to be in clean, safe and good working condition at the time You take possession of the Apartment unless You notify Landlord otherwise in writing within seventy-two (72) hours after You take possession of the Apartment.

27. LENDER'S RIGHTS; GOVERNMENT ACTION OR CASUALTY:

27.1 Landlord may use or is using the Premises as security for a debt or mortgage. Your rights under this Lease shall at all times be subject to and subordinate to any deed to secure debt, mortgage, or any other security instrument which is now or shall hereafter be placed on the Premises. If requested, You shall execute promptly any certificate that Landlord may request specifically to implement the subordination of this Lease.

27.2 If a city, state, or other law enforcement or government agency condemns the Apartment, the portion of the Premises where the Apartment is located, or any material portion of the Premises, or if any of these areas are destroyed, Landlord may terminate this Lease upon ten (10) days written notice (or such other period as may be required by applicable law) to You or Landlord may elect to make any necessary repairs to the Apartment or portion of the Premises where the Apartment is located. If there is damage to Your Apartment that would make Your continued occupancy unsafe during the period of repairs, in Landlord's sole determination, Landlord reserves the right to terminate Your Lease and/or relocate You to another Apartment.

28. GENDER AND USE OF "FOR EXAMPLE":

In all references herein to "Resident" or "You" or "Your," the use of the singular number is intended to include the appropriate number as the text of this Lease may require, and all gender references to male or female are intended to be gender neutral. Whenever the words "for example" are used and are followed by a list, the list is by no means limited to the listed words, is not all-inclusive, and is used in place of the term "including without limitation."

29. NO ESTATE IN LAND:

This Lease creates only the relationship of landlord and tenant between Landlord and You. You have a usufruct only and not an estate for years. No estate shall pass out of Landlord.

30. ENTIRE AGREEMENT AND SEVERABILITY:

30.1 This Lease, any addenda, and any incorporated documents, including without limitation, Rules and Regulations, constitute the entire agreement between the parties and no prior, concurrent, or subsequent oral statements shall be binding.

30.2 No representative of Landlord is authorized to make any representations, warranties, or agreements other than as expressly set forth herein.

30.3 This Lease may only be modified in an amendment signed by all parties hereto.

30.4 If any provision of this Lease is invalid, such provision shall be considered deleted from this Lease, and shall not invalidate the remaining provisions.

30.5 You understand that execution of this Lease involves the waiver and release of valuable legal rights.

30.6 A copy of an original signature transmitted by facsimile, a scanned copy of an original signature transmitted by electronic mail, e.g. via a ".pdf" file, or an electronically signed document will be deemed to be an original. This Lease may be executed in two or more counterparts, each of which, whether existing electronically or in paper form, shall be deemed to be an original, and such counterparts shall together constitute the same agreement.

30.7 This Lease shall be voidable by Landlord if You, or one of You, cannot or will not produce to Landlord the original government-issued identification(s) used by You during the application process.

31. FAIR HOUSING:

Landlord is an equal opportunity housing provider and complies with all federal, state and local fair housing laws and regulations. Landlord does not discriminate in any way based upon race, religion, color, sex, national origin, familial status, disability, age, marital status, sexual orientation, or any other classification protected by federal, state, or local law applicable in the jurisdiction where the Premises is located.

32. SUCCESSORS AND ASSIGNS:

Subject to Paragraph 27.1, all provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the successors and assigns of Landlord. Any sale or conveyance of the Premises or any part thereof will not affect this Lease or any of Your obligations under this Lease, but under a sale or conveyance Landlord will be released from all obligations under this Lease and You will look solely to the new owner of the Premises for the performance of Landlord's duties under this Lease from and after the date of the sale or conveyance.

33. MOLD:

You are hereby notified that the Apartment, including any Garage or Storage Unit, may be subject to the growth of mold or mildew if not properly cleaned and maintained, if leaks or other water damage occur, or if excess moisture is allowed to accumulate. If moldy materials are allowed to grow, exposure

to mold organisms and associated products can occur through inhalation or direct physical contact. Most molds and their associated products that are routinely encountered are not hazardous to healthy individuals. Molds and their associated products are commonly found in all outdoor and indoor air of apartments. In addition, the presence of mold or excessive moisture may damage the Apartment or Your property. To reduce the chance of such potential conditions or exposures, You must take steps to prevent mold growth, must arrange for proper actions if mold or excessive moisture is discovered, and must comply with the other requirements set out in this Lease. You acknowledge that the most reliable methods for identifying the presence of mold or mildew or conditions favorable to their growth are: (i) routine visual inspections for mold growth, signs of leaks, water damage, and wetness; and (ii) odor inspections for sources of mold odors. Whenever leaks, water damage, wetness, mold, or mildew are identified, they must be addressed immediately. You agree to clean and maintain the Apartment in a manner that prevents mold or mildew and prevents conditions favorable to their growth. Possibly the single most important way of preventing or controlling mold is preventing excessive moisture build up within the Apartment or any water intrusion into the Apartment. You agree to uphold this responsibility in part by complying with the following list of responsibilities:

33.1 You shall take all reasonable measures to control the moisture level of the interior of the Apartment by immediately reporting to Landlord any water intrusion, such as building leaks, plumbing leaks, drips or "sweating" pipes, other wetness, water damage, or elevated moisture levels.

33.2 You shall limit the sources of indoor humidity by increasing fresh air ventilation when outdoor air is not humid, warming cold surfaces where condensation occurs and setting the thermostat so that air will circulate if the indoor temperature is eighty (80) degrees Fahrenheit or higher.

33.3 You shall use bathroom fans while showering or bathing and shall immediately report to Landlord any non-working fan or window.

33.4 You shall use all reasonable care to close all windows and other openings in the Apartment to prevent rain or other forms of precipitation from penetrating into the interior of the Apartment.

33.5 You shall use exhaust fans whenever cooking, dishwashing, or engaging in water-based or other wet cleaning techniques.

33.6 You shall clean and dry any personal property within 24 to 48 hours of water intrusion and shall monitor those items to verify that no mold or mildew growth occurs.

33.7 You shall notify Landlord immediately upon discovery of any damp or wet building materials, such as wet wallboard or ceiling tiles.

33.8 You shall conduct a visual and odor inspection of the Apartment for the presence of mildew, mold growth, leaks, or water damage at least once per month. The inspection shall include, but shall not be limited to, an examination of: (a) window frames and carpets; (b) ceiling tiles, and any currently or formerly damp or wet material made of cellulose (such as wallpaper, books, papers, and newspapers); (c) all indoor plants; and (d) Your personal property.

33.9 You shall perform regular and routine cleaning of caulking around the sinks, bathtubs, showers, and windows by using common household cleaning products or a bleach and water solution if moisture is condensing or sitting on the caulking and causing mold growth.

33.10 You shall immediately report to Landlord if mold or mildew growth is noted on surfaces inside the Apartment, and the growth affects more than a very small area that You will clean and dry promptly (a very small area is generally not more than one square foot). Most very small areas of mold can be cleaned by using water and detergent or bleach and drying the surface completely afterwards. If in doubt about the size of the area or Your ability to clean it properly or without damaging the Apartment, report the mold immediately so that Landlord can address it. If the mold growth is in an area that is not ordinarily subjected or exposed to moisture or water, You must report the mold to Landlord so We can investigate the source of moisture.

33.11 You also must report to Landlord immediately whenever mold, mildew, leaks, water damage, or other evidence of moisture problems are observed anywhere in the Apartment.

33.12 You agree not to bring any personal property into the Apartment that You know or suspect contains mold, especially "soft possessions" which have fabric or porous surfaces such as sofas, mattresses, and pillows. If You discover evidence of mold on such items and need help in arranging for disposal, notify Landlord.

33.13 Breach of this mold provision constitutes a material breach of this Lease.

34. RULES AND REGULATIONS:

Landlord has established certain rules and regulations to enhance Your resident experience ("Rules and Regulations"). Some of these Rules and Regulations appear in this Lease. Others may be posted in recreational, storage, service, and amenity areas. Failure to adhere to Rules and Regulations, by You, Your Occupants, or Your guests or invitees will constitute a material breach of this Lease. You agree and understand that additional Rules and Regulations may be established by Landlord at any time during the initial or a renewal term. Such additional Rules and Regulations shall be effective thirty (30) days after being delivered to You pursuant to the notice provision in Paragraph 25.1 or otherwise conspicuously posted on the Premises. You acknowledge that the availability of amenities is subject to change in Landlord's sole discretion and that any such change shall not constitute a breach of this Lease.

34.1 Parking:

34.1.1 You understand that Landlord may contract with third parties to manage or operate the parking areas, including but not limited to providing towing and security services.

34.1.2 You agree to abide by all parking regulations established by Landlord.

34.1.3 The Parking area(s) on the Premises may have one or more vehicle entry barrier such as a door, gate, or arm. Access through such entry barriers should be limited to ONE VEHICLE AT A TIME. Do not attempt to "tailgate" through any entry barrier. Assume every entry barrier will lower or close after each vehicle. Always use Your controlled access device prior to proceeding through the entry barrier. Vehicle entry barriers may malfunction. Tailgating could cause damage to the entry barrier or Your vehicle. Such action may also cause personal injury or death. You agree and consent that Landlord is not liable for any damages or injuries incurred as a result of a malfunction or misuse of the vehicle entry barrier.

34.1.4 All vehicles must be approved and registered with Landlord. You shall, without delay, inform management if You have a change in vehicle.

34.1.5 No campers, recreational vehicles, boats, trailers, mobile homes, buses, commercial vehicles or mechanized equipment may be allowed on the Premises without Landlord's prior written approval. If Landlord has designated spaces for You to park or areas for boats, trailers, campers or other vehicles, You agree to park only in those spaces so designated.

34.1.6 Improperly parked, non-operable, abandoned, or unauthorized vehicles or equipment are not permitted on the Premises and may be booted or removed by Landlord at the expense of You or any other person owning same, for storage or public or private sale, at Landlord's option with no right of recourse against Landlord therefore. The definition of improperly parked, non-operable, abandoned, or unauthorized vehicles or equipment shall be liberally construed in favor of Landlord. In addition, but not limited to their generally accepted definitions, "improperly parked", "non-operable", "abandoned", and "unauthorized" shall also mean vehicles or equipment which:

34.1.6.1 Are noxious, offensive, unsightly, unpleasant or unkempt such as could reasonably affect the appearance or rental marketability of the Premises or such as could reasonably cause embarrassment, discomfort, annoyance, or nuisance to Landlord or other residents;

34.1.6.2 Are causing damage to the Premises or the parking lot, including but not limited to, oil or gas leaks, seepage or spills, and motorcycle kickstands which sink into the pavement;

34.1.6.3 Are not previously approved and registered with Landlord as required;

34.1.6.4 Are not displaying any required hangtag, decal, or other identifier provided by Landlord;

34.1.6.5 Are not properly parked between parallel lines or other lines marking spaces for parking;

34.1.6.6 Are parked in a space assigned to another resident, blocking access to any prohibited areas, designated "no parking" areas, including but not limited to, fire lanes, fire hydrants, ingress and egress travel lanes, entrances, exits, trash dumpsters or compactors, carwash bays, or maintenance or service areas;

34.1.6.7 Are on blocks or jack stands;

34.1.6.8 Appear to be in a state of disrepair;

34.1.6.9 Appear to be incapable of self-propelled movement;

34.1.6.10 Do not have a proper license tag, proper handicap hang-tag, decal, or other designation, current license decal validation sticker, current state emissions inspection sticker or minimum applicable motor vehicle insurance;

34.1.6.11 Are not owned by You; or

34.1.6.12 Are left unattended on the Premises for a period of not less than thirty (30) days without anyone having claimed ownership of it.

34.1.7 Vehicles may not be repaired or washed on the Premises, except in specifically designated areas when they are provided.

34.2 Entrances, Hallways, Breezeways, Walks and Lawns: Entrances, hallways, breezeways, walks, lawns and other public areas shall not be used for storage, gathering, or smoking, or obstructed or used for any purpose other than ingress and egress.

34.3 Balcony or Patio: Balcony or patio shall be kept neat and clean at all times without excessive furniture or personal items. No items shall be stored, hung or draped on railings or other portions of balcony or patio. You agree to properly secure any items on Your balcony to prevent such items from being blown from the balcony. You agree that You are liable for any damage caused by items blown from Your balcony.

34.4 Antennas/Satellite Dishes: Radio or television aerials or satellite dishes, no larger than one (1) meter in diameter (or approximately 3.2 feet), are permissible within the Apartment or contiguous space leased to You, e.g. a private balcony or patio. Such permission does not extend to outside windows, doors and walls, nor to antennas/satellite dishes that extend beyond a balcony railing or a patio line on a ground floor, nor can You damage the Apartment or Premises in the installation or removal. If You choose to install a satellite dish or antenna, You must (i) provide evidence of liability insurance of at least Three Hundred Thousand Dollars (\$300,000) to protect us against claims of personal injury and property damage (such insurance to meet the additional requirements of Section 10 above) and (ii) pay an additional security deposit of Three Hundred Dollars (\$300) which will be maintained in accordance with the provisions of Section 8, provided, however, if this Lease is a renewal, and You have previously paid a security deposit of less than Three Hundred Dollars (\$300), You will not be required to pay the difference to Landlord. You must keep Your aerials and satellite dishes in good working order and appearance. Landlord makes no representation that the properly installed satellite dishes servicing the Apartment will be able to receive the desired signals. You are responsible for removal of the radio or television aerials or satellite dish and all related equipment when You move out of the Apartment. You are also responsible for the cost of any repairs reasonably necessary to restore the Apartment (or contiguous space) leased to You to the condition it was in prior to the installation, ordinary wear and tear excepted.

34.5 Signs and Projections: You agree to refrain from placing and/or displaying in locations that are visible to others outside of Your apartment any signs, posters, flags, fabric or other forms of symbolic or written expression that, in Landlord's reasonable judgment, may be deemed disruptive to the apartment community. You further agree not to attach any awnings or other projections to the Premises or outside of the building of which the Apartment is a part.

34.6 Window Screens and Treatments: You agree not to remove any screens from the Apartment windows. All window treatments installed by You must present a uniform appearance with the exterior of the Premises.

34.7 Water Beds/Hot Tubs: You shall not have or keep any water beds or hot tubs in the Apartment without prior written permission of Landlord.

34.8 Combustible Materials, Heaters, and Grills:

34.8.1 You may not keep or store in the Apartment or on the Premises goods or materials of any kind or description which are combustible or would increase fire risk, nor may such items be taken to or placed in storage, balcony, patio, or garage areas. You may not burn candles anywhere on the Premises outside of Your Apartment. You may not display or ignite fireworks anywhere on the Premises.

34.8.2 You may not use gas, kerosene or electric heaters or any other heater other than Your Apartment's built-in heating system. Landlord shall not be responsible for any loss or damage due to the storage or keeping of such materials.

34.8.3 You may not use, kindle, or maintain any charcoal or liquid-filled petroleum gas or liquid fueled burners, heaters, grills, or cooking devices in the Apartment or on the Premises or otherwise in violation of law. Such devices may be used only if provided by Landlord in designated areas. This Lease specifically prohibits the use of or igniting any charcoal cooker, brazier, hibachi or grill or any gasoline or other flammable liquid or liquefied petroleum gas-fired stove, grill or similar device in the Apartment or on the Premises except as may be provided by Landlord. Additionally, the storage of gasoline powered equipment, or cooking devices using flammable or combustible liquids or liquefied petroleum gas ("LPG") as a fuel source, is prohibited in the Apartment or on the Premises except as may be provided by Landlord.

34.9 Garages and Mechanical Closets: You will not use any garage or mechanical closet, including but not limited to any attached garage or water heater or HVAC closets, for storage of any type.

34.10 Resident Liable for Actions of Your Occupants, Guests or Invitees: You are responsible and liable for the conduct of Your Occupants, guests or invitees. Acts or failure to act of Your Occupants, guests or invitees in violation of this Lease, any addenda, or Rules and Regulations may be deemed by Landlord to be a breach by You. You acknowledge and agree to communicate and explain all addenda, rules and regulations, and the terms of this Lease to Your Occupants, guests and invitees.

34.11 Conduct:

34.11.1 You agree to communicate and conduct yourself at all times in a lawful, courteous, and reasonable manner when interacting with Landlord; Landlord's employees, agents, independent contractors, and vendors; other residents, occupants, guests or invitees; or any other person on the Premises. Any acts of unlawful, discourteous, or unreasonable communication or conduct by You or Your Occupants, guests or invitees, shall be a material breach of this Lease and will entitle Landlord to exercise all of its rights and remedies for default.

34.11.2 You agree not to engage in any abusive behavior, either verbal or physical, or any form of intimidation or aggression directed at Landlord; Landlord's employees, agents, independent contractors, and vendors; other residents, occupants, guests or invitees; or any other person on the Premises. Any acts of abusive or offensive behavior whether verbal or physical by You or Your Occupants, guests or invitees, shall be a material breach of this Lease and will entitle Landlord to exercise all of its rights and remedies for default.

34.11.3 If requested by Landlord, You agree to conduct all further business with Landlord in writing.

34.11.4 You agree not to damage the Apartment or any other portion of the Premises, including but not limited to, the physical facilities, buildings, trees or landscape. You shall be liable for all acts or failure to act of Your occupants, guests or invitees which result in damages to the Apartment or the Premises. You shall remain liable to Landlord for any damages which exceed normal wear and tear and agree to pay Landlord promptly upon notice of such damages, notwithstanding whether the repairs have actually been made. Further, Your acts or failure to act which results in damages to the Apartment or Premises shall constitute grounds for termination of this Lease. Any amounts due from You because of damage exceeding normal wear and tear shall constitute additional rent.

34.11.5 You acknowledge and agree that everyday noises, sounds, odors and smells (including those from cooking) are normal occurrences in an apartment community and may penetrate Your Apartment.

34.12 Keys and Controlled Access:

34.12.1 Landlord may deliver keys to the Apartment to another person with Your prior written permission ("Key Release") specifically identifying the individual or company You intend to receive a key. It is Your responsibility to return the checked out keys to Landlord the same day or to cover the cost of changing the locks to the Apartment. You acknowledge that Landlord does not provide lock out service before or after leasing office hours. You agree to pay a reasonable fee to Landlord for re-keying locks if You request that Landlord re-key Your lock(s).

34.12.2 To the extent available, each Resident, and each Occupant if Resident requests, will receive one controlled access device of Landlord's choice. You will pay Landlord for replacement of any controlled access device that is lost, misplaced, stolen, or not returned to Landlord at termination of this Lease.

34.12.3 Landlord may, but is not required to, allow You to get one or, in Landlord's discretion, more than one, additional controlled access device for a non-refundable convenience fee to be set by Landlord. You will be responsible for replacement of any such additional controlled access device that is lost, misplaced, stolen, or not returned to Landlord at termination of this Lease.

34.13 Waste: To the extent any trash cans, dumpsters, trash chutes, or other waste disposal facilities are located on the Premises, You understand and agree that they are to be used exclusively for the disposal of Your normal household waste generated on the Premises. They are not to be used for disposal of hazardous, dangerous, toxic, or specially regulated items or wastes (such as tires, car batteries, radioactive materials, etc.), over-sized items (such as mattresses, sofas, etc.), waste of any type generated elsewhere than on the Premises, or waste of any type or any other items brought onto the Premises for the purpose of disposal. You agree to abide by any Rules and Regulations posted at such facilities regarding their use, including additional use restrictions.

34.14 Common Areas, Pools, and Other Community Rules:

34.14.1 Use of all recreational facilities and amenity areas, including pools and exercise equipment, is at Your own risk. Landlord and its employees are

not responsible for any personal or property damage, death, injury, illness, or loss suffered or sustained by residents, occupants, guests, or invitees from use of recreational facilities or amenity areas. Call 911 in case of injury and report any injury to the leasing office as soon as possible.

34.14.2 Please read and abide by any specific rules posted in each recreational area or amenity area.

34.14.3 Pool. Adequate supervision is required for non-proficient swimmers at all times while at the pool. Wear only swimwear in the pool. Individuals who are incontinent or who lack bladder or bowel control must wear a protective swim diaper or swim pants to prevent fecal contamination of the pool. Immediately report any contamination to Landlord. Glass containers are prohibited in the pool area. Dispose of all trash and waste in trash receptacles. No pets are permitted in the pool area. Do not hang or play on pool ropes, rings, hooks, or fountains. Be courteous of other swimmers near the pool; profanity, horseplay, running, diving, bicycle riding, skating, rollerblading, loud music or harassment of others is not permitted. Resident identification may be requested by Landlord at any time to assure that only residents and their guests are using the pool. As a courtesy to all residents, no more than two (2) guests per apartment are allowed at the pool at any one time. Residents must accompany their guests at all times. Landlord may require the use of identification bracelets or other device by residents and their guests while in the pool area, may limit the number of such bracelets or devices available to You, and may charge a convenience fee for those used by guests or for replacements (if Landlord, in its discretion, decides to issue replacements). Failure to use such bracelet or device shall constitute a material breach of this Lease.

34.14.4 Exercise Room. The Property may include an exercise room and exercise equipment for Your personal use. Guests must be accompanied by a resident at all times. If residents or guests cannot, due to physical condition or otherwise, safely operate the exercise equipment, they must be accompanied by a person able to provide supervision and support for the particular exercise activity. Only persons using the equipment are allowed in the workout area. Horseplay, loitering or any use of the fitness equipment for other than its intended purpose is not permitted.

34.14.5 Other Recreational Facilities. Landlord may provide tennis courts, basketball courts, sauna and steam rooms in Your Landlord community for Your personal use. Please exercise care and common sense and be courteous to other residents when using the facilities.

34.15 Laundry Facilities. If the Property includes laundry facilities for Your personal use, such facilities may be operated by an independent service and Landlord is not responsible for damaged, lost or stolen items. Please call the leasing office if You find that any of the machines are not working properly so that Landlord can arrange to have them repaired

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in person or by a person duly authorized the day and year written above.

BY SIGNING BELOW, RESIDENT ACKNOWLEDGES THAT HE OR SHE HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY TO FULLY REVIEW THIS LEASE, HAS READ THE TERMS AND CONDITIONS OF THIS LEASE, AND UNDERSTANDS THE ABOVE LISTED LEASE TERMS AND CONDITIONS. BY SIGNING BELOW, RESIDENT FURTHER AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS LEASE AS SET FORTH ABOVE.

Electronically Signed By
Sean Jones
on 6/13/2022

Authorized Representative of Mid-America Apartments, L.P.

Property phone number: 8438756409
(always call 911 for police, fire or medical emergencies)

Electronically Signed By
Marisol Kelly
on 6/9/2022

Marisol Kelly

Cleaning and Damage Costs

MAA - 6815 Poplar Ave., Suite 500 - Germantown, TN 38138 - (901) 682-6600

				Resident Charges
Kitchen				
	Dishwasher	Must be cleaned inside and out	\$12.00	
	Kitchen Sink/Disposal	Must be cleaned and stopper in place	\$10.00	
	Range Top	Must be cleaned: drip pans, stove top, outside, grease guard (back)	\$15.00	
	Microwave	Cleaned inside and out	\$12.00	
	Oven	Must be cleaned to include: bottom drawer and oven racks	\$25.00	
	Range Hood	Must be cleaned and free from grease	\$10.00	
	Refrigerator	Must be cleaned to include: top, front, sides, inside drawers and racks	\$25.00	
	Trash Compactor	Clean inside and out. New replacement bag	\$12.00	
	Replacement	Applies to all appliances. For example, if the refrigerator cannot be cleaned/deodorized to management's satisfaction, resident is responsible for full replacement	At Cost	
	Cabinets	Must be cleaned, shelf paper removed, damage to wood priced at cost	\$12.00	
	Floor	Must be swept and freshly mopped - no wax build up	\$27.00	
	Laundry Room	Must be cleaned and mopped	\$15.00	
Bathrooms				
	Mirrors	Mirrors must be cleaned	\$7.00	
	Tubs and Sinks	Must be cleaned to include all fixtures. Free of mold and soap scum	\$27.00	
	Jacuzzi Tubs	In good working condition. Repairs to motor At Cost	At Cost	
	Floors	Must be swept and freshly mopped (never waxed)	\$12.00	
	Toilets	Must be cleaned to include inside and outside	\$12.00	
	Balcony & Patio			
	Patio/Balcony	Screens, storage room, entire area must be cleaned and swept	\$17.00	
	Front Door	Kick plate and door must be cleaned	\$6.00	
	Water Heater Closet	Must be cleaned and free of debris	\$12.00	
	Screened Enclosures	Torn or damaged screens (minimum \$25)	At Cost	
	Trash/Furniture Removal	\$25 per bag or At Cost for Furniture Removal		
Fans and Fixtures				
	Ceiling Fan	Ceiling Fans and Light Fixtures must be cleaned	\$10.00	
	Replacement	Ceiling Fan replacement	\$75.00	
	Globe Replacement	If broken or missing	\$25.00	
	Light Replacement	If broken or missing	\$25.00	
	Smoke Detector	If broken or missing	\$25.00	
	A/C Vents	Must be cleaned	\$25.00	
	Fire Extinguisher	If broken or missing - 5 lb. replacement	\$45.00	
	Vent Hood	Replacement if damaged or broken	\$70.00	
	Towel Bars	If broken or off wall (each)	\$35.00	
	Fireplace	Must be clean and free of ashes and wax (if applicable)	\$25.00	
	Grate	Replacement if damaged or missing	\$15.00	
Blinds				
	Mini Blinds	Mini-blind replacement (standard size) (Double Window \$60)	\$30.00	
	Vertical Blinds	Vertical-blind repair (each slat)	\$7.00	
	Replacement	Vertical-blind replacement (each set)	\$100.00	

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Screens				
	Window Screens	Frame and Screen replacement	\$40.00	
	Re-screen	Re-screen (small)	\$25.00	
	Sliding Door Screen	Sliding glass door screen	\$50.00	
Wall & Ceiling Repairs				
	Sheetrock repairs	Door knob size hole	\$40.00	
		Larger hole - 1 square foot	\$55.00	
		Each additional square foot	\$35.00	
	Stain treatment	Kilz stain treatment (each wall)	\$30.00	
	Wall Paint	Additional coat of paint due to covering color/stains	\$150.00	
	Holes Repaired	Picture hooks, toggle bolts, etc. (\$7 each)	\$7.00	
	Ceiling Paint	Ceiling Paint (due to stains/yellowing/cigarette smoke)	\$150.00	
Counter Tops				
	Counter Replacement	Replacement per square foot (Formica)	\$22.00	
	Counter Replacement	Replacement per square foot (Granite)	\$40.00	
Carpet				
	Carpet cleaning	Must be freshly vacuumed & professionally shampooed (receipt required) or		
		[One bedroom = \$45] [Two bedroom = \$55] [Three bedroom = \$65]		
	Stain treatment	Per Stain	\$40.00	
	Patch	Patch per square foot	\$60.00	
	Deodorize Treatment	Pet, cooking odors, cigarette smoke	At Cost	
	Flea Treatment	Pets	\$60.00	
	Total Replacement	1 year	100 % of value	
	(Age of carpet)	2 year	80 % of value	
		3 year	60% of value	
		4 years	40% of value	
		5 years	20% of value	
Wallpaper				
	Repair	Repairs (per repair)	\$40.00	
	Replacement	Replacement (per roll)	\$60.00	
Vinyl Floors				
	Patch	Repair patch (minimum)	\$50.00	
	Replacement	Replace floor	At Cost	
Wood Floors				
	Repair/Replacement	Repair or replace floor	At Cost	
Vinyl Floors				
	Patch	Repair patch (minimum)	\$50.00	
	Replacement	Replace floor	At Cost	
Doors & Windows				
	Bi-Fold Metal Doors	Replacement per panel	\$70.00	
	Interior doors	Doors and Frame (Wood) replacement	\$225.00	
	Windows	Single paned - broken or cracked	\$75.00	
	Windows	Double insulated - broken or cracked	\$175.00	
	Sliding Glass Door	Replacement of door and tracking (36" width)	\$425.00	
		Replacement of door and tracking (48" width)	\$700.00	
		Glass Slider Door cleaned (to include track)	\$10.00	
	Window sills	Cleaned (each)	\$5.00	
	Keys	Keys replaced (each)	\$5.00	
	Lock Replacement	Re-Keying Locks (if all keys are not returned)	\$60.00	
	Gate Cards	Gate Cards (if applicable)	\$25.00	
	Laundry Cards/Keys	Laundry Cards (if applicable)	\$10.00	
Misc. Cleaning - Damage Charges				
	Key Fob	Missing or damaged key fob	\$100.00	

You are required to return the apartment to us when you move out in the same condition it was received, ordinary wear and tear excepted, including cleaning the apartment. MAA provides this Cleaning and Damages Cost Sheet in order to assist you in preparing your apartment for move-out. Please note these costs are not all inclusive and are only estimates as of the date hereof. Actual charges will be detailed after move-out and may be in addition to the amounts set forth above. A preliminary walk through is not a final assessment of any damages or necessary cleaning.

Electronically Signed By
Marisol Kelly
on 6/9/2022

Marisol Kelly

Signatures below this line are to be completed during the moveout phase

Marisol Kelly

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

MARISOL KELLY,

Plaintiff,

vs.

MID-AMERICA APARTMENTS, L.P., d/b/a
WATER'S EDGE APARTMENTS,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2024-CP-18-01431

**PLAINTIFF'S ANSWERS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES**

**EXHIBIT
2**

**TO: KIERRA N. BROWN, ESQ., AND LEE C. WEATHERLY, ESQ., ATTORNEYS FOR
DEFENDANT:**

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- **Marisol Kelly**
387 West Laurel Bay Blvd
Beaufort, SC 29906

Mrs. Kelly is the Plaintiff in this action. She is expected to testify as to the facts and circumstances of the incident and the injuries and treatment that resulted. Mrs. Kelly is not in possession of any written or recorded statements.

