RECEIVED
Jul 01 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick Cleburne Fant, III, Circuit Court Judge

Appellate Case No. 2025-002427
Circuit Court Case No. 2024-CP-23-06777

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, ... Respondent,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC, ... Appellants.

RECORD ON APPEAL

Timothy Maio, Esquire
Holcombe Bomar, PA
PO Box 1897
Spartanburg, SC 29304
(864) 594-5300

Counsel for Appellants

Gary W. Poliakoff
Raymond P. Mullman, Jr.
Poliakoff & Associates, PA
215 Magnolia Street
Spartanburg, SC 29306
(864) 582-5472

Jordan C. Calloway
McGowan, Hood, Felder & Phillips, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800

Counsel for Respondent

Index

Pleadings

Transcripts

Motions and Related Filings

<u>Other Materials</u>

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiffs, vs. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC; Defendants.	)	C. A No. 2024-CP-23-06777 **ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

Hearing: August 28th, 2025
Judge: Honorable Patrick C. Fant III
Court Reporter: WebEx
Plaintiffs' Attorney: Gary W. Poliakoff
Defendants' Attorney: Timothy Maio

This matter is before the Court on Defendants' Motion to Compel Arbitration and Stay Proceedings filed on **July 3, 2025**. Plaintiff alleges that, on **August 22, 2023**, Ms. Parsons suffered a traumatic incident causing her to fall and sustain both a displaced intertrochanteric fracture of her right femur and right hip fracture requiring surgical repair. She passed away on **October 5, 2023**, after 44 days of medical treatment.

Having considered the parties' memoranda, heard oral arguments from counsel, and reviewed the applicable law and evidence, the Court hereby **DENIES** Defendants' Motion to Compel Arbitration and Stay Proceedings.

The burden of proving unconscionability lies with the party asserting it. *See Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) ("The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration."); *Doe v. TCSC, LLC*, 430 S.C. 602, 612, 846 S.E.2d 874, 879 (Ct. App. 2020). The Court finds that burden has been met.

This wrongful death action arises from the death of Virginia Parsons. It appears from the memorandum and the arguments of counsel of both sides, that Ms. Parsons was admitted to Defendants' memory care facility, Oakview Park Assisted Living, on **March 17, 2023**. Virginia Parsons was a vulnerable adult with advanced dementia and Alzheimer's disease who, per the records, was "oriented to person only" and lacked capacity to understand complex legal agreements. The admission paperwork was approximately 20 pages, in which was an arbitration agreement. Ms. Parsons' daughter signed these papers as part of the admission process.

The court notes that there exists a significant inherent disparity in bargaining power between a family member making emergency placement decisions for a vulnerable adult and sophisticated corporate healthcare providers with extensive experience in these transactions. The arbitration agreement was prepared by the Defendants and was presented as a standardized form with no opportunity for negotiation, which is consistent with other cases finding procedural unconscionability in similar circumstances. The arbitration provisions are located on pages 7 to 11 of the 20-page residency agreement, and are not in bold type, nor is arbitration noticed on the first page. Further, the equal cost sharing of the arbitration's fees and costs places a greater burden on an individual plaintiff than on a corporate defendant.

"In South Carolina, unconscionability 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."[1] The "[a]bsence of meaningful choice" requirement "speaks to the fundamental fairness of the bargaining process in the contract at issue."[2] Courts should consider "the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative

[1] *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007); *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004).
[2] *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.

disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause."[3] Even if an arbitration clause is technically conspicuous, it may be unconscionable if it is "sprung on [a consumer] along with a flurry of other" documents during a hasty transaction.[4]

The Court also finds the arbitration agreement to be substantively unconscionable due to oppressive, one-sided terms. These terms include, among others, the following: (a) Severely restricted caps on "non-economic damages"; (b) regarding "economic damages", a carefully worded provision, the effect of which likely would result in no payment at all, or a miniscule payment, to a Plaintiff injured by Defendant's negligence in a long-term care situation. Further, such provision seeks to invalidate South Carolina's well-established Collateral Source Rule; (c) complete elimination of punitive damages; (d) serious limitations on discovery, which include disallowance of all lay person depositions (allowing depositions of experts only), and late presentation of witness lists, exhibit lists, and sworn recorded statements to be relied upon at the arbitration hearing (to be provided 14 working days before the hearing); all of which appears to strongly favor the Defendant, and effectively it would prevent a Plaintiff from obtaining normal discovery and information, particularly in a long-term care negligence case. As Plaintiff emphasizes, in a long-term care negligence case such as the case at hand, all or nearly all of the evidence of the incident/occurrence in question, and the evidence leading to it or underlying it, especially including documents and information, is in the possession and control of the Defendant facility, and all or nearly all of the witnesses having knowledge of relevant events are/were employees of the Defendant facility and are under the facility's control. The effect of this is likely to favor and protect the Defendant, while impeding the Plaintiff, who bears the burden of proof, in its obligation to gather information, documents, evidence, and witness testimony; (e) Delegation of complete authority to the arbitrator, including gateway issues of arbitrability, and elimination of right of appeal.