- **Kenneth Kelly**
387 West Laurel Bay Blvd
Beaufort, SC 29906

Mr. Kelly is Mrs. Kelly's husband; he personally witnessed the incident occur. He is expected to testify as to the facts and circumstances of the incident known to him. Mrs. Kelly is not in possession of any written or recorded statements from this witness.

- **Mrs. Kelly's Medical Providers**

- **All Witnesses Named by Defendant**

Mrs. Kelly reserves the right to supplement this Answer in accordance with the South Carolina Rules of Civil Procedure as discovery is ongoing.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or the defense in the case.

ANSWER:

Mrs. Kelly produces the following;

- **Lease Agreement**
- **Lexington Insurance Company Binder**
- **Photos of Incident Staircase**
- **Photos of Trash on Staircase**
- **Videos of Staircase**
- **Submitted Work Orders**
- **Plaintiff's Medical Records and Bills**

Mrs. Kelly reserves the right to supplement this as discovery is ongoing.

3. In cases involving personal injury, set forth the names and addresses of all physicians, psychiatrists, therapists, or counselors who have treated the party, all pharmacies from which the party has received medication, as well as all hospitals to which the party has been admitted in connection with said injuries and also set forth a statement of all medical costs involved.

ANSWER:

PROVIDERS	COSTS
Summerville Medical Center 295 Midland Pkwy Summerville, SC 29485	\$2,836.300
VA Primary Care Clinic 6450 Rivers Ave North Charleston, SC 29406	\$5,546.43
AlignLife of Wescott <i>Michael Pisani, D.C.</i> 9730 Dorchester Road, Unit 103	\$4,130.00

Summerville, SC 29485	
ATI Physical Therapy <i>Sara Martin, PT</i> 10040 Dorchester Road, Suites 106 & 107 Summerville, SC 29485	\$1,892.69
TOTAL	\$16,222.12

Ms. Kelly reserves the right to supplement this as discovery is ongoing.

4. Set forth here an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER:

Ms. Kelly refers Defendant to Answer to Interrogatory No. 3. In addition to medical expenses, Ms. Kelly claims any actual, consequential, and punitive damages in an amount to be determined at the trial of the matter. Ms. Kelly reserves the right to supplement this Answer as discovery continues.

5. List the names, addresses, qualifications, subject matter and opinions of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

None.

6. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

Ms. Kelly refers Defendant to Answer to Interrogatory No. 1.

7. Set forth the names and addresses of all insurance companies (to include health insurance companies) which have provided insurance coverage to you relating to the claim and set

forth the policy number(s) or member number(s). The purpose of this Interrogatory is not to determine if there is a collateral source of payment for Plaintiff's medical expenses but instead to determine any potential lien holders or entities that may have a complete record of Plaintiff's medical treatment history.

ANSWER:

Ms. Kelly is unaware of any insurance company or policy providing liability coverage for this claim, other than those identified in Defendants' discovery responses. To the extent this Interrogatory seeks information regarding any applicable health insurance, Objection. As Defense counsel is surely aware, the Collateral Source Rule bars the reduction of an injured party's damages on the basis of payments made by the injured party's health insurer or other source independent of the tortfeasor. Such information is neither relevant nor admissible and, as such, is not discoverable.

8. List every element, including the dollar amount, of general damages (lost wages, mileage, future medical expenses, future lost wages, life care plan, etc.), punitive damages, or special damages that you contend you are entitled to recover from Defendant.

ANSWER:

Mrs. Kelly refers Defendant to her answer to Interrogatory number 3. In addition to the medical expenses itemized in Interrogatory number 3, any actual, consequential and punitive damages is an amount to be determined at the trial of the matter. Mrs. Kelly reserves the right to supplement this Answer as discovery is ongoing.

9. Have Plaintiff had an occupation or job during the last ten (10) years? If so, as to each such occupation or job, state the name, address and telephone number of each employer; the dates of each such employment, Plaintiff's employment title or position and the nature of the duties performed by you, and the reason of the termination of each such occupation or job.

ANSWER:

Mrs. Kelly was enlisted in the military, and on active duty with the Marine Corps beginning in 2016. Mrs. Kelly retired in 2021, and is currently enrolled in a higher education program working towards obtaining degrees in physical therapy and marketing through an online school program.

10. State your annual gross income dating back to 2020.

ANSWER:

Mrs. Kelly objects to this interrogatory to the extent that it is not relevant to the subject matter in the pending action and not reasonably calculated to lead to the discovery of admissible evidence.

11. Describe with particularity exactly what occurred in the five (5) minutes prior to the incident which is the subject of the above action, what occurred during the incident, and what occurred during the ten minutes after the incident, including anything said by or to you, or by or to any party, witness, Defendant's employee(s), EMS, etc.

ANSWER:

Mrs. Kelly, her husband and their daughter were heading out of their apartment to go on a walk. Mrs. Kelly was carrying her daughter, who was approximately one years old at the time. Mrs. Kelly was approximately six months pregnant at the time, as well. As Mrs. Kelly was making her way to the descending staircase, she attempted to avoid the large amount of trash scattered around the area. As Mrs. Kelly stepped down to the first stair, her foot landed on the empty chip bag, causing her foot to slide out from under her and causing her to fall. Mrs. Kelly fell down several stairs prior to coming to a stop. Her husband, who was standing behind her, helped Mrs. Kelly up after she fell. Mrs. Kelly remembers a neighbor on the first-floor level being outside when she fell, but the neighbor was on the phone, so she is not sure if the neighbor saw her fall or heard her yell as she was falling. Mrs. Kelly's husband drove her to the hospital immediately following the incident.

12. Please describe the condition allegedly causing Plaintiff's fall, when Plaintiff first observed the alleged condition, and describe why Plaintiff did not observe the obstacle or condition before allegedly falling.

ANSWER:

The area where Mrs. Kelly fell had been hazardous and debris ridden since Mrs. Kelly moved into the apartment. Mrs. Kelly specifically slipped on an empty chip bag that was positioned on the stairs prior to stepping down. Mrs. Kelly was attempting to avoid stepping on other trash when she stepped down to the next step and slipped on the empty chip bag.

13. Please list all facts that support Plaintiff's position that Defendant knew, or should have known, of the alleged dangerous condition that Plaintiff alleges caused her to fall.

ANSWER:

Mrs. Kelly notified the Defendant directly via submitting a work order, per the Defendant's instructions, to rid the area of the garbage and other debris causing the dangerous and obstructed condition on the following dates:

- **09/22/2022**
- **10/19/2022**
- **12/05/2022**
- **12/15/2022**
- **02/20/2023 (reported Mrs. Kelly falling with request)**

Mrs. Kelly refers to the Work Orders enclosed.

14. Please list all facts that support Plaintiff's position that Defendant created the alleged dangerous condition that Plaintiff alleges caused her to fall.

ANSWER:

Mrs. Kelly notified property management on multiple occasions about the dangerous state of the area outside of and near the entrance to her apartment unit (see Answer to Interrogatory No. 13). However, the requests were never timely or adequately addressed such that garbage remained strewn about the common area outside of her apartment for several days, sometimes weeks after Mrs. Kelly submitted a work order. The common area was consistently not properly maintained by the Defendant.

15. Please state the source of the condition that Plaintiff claims caused her to fall, including who/what placed it in the subject area, how long it had been in the subject area before Plaintiff fell and all evidence known by Plaintiff that supports each claim.

ANSWER:

Ms. Kelly slipped on trash left in the common area outside of her apartment. Trash and other debris had been strewn about this area since the day she moved in.

16. Please state each and every time Plaintiff, or anyone in her household, has notified Defendant employees of any issue concerning trash or debris in the breezeway of Building 10 to include: the date notice was provided; the manner in which notice was provided; who received the notice; and the content of the notice.

ANSWER:

Mrs. Kelly refers Defendant to Answer to Interrogatory number 13.

17. Please state the last date on which Plaintiff exited or entered her home utilizing the subject area prior to the occasion on which she fell, to include her observations of the condition of the subject area.

ANSWER:

Ms. Kelly has no recollection of the last time she used the subject area prior to the day on which she fell.

18. If you claim to have any permanent injuries as a result of the incident, please state the nature and location of each such injury. If you do not claim to have any permanent injuries as a result of the incident, please state "No."

ANSWER:

Mrs. Kelly still suffers from pain resulting from the injuries to her tailbone and back.

19. If you contend the subject incident exacerbated a previously existing injury or condition, please describe in detail the nature of that condition and list the names of any and all medical providers who treated you for said condition(s), to include said medical providers' mailing address(es).

ANSWER:

Mrs. Kelly previously underwent two right hip labral repair surgeries. The injuries sustained from the subject incident exacerbated this existing condition. Both

surgeries were performed at the Balboa Naval Hospital, 34800 Bob Wilson Drive, San Diego, CA 92134. These surgeries occurred while Mrs. Kelly was on active duty.

20. Please list all medication, prescription and otherwise, that you take on a regular basis. For each prescription medication, please state the prescribing physician's name and address.

ANSWER:

- **Sertraline (100mg daily) – Prescribed By Dr. Baer at the VA**
- **Cholecalciferol (1,000 unit daily) – Over the counter**
- **Prenatal Vitamin (1 tab Daily) – This medication was prescribed by Mrs. Kelly's OBGYN at MUSC. She does not recall the prescribing physician's name.**
- **Levothyroxine (25 MCG daily) – This medication was prescribed by Mrs. Kelly's PCP at the VA. She is unable to recall the prescribing physician's name.**

21. Were you ever hospitalized in the fifteen (15) years preceding the subject incident or anytime subsequent to the incident? If so, please list the hospital, dates of treatment, reason(s) for treatment, and name of attending physician(s).

ANSWER:

- **Balboa Naval Hospital
34800 Bob Wilson Drive
San Diego, CA 92134
Mrs. Kelly refers Defendant to Answer to Interrogatory number 19.**
- **Summerville Medical Center
295 Midland Parkway
Summerville, SC 29485
Giving birth to first child (2/7/22)**

22. Please list your full name, current address, addresses for the past ten (10) years, driver's license number, and date of birth.

ANSWER:

Name: Marisol Kelly

Current Address:

- 387 West Laurel Bay Blvd
Beaufort, SC 29906

Previous Addresses:

- 9989 Dorchester Rd, Apt 10L
Summerville, SC 29485
- 1291 Three Branches Road
Lugoff, SC 29078
- 387 W Laurel Bay Blvd
Beaufort, SC 29906
- MCAS Miramar
453119 PO Box
San Diego, CA 92145
- 314 Vandeventer st
Oceanside, CA 92058
- 1051 El Norte Pkwy Apt 129
Escondido, CA 92026
- 825 Nordahl Rd Apt D
San Marcos, CA 92069
- 1107 Brown Rd
Camden, SC 29020

DL No.: 102475021

DOB: 02/09/1996

23. Please identify by name, address, and phone number all persons who have resided with Plaintiff for the last ten years.

ANSWER:

Kenneth Eugene Kelly (Spouse)
387 West Laurel Bay Blvd
Beaufort, SC 29906
803-468-9631

Nick Delpino (Brother)
1165 Gilbert Street
Sumter, South Carolina
803-651-1543

Octavia Kelly (Minor Daughter)
387 West Laurel Bay Blvd
Beaufort, SC 29906

**Elijah Kelly (Minor Son)
387 West Laurel Bay Blvd
Beaufort, SC 29906**

24. On the date of the incident and in the 24-hour period immediately preceding the same, had you ingested any alcohol, medications, intoxicants, or any other controlled substance? If so, please state the type of substance ingested, the amount of substance ingested, the time that the substance was ingested, witnesses to you ingesting said substances and/or with knowledge of the amount ingested and location of the ingestion.

ANSWER:

Mrs. Kelly was prescribed and taking the following prescriptions:

- Sertraline (100mg daily)
- Cholecalciferol (1,000 unit daily)
- Prenatal Vitamin (1 tab Daily)
- Levothyroxine (25 MCG daily)

Mrs. Kelly's husband, Kenneth Kelly, is witness to Mrs. Kelly taking the aforementioned medications. Mrs. Kelly had not consumed alcohol, intoxicants or any other controlled substance in the 24-hour period immediately preceding the date of the incident.

25. Has Plaintiff ever been named as a Defendant or Plaintiff in any type of litigation? If so, please state the case name and number as well as the outcome of the litigation.

ANSWER:

Mrs. Kelly has never been party to any type of litigation prior to the subject action.

26. Have Plaintiff ever suffered a personal injury of any kind? If so, please give the date and location of the personal injury as well as who was at fault in causing the personal injury.

ANSWER:

Mrs. Kelly suffered a previous personal injury claim in 2021. The claim was in connection to a military service incident.

In 2017, Mrs. Kelly injured her left shoulder and neck when she fell from an 8-foot platform during a training exercise on an obstacle course while on active duty.

Mrs. Kelly also suffered an injury to her right hip, due to wear and tear from excessive exercise and training during her time on active duty. Mrs. Kelly underwent two right hip surgeries between 2019-2021 to repair a labral tear.

27. Please describe any portions of your medical records, from any medical provider that you claim has treated you for injuries sustained in this incident, that you believe to be inaccurate including the date of the inaccuracy, the provider recording the inaccurate information, the text or value(s) that are inaccurate, what is inaccurate about the text or value(s), the source of the inaccurate information, and why you believe that inaccurate information was recorded by the respective medical provider.

ANSWER:

Upon an initial review of her medical records Mrs. Kelly was unable to identify any glaring inaccuracies. Mrs. Kelly reserves the right to supplement this Answer in accordance with the South Carolina Rules of Civil Procedure as discovery is ongoing.

28. Did you, anyone acting on your behalf, or any member of your party have any conversations with any employee of Defendant at any time before or following the incident, which is the subject of your Complaint? If so, please describe in detail the content of those conversations, the parties involved in said conversations, when and where said conversations occurred, and any other pertinent details regarding the same.

ANSWER:

Prior to the incident occurring, Mrs. Kelly had called the front desk of the apartment complex requesting the maintenance team, or persons of similar title, inspect the area and resolve the hazardous conditions consisting of waste and debris scattered throughout the stairs and hallway, creating a dangerous path. Each time Mrs. Kelly did this, an employee would come and observe the area, thereafter, requesting Mrs. Kelly submit a work order. Mrs. Kelly continued to follow instruction and submitted work orders. The issue was never timely or adequately resolved.

29. List every Social Networking Website ("SNW") utilized or accessed by the Plaintiff since the date of the alleged incident, including but not limited to, Facebook, Myspace, Twitter, LinkedIn, Instagram, Foursquare, Tumblr, Flickr, Pheed, Snapchat, Tiktok, Google+, Vine and YouTube. For any SNW identified in response to this or any other interrogatory, provide: the name and internet address of the SNW; name, address, social security number, and date of birth of the SNW account subscriber, and if different, the individual responsible for the SNW account; each and every user name, screen name, friend ID#, email address, or alias affiliated with the SNW account; full URL to each SNW profile; the last time the party accessed the SNW account; and whether the party posts photographs and any type of information on the SNW account.

ANSWER:

Mrs. Kelly has a Facebook and Instagram account.

Facebook: "Marisol Kelly"

Instagram: "mk_stargaze"

These Interrogatories shall be deemed to continue until the time of trial and the party and party's counsel shall promptly transmit to the opposing party's attorneys any information which comes into their possession subsequent to the answers to the above Interrogatories.

MILLER, DAWSON, SIGAL & WARD, LLC

By: s/ Sydney K. Catlett
 Sydney Catlett, Esq. (SC Bar No.: 106289)
 Patrick Yanoti, Esq. (SC Bar No.: 103044)
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Attorneys for Plaintiff

North Charleston, SC
 November 11, 2024

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

MARISOL KELLY,

Plaintiff,

vs.

MID-AMERICA APARTMENTS, L.P., d/b/a
WATER'S EDGE APARTMENTS,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

CASE NO.: 2024-CP-18-01431

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUESTS FOR
PRODUCTION**

**TO: KIERRA N. BROWN, ESQ., AND LEE C. WEATHERLY, ESQ., ATTORNEYS FOR
DEFENDANT:**

REQUESTS FOR PRODUCTION

1. Produce all photographs, reports, plats, sketches or other prepared documents in your possession that relate to the incident at issue.

RESPONSE:

Mrs. Kelly produces the following:

- Lease Agreement
- Lexington Insurance Company Binder
- Photos of Incident Staircase
- Photos of Trash on Staircase
- Videos of Staircase
- Submitted Work Orders
- Plaintiff's Medical Records and Bills

Mrs. Kelly reserves the right to supplement this as discovery is ongoing.

2. Copies of any and all statements given by any witness listed in your answers to Defendant's First Set of Interrogatories or Request for Production, which are in your possession

or the possession of your attorney(s), agent(s) or representative(s), whether written or recorded on a tape recorder or otherwise.

RESPONSE:

Neither Mrs. Kelly nor her counsel are in possession of any witness statements. Mrs. Kelly reserves the right to supplement this as discovery is ongoing.

3. Copies of any and all documents or reports which you have provided to any expert witness and any documents or reports that any expert witness has provided to you.

RESPONSE:

There are no experts anticipated or chosen as of the current date, and therefore, Mrs. Kelly does not have any items to produce. Mrs. Kelly reserves the right to supplement this as discovery is ongoing.

4. Copies of all documents referred to in your answers to Defendant's First Set of Interrogatories to Plaintiff.

RESPONSE:

Mrs. Kelly refers Defendant to Response to Request for Production number 1.

5. Copies of any and all statements, memoranda, reports or other materials which in any way might relate to your claim herein which are within your possession or your attorney's, agent's or representative's possession, whether written or recorded on a tape recorder or otherwise.

RESPONSE:

Mrs. Kelly refers Defendant to Response to Request for Production number 1.

6. Copies of any photos in your possession taken of Plaintiff in the seven (7) days before and after the incident.

RESPONSE:

Mrs. Kelly produces the following:

- **Photos of Incident Staircase**
- **Photos of Trash on Staircase**
- **Videos of Staircase**

Mrs. Kelly reserves the right to supplement this as discovery is ongoing.

7. Copies of all photos or videos that support Plaintiff's claims for damages.

RESPONSE:

Mrs. Kelly refers Defendant to Response to Request for Production No. 6.

8. Photos of the shoes Plaintiff were wearing on the date of the incident.

RESPONSE:

Mrs. Kelly does not have images of the shoes she was wearing at the time of the incident, however, states they were sneakers.

9. Copies of any and all documents, memoranda, correspondence, books, photographs, architectural renderings, video tapes, notes, including handwritten, mechanically produced and electronically stored notes, repair estimates, statements, bills, invoices, statements of account, canceled checks, drawings, reports, receipts, newspaper articles, magazine articles or any other documents, in any form, that support your claim for damages.

RESPONSE:

Mrs. Kelly refers Defendant to Response to Request for Production number 1.

10. All medical records including physician(s) or hospital bills, reports or records, nurse's notes, charts or any other medical records relating to: a) the claim or claims in the above-referenced matter b) any previous medical care Plaintiff received in regards to any injury you claim has been exacerbated by the subject incident and/or c) any previous medical care Plaintiff received,

prior to the subject incident, to the same or similar body part(s) that Plaintiff is claiming was injured in the subject incident.

RESPONSE:

Mrs. Kelly refers Defendant to the medical bills enclosed. Mrs. Kelly reserves the right to supplement this as discovery is ongoing.

11. All receipts and other records of payment, and any other unpaid statements for the purchase of prescription drugs, or the purchase or rental of medical devices, or other medical supplies purchased or rented for use by the party any time after the date of the incident which is the basis of this lawsuit.

RESPONSE:

Neither Mrs. Kelly nor her Counsel is in possession of the requested documents.

12. All statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the incident as set forth in the Complaint.

RESPONSE:

Neither Mrs. Kelly nor her Counsel is in possession of the requested documents.

13. Any and all other documents or writings of any kind, or tangible items of any kind, relating to the claim as set forth in the Complaint.

RESPONSE:

Mrs. Kelly refers Defendant to Response to Request for Production number 1.

14. Copies of your tax returns for the past six (6) years.

RESPONSE:

Mrs. Kelly objects to this Requests to the extent she is not claiming lost wages and therefore, producing tax returns is not relevant to the subject matter of this action.

15. With regard to Plaintiff's email or social networking website ("SNW") accounts, please produce or make available for inspection all documents or tangible things, including electronically stored information in the party's possession, custody or control which may relate to the facts alleged in the Complaint. This request includes, but is not limited to, all IP Logs, blog entries, "Wall Postings," photographs, bulletins and any additional information contained on SNW accounts maintained by the party from the date of the subject matter incident up to today's date. For purposes of this Request for Production, the party is in "control" of all electronically stored information maintained by the Social Networking Site Administrator by virtue of the consent provisions of the Stored Communications Act ("SCA"), 18 U.S.C. § 2701 *et. seq.*

RESPONSE:

Mrs. Kelly objects to this Request to the extent the requested information is equally accessible to the propounding through use of the usernames provided in Answer to Interrogatory number 29.

16. Copies of any pleadings where Plaintiff has been named as a Defendant or Plaintiff in any type of litigation.

RESPONSE:

Mrs. Kelly has never been party to litigation prior to the subject action, therefore, is not in possession of the requested documents.

17. Copies of all incident reports where Plaintiff was injured in any commercial establishment.

RESPONSE:

Mrs. Kelly has never been injured in any commercial establishment prior to the subject action, therefore, is not in possession of the requested documents.

18. Copies of all settlement documents where Plaintiff has received payment(s) for personal injury.

RESPONSE:

Mrs. Kelly objects to this Request to the extent that it is not relevant to the subject matter in the pending action, not reasonably calculated to lead to the discovery of admissible evidence, and is in violation of the South Carolina Collateral Source Rule and as such, is not discoverable. Without waiving this objection, Mrs. Kelly nor her counsel are in possession of the requested documents.

19. A copy of your driver's license.

RESPONSE:

Please see copy of Mrs. Kelly's driver's license is enclosed.

20. A copy of your Birth Certificate.

RESPONSE:

Mrs. Kelly objects to this Request to the extent requesting to produce her Birth Certificate is unduly burdensome, and further, not relevant to the subject matter of this action and is not likely to lead to admissible evidence.

21. A copy of your Social Security Card.

RESPONSE:

Mrs. Kelly objects to this Request to the extent requesting to produce her Social Security Card is unduly burdensome, and further, not relevant to the subject matter of this action and is not likely to lead to admissible evidence. Withstanding stated objections, Mrs. Kelly does not object to verbally providing her social security number at the time of deposition.

22. Any correspondence with:

- a) Social Security Administration;
- b) Department of Health and Human Services;
- c) Centers for Medicare and Medicaid Services (CMS);
- d) CMS' Coordination of Benefits Contractor (COBC);

- e) Any State or Federal agency regarding Medicare benefits or Social Security Disability Income (SSDI) payments.

RESPONSE:

Mrs. Kelly objects to this Requests to the extent that the requests are not relevant to the subject matter in the pending action, not reasonably calculated to lead to the discovery of admissible evidence, and in violation of the South Carolina Collateral Source Rule and as such, not discoverable.

23. Any documents you have sent to or received from:
- a) Social Security Administration;
 - b) Department of Health and Human Services;
 - c) Centers for Medicare and Medicaid Services (CMS);
 - d) CMS' Coordination of Benefits Contractor (COBC);
 - e) Any State or Federal agency regarding Medicare benefits or Social Security Disability Income (SDI) payments.

RESPONSE:

Mrs. Kelly objects to this Requests to the extent that the requests are not relevant to the subject matter in the pending action, not reasonably calculated to lead to the discovery of admissible evidence, and in violation of the South Carolina Collateral Source Rule and as such, not discoverable.

24. Any analysis, including but not limited to a Medicare Set-Aside Allocation (MSA) of the future medical expenses which might be incurred by Plaintiff/Claimant which would be covered by medical benefits provided by Medicare.

RESPONSE:

Mrs. Kelly objects to this Requests to the extent that the requests are not relevant to the subject matter in the pending action, not reasonably calculated to lead to the discovery of admissible evidence, and in violation of the South Carolina Collateral Source Rule and as such, not discoverable.

MILLER, DAWSON, SIGAL & WARD, LLC

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North Charleston, SC
November 11, 2024

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

MARISOL KELLY,

Plaintiff,

vs.

MID-AMERICA APARTMENTS, L.P., d/b/a
WATER'S EDGE APARTMENTS,

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE FIRST JUDICIAL CIRCUIT

Civil Action No. 2024-CP-18-01431

CERTIFICATE OF SERVICE

I hereby certify that the Plaintiff's Answers to Defendant's First Set of Interrogatories and Plaintiff's Responses to Defendant's First Set of Requests for Production to Plaintiff which was dated November 11, 2024 were served upon Kierra N. Brown, Esq. and Lee C. Weatherly, Esq., Attorneys for Defendant via e-mail to kbrown@csvg.law and lweatherly@csvg.law.

MILLER, DAWSON, SIGAL & WARD, LLC



By: _____

Sydney K. Catlett
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November 11, 2024
North Charleston, SC

Commercial

Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Commercial Disputes



AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/commercial

Rules Amended and Effective October 1, 2013

Fee Schedule Amended and Effective July 1, 2016

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Commercial Arbitration Rules and Mediation Procedures

(Including Procedures for Large, Complex Commercial Disputes)



Important Notice

These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA®. To ensure that you have the most current information, see our web site at **www.adr.org**.

Introduction

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association® (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on various forms of alternative dispute resolution.

Standard Arbitration Clause

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following Controversy: (describe briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute upon the administration of the arbitration or at any time when the arbitration is pending. In mediation, the neutral mediator assists the parties in

reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional filing fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

Although these rules include a mediation procedure that will apply to many cases, parties may still want to incorporate mediation into their contractual dispute settlement process. Parties can do so by inserting the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission agreement:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Large, Complex Cases

Unless the parties agree otherwise, the procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs. The key features of these procedures include:

- > A highly qualified, trained Roster of Neutrals;
- > A mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;
- > Broad arbitrator authority to order and control the exchange of information, including depositions;
- > A presumption that hearings will proceed on a consecutive or block basis.

Commercial Arbitration Rules

R-1. Agreement of Parties*

- (a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration or Submission Agreement received by the AAA. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.
- (b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs.

Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.
- (c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000 or more, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-3 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.
- (d) Parties may, by agreement, apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission (Rule E-6) to any dispute.
- (e) All other cases shall be administered in accordance with Sections R-1 through R-58 of these rules.

* A dispute arising out of an employer-promulgated plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures. A dispute arising out of a consumer arbitration agreement will be administered under the AAA's Consumer Arbitration Rules.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Filing Requirements

- (a) Arbitration under an arbitration provision in a contract shall be initiated by the initiating party ("claimant") filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of the applicable arbitration agreement from the parties' contract which provides for arbitration.
- (b) Arbitration pursuant to a court order shall be initiated by the initiating party filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of any applicable arbitration agreement from the parties' contract which provides for arbitration.
 - i. The filing party shall include a copy of the court order.
 - ii. The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party to either make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.
 - iii. The party filing the Demand with the AAA is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings if necessary pursuant to R-32.
- (c) It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination.

- (d) Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration under these rules by filing a written submission agreement and the administrative filing fee. To the extent that the parties' submission agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement.
- (e) Information to be included with any arbitration filing includes:
 - i. the name of each party;
 - ii. the address for each party, including telephone and fax numbers and e-mail addresses;
 - iii. if applicable, the names, addresses, telephone and fax numbers, and e-mail addresses of any known representative for each party;
 - iv. a statement setting forth the nature of the claim including the relief sought and the amount involved; and
 - v. the locale requested if the arbitration agreement does not specify one.
- (f) The initiating party may file or submit a dispute to the AAA in the following manner:
 - i. through AAA WebFile, located at **www.adr.org**; or
 - ii. by filing the complete Demand or Submission with any AAA office, regardless of the intended locale of hearing.
- (g) The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.
- (h) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration. However, all disputes in connection with the AAA's determination of the date of filing may be decided by the arbitrator.
- (i) If the filing does not satisfy the filing requirements set forth above, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the date specified by the AAA, the filing may be returned to the initiating party.

R-5. Answers and Counterclaims

- (a) A respondent may file an answering statement with the AAA within 14 calendar days after notice of the filing of the Demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

- (b) A respondent may file a counterclaim at any time after notice of the filing of the Demand is sent by the AAA, subject to the limitations set forth in Rule R-6. The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the amount involved. The filing fee as specified in the applicable AAA Fee Schedule must be paid at the time of the filing of any counterclaim.
- (c) If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision submitted by the initiating party subject to a final determination by the arbitrator.
- (d) If the counterclaim does not meet the requirements for filing a claim and the deficiency is not cured by the date specified by the AAA, it may be returned to the filing party.

R-6. Changes of Claim

- (a) A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to the AAA and all parties. If the change of claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.
- (b) Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be provided to the other party, who shall have a period of 14 calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Jurisdiction

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-8. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-9. Mediation

In all cases where a claim or counterclaim exceeds \$75,000, upon the AAA's administration of the arbitration or at any time while the arbitration is pending, the parties shall mediate their dispute pursuant to the applicable provisions of the AAA's Commercial Mediation Procedures, or as otherwise agreed by the parties. Absent an agreement of the parties to the contrary, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. However, any party to an arbitration may unilaterally opt out of this rule upon notification to the AAA and the other parties to the arbitration. The parties shall confirm the completion of any mediation or any decision to opt out of this rule to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator to the case.

R-10. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

R-11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days from the date of the AAA's initiation of the case or the date established by the AAA. Disputes regarding locale shall be determined in the following manner:

- (a) When the parties' arbitration agreement is silent with respect to locale, and if the parties disagree as to the locale, the AAA may initially determine the place of

arbitration, subject to the power of the arbitrator after appointment, to make a final determination on the locale.

- (b) When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, or a determination by the arbitrator upon appointment that applicable law requires a different locale, the locale shall be that specified in the arbitration agreement.
- (c) If the reference to a locale in the arbitration agreement is ambiguous, and the parties are unable to agree to a specific locale, the AAA shall determine the locale, subject to the power of the arbitrator to finally determine the locale.

The arbitrator, at the arbitrator's sole discretion, shall have the authority to conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process.

R-12. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

- (a) The AAA shall send simultaneously to each party to the dispute an identical list of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.
- (b) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 14 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.
- (c) Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-13. Direct Appointment by a Party

- (a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.
- (b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.
- (c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.
- (d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

- (a) If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.
- (b) If no period of time is specified for appointment of the chairperson, and the party-appointed arbitrators or the parties do not make the appointment within 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.
- (c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-15. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-16. Number of Arbitrators

- (a) If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.
- (b) Any request for a change in the number of arbitrators as a result of an increase or decrease in the amount of a claim or a new or different claim must be made to the AAA and other parties to the arbitration no later than seven calendar days after receipt of the R-6 required notice of change of claim amount. If the parties are unable to agree with respect to the request for a change in the number of arbitrators, the AAA shall make that determination.

R-17. Disclosure

- (a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration. Failure on the part of a party or a representative to comply with the requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-41.
- (b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) Disclosure of information pursuant to this Section R-17 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-18. Disqualification of Arbitrator

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
 - i. partiality or lack of independence,
 - ii. inability or refusal to perform his or her duties with diligence and in good faith, and
 - iii. any grounds for disqualification provided by applicable law.
- (b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.
- (c) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-19. Communication with Arbitrator

- (a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.
- (b) Section R-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(a) should nonetheless apply prospectively.
- (c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.
- (d) As set forth in R-43, unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-20. Vacancies

- (a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-21. Preliminary Hearing

- (a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone.
- (b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute. Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

R-22. Pre-Hearing Exchange and Production of Information

- (a) *Authority of arbitrator.* The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.
- (b) *Documents.* The arbitrator may, on application of a party or on the arbitrator's own initiative:
 - i. require the parties to exchange documents in their possession or custody on which they intend to rely;
 - ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
 - iii. require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and

- iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.

R-23. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case, including, without limitation:

- (a) conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;
- (b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;
- (c) allocating costs of producing documentation, including electronically stored documentation;
- (d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and
- (e) issuing any other enforcement orders which the arbitrator is empowered to issue under applicable law.

R-24. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-25. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

R-26. Representation

Any party may participate without representation (*pro se*), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-27. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-28. Stenographic Record

- (a) Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.
- (b) No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.
- (c) If the transcript or any other recording is agreed by the parties or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.
- (d) The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.

R-29. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-30. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

R-31. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. Conduct of Proceedings

- (a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- (b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- (c) When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation. Such alternative means must afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination.
- (d) The parties may agree to waive oral hearings in any case and may also agree to utilize the Procedures for Resolution of Disputes Through Document Submission, found in Rule E-6.

R-33. Dispositive Motions

The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

R-34. Evidence

- (a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.
- (b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.
- (c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
- (d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

- (a) At a date agreed upon by the parties or ordered by the arbitrator, the parties shall give written notice for any witness or expert witness who has provided a written witness statement to appear in person at the arbitration hearing for examination. If such notice is given, and the witness fails to appear, the arbitrator may disregard the written witness statement and/or expert report of the witness or make such other order as the arbitrator may consider to be just and reasonable.
- (b) If a witness whose testimony is represented by a party to be essential is unable or unwilling to testify at the hearing, either in person or through electronic or other means, either party may request that the arbitrator order the witness to appear in person for examination before the arbitrator at a time and location where the witness is willing and able to appear voluntarily or can legally be compelled to do so. Any such order may be conditioned upon payment by the requesting party of all reasonable costs associated with such examination.
- (c) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-37. Interim Measures

- (a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.
- (b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.
- (c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-38. Emergency Measures of Protection

- (a) Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after October 1, 2013.
- (b) A party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile or e-mail or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.
- (c) Within one business day of receipt of notice as provided in section (b), the AAA shall appoint a single emergency arbitrator designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

- (d) The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such a schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the tribunal under Rule 7, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule 38.
- (e) If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.
- (f) Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.
- (g) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief for appropriate security.
- (h) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in this rule and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.
- (i) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

R-39. Closing of Hearing

- (a) The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
- (b) If documents or responses are to be filed as provided in Rule R-35, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If no documents, responses, or briefs are to be filed, the arbitrator shall declare the hearings closed as of the date of the last hearing (including telephonic hearings). If the case was heard without any oral hearings, the arbitrator shall close the hearings upon the due date established for receipt of the final submission.

- (c) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing. The AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.

R-40. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award (14 calendar days if the case is governed by the Expedited Procedures).

R-41. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-42. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-43. Serving of Notice and Communications

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.
- (b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), or electronic (e-mail) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by e-mail or other methods of communication.

- (c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (d) Unless otherwise instructed by the AAA or by the arbitrator, all written communications made by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (e) Failure to provide the other party with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained therein.
- (f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or their representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-44. Majority Decision

- (a) When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement or section (b) of this rule, a majority of the arbitrators must make all decisions.
- (b) Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

R-45. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.

R-46. Form of Award

- (a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.
- (b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-47. Scope of Award

- (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
- (b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.
- (c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.
- (d) The award of the arbitrator(s) may include:
 - i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
 - ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-48. Award Upon Settlement—Consent Award

- (a) If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.
- (b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation have been paid in full.

R-49. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-50. Modification of Award

Within 20 calendar days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other

parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

R-51. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to the arbitration, furnish to the party, at its expense, copies or certified copies of any papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

R-52. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.
- (e) Parties to an arbitration under these rules may not call the arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

R-53. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-54. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and

the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

R-55. Neutral Arbitrator's Compensation

- (a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.
- (b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.
- (c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-56. Deposits

- (a) The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.
- (b) Other than in cases where the arbitrator serves for a flat fee, deposit amounts requested will be based on estimates provided by the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity of each case.
- (c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation for the arbitrator's request for deposits.

R-57. Remedies for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment.

- (a) Upon receipt of information from the AAA that payment for administrative charges or deposits for arbitrator compensation have not been paid in full, to the extent the law allows, a party may request that the arbitrator take specific measures relating to a party's non-payment.
- (b) Such measures may include, but are not limited to, limiting a party's ability to assert or pursue their claim. In no event, however, shall a party be precluded from defending a claim or counterclaim.

- (c) The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any ruling regarding the same.
- (d) In the event that the arbitrator grants any request for relief which limits any party's participation in the arbitration, the arbitrator shall require the party who is making a claim and who has made appropriate payments to submit such evidence as the arbitrator may require for the making of an award.
- (e) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative or at the request of the AAA or a party, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.
- (f) If the arbitration has been suspended by either the AAA or the arbitrator and the parties have failed to make the full deposits requested within the time provided after the suspension, the arbitrator, or the AAA if an arbitrator has not been appointed, may terminate the proceedings.

R-58. Sanctions

- (a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction.
- (b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.

Preliminary Hearing Procedures

P-1. General

- (a)** In all but the simplest cases, holding a preliminary hearing as early in the process as possible will help the parties and the arbitrator organize the proceeding in a manner that will maximize efficiency and economy, and will provide each party a fair opportunity to present its case.
- (b)** Care must be taken to avoid importing procedures from court systems, as such procedures may not be appropriate to the conduct of arbitrations as an alternative form of dispute resolution that is designed to be simpler, less expensive and more expeditious.

P-2. Checklist

- (a)** The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute, and are subject to the discretion of the arbitrator:
 - (i)** the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;
 - (ii)** whether all necessary or appropriate parties are included in the arbitration;
 - (iii)** whether a party will seek a more detailed statement of claims, counterclaims or defenses;
 - (iv)** whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;
 - (v)** which
 - (a)** arbitration rules;
 - (b)** procedural law; and
 - (c)** substantive law govern the arbitration;
 - (vi)** whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation,
 - (a)** any preconditions that must be satisfied before proceeding with the arbitration;
 - (b)** whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;
 - (c)** consolidation of the claims or counterclaims with another arbitration; or
 - (d)** bifurcation of the proceeding.

- (vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;
 - (viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;
 - (ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;
 - (x) whether any measures are required to protect confidential information;
 - (xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;
 - (xii) whether, according to a schedule set by the arbitrator, the parties will
 - (a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;
 - (b) exchange and pre-mark documents that each party intends to submit; and
 - (c) exchange pre-hearing submissions, including exhibits;
 - (xiii) the date, time and place of the arbitration hearing;
 - (xiv) whether, at the arbitration hearing,
 - (a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;
 - (b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;
 - (xv) whether any procedure needs to be established for the issuance of subpoenas;
 - (xvi) the identification of any ongoing, related litigation or arbitration;
 - (xvii) whether post-hearing submissions will be filed;
 - (xviii) the form of the arbitration award; and
 - (xix) any other matter the arbitrator considers appropriate or a party wishes to raise.
- (b) The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the Demand for Arbitration or counterclaim as provided in Section R-5.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-43, the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

- (a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.
- (b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.
- (c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-18. The parties shall notify the AAA within seven calendar days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission

Where no party's claim exceeds \$25,000, exclusive of interest, attorneys' fees and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Where cases are resolved by submission of documents, the following procedures may be utilized at the agreement of the parties or the discretion of the arbitrator:

- (a) Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator may convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.
- (b) The arbitrator has the discretion to remove the case from the documents-only process if the arbitrator determines that an in-person hearing is necessary.
- (c) If the parties agree to in-person hearings after a previous agreement to proceed under this rule, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearings after agreeing to this rule, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.
- (d) The arbitrator shall establish the date for either written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.
- (e) Unless the parties have agreed to a form of award other than that set forth in rule R-46, when the parties have agreed to resolve their dispute by this rule, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.
- (f) If the parties agree to a form of award other than that described in rule R-46, the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.
- (g) The award is subject to all other provisions of the Regular Track of these rules which pertain to awards.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

- (a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.
- (b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-28.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the due date established for the receipt of the parties' final statements and proofs.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 calendar days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- (a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- (b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- (c) to obtain conflicts statements from the parties; and
- (d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

- (a) Large, complex commercial cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. With the exception in paragraph (b) below, if the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than \$1,000,000, then one arbitrator shall hear and determine the case.
- (b) In cases involving the financial hardship of a party or other circumstance, the AAA at its discretion may require that only one arbitrator hear and determine the case, irrespective of the size of the claim involved in the dispute.
- (c) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Management of Proceedings

- (a) The arbitrator shall take such steps as deemed necessary or desirable to avoid delay and to achieve a fair, speedy and cost-effective resolution of a Large, Complex Commercial Dispute.
- (b) As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be scheduled in accordance with sections P-1 and P-2 of these rules.
- (c) The parties shall exchange copies of all exhibits they intend to submit at the hearing at least 10 calendar days prior to the hearing unless the arbitrator(s) determines otherwise.
- (d) The parties and the arbitrator(s) shall address issues pertaining to the pre-hearing exchange and production of information in accordance with rule R-22 of the AAA Commercial Rules, and the arbitrator's determinations on such issues shall be included within the Scheduling and Procedure Order.
- (e) The arbitrator, or any single member of the arbitration tribunal, shall be authorized to resolve any disputes concerning the pre-hearing exchange and production of documents and information by any reasonable means within his discretion, including, without limitation, the issuance of orders set forth in rules R-22 and R-23 of the AAA Commercial Rules.
- (f) In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions to obtain the testimony of a person who may possess information determined by the arbitrator to be relevant and material to the outcome of the case. The arbitrator may allocate the cost of taking such a deposition.
- (g) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Administrative Fee Schedules (Standard and Flexible Fees)

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
www.adr.org/feeschedule.

Commercial Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via WebFile at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- (v) In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or
- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or
- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
www.adr.org/feeschedule.

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ROA 145

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
Marisol Kelly,	)	Case No. 2024-CP-18-01431
	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION
	)	TO DEFENDANT'S MOTION TO
	)	STAY AND COMPEL ARBITRATION
	)	
Mid-America Apartment, L.P., d/b/a	)	
Water's Edge Apartments,	)	
	)	
	)	
Defendant.	)	

COMES NOW Plaintiff, Marisol Kelly, by and through her undersigned counsel, hereby submits this Memorandum in Opposition of Defendant's Motion to Stay and Compel Arbitration. For the reasons stated herein, Plaintiff respectfully requests that Defendant's Motion to Stay and Compel Arbitration be denied. Defendant relies on the arbitration clause in the lease agreement and between Plaintiff and Defendant, the Federal Arbitration Act (FAA), and the S.C. Uniform Arbitration Act, S.C. Code Ann. §15-48-10 et. seq. However, Defendant's reliance is misplaced as Defendant has waived their purported right to seek arbitration by engaging in litigation and the arbitration clause is unconscionable and therefore unenforceable.

FACTS OF THE CASE

On February 20, 2023, Plaintiff, Marisol Kelly, was walking down the stairs in the common area of the apartment owned by Defendant, Mid-America Apartments, L.P., d/b/a Water's Edge Apartments, when she slipped and fell on trash that had accumulated on the stairs, causing Plaintiff to suffer significant injuries to her back. Plaintiff filed a complaint against Defendant in Dorchester County Court of Common Pleas on August 30, 2024. Defendant filed an Answer to Plaintiff's complaint on October 8, 2024. Plaintiff has since sent discovery requests which Defendant has

responded to, Defendant has sent discovery requests which Plaintiff has responded to, and Defendant has sent out eight subpoenas. Almost five months after Plaintiff filed her complaint, Defendant filed the instant Motion to Stay and Compel Arbitration.

ARGUMENT

I. Defendant’s Motion to Stay and Compel Arbitration should be denied because the arbitration clause is unconscionable and therefore unenforceable.

“In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.” *Smith v. D.R. Horton*, 417 S.C. 42, 48, 790 S.E.2d 1, 4, (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). “Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process.” *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013). If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause or so limit its application as to avoid an unconscionable result. S.C. Code Ann. § 36–2–302(1) (2003). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007).

Unsurprisingly, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a “take-it-or-leave it” basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 260, 365 (2001).

And while an arbitration clause in an adhesion contract is not per se unconscionable, it is a strong indication that there was a lack of meaningful choice in negotiating the terms of the contract and is met with “considerable skepticism” by courts. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007). In determining whether there was an absence of meaningful choice between parties entering into an automobile trade-in contract, the South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, considered whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in the matter. 373 S.C. 14, 27, 644 S.E.2d 663, 670 (2007).

In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the contract contains oppressive and one-sided terms. *Id.* In *Huskins v. Mungo Homes, LLC*, the South Carolina Supreme Court found that an arbitration clause in a contract which shortened the statute of limitations for any claim brought was void and illegal as a matter of public policy and thus unenforceable as it violated S.C. Code Ann. §15-3-140 (2005). 444 S.C. 592, 910 S.E.2d 474 (2024). S.C. Code Ann. §15-3-140(2005) forbids and renders void any contract clauses attempting to shorten the legal statute of limitations. The court in *Simpson v. MSA of Myrtle Beach, Inc.*, found that the arbitration clause’s limitation on statutory remedies was oppressive and one-sided. 373 S.C. at 28-30, 644 S.E. 2d at 670-671 (2007). Furthermore, courts have found that sections of arbitration clauses that purport to shorten the statute of limitations are material to the whole of the arbitration clause and have declined to salvage the remaining sections of the arbitration requirement, instead finding the entire arbitration provision unenforceable. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 597, 910 S.E.2d

474, 477 (2024). The court in *Damico v. Lennar Carolinas, LLC*, went as far to say that severing terms from an unconscionable contract of adhesion discourages fair, arms-length transactions and would encourage sophisticated parties to intentionally insert unconscionable terms in the contract. 437 S.C. 596, 604, 879 S.E.2d 746, 751 (2022).

Here, the lease agreement between the Plaintiff and Defendant is clearly an adhesion contract. The terms of the lease were not negotiable on the Plaintiff's behalf and was presented to her on a "take-it-or-leave-it" basis. Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the lease agreement, and did not have counsel present to provide assistance during the signing of the lease agreement. The arbitration clause is found in section 24 of the subject lease agreement and contains several oppressive and one-sided terms. Similar to the arbitration clause that was found unconscionable in *Huskins v. Mungo Homes, LLC*, section 24.7 here purports to bar all claims older than one year in clear contravention of S.C. Code section 15-3-140 (2005). Other oppressive and one-sided terms in the arbitration clause include the waiver of a jury trial, inability to appeal the arbitration decision, and inability to participate in a class action. The subject lease agreement is a contract of adhesion, Plaintiff lacked meaningful choice and could not negotiate its terms, and the arbitration clause contains several oppressive and one-sided terms. Therefore, the arbitration clause contained in section 24 of the lease agreement is unconscionable, and thus unenforceable.

II. Defendant's Motion to Stay and Compel Arbitration should be denied because Defendant has waived its ability to enforce arbitration by participating in litigation.

The right to enforce an arbitration clause may be waived. *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665 521 S.E.2d 749, 753 (1999). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on facts of each case." *Id.* Historically, South Carolina Courts have required a party seeking to establish waiver to show prejudice through an

undue burden caused by a delay in the demand for arbitration. *Sentry Engineering & Construction*, 287 S.C. 346, 351, 338 S.E.2d 631, 634 (1985). To ascertain whether the non-moving party was prejudiced, courts often look at whether the party requesting arbitration took advantage of the judicial system by engaging in discovery. *Evans v. Accent Manufactured Homes, Inc.* 352 S.C. 544, 548, 575 S.E.2d 74, 76 (2003). However, in *Morgan v. Sundance* the U.S. Supreme Court ruled that a party may waive their right to arbitration by engaging in litigation without needing to show prejudice to the other party. 596 U.S. 411, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022). This ruling suggests that simply participating in litigation can be considered a waiver of the right to arbitrate, even if the non-moving party was not harmed in seeking arbitration.

Here, Defendant's actions have been inconsistent with the intent to enforce arbitration as Defendant waited a substantial amount of time before seeking to enforce the arbitration clause and has actively participated in the litigation process. First, Defendant filed the Motion to Stay and Compel arbitration almost five months after Plaintiff filed her complaint. Second, Defendant filed an answer to Plaintiff's complaint which did not raise the Defendant's purported right to enforce arbitration as a defense. If Defendant wished to enforce arbitration, Defendant's first responsive pleading to Plaintiff's complaint should have expressed such an intent. Third, Defendant sent written discovery requests to Plaintiff consisting of interrogatories and requests for production, which Plaintiff answered. The discovery requests sent by the Defendant went beyond basic requests. Fourth, Defendant has sent out eight subpoenas since the commencement of this action.

It is clear Defendant's actions for the last five months have been inconsistent with the intent to enforce the arbitration clause in the lease agreement between Plaintiff and Defendant.

Based on the foregoing, Defendant's Motion to Stay and Compel Arbitration should be denied.

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February 20, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO.: 2024-CP-18-01431
	)	
Marisol Kelly,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT’S MOTION TO
	)	RECONSIDER AND SUPPORTING
	)	MEMORANDUM
Mid-America Apartments, L.P., d/b/a	)	
Water’s Edge Apartments,	)	
	)	
Defendant.	)	
	)	

COMES NOW Defendant Mid-America Apartments, L.P., d/b/a Water’s Edge Apartments (“Defendant”), pursuant to Rule 59 of the South Carolina Rules of Civil Procedure (“SCRPC”) and respectfully submits this Motion to Reconsider the Honorable Court’s Order denying Defendant’s Motion to Stay and Compel Arbitration dated March 25, 2025. Defendant asserts that the denial was in error as: (1) the Arbitration Clause in the lease agreement between Plaintiff Marisol Kelly and Defendant is not unconscionable; and (2) Plaintiff failed to show any prejudice she suffered by Defendant’s delay in demanding arbitration as is required under South Carolina’s waiver law.

Defendant incorporates by reference all memoranda of law and oral arguments previously presented to the Court in this case.

STATEMENT OF THE CASE

Defendant fully incorporates its “Statement of the Case” section from its Memorandum in Support of Motion to Stay and Compel Arbitration filed on February 19, 2025. (attached as **Exhibit 1**).

After the filing of Defendant's Motion to Stay and Compel Arbitration, a hearing was noticed for February 24, 2025, via WebEx, before the Honorable Judge William McMaster. In addition to pre-hearing briefing, this Court entertained oral arguments on behalf of counsel for both Plaintiff and Defendant. On March 11, 2025, the Court entered a Form 4 Order denying this Defendant's motion and requiring Plaintiff's counsel to submit a formal order within ten days thereof. The Court subsequently adopted the order drafted by Plaintiff's counsel on March 25, 2025. Defendant now timely moves this Court pursuant to Rule 59(e), SCRCPP, to reconsider its denial.

The Order finds that the Arbitration Clause contained in the lease agreement between Plaintiff and Defendant is unconscionable and unenforceable because: (1) the lease agreement constitutes an adhesion contract; and (2) the arbitration clause included:

oppressive terms such as language which sought to bar all claims older than one year in clear contravention of S.C. Code Section 15-3-140 (2005), the waiver of a jury trial, inability to appeal the arbitration decision, inability to participate in a class action, and putting the burden on paying the arbitration filing fees on the Plaintiff.

The Order further found that Defendant had waived its ability to enforce arbitration by participating in litigation and exhibiting actions contrary to that of a party intending to enforce an arbitration agreement.

Defendant respectfully requests the Court reconsider its ruling in full as it believes the Court may have misunderstood, failed to fully consider, or failed to rule on an argument or issue. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). For the reasons emphasized in Defendant's previously submitted memorandum and at the hearing, which are incorporated fully herein, the subject Arbitration Clause is not unconscionable, and Defendant did

not waive its right to compel arbitration. Therefore, Defendant requests the Court GRANT its Motion to Stay and Compel Arbitration.

ARGUMENT

A circuit court's interlocutory orders are amendable. Johnston v. Bowen, 313 S.C. 61, 63, 437 S.E.2d 45, 47 (1993). Rule 59(e) of the South Carolina Rules of Civil Procedure provides that a party may move the court to alter or amend a judgment within 10 days after it receives written notice the order was entered. Rule 59(e), SCRCP; see also Elam, 361 S.C. at 21-22, 602 S.E.2d at 778-79 ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule."). A party is permitted to file a motion to reconsider pursuant to Rule 59(e), SCRCP, upon a belief that: "the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue." Id. at 24, 602 S.E.2d at 780. "Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." Id. (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)).

The decision to grant a motion for relief from judgment lies within the sound discretion of the circuit court and will not be disturbed upon appeal absent an abuse of discretion. BB&T v. Taylor, 369 S.C. 549, 551, 633 S.E.2d 501, 502-03 (2006). A circuit court abuses its discretion when there is an error of law or the order is based on factual conclusions that are without evidentiary support. Id. (citing Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990)).

I. The Arbitration Clause is not unconscionable and is, therefore, enforceable.

As it relates to arbitration provisions, there is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes.

Towles v. United HealthCare Corp., 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). In South Carolina, unconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2000). The Supreme Court of South Carolina has explicitly advised that

[c]ourts should not refuse to enforce a contract on the grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.

Gladden v. Boykin, 402 S.C. 140, 145, 739 S.E.2d 882, 884-85 (2013).

As an initial matter, page one of the applicable lease agreement states the following in bolded, underscored, capital lettering:

**THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO THE FEDERAL ARBITRATION ACT
AND/OR SECTION 15-48-10 ET SEQ., OF THE SOUTH
CAROLINA CODE OF LAWS (1976), AS AMENDED.**

(**Exhibit 2:** Lease Agreement). Section 24.2 titled **Agreement to Arbitrate Disputes** is similarly formatted in majority bolded, underscored, capital lettering. (*Id.*) As such, there is no intent by Defendant to obscure or otherwise, hide the fact that Plaintiff's lease agreement is subject to mandatory arbitration. The agreement goes on to describe precisely what claims are subject to mandatory arbitration and which claims are excluded therefrom. (*Id.*) Additionally, there is no evidence that Plaintiff lacked the basic ability to read and understand the terms of the Arbitration Clause.

Even further, the Arbitration Clause, via Section 24.8, advises Plaintiff of her ability to opt out of the Section 24.2's Agreement to Arbitrate Disputes. (See Exhibit 2). Specifically, Plaintiff simply had to notify Defendant of her desire to opt out of Section 24.2, in writing and within thirty (30) calendar days of the lease agreement. (Id.) This provision alone confirms that the lease agreement is not appropriately considered an adhesion contract as providing the "Opt Out Notice" would not have impacted Plaintiff's ability to lease the unit. Consequently, it can hardly be said that Plaintiff lacked any meaningful choice as she decided whether to agree to the Arbitration Clause.

Plaintiff cites the presence of the following terms as a basis for finding the Arbitration Clause unconscionable: the barring of all claims older than one year, the waiver of a jury trial, the inability to appeal the arbitration decision, the inability to participate in a class action, and the requirement that Plaintiff pay the arbitration filing fees. However, these terms are not so oppressive that no reasonable person would make them and no fair and honest person would accept them as such terms do not place any limitation on the remedies available to Plaintiff during arbitration.

Alternatively, even if such terms are found to be unconscionable, this Court should sever such portions from the Arbitration Clause and enforce the remaining provisions as intended. Pursuant to S.C. Code Ann. § 36-2-302 (2003), upon a finding that a clause of any contract was unconscionable at the time it was made, the Court may refuse to enforce the unconscionable clause or so limit its application so as to avoid any unconscionable result. Simpson, 373 S.C. at 25, 644 S.E.2d at 668. A critical consideration in assessing severability is giving effect to the intent of the contracting parties. Id. at 34, 644 S.E.2d at 673. Section 24.5 specifically states that if any portion of Section 24, i.e. the Arbitration Clause, is found to be unenforceable for any reason, it will not invalidate the remaining portions of Section 24. (See Exhibit 2). Accordingly, to the extent the

above-described terms are deemed unconscionable, such terms should be severed from the Arbitration Clause.

Because the Arbitration Clause was conspicuously included in the subject lease agreement and contained Section 24.8, an opt-out provision, Plaintiff had a meaningful choice in whether to agree to be bound by thereby. As such, this Court should find that the lease agreement is not an adhesion contract, the Arbitration Clause is not unconscionable, and instead, is applicable and enforceable in this matter. To the extent that any portion of the Arbitration Clause is found to be unconscionable, this Court should sever such unconscionable terms and enforce the remaining provisions of the clause as permitted by the severability provision of Section 24.5.

II. Defendant has not waived its right to arbitrate Plaintiff's claims.

South Carolina contract law governs issues concerning the validity, revocability, and enforceability of arbitration clauses. Munoz v. Green Tree Financial Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001). In determining whether a party has waived its right to compel arbitration, South Carolina courts consider: (1) whether a substantial length of time has 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. Carlson v. South Carolina State Plastering, LLC, 404 S.C. 250, 257, 743 S.E.2d 868, 872 (Ct. App. 2013); see also Palmetto Construction Group, LLC v. Restoration Specialists, LLC, 444 S.C. 328, 343, 907 S.E.2d 129, 137 (Ct. App. 2024).

Plaintiff erroneously relies on inapplicable precedent from the Supreme Court of the United States for the proposition that she does not need to make a showing of prejudice to support a finding that Defendant has waived its right to compel arbitration. Morgan v. Sundance, Inc., 596

U.S. 411, 416, 142 S. Ct. 1708, 1713 (2022) (finding that a showing of prejudice is not a requirement in federal waiver law). Morgan was decided in 2022 and the Supreme Court explicitly declined to address the role state law might play in resolving when a party's litigation conduct results in the loss of a contractual right to arbitrate and whether prejudice should be considered thereunder. Id. South Carolina law is clear on this topic; in determining whether a party has waived its right to arbitration, there must be a showing of prejudice suffered by the party opposing arbitration. Carlson, 404 S.C. at 257, 743 S.E.2d at 872. The South Carolina Court of Appeals confirmed prejudice as a determining factor in South Carolina waiver law in 2024, about two years after the Morgan opinion. Palmetto Construction Group, LLC v. Restoration Specialists, LLC, 444 S.C. 328, 343, 907 S.E.2d 129, 137 (Ct. App. 2024).

To establish prejudice, courts examine whether the party requesting arbitration took advantage of the judicial system when it engaged in discovery. Evans v. Accent Manufactured Homes, Inc., 352 S.C. 544, 548, 575 S.E.2d 74, 76 (Ct. App. 2003). When the parties have conducted little or no discovery, then the party seeking arbitration has not taken advantage of the judicial system. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 127, 647 S.E.2d 249, 251 (Ct. App. 2007). As previously stated, the parties have begun written discovery but have not completed it. No motions have been filed aside from the instant motion to compel arbitration, and no depositions have been taken.

Because the parties have engaged in only limited written discovery, Plaintiff cannot demonstrate that she has been prejudiced by Defendant's delay in seeking to compel arbitration and Defendant's Motion should be granted.

CONCLUSION

Based upon the foregoing, as well as the arguments set forth by this Defendant in its previously filed Motion to Stay and Compel Arbitration, its Memorandum in Support thereof, as well as the arguments made by counsel for Defendant at the hearing on this matter, all of which is incorporated herein by reference, Defendant respectfully requests that the Court reconsider its March 25, 2025 Order and GRANT Defendant's Motion to Stay and Compel Arbitration. The subject Arbitration Clause is not unconscionable and Plaintiff has not made the requisite showing of prejudice to support the conclusion that Defendant waived its right to compel arbitration.

This 3rd day of April, 2025.

Respectfully submitted,

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ELECTRONICALLY FILED - 2025 Feb 19 1:47 PM - DORCHESTER - COMMON PLEAS - CASE#2024CP1801431
ELECTRONICALLY FILED - 2025 Apr 03 3:35 PM - DORCHESTER - COMMON PLEAS - CASE#2024CP1801431

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Marisol Kelly,

Plaintiff,

VS.