In order to determine whether or not an agreement is unconscionable, a case by case analysis is necessary. In the case at hand, the combined effect of the one-sided provisions of the

[3] *Id.*
[4] *Doe v. TSDC, LLC*, 430 S.C. 605, 613-14, 846 S.E.2d 871, 879-80 (2019).

arbitration agreement strongly favors the Defendant and severely limits and/or prevents the Plaintiff from ability to prove its case, and likely impedes reasonable recovery to the Plaintiff for damages. The combination of these one-sided provisions renders this arbitration agreement unconscionable.

Following *Simpson vs. MSA* 373 S.C. 14, 644 S.E.2d 663 (2007) , arbitration clauses that prevent recovery of statutorily established damages are unconscionable. As in Simpson, this agreement contains restrictions that "effectively preclude the Plaintiff from obtaining the information and evidence necessary to prove her case" while the "culpable party...typically holds, possesses and controls all or nearly all of the evidence." Such limitations are unconscionable when defendants "possess all or nearly all of the pertinent information regarding the incidents in question." The agreement in the case at hand restricts depositions to "experts only," effectively precluding Plaintiff from obtaining information and evidence necessary to prove her case. This asymmetrically benefits Defendants, who possess all or nearly all pertinent information regarding the incident, while hampering Plaintiff's ability to discover crucial facts and information, such as staffing, supervision, and circumstances of Virginia's fall. The $400,000 limitation on non-economic damages would likely be insufficient, if Plaintiff is able to prove Plaintiffs' allegations such as, Virginia's endurance of 44 days of severe conscious pain and suffering, requiring extensive pain management with morphine and oxycodone, leading to her death. The agreement expressly prohibits punitive damages, eliminating any deterrent effect for gross negligence or willful misconduct, despite the alleged reckless disregard of vulnerable adult rights. The requirement for equal cost-sharing of arbitration fees creates prohibitively expensive barriers to individual Plaintiffs. The agreement's provision limiting economic damages is worded so as to eliminate nearly any payment by the Defendant, and likely would result in no recovery for economic damages, or perhaps a miniscule recovery only. Also, this arbitration agreement is not geared towards achieving an unbiased decision by a neutral decision-maker. Further, this provision nullifies South Carolina's well-established collateral source rule.

After careful consideration of the arguments, submissions of the parties, and review of law, this Court finds that the arbitration agreement is unconscionable, both procedurally and substantively, and therefore unenforceable. Defendants have failed to meet their burden of proving the existence of a valid and enforceable arbitration agreement. The combination of procedural unconscionability arising from the vulnerable population, crisis-driven admission process, and significant bargaining power disparity, together with substantive unconscionability from oppressive one-sided terms, renders this arbitration agreement unenforceable under South Carolina law.

The arbitration agreement in this case was prepared by Defendant, contained within Defendant's 20-page residency agreement, and is a contract of adhesion. The court in *Damico vs Lennar Carolinas, LLC*, 437 S.C. 596, S.E. 2d7 4b (2022), having found unconscionability, declined to sever the unconscionable provisions, finding that the unconscionable terms infected the entire agreement sufficiently that it was more appropriate to refuse enforcement of the entire agreement, rather than the Court attempting to re-write the offending terms. In the present case there are multiple offending provisions which combine to render the agreement unconscionable. As stated in Damico, the Court should not attempt to re-write the unconscionable terms, and instead finds this unconscionable arbitration agreement to be unenforceable. Plaintiff also argued that various delays and occurrences in this case are such that the Defendants should be deemed to have waived any right they may have had to assert the arbitration agreement. The Court finds that Defendants have not waived their contractual right to arbitration. The court's findings that the arbitration agreement is unconscionable are not based on waiver.