Mid-America Apartments, L.P., d/b/a
Water's Edge Apartments,

Defendant.

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CASE NO.: 2024-CP-18-01431

EXHIBIT

1

**DEFENDANT’S MEMORANDUM IN
SUPPORT OF MOTION TO STAY AND
COMPEL ARBITRATION**

COMES NOW Defendant Mid-America Apartments, L.P., d/b/a Water's Edge Apartments ("Defendant"), and respectfully submits this Memorandum in Support of its Motion to Stay and Compel Arbitration, pursuant to the arbitration provision contained in the lease agreement between Plaintiff and Defendant, the Federal Arbitration Act (FAA), and the S.C. Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 et. seq. Because (1) Plaintiff's claims are arbitrable pursuant to her Lease Agreement; and (2) Plaintiff has not been prejudiced by Defendant's delay in demanding arbitration, Defendant respectfully requests this Court grant its Motion to Stay this matter and Compel Arbitration.

STATEMENT OF THE CASE

Plaintiff Marisol Kelly filed her Complaint against Mid-America Apartments, L.P., d/b/a Water's Edge Apartments in the Dorchester County Court of Common Pleas on August 30, 2024. Plaintiff alleges that she was injured when she fell down five stairs after slipping on trash which had accumulated along the exterior stairwell in the common area of her apartment building on February 20, 2023. Complaint ¶¶ 6, 7, 8. However, Plaintiff Marisol Kelly's applicable Lease

Agreement is subject to arbitration pursuant to the Federal Arbitration Act and S.C. Code Ann. § 15-48-10 et. seq. (**Exhibit 1:** Lease Agreement).

Section 24.2 of the Lease Agreement states the following, in pertinent part:

ALL CLAIMS THAT ARISE BETWEEN YOU AND LANDLORD WILL BE RESOLVED THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE [Federal Arbitration Act, Title 9 of the United States Code] AND THE [Commercial Arbitration Rules of the American Arbitration Association]. YOU AND LANDLORD AGREE AND UNDERSTAND THAT WE MUTUALLY CHOOSE BINDING ARBITRATION INSTEAD OF LITIGATION TO RESOLVE ALL CLAIMS. THIS MEANS THAT UNLESS YOU OPT OUT OF THIS SECTION 24.2 (AGREEMENT TO ARBITRATE DISPUTES), NEITHER YOU NOR THE LANDLORD WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT EXCEPT TO THE EXTENT PROVIDED HEREIN WITH RESPECT TO EXCLUDED CLAIMS.

(Id.) Section 24.1 of the Lease Agreement defines a claim, in pertinent part, as

any claim, dispute, action, proceeding, cause of action or controversy of every kind and nature, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property).

However, an excluded claim is defined as

any action, proceeding, or cause of action by You or Landlord, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property) or otherwise, in which the aggregate amount of damages, including exemplary damages, punitive damages, attorneys' fees, and all other forms of monetary damages, sought does not exceed \$10,000.

(Id.)

Since being served with the Complaint in this matter, Defendant filed an appropriate and timely Answer in response to Plaintiff's allegations and began limited written discovery. Both parties served discovery requests and provided responses thereto. (**Exhibit 2:** Plaintiff's

Discovery Responses). No depositions have been taken. Shortly after exchanging this initial written discovery, Defendant halted all further discovery as Plaintiff's claims are subject to the arbitration provision contained in the Lease Agreement. Defendant filed the instant Motion to Stay and Compel Arbitration on January 15, 2025, less than five months after Plaintiff instituted this action, as the relevant terms of the Lease Agreement dictate that Plaintiff's personal injury claims are subject to mandatory and binding arbitration.

ARGUMENT

Unless otherwise provided by the parties, the question of arbitrability of a claim is an issue for judicial determination. Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 609, 571 S.E.2d 711, 713 (Ct. App. 2002). A trial court's decision of whether or not a matter is arbitrable is subject to *de novo* review and its findings of facts will not be overruled if there is any evidence reasonably supporting them. Id. at 609-10, 571 S.E.2d at 713. It is the policy of the United States and South Carolina to favor arbitration of disputes. Tritech Elec., Inc. v. Frank M. Hall & Co., 343 S.C. 396, 540 S.E.2d 864 (Ct. App. 2000). Thus, a motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute. Id.

I. Plaintiff's claims fall squarely within the arbitration provision of the Lease Agreement and thus, are arbitrable.

An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine the clause's applicability to a particular dispute, including those clauses governed by the Federal Arbitration Act. Towles v. United HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999); see also Munoz v. Green Tree Financial Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 364 (2001) (concluding that state law remains applicable if such laws arose to govern issues concerning the validity, revocability, and enforceability of contracts). Arbitration

rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement. Zabinski v. Bright Acres Assoc., 346 S.C. 580, 596-97, 553 S.E.2d 110, 118 (2001). In order to decide whether an arbitration agreement encompasses a dispute, the court must determine whether the factual allegations underlying the claim fall within the scope of the arbitration clause, regardless of the label assigned to it. Id. at 597, 553 S.E.2d at 118.

Here, Plaintiff entered a Lease Agreement with Defendant to lease Unit 10L of the property known as Waters Edge on June 9, 2022. (Exhibit 1). This Lease Agreement was effective through May 9, 2023. (Id.) Section 24.2 of Plaintiff's Lease Agreement states that **all claims that arise between Plaintiff and the Defendant** will be resolved through binding arbitration. (Id.) Section 24.1 of the Lease Agreement expressly includes personal injury claims in its definition of "claims." While certain claims are excluded from this arbitration provision, those "excluded claims" are specifically defined, in relevant part, as personal injury claims in which the monetary damages sought do not exceed \$10,000. (Id.)

Plaintiff brought this negligence action against Defendant to recover for personal injuries she sustained when she allegedly slipped and fell down five steps located in the common area of her building on February 20, 2023. (See Complaint). During discovery, Plaintiff disclosed that she was seeking \$16,222.12 in medical expenses alone. This amount does not include the monetary damages Plaintiff will seek to compensate her for the noneconomic claims she has lodged against Defendant. Given that Plaintiff has lodged personal injury claims for which she seeks more than \$10,000 in monetary damages, Plaintiff's claims are subject to the arbitration provision contained in the Lease Agreement. See Lewis v. Premium Inv. Corp., 351 S.C. 167, 568 S.E.2d 361 (2002) (holding that when a contract is clear and unambiguous, the language alone determines the force and effect); see also Erie Ins. Co. v. Winter Const. Co., 393 S.C. 455, 713 S.E.2d 318 (Ct. App.

2011) (holding that a court must construe the language of a contract according to its plain, ordinary, and popular meaning). Therefore, this Court should stay this litigation and compel the parties to participate in the arbitration which is mandated by the applicable Lease Agreement.

II. Defendant has not waived its right to arbitrate Plaintiff's claims.

South Carolina contract law governs issues concerning the validity, revocability, and enforceability of arbitration clauses. Munoz, 343 S.C. at 539, 542 S.E.2d at 364. The right to enforce an arbitration clause may be waived. See Carlson v. South Carolina State Plastering, LLC, 404 S.C. 250, 256, 743 S.E.2d 868, 872 (Ct. App. 2013). However, there is no set rule as to what constitutes a waiver of the right to arbitration as such is dependent upon the facts of each case. See Liberty Builders, Inc. v. Horton, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999).

In determining whether a party has waived its right to compel arbitration, South Carolina courts consider: (1) whether a substantial length of time has 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. Carlson, 404 S.C. at 257, 743 S.E.2d at 872; see also Palmetto Construction Group, LLC v. Restoration Specialists, LLC, 444 S.C. 328, 343, 907 S.E.2d 129, 137 (Ct. App. 2024) (confirming prejudice as a factor in South Carolina waiver law). Cf. Morgan v. Sundance, Inc., 596 U.S. 411, 416, 142 S. Ct. 1708, 1713 (2022) (explicitly declining to address the role state law might play in resolving when a party's litigation conduct results in the loss of a contractual right to arbitrate and whether prejudice should be considered thereunder).

a. Defendant filed the instant motion to compel arbitration less than five months after Plaintiff commenced this lawsuit.

At the time Defendant filed its motion to compel arbitration only four and a half months had elapsed since Plaintiff commenced the action on August 30, 2024. Four and a half months can hardly be considered a substantial length of time as South Carolina courts have found that waiver did not occur when litigation had gone on for a much longer periods of time on numerous occasions. Carlson, 404 S.C. at 257, 743 S.E.2d at 872 (finding a period of over two years did not demonstrate waiver); see also Rich v. Walsh, 357 S.C. 64, 72, 590 S.E.2d 506, 507 (Ct. App. 2003) (finding a thirteen-month period did not demonstrate waiver); Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (finding a thirteen-month period did not demonstrate waiver); Gen Equip. & Supply Co. v. Keller Rigging & Constr., Inc., 344 S.C. 553, 557, 544 S.E.2d 643, 645 (Ct. App. 2001) (finding an eight-month period did not demonstrate waiver).

b. Defendant has conducted very limited written discovery and thus, its brief delay in demanding arbitration did not prejudice Plaintiff.

Defendant has issued twenty-nine interrogatories and twenty-four requests for production, responded to Plaintiff's discovery requests, and issued seven subpoenas in this matter. To date, no depositions have been taken, and written discovery has not been completed. Instead, discovery has been suspended during the pendency of the instant motion. Toler's Cove Homeowners Ass'n, Inc., 355 S.C. at 612, 586 S.E.2d at 585 (finding waiver had not occurred where discovery was very limited in nature, the parties had not availed themselves of the court's assistance, and no depositions had been taken); Rich, 357 S.C. at 72, 590 S.E.2d at 507 (finding waiver did not occur where limited discovery was conducted and the party requesting arbitration took one deposition lasting fifteen minutes); Gen Equip., 344 S.C. at 557, 544 S.E.2d at 645 (finding no waiver

occurred when the litigation consisted of routine administrative matters and limited discovery which did not involve depositions).

To establish prejudice, the non-moving party must establish something more than “mere inconvenience. Evans v. Accent Manufactured Homes, Inc., 352 S.C. 544, 550, 575 S.E.2d 74, 76-77 (Ct. App. 2003). Courts examine whether the party requesting arbitration took advantage of the judicial system when it engaged in discovery. Evans, 352 S.C. at 548, 575 S.E.2d at 76. When the parties have conducted little or no discovery, then the party seeking arbitration has not taken advantage of the judicial system. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 127, 647 S.E.2d 249, 251 (Ct. App. 2007). As previously stated, the parties have begun written discovery but have not completed it. No motions have been filed aside from the instant motion to compel arbitration, and no depositions have been taken.

Moreover, much of the discovery which has been completed to date, would be available during the arbitration process; and thus, can hardly be considered an effort, by Defendant, to take advantage of the judicial system. Section 24.2 of the Lease Agreement specifically requires that arbitration be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association. (Exhibit 1; see also Exhibit 3: Commercial Arbitration Rules of the American Arbitration Association). The subject rules allow parties to request an administrative conference wherein the AAA addresses several topics including the manner in which the parties will exchange information. (See Exhibit 3: R.10 Administrative Conference). During the arbitration process, parties can issue requests for production and exchange documents and arbitrators can issue subpoenas upon a party’s request. (See Exhibit 3: P-2 Checklist (a)(vii); R-34 Evidence (d)). The rules further empower arbitrators to establish additional procedures to obtain information that is relevant and material to the outcome of disputed issues. (See Exhibit 3: P-2

Checklist (a)(viii)). These additional procedures could include allowing the parties to exchange interrogatories, if found to be appropriate.

Because the parties have engaged in only limited written discovery which would have been available thereto during the arbitration process, Plaintiff cannot demonstrate that she has been prejudiced by Defendant's delay in seeking to compel arbitration.

CONCLUSION

In conclusion, this Court should grant Defendant's Motion to Stay and Compel Arbitration as Plaintiff's claims are arbitrable pursuant to her Lease Agreement and Plaintiff has not been prejudiced by the less than five-month delay between the commencement of this lawsuit and the filing of Defendant's motion.

This 19th day of February, 2025.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

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SOUTH CAROLINA RESIDENTIAL LEASE AGREEMENT

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND/OR SECTION 15-48-10 ET SEQ., OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS AMENDED.

THIS RESIDENTIAL LEASE AGREEMENT ("Lease" or "Agreement") is made this 9th of June, 2022 between Landlord and Resident(s). Subject to the Lease Summary and Specific Terms and General Terms and Conditions set forth below, Landlord leases to Resident(s), and Resident(s) leases from Landlord for the initial term beginning on the Lease Start Date and ending on the Lease End Date, the Apartment located at the Property.

LEASE SUMMARY AND SPECIFIC TERMS

EXHIBIT
2

Property (also referred to as "Premises"): CV at Waters Edge

Property Address:
9989 Dorchester Road
Summerville, SC 29485

Landlord (referred to as "Landlord" "We" or "Our"): Mid-America Apartments, L.P., a Tennessee limited partnership

Resident(s) (referred to as "Resident", "You", or "Your"):
Marisol Kelly

Occupant(s):
Kenneth Kelly

Apartment:
9989 Dorchester Road #10L
Summerville, SC 29485

Lease Start Date: 06/10/2022

Lease End Date: 05/09/2023

Monthly Base Rent: \$1568.00

Security Deposit: \$0.00

SMAArt Savings Fee: \$784.00

Additional Deposits:

Additional Rentable Items:

Other Recurring Charges:
Monthly MAA Connect Fee: \$75.00 Per Month.
Monthly Pet Rent: \$10.00 Per Month.
Monthly MAA Connect Fee: \$10.00 Per Month.
Monthly Community Fee: \$18.00 Per Month.

Non-refundable Pet Fee: 330.00

You HAVE a pet at this time. In consideration for the privilege of having a pet on the Premises and in the Apartment, You agree to pay the Non-refundable Pet Fee set forth above. This Non-refundable Pet Fee is a fee not a deposit. The Non-refundable Pet Fee will not be returned to You and will not be applied to damages caused by the pet or for any other reason. The Non-refundable Pet Fee is payable, at Landlord's discretion, either in full when you move into Your Apartment or in two equal installments. If Landlord agrees to allow you to pay in installments, one-half of the Non-refundable Pet Fee will be due on Your move in date and the remaining one-half will be due on the first day of the following month. In addition to Base Monthly Rent, You agree to pay Monthly Pet Rent for each pet, payable each month in advance on the first day of the month without notice.

SMAArt Savings Fee. We have made available to You the SMAArt Savings Program as a way to provide You with lower up-front move-in costs than the total cost associated with a traditional Security Deposit. The Security Deposit option has been explained to You, and You have made the choice to participate in SMAArt Savings Program. You will pay a nonrefundable fee in lieu of a Security Deposit or Additional Security Deposit. The SMAArt Savings Program fee is lower than the Security Deposit typically required for the Premises. The SMAArt Savings Program fee is not a deposit and is not intended to secure performance of Your obligations under the Lease, but rather to lower the total move-in cost for residents who choose to participate in the SMAArt Savings Program. You are responsible for the full amount of all damage to the Premises exceeding normal wear and tear, and any unpaid rent, utilities or any other amount owing by You under the Lease at the time of move out. You will receive a final account statement reflecting all charges owed at the time of move out. You further understand that through the SMAArt Savings Program there is no existing deposit held on hand to offset against potential damages, charges, or other outstanding balances. Any amount left owing at the end of Lease term is Your full responsibility to pay to Landlord. If You paid a Security Deposit as a part of Your Lease application with Landlord, You hereby acknowledge and agree that (i) as part of Your election to participate in the SMAArt Savings Program You directed Landlord to credit the amount of that Security Deposit to Your account as a prepaid balance; (ii) Landlord may apply the SMAArt Savings Program fee and any other charges against the amount credited; and (iii) You do not have a Security Deposit under this Lease.

GENERAL TERMS AND CONDITIONS:**1. RENT:**

1.1 You agree to pay Landlord the Monthly Base Rent, which is payable each month in advance on the first (1st) day of each month. You agree that not paying Rent on or before the first of each month is a material breach of this Lease. Rent is payable on Landlord's online payment portal or such other place as Landlord may designate. Rent paid after the first (1st) day of the month is late. If the Lease Start Date is not the first (1st) day of the month and this is the initial term of this Lease, then Your Monthly Base Rent for that month will be prorated and will be payable in advance on the Lease Start Date. If the Lease Start Date is not the first (1st) day of the month and this is a renewal of a prior lease between You and Landlord, then Your Monthly Base Rent for that month will be prorated and will be payable in advance on the first (1st) day of the month along with the prorated rent due under Your prior lease.

1.2 Any additional sums or charges due from You under this Lease including, but not limited to, sums for Storage Unit(s), Parking, Garage, trash, late fees, other fees, utilities, or because of a breach or violation of this Lease ("Additional Sums") shall be due as additional rent. Such Additional Sums shall also include, but are not limited to, damages exceeding normal wear and tear to the Apartment or Premises, when such damages are caused by You or Your Occupants, guests or invitees. You will receive a monthly billing statement that outlines your current monthly charges; however, it is Your responsibility to pay the balance owed each month, regardless of whether or not a statement is received. You can receive this statement via email at no charge or You may elect by written notice to Landlord, to receive this statement via US mail. You will be charged \$4.95 each month for a paper statement ("Paper Statement Fee") which will be mailed to the Apartment address or to such other address as You designate in writing to Landlord. The Paper Statement Fee is for administration, billing, overhead and similar expenses and charges incurred by us for providing and processing billing statements and also includes our profit margin. This Paper Statement Fee will be constant regardless of the number of other charges contained on your billing statement and may be changed (with thirty (30) days written notice provided to You) if our actual expenses increase. This Paper Statement Fee is not a charge for drinking water, wastewater, gas or electricity from the retail public utility from which such utility services are provided, and does not include any fees billed to us by that retail public utility for any deposit, disconnect, reconnect, late payment or other similar fees. If Landlord does not have a valid email account on file for You at the time statements are sent out for Your Apartment, You will be charged the Paper Statement Fee. You can elect to change your billing statement option at any time during your Lease term. Converting from Online/Electronic Statement to a paper statement may take two (2) billing cycles and You will not be charged the Paper Statement Fee until you actually receive the paper statement.

1.3 Only after Total Rent (which shall include Monthly Base Rent and the Additional Sums) is tendered will rent payment be accepted. Total Rent must be submitted in full. Landlord's acceptance of any partial payment does not waive Landlord's rights under this Lease or applicable State law nor its right to demand payment in full. Furthermore, Landlord's acceptance of any partial payment shall not be construed as a waiver of paying rent in full nor does it release You from your obligation to pay rent in full when due or demanded. Landlord reserves its rights to pursue any and all available civil remedies for You failing to pay rent in full when due or demanded.

1.4 All rent shall be paid by direct debit, ACH, or other electronic means established and approved by Landlord, personal check drawn on Your personal account, cashier's check, certified funds, other checks made payable to Landlord, or money order. You shall remain liable for any and all convenience fees associated with any electronic payments. You will not use and Landlord shall have the right to refuse cash for any payment due under this Lease.

1.5 You agree to pay to Landlord with your Monthly Base Rent, any sales, municipal or other rental tax due as a result of this Lease and charged by Landlord, including any increases in any such tax during the term of the Lease, and Landlord will remit such amounts to the appropriate taxing authority.

1.6 You waive all rights to deduct or offset any sums from rent, whether such rights exist now, arise after the Lease Start Date, or were created by statute or other laws. Notwithstanding the foregoing, nothing herein or elsewhere in the Lease shall be deemed to constitute a waiver of any right or remedy provided to You by applicable law, which right or remedy may not be waived pursuant to such law.

1.7 Monthly Community Fee. You shall pay to Landlord the Monthly Community Fee to reimburse Landlord for a portion of (i) the costs of operation, repair and maintenance of the Common Areas of the Premises, together with (ii) taxes and insurance associated with the Premises. "Common Areas" may include without limitation, green spaces, lawns, sidewalks, breezeways, parking lots, garages, the leasing office and other areas on the Premises that are common to Residents, Occupants and their guests. Costs incurred for the operation, repair and maintenance of the Common Areas may include without limitation, labor and material costs for, among other things, painting, cleaning, window cleaning, landscaping; inspection, repair and replacement work; and seasonal holiday decoration displays. Costs related to utilities (such as water, telephone, electric or gas), heating, air-conditioning and lighting of Common Areas are specifically excluded and will not be charged as part of the Community Fee.

1.8 Rent Increases: You agree that sixty (60) days prior to the Lease End Date, or at any time thereafter, Landlord shall have the right to increase the Monthly Base Rent and any other rent or sums due under this Lease by giving You no less than sixty (60) days' written notice (the "rent increase notice period"), and such increase shall not terminate this Lease.

1.8.1 You agree the rent increase notice period shall begin when Landlord either (a) delivers the notice regarding a rent increase personally to You or any one of You, (b) sends such notice to any email address on file with Landlord as provided by You or any one of You, (c) places such notice on the Apartment door, or (d) mails such notice by Registered or Certified Mail to the Apartment pursuant to South Carolina Code Section 27-40-240.

1.8.2 The rental increase shall be effective following the end of the initial Lease term or the sixtieth (60th) day after such notice was given, whichever shall occur later.

1.8.3 The terms of any renewal may specify rent greater than the Monthly Base Rent under this Lease, may incorporate Lease provisions that are different from the provisions of this Lease, and may specify rules that are different from the Rules in effect during the term of this Lease.

1.8.4 In the event that You have received a renewal offer from Landlord, have submitted a signed renewal letter to Landlord, or have entered into a renewal lease with Landlord prior to the expiration of this Lease and You breach or otherwise commit a default under this Lease, Landlord may, in its sole discretion, retract the pending renewal letter, reject the signed renewal letter received from You, or terminate the renewal Lease prior to the commencement of the renewal lease term by giving written notice to You.

2. LATE PAYMENTS; RETURNED CHECKS, ACH TRANSACTIONS, OR OTHER PAYMENTS:

Time is of the essence of this Lease. If Your rent is not paid on or before the First (1st) day of the month, an initial late fee in the amount of Seventy-Five Dollars (\$75.00) will be charged on the Second (2nd) day of the month and, beginning on the Third (3rd) of the month, a daily late fee of Ten Dollars (\$10.00) per day will be charged, not to exceed fifteen (15) days, until the rent amount due is paid in full. Such "full monthly rent" shall include all

additional monthly rent due for any Additional Rentable Item. The parties agree that these fees represent a reasonable estimate of uncertain damages to Landlord that are incapable of precise calculation that would result from Your late payment of rent.

Payments received any time after the office has closed for the day or on a holiday or other day when Landlord's office is not open for business will not be credited to Your account until the next business day and a late fee may be incurred.

2.1 If Landlord elects to accept late rent, you shall tender all late rents, late fees, dispossession warrant costs, administrative filing fees, and all other costs related to Your late payment to Landlord and such payment shall be made by cashier's check, certified check, or money order. Acceptance of late rent is not a waiver of the requirement that rent is due on the first (1st) day of the month.

2.2 In the event Your rent check or any other check written by You or any direct debit, ACH, or other electronic payment made by You or on Your behalf is dishonored, returned, or rejected by the bank or is otherwise unsuccessful through no fault of Landlord, You shall pay Landlord a service charge in the amount of \$30.00 in addition to the amount of the check or payment, any late charges, and any other amounts owed. Dishonored, returned, rejected, or unsuccessful checks, direct debits, ACH transactions, or other electronic payments shall be redeemed only by cashier's check, certified check or money order, and, after two dishonored, returned or rejected payments, You shall pay all future rents and charges due under this Lease only by cashier's check, certified check or money order.

2.3 Nothing in this Lease shall constitute a waiver or limitation of Landlord's right to institute legal proceedings for rent, damages and/or repossession of the Apartment for non-payment of any installment of rent when and as the same becomes due and payable.

2.4 FAILURE TO PAY RENT ON TIME. THIS IS YOUR NOTICE. IF YOU DO NOT PAY YOUR RENT WITHIN FIVE (5) DAYS OF THE DUE DATE, WE CAN BEGIN THE EVICTION PROCESS. WE ARE NOT REQUIRED TO PROVIDE YOU ANY ADDITIONAL NOTICE OTHER THAN AS SET FORTH IN THIS SECTION 2.4 FOR AS LONG AS YOU LIVE IN THE APARTMENT.

3. WRITTEN NOTICE TO VACATE REQUIREMENT AND AUTOMATIC RENEWAL TERM

3.1 Either party may terminate this Lease at the end of the initial Lease term by delivering to the other party sixty (60) days' written notice prior to the Lease End Date.

3.2 Without sixty (60) days' prior written notice, then this Lease will automatically renew on a month-to-month basis. During any month-to-month tenancy, in addition to any increase in Monthly Rent and Additional Sums, the terms of Landlord's then most current residential lease agreement will apply and You will be deemed to have agreed to such terms by continuing Your lease on a month-to-month basis. Landlord will make the most current residential lease agreement available to You upon Your written request. Your Lease will continue to automatically renew on a month-to-month basis until (a) the parties enter into a renewal lease for the Apartment; or (b) this Lease is terminated by either party providing to the other party not less than thirty (30) days' prior written notice of termination. If prior written notice of termination is provided, the Lease will terminate on the date indicated in the notice but in any event not less than thirty (30) days following the date of the notice.

3.3 THE FOLLOWING PROVISIONS REGARDING WRITTEN NOTICE BY YOU APPLY UNLESS PROHIBITED UNDER APPLICABLE LAW:

3.3.1 YOU UNDERSTAND AND AGREE THAT, IN ORDER FOR YOU TO TERMINATE THIS LEASE AT THE END OF THE INITIAL LEASE TERM, YOU MUST PROVIDE TO LANDLORD WRITTEN NOTICE AT LEAST SIXTY (60) DAYS PRIOR TO THE LEASE END DATE.

3.3.2 YOU UNDERSTAND AND AGREE THAT LANDLORD'S EMPLOYEES ARE NOT AUTHORIZED TO ACCEPT A VERBAL NOTICE OF A LEASE NON-RENEWAL, SURRENDER, TERMINATION, OR EARLY TERMINATION FROM YOU.

3.3.3 YOU HAVE NO RIGHT TO RELY ON ANY STATEMENT BY LANDLORD'S EMPLOYEES THAT A VERBAL NOTICE IS ACCEPTABLE.

3.3.4 YOUR NOTICE MUST BE IN WRITING, DATED, AND SIGNED BY AT LEAST ONE RESIDENT ON THIS LEASE, AND MUST SPECIFY THE MOVE-OUT DATE. NOTICE FROM ONE RESIDENT CONSTITUTES NOTICE FROM ALL RESIDENTS FOR PURPOSES OF THIS PARAGRAPH.

3.3.5 YOU SHOULD CONFIRM RECEIPT OF THE NOTICE BY LANDLORD WITH THE AUTHORIZED SIGNATURE OF A LANDLORD REPRESENTATIVE USING LANDLORD'S PRESCRIBED FORM.

3.3.6 YOU SHOULD KEEP A SIGNED RECEIPT OF THE WRITTEN NOTICE FOR YOUR PERSONAL RECORDS IN CASE OF ANY DISPUTE AS TO WHETHER SUCH NOTICE WAS GIVEN TO AND RECEIVED BY LANDLORD.

3.4 IF YOU DO NOT OBTAIN OR CANNOT PRODUCE A SIGNED RECEIPT OF THE WRITTEN NOTICE FROM LANDLORD, OR IF LANDLORD DOES NOT HAVE A SIGNED ORIGINAL NOTICE(S) FROM AT LEAST ONE RESIDENT, THEN A PRESUMPTION SHALL ARISE THAT YOU FAILED TO GIVE A PROPER NOTICE.

4. FAILURE TO FULFILL LEASE CONTRACT AND RESIDENT'S OPTION FOR EARLY LEASE TERMINATION, or TRANSFER TO ANOTHER LANDLORD APARTMENT OR PROPERTY:

4.1 Early Lease Termination Option ("Early Termination Option"): You may terminate this Lease before the expiration of the initial term if You are not in default under this Lease at the time of giving written notice or thereafter, and if You strictly comply with all of the provisions of this paragraph:

4.1.1 In order to terminate this Lease pursuant to this paragraph before the expiration of the initial term, You must:

4.1.1.1 Give Landlord sixty (60) days' written notice or pay an additional termination fee equal to rent for the period equal to sixty (60) days less the actual number of days' notice you provided ("Additional Termination Fee") (e.g., if you only give fifteen (15) days' notice you will pay your standard rent for fifteen (15) days plus an additional termination fee equal to rent for forty-five (45) days) at the time of giving notice; PLUS

4.1.1.2 Pay all monies due through date of termination, including, but not limited to, the payment of prorated rent; PLUS

4.1.1.3 Pay a fee in an amount equal to the sum of two times Your Monthly Base Rent ("Early Termination Fee") at the time of giving notice.

4.1.2 All terms and conditions of this paragraph must be satisfied before Your Lease will be terminated. Failure to comply with all terms and conditions of this paragraph will result in Your continued liability under the terms and conditions of this Lease. Additionally, Your election for early termination shall not relieve You of Your responsibilities and obligations regarding any damage beyond normal wear and tear to the Apartment.

4.2. Failure to Exercise Early Termination Option: If You do not exercise the Early Termination Option or You fail to fully satisfy your obligations under the Early Termination Option and You vacate Your Apartment or are evicted by Landlord during the term of Your Lease, You will be in material default of Your Lease and, in addition to Monthly Base Rent and Additional Sums (or prorated portions thereof) that You owe to Landlord, You will be charged and will be responsible to pay the Early Termination Fee and the Additional Termination Fee as defined in the paragraph above as liquidated damages. Landlord's damages from Your failure to fulfill the term of this Lease are uncertain and difficult to ascertain. Those damages include Our time, effort and expense in finding and processing a replacement resident such as making the Apartment ready, paperwork, advertising, showing vacant units, overhead and locator services. In addition, Landlord loses the rental income from Your Apartment until it is re-leased to another resident. While Landlord will make reasonably diligent efforts to re-lease Your Apartment if you vacate early, neither Landlord nor You know exactly how long the Apartment will remain vacant if you fail to fulfill Your lease term. You agree that the Early Termination Fee and the Additional Termination Fee are reasonable estimates of Landlord's damages and that these fees are due regardless of when the Apartment is re-leased.