IT IS THEREFORE ORDERED that Defendants' Motion to Compel Arbitration and Stay Proceedings is hereby **DENIED**.

IT IS FURTHER ORDERED the arbitration agreement in this case is unconscionable and unenforceable.

IT IS SO ORDERED.

Greenville Common Pleas

Case Caption: Virginia Parsons Estate , plaintiff, et al vs. Atlas Senior Living LLC , defendant, et al

Case Number: 2024CP2306777

Type: Order/Other

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-11-07 17:09:42 page 6 of 6

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiffs, vs. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC; Defendants.	)	C. A No. 2024-CP-23-06777 **ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

Hearing: August 28th, 2025
Judge: Honorable Patrick C. Fant III
Court Reporter: WebEx
Plaintiffs' Attorney: Gary W. Poliakoff
Defendants' Attorney: Timothy Maio

This matter is before the Court on Defendants' Motion to Compel Arbitration and Stay Proceedings filed on **July 3, 2025**. Plaintiff alleges that, on **August 22, 2023**, Ms. Parsons suffered a traumatic incident causing her to fall and sustain both a displaced intertrochanteric fracture of her right femur and right hip fracture requiring surgical repair. She passed away on **October 5, 2023**, after 44 days of medical treatment.

Having considered the parties' memoranda, heard oral arguments from counsel, and reviewed the applicable law and evidence, the Court hereby **DENIES** Defendants' Motion to Compel Arbitration and Stay Proceedings.

Defendants bear the burden of establishing the existence of a valid and enforceable arbitration agreement.[1] The party seeking to enforce an agreement to arbitrate must prove both the formation and enforceability of the arbitration agreement under ordinary state-law contract principles.[2] Defendants have not met the burden.

This wrongful death action arises from the death of Virginia Parsons. It appears from the memorandum and the arguments of counsel of both sides, that Ms. Parsons was admitted to Defendants' memory care facility, Oakview Park Assisted Living, on **March 17, 2023**. Virginia Parsons was a vulnerable adult with advanced dementia and Alzheimer's disease who, per the records, was "oriented to person only" and lacked capacity to understand complex legal agreements. The admission paperwork was approximately 20 pages, in which was an arbitration agreement. Ms. Parsons' daughter signed these papers as part of the admission process.

The court notes that there exists a significant inherent disparity in bargaining power between a family member making emergency placement decisions for a vulnerable adult and sophisticated corporate healthcare providers with extensive experience in these transactions. The arbitration agreement was prepared by the Defendants and was presented as a standardized form with no opportunity for negotiation, which is consistent with other cases finding procedural unconscionability in similar circumstances. The arbitration provisions are located on pages 7 to 11 of the 20-page residency agreement, and are not in bold type, nor is arbitration noticed on the first page. Further, the equal cost sharing of the arbitration's fees and costs places a greater burden on an individual plaintiff than on a corporate defendant.

"In South Carolina, unconscionability 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."[3] The "[a]bsence of meaningful choice" requirement "speaks to the fundamental fairness of

---

[1] See *Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007) which establishes that the party seeking to enforce an arbitration agreement has the burden of establishing the existence of a valid arbitration agreement.

[2] See *Munoz v. Green Tree Fin. Corp*., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001).

[3] *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007); *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004).

the bargaining process in the contract at issue."[4] Courts should consider "the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause."[5] Even if an arbitration clause is technically conspicuous, it may be unconscionable if it is "sprung on [a consumer] along with a flurry of other" documents during a hasty transaction.[6]

The Court also finds the arbitration agreement to be substantively unconscionable due to oppressive, one-sided terms. These terms include, among others, the following: (a) Severely restricted caps on "non-economic damages"; (b) regarding "economic damages", a carefully worded provision, the effect of which likely would result in no payment at all, or a miniscule payment, to a Plaintiff injured by Defendant's negligence in a long-term care situation. Further, such provision seeks to invalidate South Carolina's well-established Collateral Source Rule; (c) complete elimination of punitive damages; (d) serious limitations on discovery, which include disallowance of all lay person depositions (allowing depositions of experts only), and late presentation of witness lists, exhibit lists, and sworn recorded statements to be relied upon at the arbitration hearing (to be provided 14 working days before the hearing); all of which appears to strongly favor the Defendant, and effectively it would prevent a Plaintiff from obtaining normal discovery and information, particularly in a long-term care negligence case. As Plaintiff emphasizes, in a long-term care negligence case such as the case at hand, all or nearly all of the evidence of the incident/occurrence in question, and the evidence leading to it or underlying it, especially including documents and information, is in the possession and control of the Defendant facility, and all or nearly all of the witnesses having knowledge of relevant events are/were employees of the Defendant facility and are under the facility's control. The effect of this is likely to favor and protect the Defendant, while impeding the Plaintiff, who bears the burden of proof, in its obligation to gather information, documents, evidence, and witness testimony; (e) Delegation

---

[4] *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669.
[5] *Id.*
[6] *Doe v. TSDC, LLC*, 430 S.C. 605, 613-14, 846 S.E.2d 871, 879-80 (2019).

of complete authority to the arbitrator, including gateway issues of arbitrability, and elimination of right of appeal.

In order to determine whether or not an agreement is unconscionable, a case by case analysis is necessary. In the case at hand, the combined effect of the one-sided provisions of the arbitration agreement strongly favors the Defendant and severely limits and/or prevents the Plaintiff from ability to prove its case, and likely impedes reasonable recovery to the Plaintiff for damages. The combination of these one-sided provisions renders this arbitration agreement unconscionable.

Following *Simpson vs. MSA* 373 S.C. 14, 644 S.E.2d 663 (2007) , arbitration clauses that prevent recovery of statutorily established damages are unconscionable. As in Simpson, this agreement contains restrictions that "effectively preclude the Plaintiff from obtaining the information and evidence necessary to prove her case" while the "culpable party...typically holds, possesses and controls all or nearly all of the evidence." Such limitations are unconscionable when defendants "possess all or nearly all of the pertinent information regarding the incidents in question." The agreement in the case at hand restricts depositions to "experts only," effectively precluding Plaintiff from obtaining information and evidence necessary to prove her case. This asymmetrically benefits Defendants, who possess all or nearly all pertinent information regarding the incident, while hampering Plaintiff's ability to discover crucial facts and information, such as staffing, supervision, and circumstances of Virginia's fall. The $400,000 limitation on non-economic damages would likely be insufficient, if Plaintiff is able to prove Plaintiffs' allegations such as, Virginia's endurance of 44 days of severe conscious pain and suffering, requiring extensive pain management with morphine and oxycodone, leading to her death. The agreement expressly prohibits punitive damages, eliminating any deterrent effect for gross negligence or willful misconduct, despite the alleged reckless disregard of vulnerable adult rights. The requirement for equal cost-sharing of arbitration fees creates prohibitively expensive barriers to individual Plaintiffs. The agreement's provision limiting economic damages is worded so as to eliminate nearly any payment by the Defendant, and likely would result in no recovery for economic damages, or perhaps a miniscule recovery only. Also, this arbitration agreement is not geared towards achieving an unbiased decision by a neutral decision-maker. Further, this provision nullifies South Carolina's well-established collateral source rule.

After careful consideration of the arguments, submissions of the parties, and review of law, this Court finds that the arbitration agreement is unconscionable, both procedurally and substantively, and therefore unenforceable. Defendants have failed to meet their burden of proving the existence of a valid and enforceable arbitration agreement. The combination of procedural unconscionability arising from the vulnerable population, crisis-driven admission process, and significant bargaining power disparity, together with substantive unconscionability from oppressive one-sided terms, renders this arbitration agreement unenforceable under South Carolina law.

The arbitration agreement in this case was prepared by Defendant, contained within Defendant's 20-page residency agreement, and is a contract of adhesion. The court in *Damico vs Lennar Carolinas, LLC*, 437 S.C. 596, S.E. 2d7 4b (2022), having found unconscionability, declined to sever the unconscionable provisions, finding that the unconscionable terms infected the entire agreement sufficiently that it was more appropriate to refuse enforcement of the entire agreement, rather than the Court attempting to re-write the offending terms. In the present case there are multiple offending provisions which combine to render the agreement unconscionable. As stated in Damico, the Court should not attempt to re-write the unconscionable terms, and instead finds this unconscionable arbitration agreement to be unenforceable. Plaintiff also argued that various delays and occurrences in this case are such that the Defendants should be deemed to have waived any right they may have had to assert the arbitration agreement. The Court finds that Defendants have not waived their contractual right to arbitration. The court's findings that the arbitration agreement is unconscionable are not based on waiver.

IT IS THEREFORE ORDERED that Defendants' Motion to Compel Arbitration and Stay Proceedings is hereby **DENIED**.

IT IS FURTHER ORDERED the arbitration agreement in this case is unconscionable and unenforceable.