4.3 Military Termination: You may terminate this Lease, pursuant to 50 App. USCA § 535 or other applicable state law ("Military Relief Laws"), if You (a) enter military service (active or reserve) after the signing of the Lease; (b) while in military service, receive military orders for a permanent change of station or to deploy with a military unit (or as an individual in support of a military operation) for a period of at least 90 days, or (c) meet any other conditions for an early termination of this Lease by military personnel under applicable law ("Military Cause").

4.3.1 To terminate this Lease under this paragraph, You must deliver to Landlord a written termination notice and a copy of the service member's military orders or a signed letter, confirming the orders, from Your commanding officer, confirming a Military Cause (collectively, "Military Termination Notice") either by hand delivery directly to Landlord by private business carrier, or by placing the written notice in an envelope with sufficient postage and with return receipt requested and addressed as designated in this Lease and depositing the written notice in the United States mail. Upon Our receipt of the Military Termination Notice and supporting documents, the Lease will terminate thirty (30) days following the date on which your next rental payment is due, provided that all criteria required by law are met ("Military Termination Date"), and the Military Termination Date will become the new Lease End Date.

4.3.2 You must perform all of Your obligations under this Lease through the Military Termination Date, including but not limited to, paying all Monthly Base Rent and any Additional Sums accruing or incurred through the Military Termination Date when due and You must vacate the Apartment by the Military Termination Date. The Military Termination Notice shall be effective as to all Residents and Occupants under this Lease.

4.4 Transfer to Another Landlord Apartment or Landlord Property: You may terminate this Lease and transfer to another apartment at the Property or to an apartment at another Landlord property before the expiration of the initial term, if You are not in default under this Lease at the time of giving written notice or thereafter, You have lived in the Apartment for at least six (6) months, You strictly comply with all the provisions of this paragraph, and Landlord, in its sole discretion, approves the termination.

4.4.1 In order to terminate this Lease pursuant to this paragraph before the expiration of the initial term, You must:

4.4.1.1 Give Landlord thirty (30) days' written notice; PLUS

4.4.1.2 Pay all monies due through date of termination, including, but not limited to, the payment of prorated rent; PLUS

4.4.1.3 Acknowledging that transfers cost Landlord additional administrative and maintenance time, which creates costs that are both varied and difficult to ascertain, pay a Transfer Fee of Five Hundred Dollars (\$500) for the administrative and maintenance costs incurred as a result of the transfer when You give the required written notice; PLUS

4.4.1.4 Participate with Landlord in a pre-transfer inspection of the Apartment; PLUS

4.4.1.5 Complete a new application and/or submit to all or part of the application approval process, involving, in part, credit, criminal, employment, and resident history background check or screening; PLUS

4.4.1.6 Pay any required fees (in addition to the Transfer Fee) and deposits associated with leasing the Landlord apartment to which You will be transferring; PLUS

4.4.1.7 Execute a Transfer Agreement and a lease for the Landlord apartment to which You will be transferring.

4.4.2 Landlord, in its sole discretion, may deny any transfer.

4.4.3 If this Lease requires You or any one of You to have an approved Guarantor(s), You agree that Landlord, in its sole discretion, may elect to deny any transfer if Your Guarantor(s) decline(s) to execute a new Guarantor Agreement associated with such transfer.

4.4.4 All terms and conditions of this paragraph must be satisfied before Your Lease will be terminated. Failure to comply with all terms and conditions of this paragraph will result in Your continued liability under the terms and conditions of this Lease. Additionally, transfer to another apartment shall not relieve You of Your responsibilities and obligations regarding any damage beyond normal wear and tear to the Apartment.

4.5 You understand that, unless and until all necessary and corresponding forms required for any termination under this paragraph are completed and signed by both You and Landlord, such termination is considered incomplete, regardless of when, or if, You gave notice to Landlord.

5. NO ASSIGNMENT OR SUBLETTING; RELEASE, SUBSTITUTION, OR ADDITION OF RESIDENT:

5.1 You may not sublet the Apartment or assign this Lease without prior written consent of Landlord which consent may be withheld in Landlord's sole discretion. You may not rent or license, or advertise, market or list the Apartment, or any portion thereof, for rent or license to any third party for lodging or other purposes, including, for example, through a website or other service that allows people to rent out lodging. This prohibition applies to daily, weekly, monthly, or any other period of usage of the Apartment by a third party or entity on a fee basis or for any other consideration. Landlord

reserves the right to provide, and to advertise, market and list the availability of, short term rentals and corporate housing programs at the Property. Further, Landlord may enter into business arrangements with third parties who provide short term rentals or corporate housing programs or who host websites where short term rental and corporate housing programs are advertised, marketed or listed, allowing them to promote and/or enter into rental or licensing arrangements at the Property for a fee.

5.2 Roommate Release Procedure:

5.2.1 Landlord may, in its sole discretion, allow for the release of one, but not all Residents from this Lease, if You are not in default under this Lease and You strictly comply with all the provisions of this paragraph. Before Landlord will release one (1) Resident, but not all Residents, from this Lease, You must:

5.2.1.1 Complete Landlord's Roommate Release Form or other application documentation required by Landlord; PLUS

5.2.1.2 Pay all monies due through date of release; PLUS

5.2.1.3 Pay a Roommate Release Fee of Three Hundred Fifty Dollars (\$350.00); PLUS

5.2.1.4 Complete a new application and/or submit to all or part of the application approval process (including payment of an application fee in addition to the Roommate Release Fee), involving, in part, credit, criminal, employment background check or screening, and resident history; PLUS

5.2.1.5 Execute a new lease for the Apartment, if required by Landlord, in the name of the remaining (and, if allowed by Landlord, any additional) roommate(s).

5.2.2 Landlord, in its sole discretion, may deny any release.

5.2.3 If this Lease requires You or any one of You to have an approved Guarantor(s), You agree that Landlord, in its sole discretion, may elect to deny any release if Your Guarantor(s) decline(s) to execute a new Guarantor Agreement associated with such release.

5.2.4 All terms and conditions of this paragraph must be satisfied before a Resident may be released. After completion of the roommate release process, the departing Resident will no longer have a right to occupy the Apartment or any other rights under this Lease or be entitled to any portion or a refund of any Security Deposits regardless of which Resident originally paid such Security Deposits. Failure to comply with all terms and conditions of this paragraph will result in the continued liability of all Residents under the terms and conditions of this Lease.

5.2.5 You understand that, unless and until all necessary and corresponding forms required for release of a Resident under this paragraph are completed and signed by both You and Landlord, such release is considered incomplete, regardless of when, or if, You gave notice to Landlord.

5.3 Addition of Resident: The Apartment shall be occupied only by the person(s) named in this Lease as a Resident or Occupant. Substitution or addition of any Resident(s) or Occupant(s) will be allowable only with prior written consent of Landlord, which may be withheld in Landlord's sole discretion and may require the execution of a new Lease, an increase in the total Security Deposits required, the use of one or more Guarantors, the successful completion of the application approval process (including payment of an application fee), involving, in part, credit, criminal, employment, and resident history background check or screening.

6. HOLD OVER:

6.1 If You fail to return possession of the Apartment to Landlord on or before the date that Your right of occupancy or possession ends or the date on which Your Lease terminates, is non-renewed, or expires, then:

6.1.1 You are deemed to be holding possession over beyond the term of the Lease ("Hold Over");

6.1.2 Your legal status is that of a Hold Over tenant at sufferance;

6.1.3 You shall be obligated to immediately remove all of Your property and property of the Occupants from the Apartment, return all keys to Landlord, and deliver possession of the Apartment to Landlord in a clean condition and good order and repair; and

6.1.4 You shall pay Landlord an amount equal to two (2) times the then existing Monthly Base Rent (without concession), prorated by the day for each day in Hold Over and beyond the termination, non-renewal or expiration of this Lease, plus any Additional Sums due from You to Landlord.

6.2 If Your Hold Over prevents a new resident from occupying the Apartment, You may also be liable to Landlord for any and all damages incurred by Landlord as a result of Your Hold Over, including but not limited to, all rent for the new resident's full lease term, subject to Landlord's obligation, if any, to mitigate damages.

7. JOINT AND SEVERAL LIABILITY:

Each person who signs this Lease, or who enters into a Continuing Guaranty of Payment ("Guaranty Agreement") with Landlord on behalf of the Resident(s) who signed this Lease ("Guarantor"), understands and agrees that his/her liability is both joint and several with every other person who signs this Lease or signs a Guaranty Agreement. This means that Landlord may seek to recover the full amount due from any Resident or Guarantor without first seeking to collect from the other Resident(s) or Guarantor(s). Landlord is not required to seek recovery of money owed by the Resident(s) before seeking recovery from a Guarantor. Landlord is not required to seek recovery of money owed by the Guarantor(s) before seeking recovery from the Resident(s).

8. SECURITY DEPOSIT:

8.1 You agree to pay to Landlord any Security Deposit and Refundable Pet Deposit due under this Lease (collectively "Security Deposits") before taking possession of the Apartment as security for Your fulfillment of the conditions of this Lease. Your Security Deposits will be returned to You, less Lawful

Deductions, after possession of the Apartment has been returned to Landlord if:

8.1.1 The Lease term has expired or this Lease has been terminated; AND

8.1.2 You provide and fulfill a written notice to vacate as required under this Lease; AND

8.1.3 All monies due Landlord have been paid in full; AND

8.1.4 The Apartment is clean, is not damaged and is left in its original condition, normal wear and tear excepted. Damages beyond normal wear and tear include, but are not limited to: broken or missing door locks; stained or burned carpeting; badly scratched floors; burns and cuts in countertops; stains on another resident's ceilings from Your overflowed tub or sink; unapproved holes; painting on walls performed by anyone other than Landlord or its vendor which requires more than one (1) coat of paint to return to move-in condition; bent or broken blinds; odor or stains throughout the Apartment due to an animal, smoke, or other source; and any fixtures missing from the Apartment. Any of Your Security Deposits may be applied by Landlord to satisfy all or part of Your obligations under this Lease, including, but not limited to, unpaid rent, late fees, utilities, damages, cleaning costs, and other charges specified in Paragraph 8.9 below. Withholding Your Security Deposits shall not prevent Landlord from claiming damages in excess of the Security Deposits.

8.2 You acknowledge and agree that You are not permitted to apply any Security Deposits to any past-due rent payment or payment that shall come due in the future.

8.3 You agree and acknowledge that, prior to or at the time of signing this Lease, You have been given a properly signed list of any existing damages to the Apartment, have been given the right to inspect the Apartment and have approved this list except as specified in writing to Landlord.

8.4 You acknowledge that any interest earned on such Security Deposits shall belong to Landlord. You further acknowledge that Landlord has complied with the South Carolina Security Deposit Law.

8.5 You will provide Landlord with a forwarding address so Landlord may forward Your Security Deposits, or any remaining balance thereof, to You. Landlord may disburse a refund of Your Security Deposits by one check, jointly payable to all named as Residents or to any one named Resident, and may send a refund of Your Security Deposits, and deduction itemizations, to only one Resident named on this Lease.

8.6 At Landlord's sole discretion, any named Resident on this Lease, if more than one is named, may be designated as agent for all Residents for purposes of receiving any applicable refund of Your Security Deposits, or any other balance owed or accounted at the time of Lease termination. You agree to look to said Resident for payment of any portion of the amount refunded.

8.7 If Landlord sells or transfers the Premises to a new owner, You agree that, once the sale or transfer has occurred, Landlord will be released from liability related to Your Security Deposits and that You will look solely to the successor owner for satisfaction of claims relating to Your Security Deposits.

8.8 If this Lease constitutes a renewal or revised Lease, then You agree to pay to Landlord only the amount, if any, by which the Security Deposits shown in this Lease exceed the amount of Security Deposits Landlord is already holding.

8.9 You will be liable for, including but not limited to, the following charges, if applicable, as Lawful Deductions: unpaid rent; unpaid utilities; unreimbursed service charges; Early Termination Fees; Additional Termination Fees; cancellation fees; revoked conditional rent concession credits; repairs or damages caused by Your, Your Occupant's, Your invitees' or Your Occupants' invitees' use of the Apartment or Property, Your, Your Occupant's, Your invitees' or Your Occupants' invitees' negligence, carelessness, accident, or abuse, including stickers, scratches, tears, burns, stains, or unapproved holes; replacement cost of Our property that was in or attached to the Apartment and is missing; replacing dead or missing smoke detector batteries at any time; replacing missing or burned out light bulbs at any time; utilities for repairs or cleaning; unreturned keys, parking identifiers (e.g. hangtags, decals, etc.), and access control devices; removing or rekeying unauthorized security devices or alarm systems; packing, removing or storing property removed or stored under this Lease; removing illegally parked vehicles; animal-related charges; late-payment and returned-check charges; attorney's fees, court costs and filing fees actually paid; government fees or fines against Landlord for violation by You, Your Occupants, guests, or invitees of local ordinances relating to detection devices, false alarms, recycling or other matters; trips to the Apartment to allow removal of Your telephone or TV cable services or other rental items (if You so request or have moved out); special trips for trash removal caused by parked vehicles blocking dumpsters; false security alarm charges unless due to Landlord's negligence; and any other sums due under this Lease.

8.10 You agree that Landlord also may, but shall not be obligated to, make deductions from Your Security Deposits for any Lawful Deductions to Landlord under this Lease while You are still in possession of the Apartment. Landlord shall provide You with written notice of such deduction, itemizing the amounts deducted. Upon receipt of such notice, You agree to pay to Landlord, on or before the next rent due date, an amount sufficient to bring Your Security Deposits to the original amount, and You further agree that failure to do so constitutes a material breach of this Lease.

9. UTILITIES:

9.1 You must pay charges for all utilities provided to the Apartment, including but not limited to, electricity, natural gas, water and sewer, internet, cable TV and telephone, except as may otherwise be set forth in this Lease. Where applicable, Your utility bills may include a one-time deposit, flat fees, and other charges and any increases as billed by the utility provider. In addition, You will be billed each month for common area charges which represent a proportional share of common area water, sewer, stormwater, electricity, and/or natural gas charges and such amounts shall be due and payable as Additional Rent. These charges may be reflected on our bill to you as, for example, "Common Area Electric," "Common Area Gas", etc., depending on the service(s) provided.

9.1.1 Water and sewer service will be billed to Landlord by the service provider and Landlord will allocate those bills to You based on a combination of the square footage and the number of Occupants and Residents of Your Apartment. As a result of this allocation method, You may pay for water and sewer used in other apartment units or in the common areas of the Property. You agree that this allocation method is fair and reasonable even though it may not reflect accurately Your water consumption. Landlord will provide additional information regarding the calculation of your water and sewer bill upon request.

9.2 You must have all utility services transferred to Your name immediately upon signing this Lease, except for those utilities which are submetered or billed pursuant to an allocation method by Landlord. You must pay all utility bills promptly and by any applicable due date. You must provide to Landlord proof of transferring utility services into Your name prior to move-in. If You fail to transfer utility service into Your name prior to taking possession of the Apartment or otherwise fail to ensure that the utility services remain in Your name during this Lease term, such failure(s) will be a material breach and You will be in default under this Lease. In the event that the utilities are not in Your name at move-in or at any time during Your possession of the Apartment, Landlord may charge You and You agree to pay as liquidated damages, due to the uncertainty and difficulty of ascertaining Landlord's damages, a fee in the amount of Fifty-Five dollars (\$55.00) for every month during which, at any time, one or more utilities are not in Your name, plus the actual or estimated cost of utility services billed to Landlord. The fee and such costs are due as additional rent. Upon move-out, but not before, You shall transfer, or cooperate in the transfer of, all utility service back into Landlord's name. You hereby agree that Landlord will not reimburse You for any costs related to utilities left in Your name after You move out.

9.3 You must not allow Your utilities to be disconnected, terminated or interrupted for any reason, including for a failure to pay Your bills. Breach of this provision shall constitute a material default by You under this Lease.

9.4 If Landlord incurs any utility charges or late fees associated with Your utility bills or use, such charges or fees will be due from You to Landlord as additional rent. If Landlord bills You for any utility services You shall receive such bills at least once per month, and payments by You shall be considered past due if not paid before the twenty-fifth (25th) day of the month and shall incur a late fee of Ten Dollars (\$10.00).

9.5 Landlord may modify the method by which utilities are furnished to the Apartment and/or billed to You during the term of this Lease and any extension or renewal thereof or hold over period, including, but not limited to, direct metering and/or use of a ratio utility billing system, energy allocation equipment, and submetering equipment. In the event Landlord chooses to so modify any utility service to the Apartment and/or billing methods, Landlord shall give You not less than thirty-five (35) days' prior written notice of such modification.

9.6 You agree and consent that Landlord has the right to designate who Your utility providers will be.

9.7 Landlord is not liable for any interruption, outage, or fluctuation of any utility provided to You by others even if Landlord has designated who the provider of that utility would be. You release Landlord from any liability for such interruption, outage or fluctuation.

9.8 You will notify Landlord immediately of any known or suspected leak of water from any pipe in the Apartment, or any continually running or otherwise malfunctioning fixture in the Apartment. You will at all times be responsible for Your entire water bill, including any and all increases, even if unexpected, in Your water bill that may result from a leak or abnormally running fixture, even if, and after, such leak or running is reported to Landlord.

9.9 In keeping with Landlord's commitment to sustainable operations and climate-friendly practices, we strive to lower the impact of Property operations by, among other things, actively monitoring utility usage. To assist in this effort, You agree that, not less than annually, Landlord may obtain from your utility provider(s) information regarding Your resource consumption, including, but not limited to, service dates, base rate and non-base rate adjustments, taxes on services, total amounts invoiced and amounts paid by You. Utility providers include but are not limited to providers of water, wastewater/sewer, trash service, electricity, natural gas, steam and any other fuel and utility. Landlord will use or share Your information with third parties only on an aggregated basis for purposes of tracking, analyzing and reporting resource consumption and efficiency at the Property. You consent to such use and hereby authorize Your utility provider(s) to release such information and data to Landlord.

9.10 Landlord has engaged a provider ("Provider") to provide: (a) high-speed Internet access services ("Bulk Internet Services"); and (b) multi-channel video services (the "Bulk Video Services") to the Premises. The Bulk Internet Services and Bulk Video Services at times are collectively referred to as the "MAA Connect Bulk Services", and will be provided to Your Apartment, subject to the terms contained in this Lease. If You enter into Your Lease before MAA Connect Bulk Services become available to Your Apartment, You will receive the bulk video services then offered by Landlord. Your fee for bulk video services will be Landlord's then current monthly fee for such services, prorated for the number of days of the month that bulk video services are provided to Your Apartment. As of the date that MAA Connect Bulk Services become available to Your Apartment, Your monthly fee will become the MAA Connect Bulk Services Fee. You will be charged a prorated amount for the number of days in the initial month in which MAA Connect Bulk Services become available to Your Apartment. Your Use of the MAA Connect Bulk Services is subject to the following terms and conditions:

9.10.1 You acknowledge that the MAA Connect Bulk Services will be provided to You directly from the Provider. Landlord is not a provider, and Landlord has no liability to You for equipment failure, quality, quantity, availability, or outages of the MAA Connect Bulk Services.

9.10.2 You agree to pay all sales, use or other rental tax due as a result of the provision of MAA Connect Bulk Services, including any increases in any such tax(es) during the term of the Lease, and Landlord will remit such amounts to the appropriate taxing authority.

9.10.3 You agree to contact Provider directly referencing the contact information provided to You for all concerns involving the connection, reception, or repair of the MAA Connect Bulk Services, and to order any additional video-related or Internet-related services other than the MAA Connect Bulk Services described in this Lease.

9.10.4 LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE MAA CONNECT BULK SERVICES. LANDLORD DISCLAIMS, AND RESIDENT WAIVES, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE MAA CONNECT BULK SERVICES. LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE MAA CONNECT BULK SERVICES WILL BE AVAILABLE, UNINTERRUPTED, OR ERROR-FREE, OR THAT THE MAA CONNECT BULK SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. YOU HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY CLAIM THAT YOU MIGHT HAVE OR MAKE AGAINST LANDLORD AS A RESULT OF YOUR USE OF THE MAA CONNECT BULK SERVICES AND YOU WAIVE ANY LIABILITY THAT LANDLORD MIGHT HAVE (WHETHER SUCH LIABILITY IS FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES) FOR ANY SUCH CLAIM. SOME STATES DO NOT ALLOW THE LIMITATION OF IMPLIED WARRANTIES SO SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU.

9.10.5 LANDLORD IS NOT LIABLE FOR INTERRUPTIONS, INABILITY TO CONNECT, OR FAILURE OF PROVIDER TO PROVIDE THE MAA CONNECT BULK SERVICES, NOR FOR ANY LOSSES, DAMAGES, OR EXPENSES, DIRECTLY OR INDIRECTLY, RELATED TO THE MAA CONNECT BULK SERVICES. NO CHANGE, FAILURE, INTERFERENCE, DISRUPTION, DEFECT, UNAVAILABILITY, OR UNSUITABILITY OF OR IN THE MAA CONNECT BULK SERVICES CONSTITUTES OR MAY BE DEEMED TO CONSTITUTE AN ACTUAL OR CONSTRUCTIVE EVICTION, IN WHOLE OR IN PART, OR IN ANY WAY ENTITLE YOU TO ANY ABATEMENT OR DIMINUTION OF RENT OR IN ANY WAY RELIEVE YOU FROM ANY OBLIGATION UNDER THE

LEASE. LANDLORD IS ALSO NOT LIABLE FOR, AND YOU AGREE TO TAKE SOLE RESPONSIBILITY FOR, AND TO INDEMNIFY, DEFEND, AND HOLD LANDLORD, AND ITS EMPLOYEES AND AGENTS HARMLESS FROM, ANY DAMAGES OR CLAIMS YOU OR ANY OTHER PERSON MAY SUFFER OR HAVE AS A RESULT OF YOUR USE OF, OR INABILITY TO USE, THE MAA CONNECT BULK SERVICES, INCLUDING, BUT NOT LIMITED TO, COMPUTER VIRUSES, LOSS OF DATA, INVASION OF PRIVACY, DEFAMATION, FRAUD, AND COPYRIGHT AND TRADEMARK INFRINGEMENT. LANDLORD ASSUMES NO RESPONSIBILITY FOR THE CONTENT OF THE MAA CONNECT BULK SERVICES OR INFORMATION OTHERWISE AVAILABLE THROUGH THE MAA CONNECT BULK SERVICES.

9.10.6 Any televisions, computers, and other hardware or software that are necessary to utilize the MAA Connect Bulk Services must be supplied by You at Your expense. You must comply with any terms of use or acceptable use policies published by Provider. Violation of the terms of use or acceptable use policies may result in termination of Your right to access the MAA Connect Bulk Services.

9.10.7 To provide the MAA Connect Bulk Services, certain equipment, including a video receiver and a cable modem, may need to be installed in Your Apartment. You shall allow Provider's service personnel reasonable access to Your Apartment for purposes of installing, maintaining, repairing, replacing, or removing this equipment.

9.10.8 You agree not to damage the equipment described in Section 9.10.7 above, and agree to indemnify, defend, and hold Landlord harmless from and against any and all claims, demands, costs, expenses (including legal fees and court costs), and causes of action arising out of, or in any way relating to, actions or inactions by You, including, but not limited to, any amounts Landlord is required to pay to cover the costs of any such damage to any Provider.

9.10.9 Landlord reserves the right to change providers at any time for any reason, change the quantity and quality of the MAA Connect Bulk Services provided, or discontinue the MAA Connect Bulk Services to the Property and the Apartment at any time and for any reason at its sole discretion with thirty (30) days' prior written notice of such change or termination. Should Landlord exercise its right to discontinue the MAA Connect Bulk Services under this paragraph, Your obligation to pay the fee set forth in this Lease will terminate on the date specified by Landlord in the notice.

9.10.10 Any breach of Your obligations related to MAA Connect Bulk Services is a default under the Lease. Additionally, if any portion of Your rent is delinquent, and Landlord provides You written notice of the delinquency, and You fail to pay the delinquent amounts within the time prescribed in the notice to You, Landlord may be permitted by applicable laws to request that Provider interrupt or terminate the provision of MAA Connect Bulk Services to Your Apartment (even if You subscribe to enhanced services beyond those MAA Connect Bulk Services covered by this Addendum until all delinquencies are brought current).

9.10.11 You shall not install network devices, whether wireline or wireless, to enable any person who does not reside in Your Apartment to access the MAA Connect Bulk Services. Any wireless network device installed by You must comply with applicable FCC rules and regulations, and must not interfere with the MAA Connect Bulk Services or wireless systems operated by Landlord or any service provider at the Property.

10. RISK OF LOSS:

10.1 Landlord does not carry any personal property insurance on Your personal possessions or property. You may obtain insurance protecting the personal possessions or property owned by You or Your Occupants. You agree to look only to Your insurance for any loss or damage to Your personal possessions or property.

10.2 Landlord does not carry any liability insurance for Your actions that may cause harm to You or other persons or loss or damage to real or personal property owned by Landlord or other persons. You (or each of You if there is more than one Resident) agree to maintain insurance, in an amount of not less than one hundred thousand dollars (\$100,000), protecting against liability of You, Your family, Your guests (including social guests), invitees, and Your Occupants for claims involving harm, including bodily injury, to other persons or loss or damage to real or personal property owned by Landlord or other persons, arising out of the negligence or other acts of You, Your family, Your guests (including social guests), invitees, and the Occupants of the Apartment.

10.3 The insurance required under this paragraph shall (i) be maintained by You for Your benefit as well as for the benefit of Landlord; (ii) be from a carrier with an AM Best rating of A-VIII or better, licensed to do business in the state of South Carolina; and (iii) provide notice to Landlord within thirty (30) days of any cancellation or non-renewal. Your liability policy must not have any exclusions for property damage resulting from Fire, Smoke, Explosion or Water Damage.

10.4 Your right to possession of the Apartment is contingent upon You first obtaining and maintaining the insurance provided for in this paragraph, and providing Landlord with evidence of required insurance. If this Lease is a renewal lease, You must provide evidence of insurance for the new lease term. Your obligation to obtain such insurance and Your liability under this Lease or otherwise is not waived even if You do not provide such evidence of insurance.

10.5 Landlord shall not be liable for damage, theft, vandalism, breakage of glass, or other loss of any kind to Your personal property or the personal property of Your Occupants, guests, or invitees, except where such damage is due to Landlord's gross negligence or intentional misconduct by Landlord.

10.6 It is understood and agreed that Landlord shall not be responsible for or liable to You or to those claiming by, through, or under You for any loss or damage to either person or property that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining apartments, or by or through the acts or omissions of third parties, including independent contractors retained by Landlord.

10.7 You hereby consent that, in the event that You or Your Occupants, guests, or invitees cause harm, loss, or damage, by act or omission, to the property or person of another resident, occupant, guest, or invitee, Landlord has the right to share Your name, Your contact information, and information concerning Your insurance with any such injured person or his/her insurer.

10.8 Your renters insurance policy declarations page must list "Mid-America Apartments, L.P. – CV at Waters Edge, P.O. Box 115009, Carrollton, TX 75011-5009" as interested party or certificate holder. Your failure to provide evidence to Us of Your maintenance of the required minimum level of insurance coverage is a breach of this Lease and, due to the uncertainty and difficulty of ascertaining Landlord's damages, You will incur a fee of Forty Dollars (\$40.00) per month as liquidated damages for any month in which We do not have proof of the required insurance, in addition to any other

remedies which We may have under this Lease.

11. ANIMALS:

11.1 No animals of any kind including, but not limited to, mammals, reptiles, birds, fish, rodents, amphibians, arachnids, or insects are permitted in the Apartment or on the Premises without Landlord's prior written consent. Disability assistance animals required as a reasonable accommodation pursuant to a disability-related need must also be disclosed to Landlord. You certify that You have no animals except as specifically referenced in this Lease. Landlord may request information in writing from a qualified professional verifying the need for an assistance animal. You will be in material breach of this Lease if You misrepresent the need for an assistance animal.

11.1.1 You affirmatively represent and warrant that as of the date of this Lease and throughout the term of the Lease each of the animals described below in Paragraph 11.1.2 (if any): is suited for living in an apartment community; does not pose a danger or threat of any kind to any person or property; has not displayed vicious, aggressive or dangerous behavior; and has never before injured You or any other person or animal or caused any damage to Your or another person's property. You affirmatively represent and warrant that You have never had a claim or lawsuit filed against You or anyone else for an injury or damage caused by or related to Your ownership or possession of the animal. You understand and agree that Our approval of the animal to live in the Apartment is expressly conditioned upon truthful disclosures and representations above, that nothing occurs during the term of the Lease that would make the disclosures or representations inaccurate or untrue and that We would not have approved the animal had You disclosed that it was dangerous, unsuited for apartment living, or had previously injured someone or damaged property. If there is no Paragraph 11.1.2 below, You affirmatively represent and warrant that as of the date of this Lease Landlord has not given written consent for any animals to live in the Apartment.

11.1.2 DESCRIPTION OF ANIMAL(S). You may keep only the animal(s) described below. You may not substitute any other animal(s).