IT IS SO ORDERED.

Greenville Common Pleas

Case Caption: Virginia Parsons Estate , plaintiff, et al vs. Atlas Senior Living LLC , defendant, et al

Case Number: 2024CP2306777

Type: Order/Other

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-09-24 14:44:17 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP2306777

Virginia Parsons Estate et al
PLAINTIFF(S)

Atlas Senior Living LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

See attached page 2.

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 09/05/2025 .

Oakview Park Developer LLC

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.

Several motions came before this Court on August 28, 2025. Plaintiff's Motion to Compel and Defendant's Motion for Protection from Discovery have been disposed of by a prior Order. The only remaining motion is Defendant's Motion to Compel Arbitration and Stay Proceedings. After careful consideration of the thorough arguments, submissions of the parties, pleadings, and review of relevant statutory law, Defendant's Motion to Compel Arbitration and Stay Proceedings is Denied. This Court does not reach this decision based on waiver. Defendants have not waived their contractual right to arbitration. However, the court does find that this arbitration agreement is unconscionable, both procedurally and substantively. Therefore, Defendant's Motion to Compel Arbitration and Stay Proceeding is Denied. Counsel for Plaintiff is to prepare a formal proposed order and send to the Court.

And it is so Ordered.

Greenville Common Pleas

Case Caption: Virginia Parsons Estate , plaintiff, et al vs. Atlas Senior Living LLC , defendant, et al

Case Number: 2024CP2306777

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-09-05 15:31:55 page 3 of 3

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiffs, vs. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC; Defendants.	)	C. A No. 2024-CP-23-06777 **ORDER**

Hearing: August 28, 2025
Judge: Honorable Patrick C. Fant, III
Court Reporter: WebEx
Plaintiffs' Attorney: Gary W. Poliakoff
Defendants' Attorney: Tim Maio

The Plaintiff in this case has filed a Motion asking this Court for an Order allowing production of records, including medical records, related to other residents known, suspected or alleged to have assaulted Virginia Parsons or contributed to injury of Virginia Parsons that exist and are within the possession, custody and/or control of Defendants. The Court heard arguments of counsel for Plaintiff and Defendants at the Hearing held on August 28, 2025.

In the above case, Plaintiffs allege that on **August 22, 2023**, Defendants allowed Plaintiff to suffer a traumatic assault while a resident of an assisted living facility owned, operated, and managed by Defendants. Plaintiffs allege that Defendants knew or should have known of the combative or aggressive behavior, or dangerous propensities, of the suspected assailant(s). Plaintiffs have requested all the records related to any suspected or known assailant(s). The records and documentation requested in Plaintiff's Requests for Production of Documents are *protected health information* pursuant to 45 CFR § 160.103. The Defendants are a "covered entity", subject to HIPAA regulations. The privacy interest in medical records is conditional and production may be allowed if properly justified.[1] Courts have found assailants' medical records to be reasonably calculated to lead to admissible evidence to establish Defendants' knowledge of the dangers to other patients, as well as evidence of measures Defendants took to mitigate the dangers posed by this patient.[2]

Disclosure of relevant medical records under a qualified protective order is required "even if no notice is or can be provided to the nonparty patient."[3] Plaintiff brings this motion for a qualified protective order and authorization, and directing Defendants to produce the designated medical and facility records of any known or suspected assailant(s). The records and documentation requested are likely to lead to the discovery of admissible evidence in this matter. The parties request an Order allowing disclosure of these records. The identities of two residents suspected of involvement in such assault are shown in the facility's Incident Report dated August 22, 2023 as "Resident 416" and "Resident 417," and are known to the parties and will be disclosed confidentially to the Court, should the Court wish to have such.

The Health Insurance Portability and Accountability Act ("HIPAA") controls disclosure of information contained in medical records.[4] The privacy standards promulgated pursuant to HIPAA prohibit the disclosure or use of any person's protected health information (PHI) in judicial proceedings unless satisfactory safeguards are in place to limit the use and disclosure of the PHI. *See* 45 CFR 164.512(e).

The preemption provision of the act provides that the federal regulations "supersede any contrary provision of State Law."[5] Under HIPPA, the disclosure of non-party medical information is permitted for:

> judicial . . . proceedings . . . in response to a . . . discovery request . . . if: . . . the covered entity receives satisfactory assurance . . . from the party seeking the information that

---

[1] *Hutton v. City of Martinez*, 219 FRD 164, 166 (N.D. Cal. 2003).