Animal One				
Type	Breed	Weight	Color	Age
Dog	German Shepard	90.00	Brown and black	7

Animal Two				
Type	Breed	Weight	Color	Age
Dog	Alaskan Malamute	50.00	Red	2

11.2 Any animal, including the animal of a guest, that visits the Apartment for any part of one (1) day shall be considered Your animal. Without prior written permission from Landlord and the payment of the then required Non-refundable Pet Fee or Refundable Pet Deposit, as applicable, the presence of that animal on the Premises shall constitute a material breach of this Lease. If You fail to remove an unauthorized animal within twenty-four (24) hours after Our request, You shall be in default of this Lease. A disability assistance animal is subject to the same rules in Section 11.3 as other animals except to the extent You request and receive an accommodation for relief from such rules.

11.3 You are fully responsible for Your animal's actions at all times while the animal is on the Premises and You agree to abide by these rules:

11.3.1 You must keep Your animal on a leash when You are outside the Apartment and control and prevent the animal from engaging in behaviors or creating excessive noise, e.g. barking, jumping, running, which disrupts or interferes with another resident's quiet enjoyment of the Premises or disrupts Landlord from carrying out its day-to-day business at the Premises, regardless of whether the animal is inside or outside the Apartment.

11.3.2 Inside, the animal may urinate and defecate only in a litter box with a kitty litter-type mix. You must prevent Your animal from urinating or defecating on the floors, walls, doors, or fixtures of the Apartment and keep the premises in clean, hygienic condition. In no event is an animal permitted to urinate or defecate on a patio or balcony.

11.3.3 Outside, the animal may urinate or defecate only in natural, wooded areas or other area specifically designated by Landlord for that purpose. You must properly dispose of any animal excrement from the Apartment or Premises.

11.3.4 You may not tie the animals to any fixed object outside the Apartment.

11.3.5 You must not let an animal into the management/leasing office, clubhouse/community room, laundry room, fitness or spa space, swimming pool, tennis courts, and any recreational area or amenity on the Premises. The foregoing notwithstanding, disability assistance animals may go anywhere on the Premises that is not prohibited by law (e.g., into the swimming pool).

11.3.6 You must only feed Your animal inside the Apartment.

11.3.7 Your animal must wear a collar with an identification tag showing Your name, phone number, and address.

11.3.8 You may only have and keep a pet or animal that is considered a common domesticated household animal that is suitable for living in an apartment community. Common domesticated animals are domestic dogs, cats, fish, and birds.

11.3.9 You may have no more than (a) a total of two (2) dogs, cats, or birds and/or (b) fish contained in one twenty (20) gallon or less fish tank. For example, You may have two dogs or one dog and one cat but may not have two dogs and one bird.

11.3.10 Wild, exotic, poisonous, endangered, or prohibited species of animals are not allowed.

11.3.11 You may not have or keep any animal which the ownership or possession of is illegal under any applicable federal, state, or local law.

11.3.12 Your animal may not be left for extended periods of time without proper feeding, care, and supervision.

11.3.13 You must keep Your animal secured when You are not in Your Apartment and shall not leave Your animal unattended on Your patio or balcony in case Our personnel must enter Your Apartment as permitted by the terms of Your Lease.

11.3.14 You must obey all applicable state and local laws for owning and controlling Your animal or pet.

11.3.15 You must promptly notify us if the animal injures a person or animal, causes property damage, or if the animal behaves in a manner that exhibits a direct threat to others, whether or not such injury, damage, or behavior occurs on Our property.

11.4 If You, Your guest, or any Occupant violates any rule or provisions of this Section 11 or if the representations in Section 11.1.1 cease to be completely true, accurate and correct (in each case based upon Our judgment) and We give You written notice, You must remove the animal immediately and permanently from the Premises. We also have all other rights and remedies set forth in the Lease, including damages, eviction, and attorney's fees.

11.5 In some circumstances, We may allow animal control or local humane society to enter the Apartment and remove the animal in accordance with applicable law if, in Our sole judgment, You have: abandoned the animal; left the animal in the Apartment for an extended period of time without food or water; or failed to care for a sick animal.

11.6 You will be solely liable for the entire amount of all damages to the Apartment or Premises caused by the animal. You agree that any Non-refundable Pet Fee or Refundable Pet Deposit does not limit Your liability for property damages, cleaning, deodorizing, defleaing, replacements, or personal injuries caused by the animal.

11.7 You will indemnify us and any Landlord Parties and hold us and any Landlord Parties harmless from and defend us against all costs of litigation, attorney's fees, damages, or injuries in any claims, lawsuits, and judgments against us which were caused in whole or in part, directly or indirectly, by Your animal or by Your negligence or intentional acts as relates to Your ownership or possession of the animal.

11.8 In addition to any other remedies set forth herein, if You fail to immediately dispose of animal excrement as set forth in Section 11.3.3 above, You will pay Landlord a fee in the amount of Fifty Dollars (\$50.00) as liquidated damages due to the uncertainty and difficulty of ascertaining Landlord's damages.

12. PACKAGE RELEASE:

Landlord is not required to accept packages for You. It is within Landlord's sole discretion whether to accept packages for You. By signing this Lease, You authorize Landlord, in its sole discretion, to accept on Your behalf any packages which are delivered by mail, or otherwise addressed to You. You understand that Landlord may not accept any package: (1) shipped COD or having postage due; (2) weighing over forty (40) pounds; (3) larger than three (3) feet wide or two (2) feet tall; or (4) that is perishable, other than non-food flowers or plants. If Landlord does accept a package for You, You agree that Landlord will have no responsibility to provide a signature to the carrier, examine the condition, determine the contents, inform You that a package has been delivered, or take any precautions in the handling and storage of the package. Packages not claimed within a reasonable time as determined by Landlord may be (but are not required to be) returned to the delivery agent. Landlord may not accept packages on Your behalf if the accumulation of packages has an unfavorable impact on the office work area. If Landlord, in its sole discretion, accepts packages, it does so solely as a favor to You, without consideration, and, You release Landlord from any claim You might otherwise have for loss or damage suffered as a result of Landlord's accepting, refusing to accept, holding, storing, handling or disposing of any such package, even if such loss or damage is due to the negligence or other act of omission of Landlord. Additionally, You agree to indemnify Landlord for any such claims made by a third party. You, and not Landlord, absolutely assume all risks of damage, theft, destruction, or loss for any reason of any package received or held by Landlord. The term "package" includes, but is not limited to, any parcels, goods, or other items of value. You agree that Landlord may curtail or eliminate such service in its sole discretion, and You will not be relieved from the terms of this Lease or entitled to any reduction in rent if such service is curtailed or eliminated.

13. RIGHT OF ACCESS:

13.1 You agree and consent that Landlord shall have a right of access to the Apartment without consent or notice:

- a. In case of emergency or in weather conditions that pose a threat to the property;
- b. Between 9:00a.m. and 6:00p.m. for regularly scheduled periodic services i.e. A/C filter changes and pest treatment provided Landlord knocks and announces Landlord's intent to enter;
- c. Between 8:00am and 8:00p.m. for responding to maintenance requests and provided Landlord knocks and announces Landlord's intent to enter
- d. By court order;
- e. When accompanied by law enforcement for the purpose of serving legal paperwork/notices i.e. paperwork related to eviction proceedings
- f. You fail to properly care for or keep the Apartment in acceptable condition after being sent a right to cure notice which materially affects health and safety; or
- g. You abandon the Premises.

In all other cases Landlord may provide a 24 hour notice of Landlord's intent to enter.

13.2 You authorize Landlord to show the Apartment to prospective renters at any time after You have given notice of termination.

13.3 In the event of a power outage that lasts more than 8 hours, Landlord has the right, but not an obligation, to dispose of the contents of Your refrigerator. You shall not have a right of recovery against Landlord for interruption of power that results in disposal, loss, or spoilage of refrigerated food.

14. USE:

14.1 The Apartment shall be used by You for residential purposes only and shall be occupied only by the person(s) named in this Lease as a Resident or Occupant. An "Occupant" is defined as any person listed in this Lease as an Occupant. A "guest" is defined as any person who enters the Apartment, or upon the Premises, by Your expressed or implied invitation or by an Occupant's expressed or implied invitation and includes social guests. Only the Residents and Occupants named in this Lease may continuously occupy the Apartment. Persons who are not a Resident or Occupant named in this Lease who visit the Apartment must be accompanied by You, will be considered guests or "invitees" and are not permitted to continuously occupy the Apartment. Guests may not occupy the Apartment in excess of fourteen (14) days, or portion thereof, during any twelve (12) month period.

14.2 You, an Occupant, or any guest or invitee shall not engage in any disorderly, loud, dangerous, violent or threatening behavior or in any manner so as to interfere with another resident's quiet enjoyment of his, her, or their apartment(s) or with the operation or management of the Premises.

14.2.1 You, an Occupant, or any guest or invitee shall not engage in criminal conduct in violation of any federal, state or local laws, regardless of whether or where arrest or conviction occurs, including but not limited to, while on the Premises or in the Apartment. You, an Occupant, or any guest or invitee shall not possess, display or discharge a weapon in violation of applicable law.

14.2.2 You must notify us within 5 calendar days if You, an Occupant, or any guest or invitee of either is convicted of a crime that involves a controlled substance, violence to person(s), or destruction of property. You must also notify us within 5 calendar days if You, an Occupant, or any guest or invitee of either registers as a sex offender.

14.3 You, an Occupant, or any guest or invitee shall not distribute petitions, flyers, or solicitation notices to other residents in any manner other than through lawful use of the U.S. mail.

14.4 You, an Occupant, or any guest or invitee shall not commit business libel or slander or make untruthful, unfair, or misleading statements to others about Landlord or its employees.

14.5 You, an Occupant, or any guest or invitee shall not commit waste to the Apartment or Premises and shall not commit any act or fail to take any action that would endanger the life, health, safety, welfare, or property of any person in the Apartment or Premises.

14.6 You agree that no "garage sales" shall be permitted in or around the Premises, parking areas or common areas and nothing shall be sold out of or around the Premises, parking areas or common areas without express written permission by Landlord.

14.7 Any violation of this Section 14 by You, an Occupant, or any guest or invitee is a material breach of this Lease and grounds for termination of this Lease or right of occupancy by Landlord demanding possession or filing a dispossessory action or an eviction.

14.8 In the event that Your tenancy at the Property is terminated or You are evicted, You shall not return to any portion of the Premises for any reason, including at the invitation of another resident or occupant. This provision shall survive the expiration or earlier termination of this Lease.

14.9 You, any Occupant, guest or invitee shall not invite or allow individuals who have been evicted from, or had their tenancies or right of access terminated at, the Property to return as Your guest.

14.10 Any Resident or Occupant who is under court order prohibiting entry to the Apartment or Premises is no longer entitled to occupancy, keys, or other access devices while the order is in effect.

14.11 You agree that any recreation, service, and amenities areas, if they are available at the Premises, are merely ancillary to this Lease and may be used by You only with the permission of Landlord. You also agree that Landlord may curtail or eliminate such services or facilities in its sole discretion, and You will not be relieved from the terms of this Lease or entitled to any reduction in rent if such services or facilities are curtailed or eliminated.

14.12 Any violation by You, an Occupant, a guest or invitee of the Rules and Regulations which are now in effect or which may hereinafter be enacted will be considered a violation of this Lease by You.

14.13 The Rules are part of this Lease and enforceable as terms and conditions of this Lease.

14.14 Landlord may exclude any person that Landlord determines, in its sole discretion, to be violating the law, violating the Lease, violating the Rules, or disturbing any other residents, visitors, or Our representatives. Landlord may exclude any person who refuses to properly identify himself or herself or identify which Resident or Occupant gave permission for him/her to be on the Premises.

14.15 You may have a home office in order to operate a business in the Apartment, if You comply with the following conditions: (1) Your home business must comply with all applicable laws; (2) You cannot employ anyone at the Apartment besides You or anyone named as an Occupant on this Lease; (3) You do not require receipt or delivery of merchandise, goods, or equipment other than by parcel or letter carrier mail service; (4) You must not be a nuisance; (5) You must not display stock in trade in the Apartment or on the Premises; (6) Your home business must not require any special permit or license; (7) You must not cause additional vehicles of suppliers, vendors, delivery services, customers or clients to park in the Premises; (8) Your customers and/or clients of the home business may not come to the Apartment or on the Premises to receive goods or services; and (9) You may not display signage relating to or identifying the home business. Landlord will not sign or otherwise agree to any business license or similar application. A home business permitted by this Lease includes, by way of example and not by limitation, an internet-based company, legal service provider, or a consulting service provider, to the extent they are also permitted by applicable law and conform to each of the requirements listed herein. A business not permitted by this Lease includes, by way of example and not by limitation, massage therapy, retail sales or a home child care service.

15. DEFAULT BY YOU:

15.1 If You fail to pay any rent or other charges as and when due hereunder, or if any facts or representations contained in Your or any Occupant's rental application (Residential Lease Application) or any request for an assistance animal are untrue or misleading, You shall be in default. To the extent permitted by law, You agree that such notice period shall be twenty-four (24) hours unless Landlord, in its sole discretion, chooses a longer period. To the extent permitted by law, You expressly waive notice of default and an opportunity to cure.

15.2 You shall surrender possession of the Apartment and any Storage Unit, Parking, or Garage area to Landlord upon the effective date of such termination and You shall be liable to Landlord for, and shall indemnify Landlord against, all rent loss and other expenses (for re-letting, cleaning or otherwise making the Apartment suitable for re-letting) suffered or incurred by Landlord as a result of Your default and the termination of the Lease.

15.3 Landlord's application of Your Security Deposits (if any) shall not relieve You of liability for any other rent, Additional Sums, charges, damages or other costs or obligations until the term of this Lease expires, or the Apartment is re-rented, whichever comes first. Accepting money does not waive Landlord's rights to damages, past or future rent or other sums, or, if allowed by law, to continue with the eviction proceedings. Exercising one remedy will not constitute an election or waiver of other remedies.

15.4 Once You have vacated the Apartment, You will be sent a statement of deposit that may indicate a balance due to Landlord. Any such balance outstanding thirty (30) days after mailing of the statement shall bear interest at the rate of sixteen percent (16%) per annum or, if such rate is usurious, the highest non-usurious interest rate permitted by applicable law. Interest on the debt evidenced by this Lease shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law and any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. You understand that Landlord's or its debt collectors' right to collect on any debt owed by You hereunder includes, and You expressly consent to receive, communications sent to You via email, pre-recorded/artificial voice messages, telephone call on a recorded line, and text message (including automated texts and telephone calls sent or made using an automatic telephone dialing system) from Landlord and debt collection agents at the email or telephone number (whether wireless or landline) that You have provided to Landlord or at any number forwarded or transferred from that number regarding information relating to Your financial obligations, including, but not limited to, payment reminders, delinquent notifications, instructions and links to billing information.

15.5 Notwithstanding the filing of a dispossessory proceeding or an eviction and the issuance and execution of a writ of possession or similar court order on account of any default by You, You shall remain liable to Landlord for all rent and other charges accrued through the date on which possession is obtained by Landlord and shall continue to be liable for any rent accruing thereafter until the earlier of (a) the expiration of the term of this Lease; or (b) date the Apartment is re-rented and the new tenant commences paying rent.

16. REPAIRS:

16.1 You accept the Apartment and any Garage, Parking, or Storage Unit in "AS IS" condition as suited for the use intended. You understand and agree that the Apartment equipment and fixtures will be under the control of You, and agree to keep the Apartment and any Garage, Parking, or Storage Unit, together with the fixtures and equipment therein, in a clean, sightly and sanitary condition. You agree to provide notice to Landlord of the existence of any water intrusion, mold, damage, or imminently dangerous, hazardous, unsanitary, or unhealthy condition in the Apartment or on the Premises immediately upon discovery of such condition by You.

16.2 Landlord will make necessary repairs to the Apartment and any Garage, Parking, or Storage Unit with reasonable promptness after receipt of notice from You. Any delay by Landlord in making necessary repairs shall not be deemed unreasonable if the delay is due to circumstances falling outside of Landlord's control, including the availability of necessary parts, personnel, or contractors, or the effects of adverse weather. If You feel Landlord has failed to make repairs with reasonable promptness, Landlord shall be deemed to have no knowledge of such failure until Landlord receives written notice from You detailing the failure.

16.3 If any damage, beyond normal wear and tear, is caused by You or Your Occupants, guests or invitees, You agree to pay Landlord the cost of repair as additional rent with the next rent payment or, if this Lease has been terminated, immediately upon presentation of such costs to You.

16.4 You may not remodel or structurally change the Apartment and any Garage, Parking, or Storage Unit, nor remove any fixture or equipment therefrom.

16.5 You may not custom paint any or part of the Apartment and any Garage, Parking, or Storage Unit unless You provide to Landlord advance written notice of the name and brand of paint color and obtain Landlord's written permission to proceed. You will be responsible for any cost associated with returning the Apartment and any Garage, Parking, or Storage Unit to the original color or other color of Landlord's choosing.

16.6 Insect or Bug Infestation

16.6.1 You agree that You have inspected the Apartment and that there are no insect or bug infestations currently in the Apartment and that You will immediately notify Landlord of any insect or bug infestation in the Apartment or affecting You or Your personal property, specifically including, but not limited to, "bed bugs" (including *Cimex Lectularius* and all other name variants).

16.6.2 You agree to reimburse any costs incurred by Landlord to treat the Apartment for bed bugs or any other pest, including any costs Landlord incurs associated with treating the Premises, neighboring apartments, and personal property arising out of pests which You introduced to the Apartment or for which You are otherwise responsible. All costs of extermination of bed bugs and other pests for which You are responsible shall be considered damages exceeding normal wear and tear and shall be due as additional rent. A determination of the cause or source of the infestation or presence may occur after treatment.

16.6.3 You agree to comply with any reasonable plan to treat, exterminate, or otherwise eradicate insects, bugs, pests, rodents, or other vermin from the Apartment or Premises. Such a plan may require: (a) treatment by You, with heat, cold, chemicals, or otherwise (as specified by Landlord), of some or all of Your personal property; (b) immediate temporary or permanent removal by You of some or all personal property from the Apartment or Premises; or (c) treatment of personal property which is allowed to remain in the Apartment or Premises. Your failure to comply with any such plan shall constitute a material breach of this Lease.

16.6.4 Although You may be required to treat some or all of Your personal property, You agree that You will not try to treat the Apartment or Premises for any infestation on Your own and that Landlord has the full right to select a qualified exterminator.

16.6.5 You agree not to bring any personal property into the Apartment that You know or reasonably should know or suspect contains bed bugs.

16.7 You are hereby notified and understand that, during the term of this Lease, including any extension or renewal hereof, rehabilitation, repair, and

maintenance projects may be conducted on the Premises, including in the Apartment, common areas, amenities, parking areas, and on the exterior and interior of buildings. Landlord is not obligated to undertake or continue any particular project. The possibility of any project has not impacted Your decision to enter into this Lease. If a project occurs, such project will continue for as long as necessary until terminated or completed in Landlord's sole discretion. Such projects may, at times, create unfavorable conditions, including but not limited to: obstruction of common hallways and breezeways; obstruction of parking areas; obstruction of balconies, decks, and windows; temporary or permanent closing or changes to amenity areas; limited use of elevators; and dust, debris, odors, and noise. You acknowledge that You may experience unfavorable conditions related to such projects and You agree that such conditions, individually or collectively, will in no way constitute a breach of this Lease, including the covenant of quiet enjoyment, or serve as a basis for any claim by You against Landlord for constructive eviction or a reduction in rent, except to the extent the Apartment is rendered untenable due to Landlord's alterations. You further acknowledge that, even in the absence of construction, there is still the potential for dust, noise, odor, and other unfavorable conditions and that these circumstances will in no way constitute a breach of this Lease, including the covenant of quiet enjoyment, or serve as basis for any claim by You against Landlord for constructive eviction or a reduction in rent. You further agree, that in any of the instances described in this Section 16.7, Landlord reserves the right to terminate Your Lease and/or relocate you to another Apartment.

17. SECURITY ACKNOWLEDGMENT:

17.1 You have responsibility for Your safety and security. Landlord does not market, represent, or guarantee that the Apartment or the Premises are safe from crime or that Landlord provides security services and devices that ensure the safety of You, Your Occupants, guests, or invitees or for Your or their property. You agree that Landlord is not responsible for the crimes of others, the actions of third parties, or any damages or injuries caused by other residents, guests, intruders, or trespassers. You are aware of the risk of crime against You and, to the greatest extent allowed by law, choose to assume all such risk.

17.2 While Landlord may choose to provide notices of crimes or offenses believed to have been committed on or near the Premises, Landlord is not obligated by any specific provision of law to warn You of crime, to provide specific kinds of security, or to take specific steps to reduce the risk of crime on the Premises. Landlord is not required to research and notify You of what crimes may have occurred at the Premises and will not necessarily have actual knowledge of every crime committed or reported to law enforcement agencies.

17.3 You agree that Landlord may send You notices of crimes or other incidents believed to have occurred on or near the Premises via email or electronic communication, despite any election that You may have made, or may in the future make, to opt out of other email or electronic communication from Landlord. In the alternative or in addition to email, You agree that Landlord, in its sole discretion, may provide notices of crimes (as an alternative or in addition to email notices) by posting such notice in certain common areas of the Premises, on Your door, and/or on the Resident Portal.

17.4 Landlord has no obligation to obtain criminal background checks on any person living, working, or visiting on the Premises. If Landlord obtains a criminal background check on a person on the Premises, it does not imply that Landlord will obtain any other background check on any other people on the Premises and does not obligate Landlord to notify You that Landlord obtained a criminal background check or to notify You of the contents or information contained in any such report. Landlord makes no representation or warranty, and cannot make any representation or warranty, that any resident, occupant, worker, guest, or invitee on the Premises does not have a criminal background.

17.5 You agree that You will inspect the Apartment continuously after occupancy to make sure that any Landlord-provided smoke detector(s), fire extinguisher, and door and window locks are adequate and in good working order. You specifically agree to test all smoke detector(s) in the Apartment no less frequently than monthly. You promise to give immediate written notice to Landlord if You determine that any of these items, or any other item affecting safety or security of the Apartment or Premises, need repair or replacement. Provision of any items or services that could relate to community safety does not in any way obligate Landlord to provide for the safety or security of You, Your Occupants, Your guests, Your invitees, or Your personal property.

17.6 While courtesy officers may reside within the Premises or temporary guard patrols may take place, these individuals, while acting in that capacity, do not have any law enforcement powers and they are not provided for Your personal safety or security. Courtesy officers engaged by Landlord have limited hours and limited duties specifically related to protecting Our property and enforcing the laws that keep an orderly community. We have the right at any time to modify, reduce, or cease the use of courtesy officers without notice to You. You should not rely upon the presence of Landlord's courtesy officers for your personal safety and You agree to look solely to public police authorities for the security and protection of You, the Occupants and any Guests. You agree to take reasonable steps to protect Your own safety and property from damage or injury. In the event of loss or injury due to criminal activity in the Apartment or on the Premises, You agree to look solely to Your insurance against such losses and agree to hold Landlord harmless from any claims for damage due to criminal acts.

17.7 If the Apartment has an individual security system in it, Landlord did not necessarily install, design, or manufacture the security system, and Landlord does not activate, operate, maintain, or monitor the security system. You agree that Landlord shall have no liability whatsoever with respect to the installation, design, manufacture, use, operation, maintenance, monitoring, effectiveness, or functionality of the security system. It is Your decision whether to activate the system, and any such activation must be arranged through an independent security company under an agreement with it. In the event You activate an individual security system, You shall without delay provide Landlord with the name of the security company that has installed, will install, or monitors the system, any codes or passwords, as well as any other information that Landlord may request regarding the system, its operation, or maintenance. You agree that it is Your responsibility to learn from the security company how to properly operate the security system, and You understand that the security company is solely responsible for all aspects of the security system. Whatever amounts the security company charges You for the use of the security system are payable directly to that company and You, not Landlord, are responsible for the payment of such charges. Landlord is not responsible for the acts or omissions of the security company and does not guarantee or warrant the services of the security company in any respect. You agree to hold Landlord harmless from any and all claims for losses of any type arising from any aspect of the security system, and You agree to look to Your own insurance for any loss due to personal injury, death, or property damage.

18. SURRENDER; ABANDONMENT:

18.1 You will have surrendered the Apartment if (1) all keys to the Apartment have been delivered to Landlord or Landlord, exercising its reasonable judgment in accordance with applicable law, determines that the Apartment is not being occupied and (2) the Lease End Date has passed or the Lease has been terminated by You or by Landlord according to its terms.

18.2 You will have abandoned the Apartment if You have not paid Landlord all monies due and Landlord, exercising its reasonable judgment, determines that (1) the Apartment is not being occupied and (2) You have no intention of returning.

18.2.1 You will have abandoned the apartment ten (10) days after it becomes known to Landlord that you, as the sole resident, are deceased.

18.3 You agree that, for purposes of both surrender and abandonment, Landlord may use any or all of the following indicia in determining whether the Apartment is not being occupied: removal of substantially all personal property from the Apartment, failure to pay rent or other charges, discontinuance of any utility service, failure to respond to any notices, phone calls, correspondence, or other communications from Landlord, reduction or lack of use of controlled access devices associated with the Apartment or Premises.

18.4 Surrender or abandonment of the Apartment without properly ending this Lease and without giving proper notices to end this Lease is a serious default and terminates Your right of possession to the Apartment, as well as Your right to use any Parking, Garage, or Storage Unit rented under this Lease. Following surrender or abandonment, Landlord may exercise any and all legal rights and remedies without limiting any other rights or remedies and You shall remain liable for all Lease obligations through the expiration of the Lease term or the Lease End Date, whichever is later. Any damages caused by surrender or abandonment of the Apartment will be due as additional rent under this Lease.

18.5 Following surrender or abandonment, Landlord shall have the right, without notice, to: (1) secure the Apartment, Garage, or Storage Unit with new locks; (2) store or dispose of any personal property or possessions left on the Premises by You or Your Occupants, guests or invitees; or (3) re-rent the Apartment, Parking, Garage, or Storage Unit for new residency. Landlord may perform any of these options without filing a court action seeking a dispossessory warrant, writ of possession, or similar court order.

18.6 You agree that Landlord shall have no liability for any actions taken to secure the Apartment, Garage, or Storage Unit; obtain possession of the Apartment, Garage, or Storage Unit; or store or dispose of any personal property or possessions found in the Apartment, Parking, Garage, or Storage Unit after Landlord deems the Apartment, Parking, Garage, or Storage Unit to have been surrendered or abandoned.

18.7 You acknowledge and agree that Landlord's acts or failure to act with regard to securing the Apartment, Parking, Garage, or Storage Unit; obtaining possession of the Apartment, Parking, Garage, or Storage Unit; or storing or disposing of any personal property or possessions found in the Apartment, Parking, Garage, or Storage Unit under circumstances which are, or may indicate, surrender or abandonment, are a contractual matter to which You have given Your consent, and any alleged breach shall not give rise to a claim in tort nor to a claim for punitive damages.

18.8 Animals removed after surrender, abandonment, or eviction may be kennel at Your expense or turned over to local authorities or humane societies.

19. LANDLORD'S PERMISSION OR CONSENT:

If any provision of this Lease requires the permission or consent of Landlord as a condition to any act by You, such permission or consent must be in writing and may be granted or withheld in the sole discretion of Landlord, may contain such conditions as Landlord deems appropriate, shall be effective only so long as You comply with such conditions, and may be modified, revoked, or withdrawn by Landlord at any time at Landlord's sole discretion, upon written notice to You.

20. DISCLOSURE:

20.1 Mid-America Apartments, L.P., whose address is 6815 Poplar Ave., Suite 500, Germantown, TN 38138 is either the Premises owner or is authorized to act on behalf of the Premises owner with respect to this Lease, to manage the Apartment and the Premises, and is the Premises owner's duly designated agent for service of process with respect to any matter arising under this Lease.

20.2 You agree that Landlord (periodically, at any time, and from time to time during the term of this Lease or any extension or renewal hereof) may obtain a background report on You, an Occupant, or any guest, including but not limited to, information as to Your credit and criminal history, in connection with this Lease and that the Lease may be non-renewed based on information contained in the reports. During and after the term of this Lease, You consent to Landlord furnishing data about You and Your relationship with Landlord to one or more credit reporting agencies.

20.2.1 Landlord may provide to any third party Your contact information, including, without limitation, Your name, email address, phone number and Apartment address, as well as any additional information regarding the Apartment or Your use of the Apartment, including, without limitation, the apartment community at which the Apartment is located, the number of bedrooms in the Apartment, the size or measured area of the Apartment, whether You keep an animal in the Apartment, the date Your Lease or the term of Your Lease or Your occupancy of the Apartment commences or expires, the date you surrender possession of the Apartment, whether You or Landlord have notified the other of an election not to renew the term of this Lease, and whether You become a former resident of the Apartment. By signing this lease, to the fullest extent permitted by applicable law, You knowingly and voluntarily waive and release any and all claims that You may now or hereafter have against Landlord with regard to any such disclosure of any such information. Further, If You elect to engage with any such third party, including without limitation, participation with any vendor or service provider who offers or advertises goods or services through such third party, such engagement is solely between You and the applicable third-party, vendor and/or service provider. Landlord shall have no liability, obligation or responsibility for any such interaction or transaction between You and any such third-party, vendor and/or service provider. You should make whatever investigation You feel is necessary or appropriate before proceeding with any online or offline transaction with any third party, vendor and/or service provider. You are solely responsible for Your dealings with any third party, vendor and/or service provider, including, without limitation, the delivery of and payment for goods and services.

21. FIRE OR OTHER CASUALTY:

If the Apartment is made uninhabitable by fire or other casualty not the fault or negligence of You, Your Occupants, guests, or invitees, this Lease may, at Our sole discretion, be terminated if you immediately vacate the Apartment and provide written notice within seven (7) days of your intent to terminate the Lease, Your Security Deposits will be returned to You (less any amount of damage attributable to You, as described above), and no Early Termination Fee or Additional Termination Fee shall be due from You. If the Apartment and/or Premises are made uninhabitable by fire or other casualty caused by You, Your Occupants, guests, or invitees, You must surrender possession of the Apartment, but You may still remain liable for damages and future rent under this Lease.

22. INDEMNIFICATION:

You release Landlord from liability for and agree to indemnify and hold harmless Landlord, any of its employees, managers, agents, officer, director,

shareholders, property managers, owners and their respective successors and assigns (collectively "Landlord Parties") against all losses incurred by Landlord as a result of:

22.1 Failure by You, Your Occupants, guests or invitees to fulfill any condition of this Lease;

22.2 Any damage or injury, happening in or about the Apartment or Premises, to You, Your Occupants, guests, or invitees or such person's property unconnected with Landlord's or Landlord's parent, subsidiary, and affiliate companies' gross negligence, fault, or violation of any applicable laws;

22.3 Your failure to comply with any requirements imposed by any governmental authority; and/or

22.4 Any judgment, lien or other encumbrance filed against the Apartment or Premises as a result of Your actions.

22.5 Nothing herein or elsewhere in this Lease shall be deemed to exempt Landlord from liability or limit the liability of Landlord from damages to person or property caused by or resulting from the negligence of Landlord (or Landlord's agents, servants or employees) in the operation, care or maintenance of the Apartment or any facility upon or portion of the Premises of which the Apartment is a part.

23. FAILURE OF LANDLORD TO ACT:

Failure of Landlord to insist upon strict compliance with the terms of this Lease shall not constitute a waiver of any violation or default by You or limit Landlord's rights or remedies in any way.

24 ARBITRATION; CLASS ACTION WAIVER; WAIVER OF A JURY TRIAL; ATTORNEY FEES.

24.1 *Definitions.* For purposes of this Section 24, the following terms will have the meanings specified:

The term "**AAA**" means the American Arbitration Association.

The term "**Claim**" means and includes any claim, dispute, action, proceeding, cause of action or controversy of every kind and nature, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property) or otherwise (whether for damages or for injunctive or other legal, equitable or other relief, or whether arising under federal, state, local, common, statutory, regulatory, constitutional or other law) whether now existing or arising in the future between You and Landlord arising from or relating to Your Lease or any prior lease between the parties, the Apartment, the Property, use of Your Apartment and/or common areas, as well as the relationship resulting from this Lease, including the validity, enforceability, or scope of this Section 24, and also including Claims by or against any third party providing any product, service or benefit in connection with the Lease (including, but not limited to, debt collectors and all of their agents, employees, directors and representatives), but does not mean or include Excluded Claims (defined below). As used in this Section 24, "You" and "Landlord" also includes any parent, wholly or majority owned subsidiaries, affiliates, any licensees, predecessors, successors, assigns, and purchasers of any accounts, all agents, employees, directors, and representatives of any of the foregoing and any third party providing any apartment, product, service, or benefit in connection with this Lease.

The term "**Excluded Claims**" means any action, proceeding or cause of action by Landlord for Your eviction from the Apartment, to recover possession of the Apartment, or any action, proceeding or cause of action by You or Landlord, whether arising in contract, tort (including, but not limited to, personal injury, death or damage to property) or otherwise, in which the aggregate amount of damages, including exemplary damages, punitive damages, attorneys' fees and all other forms of monetary damages, sought does not exceed \$10,000.00. **An action on an Excluded Claim shall be brought in a court of competent jurisdiction in the state and judicial district in which the Property is located.** You further agree that any Excluded Claims brought by you shall be on an individual basis and not on a class representative basis as more fully set forth in Section 24.3 (Class Action Waiver).

The term "**Rules**" means the Commercial Arbitration Rules of the American Arbitration Association.

The term "**FAA**" means the Federal Arbitration Act, Title 9 of the United States Code.

24.2 *Agreement to Arbitrate Disputes.* This Lease is made pursuant to a transaction involving interstate commerce. **ALL CLAIMS THAT ARISE BETWEEN YOU AND LANDLORD WILL BE RESOLVED THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE FAA AND THE RULES. YOU AND LANDLORD AGREE AND UNDERSTAND THAT WE MUTUALLY CHOOSE BINDING ARBITRATION INSTEAD OF LITIGATION TO RESOLVE ALL CLAIMS. THIS MEANS THAT UNLESS YOU OPT OUT OF THIS SECTION 24.2 (AGREEMENT TO ARBITRATE DISPUTES), NEITHER YOU NOR LANDLORD WILL HAVE THE RIGHT TO LITIGATE A CLAIM IN COURT EXCEPT TO THE EXTENT PROVIDED HEREIN WITH RESPECT TO EXCLUDED CLAIMS. OTHER RIGHTS THAT YOU WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE OR MAY BE LIMITED IN ARBITRATION, INCLUDING YOUR RIGHT TO APPEAL AND YOUR ABILITY TO PARTICIPATE IN A CLASS ACTION.** In the event that this Section 24.2 (Agreement to Arbitrate Disputes) is found to be invalid and/or unenforceable for any reason whatsoever, any and all Claims shall be brought in a court of competent jurisdiction in the state and judicial district in which the Property is located and shall be tried without a jury.

24.2.1 *Initiation of Arbitration Proceeding/Selection of Arbitrator.* Any Claim will be resolved, upon the election by You or Landlord, by arbitration pursuant to this Section 24.2 and the Rules, except to the extent the Rules conflicts with this Lease, in which case, the provisions of this Lease shall control. For a copy of the Rules, to file a Claim or for other information about the AAA, You may contact AAA at 335 Madison Avenue, New York, NY 10017, www.adr.org. In addition to the AAA, Claims may be referred to any other arbitration organization that is mutually agreed upon in writing by You and Landlord, or to an arbitration organization or arbitrator(s) appointed pursuant to Section 5 of the FAA, provided that any such arbitration organization and arbitrator(s) will enforce the terms and restrictions set forth herein. If You and Landlord cannot agree on the selection of an arbitrator within fifteen (15) days after the request for arbitration, the AAA shall select an arbitrator. The determination of the arbitrator in such arbitration shall be final and binding and may be enforced in any court of competent jurisdiction.

24.2.2 *Arbitration Procedures.* The arbitrator will apply applicable substantive law consistent with the FAA and applicable statutes of limitations as modified by this Lease and will honor claims of privilege recognized by law. Federal or state rules of civil procedure or evidence will not apply. Written requests to expand the scope of discovery rest within the arbitrator's sole discretion and will be determined pursuant to the applicable Rules. The arbitrator will take reasonable steps to preserve the privacy of individual, and of business matters. Judgment upon the written arbitral award may be

entered in any court having jurisdiction. Subject to the right of appeal under the FAA and/or Section 15-48-130 and Section 15-48-140 of the South Carolina Code of Laws (1976), as amended, the arbitrator's written decision will be final and binding unless You or we take an appeal from the award by making a dated, written request to the arbitration organization within thirty (30) days from the date of entry of the written arbitral award. A three-arbitrator panel administered by the same arbitration organization will consider anew any aspect of the award objected to by the appellant, conduct an arbitration pursuant to its Rules and issue its decision within one hundred twenty (120) days of the date of the appellant's written notice. The panel's majority vote decision will be final and binding.

24.2.3 Location of Arbitration / Payment of Fees. The arbitration will take place in the federal judicial district where the Property is located. Initially, You will only be responsible for paying Your share, if any, of the arbitration fees required by the applicable Rules, which amount will not exceed the filing fees that You would have incurred if the Claim had been brought in the appropriate state or federal court closest to where the Property is located. Initially, Landlord will pay the remainder of any arbitration fees. Notwithstanding the foregoing, the arbitrator shall assess the cost of arbitration against the party which is not the substantially-prevailing party in such arbitration.

24.3 Class Action Waiver and Other Restrictions. You agree that You shall not have the right to participate as a representative or a member of any class of claimants pertaining to any Claim or Excluded Claim regardless of whether any such Claim or Excluded Claim must be arbitrated or may be pursued in any court. Arbitration or litigation of any Claim or Excluded Claim will proceed solely on an individual basis without the right for any Claims or Excluded Claims to be arbitrated or litigated on a class action basis or on bases involving claims brought in a purported representative capacity on behalf of others. As to Claims subject to mandatory arbitration, the arbitrator's authority to resolve and make written awards is limited to Claims between You and Landlord alone. Neither Claims nor Excluded Claims may be joined or consolidated unless agreed to in writing by all parties. No arbitration award or decision will have a preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration.

24.4 Waiver of Jury Trial. Landlord and You agree that any action, proceeding or cause of action on an Excluded Claim or any action, proceeding or cause of action in which Section 24.2 (Agreement to Arbitrate Disputes) is found to be invalid and/or unenforceable shall be brought in a court of competent jurisdiction in the state and judicial district in which the Property is located and shall be governed by and construed in accordance with the laws of the state where the Property is located, without giving effect to the principles of conflict of laws thereof and **THE PARTIES VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY HAVE TO A JURY TRIAL. THE INSTITUTION AND MAINTENANCE OF AN ACTION FOR JUDICIAL RELIEF IN A COURT SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY TO COMPEL ARBITRATION OF CLAIMS OTHER THAN EXCLUDED CLAIMS, INCLUDING THE FILING OF A COUNTERCLAIM IN A SUIT BROUGHT BY YOU PURSUANT TO THIS PROVISION.**

24.5 Survival. The provisions of this Section 24 will survive termination of this Lease, as well as voluntary payment in full of Your account, any debt collection proceeding by or between You and Landlord, and any bankruptcy by You or Landlord. If any portion of this Section 24 is deemed invalid or unenforceable for any reason, it will not invalidate the remaining portions of this Section 24 or the Lease, each of which will be enforceable regardless of such invalidity.

24.6 Attorney's Fees. The prevailing party in any Claim or Excluded Claim shall be entitled to receive from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs in such proceedings, including, without limitation, its reasonable attorneys' fees and expenses.

24.7 Limitation of Claims. You agree that any Claim or Excluded Claim that You have against Landlord shall be barred unless commenced in arbitration (or, if applicable, in court) within one (1) year of the date that you suffered any alleged harm, damage or injury, regardless of the date that you discovered or should have discovered your alleged harm, damage or injury. You waive any statute of limitations to the contrary.

24.8 Opt-Out Process. You may choose to opt out of and not be subject to the provisions of Section 24.2 (Agreement to Arbitrate Disputes) but only by following the process set forth below. If You do not wish to be subject to Section 24.2 (Agreement to Arbitrate Disputes), then You must notify Landlord in writing within thirty (30) calendar days of the date of this Lease at the following address: **Mid-America Apartments, L.P., 6815 Poplar Avenue, Ste. 500 Germantown, TN 38138 Attention: Opt Out Coordinator.** Your written notice must include Your name, address, Property name, last four digits of your social security number, Your Lease Start Date, and a statement that You wish to opt out of Section 24.2 (Agreement to Arbitrate Disputes). Your notice to opt out will be effective only upon receipt by Landlord and will only apply to this particular Lease and not to subsequent or previous agreements.

25. NOTICES:

25.1 Except as otherwise required by applicable law or set forth in this Lease, any notice required by this Lease shall be in writing and shall be deemed to be given:

25.1.1 By Landlord to You if (a) delivered personally, (b) sent to any email address on file with Landlord as provided by You, (c) mailed by Registered or Certified Mail to the Apartment pursuant to South Carolina Code Section 27-40-240, or (d) if You have vacated, mailed by U.S. First Class Mail to the last known address for You or any one of You.

25.1.2 By You to Landlord if delivered to and received by a Landlord employee on duty in the property management office for the Premises listed in this Lease.

25.2 If at any time You provide an email address or telephone number (whether wireless or a landline) to Landlord, You give Your permission and consent to receive emails, pre-recorded/artificial voice messages, telephone calls on a recorded line, and text messages (including automated texts sent using an automatic telephone dialing system, mobile push notifications, or notices and messages through other services made available by Landlord or one of its vendor partners at the email or telephone number (whether wireless or landline) that You have provided to Landlord or its vendor partners, or at any number forwarded or transferred from that number. These communications may include, but not be limited to: information, promotions and offers about Landlord's communities, Your apartment unit, maintenance or other services you have requested, security alerts, lease renewal offers and options, reminder messages or information regarding upcoming events, requested services, amenities schedules or opening/closing dates and times, rental payment due dates, other payment due dates, and information about events, programs and services that might be of interest to You. You understand that providing Your consent to receive such communications is not a condition of receiving services or entering a rental agreement with Landlord and that message and data rates may apply. By providing Your email address or telephone number, You represent that You have the authority to receive text messages on the email address or telephone number that You provided or from which You contact Landlord. You agree to notify Landlord regarding any changes to Your telephone number. You understand that You may choose to opt out of certain communications should You elect to do so; however, You understand that Your opt-out will not apply to and You may continue to receive certain time-sensitive and relevant communications regarding Your lease, account, transactions, requested

services, community safety, and amenities closures.

25.3 Any notice that Landlord gives to any Resident in this Lease, or any adult Occupant, or sent to any email address on file as provided by You, constitutes notice to all persons named as a Resident in this Lease.

26. POSSESSION:

If Landlord causes a delay in delivery of possession of the Apartment until after the Lease Start Date, rent shall be abated on a daily basis until possession is granted. If such delay extends beyond seven (7) days after the Lease Start Date, then You may terminate this Lease and receive full refund of any deposit and prepaid rent. Landlord shall not be liable for damages for delay in possession. If Landlord is repairing or cleaning the Apartment and/or Premises on the Lease Start Date in a manner that does not prevent You from occupying the Apartment, You will occupy the Apartment, rent will not be abated, and You will not have the right to terminate this Lease, except as otherwise set forth herein. The Apartment will be considered to be in clean, safe and good working condition at the time You take possession of the Apartment unless You notify Landlord otherwise in writing within seventy-two (72) hours after You take possession of the Apartment.

27. LENDER'S RIGHTS; GOVERNMENT ACTION OR CASUALTY:

27.1 Landlord may use or is using the Premises as security for a debt or mortgage. Your rights under this Lease shall at all times be subject to and subordinate to any deed to secure debt, mortgage, or any other security instrument which is now or shall hereafter be placed on the Premises. If requested, You shall execute promptly any certificate that Landlord may request specifically to implement the subordination of this Lease.

27.2 If a city, state, or other law enforcement or government agency condemns the Apartment, the portion of the Premises where the Apartment is located, or any material portion of the Premises, or if any of these areas are destroyed, Landlord may terminate this Lease upon ten (10) days written notice (or such other period as may be required by applicable law) to You or Landlord may elect to make any necessary repairs to the Apartment or portion of the Premises where the Apartment is located. If there is damage to Your Apartment that would make Your continued occupancy unsafe during the period of repairs, in Landlord's sole determination, Landlord reserves the right to terminate Your Lease and/or relocate You to another Apartment.

28. GENDER AND USE OF "FOR EXAMPLE":

In all references herein to "Resident" or "You" or "Your," the use of the singular number is intended to include the appropriate number as the text of this Lease may require, and all gender references to male or female are intended to be gender neutral. Whenever the words "for example" are used and are followed by a list, the list is by no means limited to the listed words, is not all-inclusive, and is used in place of the term "including without limitation."

29. NO ESTATE IN LAND:

This Lease creates only the relationship of landlord and tenant between Landlord and You. You have a usufruct only and not an estate for years. No estate shall pass out of Landlord.

30. ENTIRE AGREEMENT AND SEVERABILITY:

30.1 This Lease, any addenda, and any incorporated documents, including without limitation, Rules and Regulations, constitute the entire agreement between the parties and no prior, concurrent, or subsequent oral statements shall be binding.

30.2 No representative of Landlord is authorized to make any representations, warranties, or agreements other than as expressly set forth herein.

30.3 This Lease may only be modified in an amendment signed by all parties hereto.

30.4 If any provision of this Lease is invalid, such provision shall be considered deleted from this Lease, and shall not invalidate the remaining provisions.

30.5 You understand that execution of this Lease involves the waiver and release of valuable legal rights.

30.6 A copy of an original signature transmitted by facsimile, a scanned copy of an original signature transmitted by electronic mail, e.g. via a ".pdf" file, or an electronically signed document will be deemed to be an original. This Lease may be executed in two or more counterparts, each of which, whether existing electronically or in paper form, shall be deemed to be an original, and such counterparts shall together constitute the same agreement.

30.7 This Lease shall be voidable by Landlord if You, or one of You, cannot or will not produce to Landlord the original government-issued identification(s) used by You during the application process.

31. FAIR HOUSING:

Landlord is an equal opportunity housing provider and complies with all federal, state and local fair housing laws and regulations. Landlord does not discriminate in any way based upon race, religion, color, sex, national origin, familial status, disability, age, marital status, sexual orientation, or any other classification protected by federal, state, or local law applicable in the jurisdiction where the Premises is located.

32. SUCCESSORS AND ASSIGNS:

Subject to Paragraph 27.1, all provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the successors and assigns of Landlord. Any sale or conveyance of the Premises or any part thereof will not affect this Lease or any of Your obligations under this Lease, but under a sale or conveyance Landlord will be released from all obligations under this Lease and You will look solely to the new owner of the Premises for the performance of Landlord's duties under this Lease from and after the date of the sale or conveyance.

33. MOLD:

You are hereby notified that the Apartment, including any Garage or Storage Unit, may be subject to the growth of mold or mildew if not properly cleaned and maintained, if leaks or other water damage occur, or if excess moisture is allowed to accumulate. If moldy materials are allowed to grow, exposure

to mold organisms and associated products can occur through inhalation or direct physical contact. Most molds and their associated products that are routinely encountered are not hazardous to healthy individuals. Molds and their associated products are commonly found in all outdoor and indoor air of apartments. In addition, the presence of mold or excessive moisture may damage the Apartment or Your property. To reduce the chance of such potential conditions or exposures, You must take steps to prevent mold growth, must arrange for proper actions if mold or excessive moisture is discovered, and must comply with the other requirements set out in this Lease. You acknowledge that the most reliable methods for identifying the presence of mold or mildew or conditions favorable to their growth are: (i) routine visual inspections for mold growth, signs of leaks, water damage, and wetness; and (ii) odor inspections for sources of mold odors. Whenever leaks, water damage, wetness, mold, or mildew are identified, they must be addressed immediately. You agree to clean and maintain the Apartment in a manner that prevents mold or mildew and prevents conditions favorable to their growth. Possibly the single most important way of preventing or controlling mold is preventing excessive moisture build up within the Apartment or any water intrusion into the Apartment. You agree to uphold this responsibility in part by complying with the following list of responsibilities:

33.1 You shall take all reasonable measures to control the moisture level of the interior of the Apartment by immediately reporting to Landlord any water intrusion, such as building leaks, plumbing leaks, drips or "sweating" pipes, other wetness, water damage, or elevated moisture levels.

33.2 You shall limit the sources of indoor humidity by increasing fresh air ventilation when outdoor air is not humid, warming cold surfaces where condensation occurs and setting the thermostat so that air will circulate if the indoor temperature is eighty (80) degrees Fahrenheit or higher.

33.3 You shall use bathroom fans while showering or bathing and shall immediately report to Landlord any non-working fan or window.

33.4 You shall use all reasonable care to close all windows and other openings in the Apartment to prevent rain or other forms of precipitation from penetrating into the interior of the Apartment.

33.5 You shall use exhaust fans whenever cooking, dishwashing, or engaging in water-based or other wet cleaning techniques.

33.6 You shall clean and dry any personal property within 24 to 48 hours of water intrusion and shall monitor those items to verify that no mold or mildew growth occurs.

33.7 You shall notify Landlord immediately upon discovery of any damp or wet building materials, such as wet wallboard or ceiling tiles.

33.8 You shall conduct a visual and odor inspection of the Apartment for the presence of mildew, mold growth, leaks, or water damage at least once per month. The inspection shall include, but shall not be limited to, an examination of: (a) window frames and carpets; (b) ceiling tiles, and any currently or formerly damp or wet material made of cellulose (such as wallpaper, books, papers, and newspapers); (c) all indoor plants; and (d) Your personal property.

33.9 You shall perform regular and routine cleaning of caulking around the sinks, bathtubs, showers, and windows by using common household cleaning products or a bleach and water solution if moisture is condensing or sitting on the caulking and causing mold growth.

33.10 You shall immediately report to Landlord if mold or mildew growth is noted on surfaces inside the Apartment, and the growth affects more than a very small area that You will clean and dry promptly (a very small area is generally not more than one square foot). Most very small areas of mold can be cleaned by using water and detergent or bleach and drying the surface completely afterwards. If in doubt about the size of the area or Your ability to clean it properly or without damaging the Apartment, report the mold immediately so that Landlord can address it. If the mold growth is in an area that is not ordinarily subjected or exposed to moisture or water, You must report the mold to Landlord so We can investigate the source of moisture.

33.11 You also must report to Landlord immediately whenever mold, mildew, leaks, water damage, or other evidence of moisture problems are observed anywhere in the Apartment.

33.12 You agree not to bring any personal property into the Apartment that You know or suspect contains mold, especially "soft possessions" which have fabric or porous surfaces such as sofas, mattresses, and pillows. If You discover evidence of mold on such items and need help in arranging for disposal, notify Landlord.

33.13 Breach of this mold provision constitutes a material breach of this Lease.

34. RULES AND REGULATIONS:

Landlord has established certain rules and regulations to enhance Your resident experience ("Rules and Regulations"). Some of these Rules and Regulations appear in this Lease. Others may be posted in recreational, storage, service, and amenity areas. Failure to adhere to Rules and Regulations, by You, Your Occupants, or Your guests or invitees will constitute a material breach of this Lease. You agree and understand that additional Rules and Regulations may be established by Landlord at any time during the initial or a renewal term. Such additional Rules and Regulations shall be effective thirty (30) days after being delivered to You pursuant to the notice provision in Paragraph 25.1 or otherwise conspicuously posted on the Premises. You acknowledge that the availability of amenities is subject to change in Landlord's sole discretion and that any such change shall not constitute a breach of this Lease.

34.1 Parking:

34.1.1 You understand that Landlord may contract with third parties to manage or operate the parking areas, including but not limited to providing towing and security services.

34.1.2 You agree to abide by all parking regulations established by Landlord.

34.1.3 The Parking area(s) on the Premises may have one or more vehicle entry barrier such as a door, gate, or arm. Access through such entry barriers should be limited to ONE VEHICLE AT A TIME. Do not attempt to "tailgate" through any entry barrier. Assume every entry barrier will lower or close after each vehicle. Always use Your controlled access device prior to proceeding through the entry barrier. Vehicle entry barriers may malfunction. Tailgating could cause damage to the entry barrier or Your vehicle. Such action may also cause personal injury or death. You agree and consent that Landlord is not liable for any damages or injuries incurred as a result of a malfunction or misuse of the vehicle entry barrier.

34.1.4 All vehicles must be approved and registered with Landlord. You shall, without delay, inform management if You have a change in vehicle.

34.1.5 No campers, recreational vehicles, boats, trailers, mobile homes, buses, commercial vehicles or mechanized equipment may be allowed on the Premises without Landlord's prior written approval. If Landlord has designated spaces for You to park or areas for boats, trailers, campers or other vehicles, You agree to park only in those spaces so designated.

34.1.6 Improperly parked, non-operable, abandoned, or unauthorized vehicles or equipment are not permitted on the Premises and may be booted or removed by Landlord at the expense of You or any other person owning same, for storage or public or private sale, at Landlord's option with no right of recourse against Landlord therefore. The definition of improperly parked, non-operable, abandoned, or unauthorized vehicles or equipment shall be liberally construed in favor of Landlord. In addition, but not limited to their generally accepted definitions, "improperly parked", "non-operable", "abandoned", and "unauthorized" shall also mean vehicles or equipment which:

34.1.6.1 Are noxious, offensive, unsightly, unpleasant or unkempt such as could reasonably affect the appearance or rental marketability of the Premises or such as could reasonably cause embarrassment, discomfort, annoyance, or nuisance to Landlord or other residents;

34.1.6.2 Are causing damage to the Premises or the parking lot, including but not limited to, oil or gas leaks, seepage or spills, and motorcycle kickstands which sink into the pavement;

34.1.6.3 Are not previously approved and registered with Landlord as required;

34.1.6.4 Are not displaying any required hangtag, decal, or other identifier provided by Landlord;

34.1.6.5 Are not properly parked between parallel lines or other lines marking spaces for parking;

34.1.6.6 Are parked in a space assigned to another resident, blocking access to any prohibited areas, designated "no parking" areas, including but not limited to, fire lanes, fire hydrants, ingress and egress travel lanes, entrances, exits, trash dumpsters or compactors, carwash bays, or maintenance or service areas;

34.1.6.7 Are on blocks or jack stands;

34.1.6.8 Appear to be in a state of disrepair;

34.1.6.9 Appear to be incapable of self-propelled movement;

34.1.6.10 Do not have a proper license tag, proper handicap hang-tag, decal, or other designation, current license decal validation sticker, current state emissions inspection sticker or minimum applicable motor vehicle insurance;

34.1.6.11 Are not owned by You; or

34.1.6.12 Are left unattended on the Premises for a period of not less than thirty (30) days without anyone having claimed ownership of it.

34.1.7 Vehicles may not be repaired or washed on the Premises, except in specifically designated areas when they are provided.

34.2 Entrances, Hallways, Breezeways, Walks and Lawns: Entrances, hallways, breezeways, walks, lawns and other public areas shall not be used for storage, gathering, or smoking, or obstructed or used for any purpose other than ingress and egress.

34.3 Balcony or Patio: Balcony or patio shall be kept neat and clean at all times without excessive furniture or personal items. No items shall be stored, hung or draped on railings or other portions of balcony or patio. You agree to properly secure any items on Your balcony to prevent such items from being blown from the balcony. You agree that You are liable for any damage caused by items blown from Your balcony.

34.4 Antennas/Satellite Dishes: Radio or television aerials or satellite dishes, no larger than one (1) meter in diameter (or approximately 3.2 feet), are permissible within the Apartment or contiguous space leased to You, e.g. a private balcony or patio. Such permission does not extend to outside windows, doors and walls, nor to antennas/satellite dishes that extend beyond a balcony railing or a patio line on a ground floor, nor can You damage the Apartment or Premises in the installation or removal. If You choose to install a satellite dish or antenna, You must (i) provide evidence of liability insurance of at least Three Hundred Thousand Dollars (\$300,000) to protect us against claims of personal injury and property damage (such insurance to meet the additional requirements of Section 10 above) and (ii) pay an additional security deposit of Three Hundred Dollars (\$300) which will be maintained in accordance with the provisions of Section 8, provided, however, if this Lease is a renewal, and You have previously paid a security deposit of less than Three Hundred Dollars (\$300), You will not be required to pay the difference to Landlord. You must keep Your aerials and satellite dishes in good working order and appearance. Landlord makes no representation that the properly installed satellite dishes servicing the Apartment will be able to receive the desired signals. You are responsible for removal of the radio or television aerials or satellite dish and all related equipment when You move out of the Apartment. You are also responsible for the cost of any repairs reasonably necessary to restore the Apartment (or contiguous space) leased to You to the condition it was in prior to the installation, ordinary wear and tear excepted.

34.5 Signs and Projections: You agree to refrain from placing and/or displaying in locations that are visible to others outside of Your apartment any signs, posters, flags, fabric or other forms of symbolic or written expression that, in Landlord's reasonable judgment, may be deemed disruptive to the apartment community. You further agree not to attach any awnings or other projections to the Premises or outside of the building of which the Apartment is a part.

34.6 Window Screens and Treatments: You agree not to remove any screens from the Apartment windows. All window treatments installed by You must present a uniform appearance with the exterior of the Premises.

34.7 Water Beds/Hot Tubs: You shall not have or keep any water beds or hot tubs in the Apartment without prior written permission of Landlord.

34.8 Combustible Materials, Heaters, and Grills:

34.8.1 You may not keep or store in the Apartment or on the Premises goods or materials of any kind or description which are combustible or would increase fire risk, nor may such items be taken to or placed in storage, balcony, patio, or garage areas. You may not burn candles anywhere on the Premises outside of Your Apartment. You may not display or ignite fireworks anywhere on the Premises.

34.8.2 You may not use gas, kerosene or electric heaters or any other heater other than Your Apartment's built-in heating system. Landlord shall not be responsible for any loss or damage due to the storage or keeping of such materials.

34.8.3 You may not use, kindle, or maintain any charcoal or liquid-filled petroleum gas or liquid fueled burners, heaters, grills, or cooking devices in the Apartment or on the Premises or otherwise in violation of law. Such devices may be used only if provided by Landlord in designated areas. This Lease specifically prohibits the use of or igniting any charcoal cooker, brazier, hibachi or grill or any gasoline or other flammable liquid or liquefied petroleum gas-fired stove, grill or similar device in the Apartment or on the Premises except as may be provided by Landlord. Additionally, the storage of gasoline powered equipment, or cooking devices using flammable or combustible liquids or liquefied petroleum gas ("LPG") as a fuel source, is prohibited in the Apartment or on the Premises except as may be provided by Landlord.

34.9 Garages and Mechanical Closets: You will not use any garage or mechanical closet, including but not limited to any attached garage or water heater or HVAC closets, for storage of any type.

34.10 Resident Liable for Actions of Your Occupants, Guests or Invitees: You are responsible and liable for the conduct of Your Occupants, guests or invitees. Acts or failure to act of Your Occupants, guests or invitees in violation of this Lease, any addenda, or Rules and Regulations may be deemed by Landlord to be a breach by You. You acknowledge and agree to communicate and explain all addenda, rules and regulations, and the terms of this Lease to Your Occupants, guests and invitees.

34.11 Conduct:

34.11.1 You agree to communicate and conduct yourself at all times in a lawful, courteous, and reasonable manner when interacting with Landlord; Landlord's employees, agents, independent contractors, and vendors; other residents, occupants, guests or invitees; or any other person on the Premises. Any acts of unlawful, discourteous, or unreasonable communication or conduct by You or Your Occupants, guests or invitees, shall be a material breach of this Lease and will entitle Landlord to exercise all of its rights and remedies for default.

34.11.2 You agree not to engage in any abusive behavior, either verbal or physical, or any form of intimidation or aggression directed at Landlord; Landlord's employees, agents, independent contractors, and vendors; other residents, occupants, guests or invitees; or any other person on the Premises. Any acts of abusive or offensive behavior whether verbal or physical by You or Your Occupants, guests or invitees, shall be a material breach of this Lease and will entitle Landlord to exercise all of its rights and remedies for default.

34.11.3 If requested by Landlord, You agree to conduct all further business with Landlord in writing.

34.11.4 You agree not to damage the Apartment or any other portion of the Premises, including but not limited to, the physical facilities, buildings, trees or landscape. You shall be liable for all acts or failure to act of Your occupants, guests or invitees which result in damages to the Apartment or the Premises. You shall remain liable to Landlord for any damages which exceed normal wear and tear and agree to pay Landlord promptly upon notice of such damages, notwithstanding whether the repairs have actually been made. Further, Your acts or failure to act which results in damages to the Apartment or Premises shall constitute grounds for termination of this Lease. Any amounts due from You because of damage exceeding normal wear and tear shall constitute additional rent.

34.11.5 You acknowledge and agree that everyday noises, sounds, odors and smells (including those from cooking) are normal occurrences in an apartment community and may penetrate Your Apartment.

34.12 Keys and Controlled Access:

34.12.1 Landlord may deliver keys to the Apartment to another person with Your prior written permission ("Key Release") specifically identifying the individual or company You intend to receive a key. It is Your responsibility to return the checked out keys to Landlord the same day or to cover the cost of changing the locks to the Apartment. You acknowledge that Landlord does not provide lock out service before or after leasing office hours. You agree to pay a reasonable fee to Landlord for re-keying locks if You request that Landlord re-key Your lock(s).

34.12.2 To the extent available, each Resident, and each Occupant if Resident requests, will receive one controlled access device of Landlord's choice. You will pay Landlord for replacement of any controlled access device that is lost, misplaced, stolen, or not returned to Landlord at termination of this Lease.

34.12.3 Landlord may, but is not required to, allow You to get one or, in Landlord's discretion, more than one, additional controlled access device for a non-refundable convenience fee to be set by Landlord. You will be responsible for replacement of any such additional controlled access device that is lost, misplaced, stolen, or not returned to Landlord at termination of this Lease.

34.13 Waste: To the extent any trash cans, dumpsters, trash chutes, or other waste disposal facilities are located on the Premises, You understand and agree that they are to be used exclusively for the disposal of Your normal household waste generated on the Premises. They are not to be used for disposal of hazardous, dangerous, toxic, or specially regulated items or wastes (such as tires, car batteries, radioactive materials, etc.), over-sized items (such as mattresses, sofas, etc.), waste of any type generated elsewhere than on the Premises, or waste of any type or any other items brought onto the Premises for the purpose of disposal. You agree to abide by any Rules and Regulations posted at such facilities regarding their use, including additional use restrictions.

34.14 Common Areas, Pools, and Other Community Rules:

34.14.1 Use of all recreational facilities and amenity areas, including pools and exercise equipment, is at Your own risk. Landlord and its employees are

not responsible for any personal or property damage, death, injury, illness, or loss suffered or sustained by residents, occupants, guests, or invitees from use of recreational facilities or amenity areas. Call 911 in case of injury and report any injury to the leasing office as soon as possible.

34.14.2 Please read and abide by any specific rules posted in each recreational area or amenity area.

34.14.3 Pool. Adequate supervision is required for non-proficient swimmers at all times while at the pool. Wear only swimwear in the pool. Individuals who are incontinent or who lack bladder or bowel control must wear a protective swim diaper or swim pants to prevent fecal contamination of the pool. Immediately report any contamination to Landlord. Glass containers are prohibited in the pool area. Dispose of all trash and waste in trash receptacles. No pets are permitted in the pool area. Do not hang or play on pool ropes, rings, hooks, or fountains. Be courteous of other swimmers near the pool; profanity, horseplay, running, diving, bicycle riding, skating, rollerblading, loud music or harassment of others is not permitted. Resident identification may be requested by Landlord at any time to assure that only residents and their guests are using the pool. As a courtesy to all residents, no more than two (2) guests per apartment are allowed at the pool at any one time. Residents must accompany their guests at all times. Landlord may require the use of identification bracelets or other device by residents and their guests while in the pool area, may limit the number of such bracelets or devices available to You, and may charge a convenience fee for those used by guests or for replacements (if Landlord, in its discretion, decides to issue replacements). Failure to use such bracelet or device shall constitute a material breach of this Lease.

34.14.4 Exercise Room. The Property may include an exercise room and exercise equipment for Your personal use. Guests must be accompanied by a resident at all times. If residents or guests cannot, due to physical condition or otherwise, safely operate the exercise equipment, they must be accompanied by a person able to provide supervision and support for the particular exercise activity. Only persons using the equipment are allowed in the workout area. Horseplay, loitering or any use of the fitness equipment for other than its intended purpose is not permitted.

34.14.5 Other Recreational Facilities. Landlord may provide tennis courts, basketball courts, sauna and steam rooms in Your Landlord community for Your personal use. Please exercise care and common sense and be courteous to other residents when using the facilities.

34.15 Laundry Facilities. If the Property includes laundry facilities for Your personal use, such facilities may be operated by an independent service and Landlord is not responsible for damaged, lost or stolen items. Please call the leasing office if You find that any of the machines are not working properly so that Landlord can arrange to have them repaired

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in person or by a person duly authorized the day and year written above.

BY SIGNING BELOW, RESIDENT ACKNOWLEDGES THAT HE OR SHE HAS BEEN GIVEN A SUFFICIENT OPPORTUNITY TO FULLY REVIEW THIS LEASE, HAS READ THE TERMS AND CONDITIONS OF THIS LEASE, AND UNDERSTANDS THE ABOVE LISTED LEASE TERMS AND CONDITIONS. BY SIGNING BELOW, RESIDENT FURTHER AGREES TO COMPLY WITH ALL TERMS AND CONDITIONS OF THIS LEASE AS SET FORTH ABOVE.

Electronically Signed By
Sean Jones
on 6/13/2022

Authorized Representative of Mid-America Apartments, L.P.

Property phone number: 8438756409
(always call 911 for police, fire or medical emergencies)

Electronically Signed By
Marisol Kelly
on 6/9/2022

Marisol Kelly

Cleaning and Damage Costs

MAA - 6815 Poplar Ave., Suite 500 - Germantown, TN 38138 - (901) 682-6600

				Resident Charges
Kitchen				
	Dishwasher	Must be cleaned inside and out	\$12.00	
	Kitchen Sink/Disposal	Must be cleaned and stopper in place	\$10.00	
	Range Top	Must be cleaned: drip pans, stove top, outside, grease guard (back)	\$15.00	
	Microwave	Cleaned inside and out	\$12.00	
	Oven	Must be cleaned to include: bottom drawer and oven racks	\$25.00	
	Range Hood	Must be cleaned and free from grease	\$10.00	
	Refrigerator	Must be cleaned to include: top, front, sides, inside drawers and racks	\$25.00	
	Trash Compactor	Clean inside and out. New replacement bag	\$12.00	
	Replacement	Applies to all appliances. For example, if the refrigerator cannot be cleaned/deodorized to management's satisfaction, resident is responsible for full replacement	At Cost	
	Cabinets	Must be cleaned, shelf paper removed, damage to wood priced at cost	\$12.00	
	Floor	Must be swept and freshly mopped - no wax build up	\$27.00	
	Laundry Room	Must be cleaned and mopped	\$15.00	
Bathrooms				
	Mirrors	Mirrors must be cleaned	\$7.00	
	Tubs and Sinks	Must be cleaned to include all fixtures. Free of mold and soap scum	\$27.00	
	Jacuzzi Tubs	In good working condition. Repairs to motor At Cost	At Cost	
	Floors	Must be swept and freshly mopped (never waxed)	\$12.00	
	Toilets	Must be cleaned to include inside and outside	\$12.00	
	Balcony & Patio			
	Patio/Balcony	Screens, storage room, entire area must be cleaned and swept	\$17.00	
	Front Door	Kick plate and door must be cleaned	\$6.00	
	Water Heater Closet	Must be cleaned and free of debris	\$12.00	
	Screened Enclosures	Torn or damaged screens (minimum \$25)	At Cost	
	Trash/Furniture Removal	\$25 per bag or At Cost for Furniture Removal		
Fans and Fixtures				
	Ceiling Fan	Ceiling Fans and Light Fixtures must be cleaned	\$10.00	
	Replacement	Ceiling Fan replacement	\$75.00	
	Globe Replacement	If broken or missing	\$25.00	
	Light Replacement	If broken or missing	\$25.00	
	Smoke Detector	If broken or missing	\$25.00	
	A/C Vents	Must be cleaned	\$25.00	
	Fire Extinguisher	If broken or missing - 5 lb. replacement	\$45.00	
	Vent Hood	Replacement if damaged or broken	\$70.00	
	Towel Bars	If broken or off wall (each)	\$35.00	
	Fireplace	Must be clean and free of ashes and wax (if applicable)	\$25.00	
	Grate	Replacement if damaged or missing	\$15.00	
Blinds				
	Mini Blinds	Mini-blind replacement (standard size) (Double Window \$60)	\$30.00	
	Vertical Blinds	Vertical-blind repair (each slat)	\$7.00	
	Replacement	Vertical-blind replacement (each set)	\$100.00	

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Screens				
	Window Screens	Frame and Screen replacement	\$40.00	
	Re-screen	Re-screen (small)	\$25.00	
	Sliding Door Screen	Sliding glass door screen	\$50.00	
Wall & Ceiling Repairs				
	Sheetrock repairs	Door knob size hole	\$40.00	
		Larger hole - 1 square foot	\$55.00	
		Each additional square foot	\$35.00	
	Stain treatment	Kilz stain treatment (each wall)	\$30.00	
	Wall Paint	Additional coat of paint due to covering color/stains	\$150.00	
	Holes Repaired	Picture hooks, toggle bolts, etc. (\$7 each)	\$7.00	
	Ceiling Paint	Ceiling Paint (due to stains/yellowing/cigarette smoke)	\$150.00	
Counter Tops				
	Counter Replacement	Replacement per square foot (Formica)	\$22.00	
	Counter Replacement	Replacement per square foot (Granite)	\$40.00	
Carpet				
	Carpet cleaning	Must be freshly vacuumed & professionally shampooed (receipt required) or		
		[One bedroom = \$45] [Two bedroom = \$55] [Three bedroom = \$65]		
	Stain treatment	Per Stain	\$40.00	
	Patch	Patch per square foot	\$60.00	
	Deodorize Treatment	Pet, cooking odors, cigarette smoke	At Cost	
	Flea Treatment	Pets	\$60.00	
	Total Replacement	1 year	100 % of value	
	(Age of carpet)	2 year	80 % of value	
		3 year	60% of value	
		4 years	40% of value	
		5 years	20% of value	
Wallpaper				
	Repair	Repairs (per repair)	\$40.00	
	Replacement	Replacement (per roll)	\$60.00	
Vinyl Floors				
	Patch	Repair patch (minimum)	\$50.00	
	Replacement	Replace floor	At Cost	
Wood Floors				
	Repair/Replacement	Repair or replace floor	At Cost	
Vinyl Floors				
	Patch	Repair patch (minimum)	\$50.00	
	Replacement	Replace floor	At Cost	
Doors & Windows				
	Bi-Fold Metal Doors	Replacement per panel	\$70.00	
	Interior doors	Doors and Frame (Wood) replacement	\$225.00	
	Windows	Single paned - broken or cracked	\$75.00	
	Windows	Double insulated - broken or cracked	\$175.00	
	Sliding Glass Door	Replacement of door and tracking (36" width)	\$425.00	
		Replacement of door and tracking (48" width)	\$700.00	
		Glass Slider Door cleaned (to include track)	\$10.00	
	Window sills	Cleaned (each)	\$5.00	
	Keys	Keys replaced (each)	\$5.00	
	Lock Replacement	Re-Keying Locks (if all keys are not returned)	\$60.00	
	Gate Cards	Gate Cards (if applicable)	\$25.00	
	Laundry Cards/Keys	Laundry Cards (if applicable)	\$10.00	
Misc. Cleaning - Damage Charges				
	Key Fob	Missing or damaged key fob	\$100.00	

You are required to return the apartment to us when you move out in the same condition it was received, ordinary wear and tear excepted, including cleaning the apartment. MAA provides this Cleaning and Damages Cost Sheet in order to assist you in preparing your apartment for move-out. Please note these costs are not all inclusive and are only estimates as of the date hereof. Actual charges will be detailed after move-out and may be in addition to the amounts set forth above. A preliminary walk through is not a final assessment of any damages or necessary cleaning.

Electronically Signed By
Marisol Kelly
on 6/9/2022

Marisol Kelly

Signatures below this line are to be completed during the moveout phase

Marisol Kelly

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
Marisol Kelly,	)	Case No. 2024-CP-18-01431
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM IN
	)	OPPOSITION TO DEFENDANT'S MOTION
	)	TO RECONSIDER COURT'S ORDER
	)	DENYING DEFENDANT'S MOTION TO
Mid-America Apartment, L.P., d/b/a	)	STAY AND COMPEL ARBITRATION
Water's Edge Apartments,	)	
	)	
	)	
Defendant.	)	

COMES NOW Plaintiff, Marisol Kelly, by and through her undersigned counsel, hereby submits this Memorandum in Opposition of Defendant's Motion to Reconsider the Order of the Court dated March 25, 2025. Defendant filed a Motion to Stay and Compel Arbitration on January 15, 2025 and the Court heard oral arguments on February 24, 2025. By order dated March 25, 2025, The Honorable William C. McMaster, denied Defendant's Motion to Stay and Compel Arbitration. Defendant has requested the Court reconsider its ruling. However, the issues have been heard and ruled upon. All parties were given a full and fair opportunity to present their arguments to the Court, therefore, Plaintiff respectfully requests this Court deny Defendant's motion to reconsider in its entirety.

STATEMENT OF THE CASE

On February 20, 2023, Plaintiff, Marisol Kelly, was walking down the stairs in the common area of the apartment owned by Defendant, Mid-America Apartments, L.P., d/b/a Water's Edge Apartments, when she slipped and fell on trash that had accumulated on the stairs, causing Plaintiff to suffer significant injuries to her back. Plaintiff filed a complaint against Defendant in Dorchester County Court of Common Pleas on August 30, 2024. Defendant filed an Answer to Plaintiff's

complaint on October 8, 2024. Plaintiff has since sent discovery requests which Defendant has responded to, Defendant has sent discovery requests which Plaintiff has responded to, and Defendant has sent out eight subpoenas. Almost five months after Plaintiff filed her complaint, Defendant filed the instant Motion to Stay and Compel Arbitration. The Honorable William C. McMaster heard oral arguments on the motion via Webex on February 24, 2025. On March 11, 2025, the Court entered a Form 4 Order denying the Defendant's Motion to Stay and Compel Arbitration and requiring Plaintiff's counsel to submit a formal order. The Court subsequently adopted the order drafted by Plaintiff's Counsel on March 25, 2025. Defendant filed a Motion to Reconsider on April 3, 2025 requesting the Court to reconsider its ruling in full pursuant to Rule 59(e), SCRCP.

STANDARD OF REVIEW

Rule 59(e), SCRCP, allows a court to alter or amend a judgment upon a party's timely motion. Under South Carolina law, a motion to reconsider is appropriate in two situations. First, "a party may wish to file a motion when he believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court reconsider or rule on it." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Second, "a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.* A party's dissatisfaction with the outcome of the underlying litigation and the instant action is not grounds for relief under Rule 59. *Id.*

ARGUMENT

I. Defendant's Motion to Reconsider raises the same arguments already rejected by the Court at the February 24, 2025, hearing.

The Court should deny the Motion to Reconsider as it has already heard the arguments made by Defendant previously and denied it. Motions to Reconsider are not meant to allow a party to repeat the arguments originally made and hope for a different outcome. The Federal Rules upon which the State Rules are based address this point more specifically. According to the discussion of Rule 59 of the Federal Rules of Civil Procedure, courts note that, “[M]otions for reconsideration will not be granted absent highly unusual circumstances”. See *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). Such motions do not provide litigants with an opportunity to have a “second bite of the apple.” See *Sequa Corp. v. GBJ Corp.* 156 F.3d 136 (2nd Cir. 1998). The discussion further states, “motions for reconsideration are not vehicles for re-litigating old issues...nor are they motions for initial consideration.” See *National Ecological Foundation v. Alexander*, 496 F.3d 466, 477 (6th Cir. 2007). A motion to reconsider is not a motion to re-examine the evidence and arguments before the court at the initial proceeding and are appropriately granted only under highly unusual circumstances.

In the case at bar, Defendant has failed to provide any evidence that the Court misunderstood, failed to fully consider, or failed to rule on an argument or issue presented to the Court in their memorandum in support or during the hearing on February 24, 2025. The Defendant is simply making the same arguments already made but is now hoping for a different outcome. Defendant’s Motion to Reconsider makes two arguments; first, that the arbitration clause is not unconscionable, and second that Defendant has not waived arbitration by participating in litigation. These two arguments presented are ones that were already presented to the court and rejected. It is clear the Defendant is dissatisfied with the Courts decision to deny the Motion to Stay and Compel Arbitration, but such dissatisfaction is not grounds for relief under Rule 59. Thus, Defendant’s Motion to Reconsider must be denied.

II. The Court properly denied Defendant's Motion to Stay and Compel Arbitration.

a. The arbitration clause is unconscionable and therefore unenforceable.

“In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.” *Smith v. D.R. Horton*, 417 S.C. 42, 48, 790 S.E.2d 1, 4, (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). “Whether one party lacks meaningful choice in entering into the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process.” *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013). If a court as a matter of law finds any clause of a contract to have been unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause or so limit its application as to avoid an unconscionable result. S.C. Code Ann. § 36–2–302(1) (2003). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007).

Unsurprisingly, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a “take-it-or-leave it” basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 260, 365 (2001). And while an arbitration clause in an adhesion contract is not per se unconscionable, it is a strong indication that there was a lack of meaningful choice in negotiating the terms of the contract and is met with “considerable skepticism” by courts. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007).

In determining whether there was an absence of meaningful choice between parties entering into an automobile trade-in contract, the South Carolina Supreme Court in *Simpson v. MSA of Myrtle Beach, Inc.*, considered whether the arbitration clause was included in a contract of adhesion between a commercial entity and a consumer, whether the consumer lacked the business judgment necessary to make her aware of the implications of the arbitration agreement, and whether the consumer had a lawyer present to provide any assistance in the matter. 373 S.C. 14, 27, 644 S.E.2d 663, 670 (2007).

In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the contract contains oppressive and one-sided terms. *Id.* In *Huskins v. Mungo Homes, LLC*, the South Carolina Supreme Court found that an arbitration clause in a contract which shortened the statute of limitations for any claim brought was void and illegal as a matter of public policy and thus unenforceable as it violated S.C. Code Ann. §15-3-140 (2005). 444 S.C. 592, 910 S.E.2d 474 (2024). S.C. Code Ann. §15-3-140(2005) forbids and renders void any contract clauses attempting to shorten the legal statute of limitations. The court in *Simpson v. MSA of Myrtle Beach, Inc.*, found that the arbitration clause's limitation on statutory remedies was oppressive and one-sided. 373 S.C. at 28-30, 644 S.E. 2d at 670-671 (2007). Furthermore, courts have found that sections of arbitration clauses that purport to shorten the statute of limitations are material to the whole of the arbitration clause and have declined to salvage the remaining sections of the arbitration requirement, instead finding the entire arbitration provision unenforceable. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 597, 910 S.E.2d 474, 477 (2024). The court in *Damico v. Lennar Carolinas, LLC*, went as far to say that severing terms from an unconscionable contract of adhesion discourages fair, arms-length transactions and would encourage sophisticated parties to intentionally insert unconscionable terms in the contract.

437 S.C. 596, 604, 879 S.E.2d 746, 751 (2022).

Here, the lease agreement between the Plaintiff and Defendant is clearly an adhesion contract. The terms of the lease were not negotiable on the Plaintiff's behalf and was presented to her on a "take-it-or-leave-it" basis. Plaintiff did not have the business judgment to understand the effect of the arbitration clause contained in the lease agreement, and did not have counsel present to provide assistance during the signing of the lease agreement. Defendant argues that the "opt out" provision of Section 24.2 alone confirms that the lease agreement is not one of adhesion. However, if Plaintiff did not have the business judgment or knowledge to understand what an arbitration clause is or its effect, then she also would not have known that she should opt out of such a provision. Furthermore, one opt out provision buried in a 26-page lease agreement is hardly enough to suggest Plaintiff had meaningful choice in agreeing to the terms of the lease.

The arbitration clause is found in section 24 of the subject lease agreement and contains several oppressive and one-sided terms. Similar to the arbitration clause that was found unconscionable in *Huskins v. Mungo Homes, LLC*, section 24.7 here purports to bar all claims older than one year in clear contravention of S.C. Code section 15-3-140 (2005). Other oppressive and one-sided terms in the arbitration clause include the waiver of a jury trial, inability to appeal the arbitration decision, and inability to participate in a class action. Defendant argues that the term barring all claims older than one year is not a limitation on the remedies available to Plaintiff, even though it limits the otherwise available three-year statute of limitations available to her. It is well settled case law that an arbitration clause in a contract which shortens the statute of limitations for any claim brought is void and illegal as a matter of public policy and thus unenforceable.

The subject lease agreement is a contract of adhesion, Plaintiff lacked meaningful choice and could not negotiate its terms, and the arbitration clause contains several oppressive and one-

sided terms. Therefore, the arbitration clause contained in section 24 of the lease agreement is unconscionable, and thus unenforceable. Alternatviely, Defendant also argues that if any provisions in the arbitration clause are considered by the Court to be unconscionable then they should sever such portions and enforce the remaining provisions as intended. Again, the South Carolina Supreme Court has declined to sever terms from an unconscionable contract of adhesion to make it enforceable on more than one occasion but specifically when the provision is one that limits the statute of limitations. Therefore, this Court did not err in finding the arbitration clause in the lease agreement between Plaintiff and Defendant is unconscionable and thus unenforceable and the unconscionable terms in the arbitration clause cannot be severed in an attempt to make the clause enforceable.

b. Defendant waived its ability to enforce arbitration by participating in litigation.

The right to enforce an arbitration clause may be waived. *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665 521 S.E.2d 749, 753 (1999). “There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on facts of each case.” *Id.* Historically, South Carolina Courts have required a party seeking to establish waiver to show prejudice through an undue burden caused by a delay in the demand for arbitration. *Sentry Engineering & Construction., 287 S.C. 346, 351, 338 S.E.2d 631, 634 (1985)*. To ascertain whether the non-moving party was prejudiced, courts often look at whether the party requesting arbitration took advantage of the judicial system by engaging in discovery. *Evans v. Accent Manufactured Homes, Inc.* 352 S.C. 544, 548, 575 S.E.2d 74, 76 (2003). However, in *Morgan v. Sundance* the U.S. Supreme Court ruled that a party may waive their right to arbitration by engaging in litigation without needing to show prejudice to the other party. 596 U.S. 411, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022). This

ruling suggests that simply participating in litigation can be considered a waiver of the right to arbitrate, even if the non-moving party was not harmed in seeking arbitration.

Here, Defendant's actions have been inconsistent with the intent to enforce arbitration as Defendant waited a substantial amount of time before seeking to enforce the arbitration clause and has actively participated in the litigation process. First, Defendant filed the Motion to Stay and Compel arbitration almost five months after Plaintiff filed her complaint. Second, Defendant filed an answer to Plaintiff's complaint which did not raise the Defendant's purported right to enforce arbitration as a defense. If Defendant wished to enforce arbitration, Defendant's first responsive pleading to Plaintiff's complaint should have expressed such an intent. Third, Defendant sent written discovery requests to Plaintiff consisting of interrogatories and requests for production, which Plaintiff answered. The discovery requests sent by the Defendant went beyond basic requests. Fourth, Defendant has sent out eight subpoenas since the commencement of this action. Defendant argues that the parties have only engaged in "limited written discovery", but Defendant cannot say for certain that they would have been able to gain access to all of the information provided by Plaintiff or information obtained by Defendant after issuing eight subpoenas. Plaintiff has expanded time and resources pursuing litigation in reliance on the Defendant's apparent choice to also pursue litigation as their conduct has clearly suggested. Allowing Defendant to benefit from subpoena power and court-supervised discovery and then allowing Defendant enforce arbitration would impose significant prejudice to Plaintiff. While Plaintiff would suffer great prejudice if the arbitration clause were enforced, the ruling in *Morgan v. Sundance* is persuasive authority that would allow this Court to find that Defendant simply participating in litigation is sufficient to constitute waiver of Defendant's purported right to enforce arbitration. Therefore, the Court did not err in finding the Defendant has waived the ability to enforce arbitration.

Based on the foregoing, Defendant's Motion to Reconsider should be denied.

MILLER, DAWSON, SIGAL & WARD, LLC

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Attorneys for Plaintiff

North Charleston, SC
April 24, 2025

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Jun 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge
Case No.: 2024-CP-18-01431

Appellate Case No. *Pending*

Marisol Kelly Respondent

v.

Mid America Apartments, L.P. d/b/a Water's Edge Apartments.....Appellant.

NOTICE OF APPEAL

Mid America Apartments, L.P. d/b/a Water's Edge Apartments appeals the order of the Honorable William C. McMaster entered March 25, 2025. **See Ex. A (3.25.2025 Order)**. Appellants timely filed a Motion to Alter or Amend on April 3, 2025. **Ex. B (4.3.25 Motion for Reconsideration)**. The Court denied the Motion to Alter or Amend on May 19, 2025. **Ex. C (5.19.2025 Order)**. Appellant also appeals the Order denying its Motion to Reconsider.

COPELAND, STAIR, VALZ & LOVELL, LLP

June 17, 2025.

s/Kierra N. Brown
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Attorneys for Appellant

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Jun 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
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William C. McMaster, Circuit Court Judge
Case No.: 2024-CP-18-01431

Appellate Case No. *Pending*

Marisol Kelly Respondent

v.

Mid America Apartments, L.P. d/b/a Water's Edge Apartments.....Appellant.

PROOF OF SERVICE

I certify that I have served *Appellant's Notice of Appeal*, upon the parties below by electronic mail, addressed as follows:

Sydney K. Catlett, Esq.
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Ryan K. Miller, Esq.
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Counsel for Plaintiff/Respondent

This 17th day of June, 2025.

COPELAND, STAIR, VALZ & LOVELL, LLP

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s/Kierra N. Brown
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Kierra N. Brown
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Attorneys for Appellant

Richards, Cierra

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To: Sumter, Jaliyah; Court Of Appeals Filings
Cc: Sydney Catlett; patrick@mdswlegal.com; miller@mdswlegal.com; Chloe Newell; Weatherly, Lee C.; Brown, Kierra N.; Richards, Cierra
Subject: RE: Petitioner Mid-America Apartments, L.P. v. Respondent Marisol Kelly - Proof of Filing
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Sent: Tuesday, June 17, 2025 1:51 PM
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Cc: Sydney Catlett <sydney@mdswlegal.com>; patrick@mdswlegal.com; miller@mdswlegal.com; Chloe Newell <chloe@mdswlegal.com>; Weatherly, Lee C. <lweatherly@csvl.law>; Brown, Kierra N. <kbrown@csvl.law>; Richards, Cierra <crichards@csvl.law>
Subject: Petitioner Mid-America Apartments, L.P. v. Respondent Marisol Kelly - Proof of Filing

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Good afternoon,

Attached please find a stamped copy of the Notice of Appeal that was filed in the Dorchester County Court of Common Pleas. By copy of this email, we are providing the same to all counsel and advising of our communication with the Court. Please let us know if anything further is required at this time. Thank you.

Respectfully,



Jaliyah Sumter

Legal Assistant

d: 843.329.8350 | f: 843.727.2995

jsumter@csvl.law | www.csvl.law

40 Calhoun Street, Suite 400, Charleston, SC 29401

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## Richards, Cierra

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**From:** efiledonotreply@sccourts.org  
**Sent:** Tuesday, June 17, 2025 12:53 PM  
**To:** Weatherly, Lee C.  
**Cc:** Richards, Cierra  
**Subject:** Courtesy NEF RE: 2024CP1801431

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**A filing has been submitted to the court RE: 2024CP1801431**

**Official File Stamp:** 06-17-2025 12:53:08 PM  
**Court:** CIRCUIT COURT  
Common Pleas  
Dorchester  
**Case Caption:** Marisol Kelly VS Mid America Apartments Lp , defendant, et al  
**Document(s) Submitted:** Appeal/Notice of Appeal to Court of Appeals  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits  
**Filed by or on behalf of:** Kierra N Brown

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**The following people were served electronically:**

Kierra N Brown for Mid America Apartments Lp et al  
Lee Cannon Weatherly for Mid America Apartments Lp et al  
Ryan Kevin Miller for Marisol Kelly  
Patrick Thomas Yanoti for Marisol Kelly  
Sydney Katherine Catlett for Marisol Kelly

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge
Case No.: 2024-CP-18-01431

Appellate Case No. 2025-001205

Marisol Kelly Respondent

v.

Mid America Apartments, L.P. d/b/a Water's Edge Apartments.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant hereby certifies that, in accordance with Rule 210(c), SCACR, this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

COPELAND, STAIR, VALZ & LOVELL, LLP

December 5, 2025.

s/Lee C. Weatherly
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