[2] *Coastal Health Services, Inc. v. Rozier*, 335 S.E.2d 712, 714 (Ga.App. 1985).

[3] *Creely v. Genesis Health Ventures*, Inc., 2004 WL 294 3661 at 3 (E.D. Pa.)

[4] 45 C.F.R. §164 et seq.

[5] 45 C.F.R. §160.203.

> reasonable efforts have been made by such party to secure a *qualified protective order* that meets the requirements of paragraph (e)(1)(v) of the Section.[6]

Under 45 CFR § 164.512(e)(1)(v), a qualified protective order or stipulation by the parties is one that:

> (A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
> (B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.[7]

45 CFR § 164.512(a) and (e) provides that privacy standards are satisfied by the entry of a protective order that:

> (a) Prohibits the parties from using or disclosing the PHI for any purpose other than the subject litigation; and
> (b) Requires the PHI (including all copies made) to be returned to the health care provider from whom the PHI was obtained, or that the PHI (including all copies made) be destroyed at the conclusion of the litigation, including appellate proceedings.

At the Hearing counsel for Defendants voiced concerns regarding a possibility of a voluminous amount of records of the residents in question and a potential for much protected health information which may be irrelevant to issues in this case, and proposed that Defendants could review the records and produce what they believed to be relevant. Counsel for Plaintiffs opposed such, requesting to be able to review all the requested records, determine which records were discoverable and appropriate for production, and then obtain copies of such records, to be held and used only in accord with the Consent Confidentiality Order in this case, and in compliance with the Federal Regulations. During discussion between the Court and counsel regarding privacy concerns, it was suggested that Plaintiff's counsel could review all the requested records of these non-party residents, in the presence of Defendants' counsel or its designee, and identify the records discoverable and appropriate for production in this case, and obtain copies of the identified records.

---

[6] 45 C.F.R. § 164.512 (e): *James v. Nocono*, Slip Copy 2007 WL 1237930 at 6 (N.D. Tex); *Hutton v. City of Martinez*, 219 F.R.D. 164, 167 (N.D.Cal. 2003).

[7] 45 C.F.R. § 164.512(e)(1)(v)(A) and (B); *James v. Nocono*, Slip Copy 2007 WL 1237930, at 6 (N.D. Tex).

Counsel for Defendants also requested that the non-party residents in question be provided advance notice that their records were being requested.

The Plaintiffs stipulate that these records will be maintained as Confidential, per the Consent Confidentiality Order in place in this case, and will be used only for purposes of the present litigation, and that Plaintiffs will act in compliance with this Order and in complaint with the relevant Federal Regulations identified herein.

The Court, having reviewed the pleadings and filings of the parties, and having heard the arguments of counsel for Plaintiff and Defendants, finds good cause for Plaintiff's request to review and obtain copies of records, including protected health information, pertaining to non-party residents who had or may have had involvement or contributed to the incident in questions, and finds that Plaintiff's request for production of such records and information is reasonably calculated to lead to admissible evidence. Therefore, the Court hereby grants Plaintiff's Motion for a Qualified Protective Order pursuant to 45 CFR § 164.512(e)(l)(i) and (f)(l)(ii)(A), as set forth hereinbelow.

IT IS THEREFORE **ORDERED and ADJUDGED** as follows:

1. Defendants shall fully and accurately respond to Plaintiff's Request for Production of documents related to known or suspected assailants, particularly those identified in the Incident Report referenced herein, that exist and are within the possession, custody and/or control of Defendants and produce same, subject to the following provisions:

A) Within 10 days of the entry of this Order, Defendants shall provide to Plaintiff's counsel the names and current mailing addresses of the persons identified in Defendant's Incident Report as "Resident 416" and "Resident 417," as well as the names and current mailing addresses of any residents of this facility who are known or suspected assailants of Virginia Parsons, and/or known or suspected to have contributed to the incident of August 22, 2023, in which Virginia Parsons was injured.

(B) Following Plaintiff's counsel's receiving the names and mailing addresses of the residents described above, Plaintiff's counsel shall issue a letter to each such resident whose records are being requested, notifying them of the request for such records, providing them with a copy of this Order, and notifying them that if they have a valid objection to the production of such records, they may, if they so choose, file with this Court a written objection with this Court, within 14 days of their receipt of such Notice letter. Any such written objection shall fully state the grounds for such objection. In the event that any such resident still resides at Defendants' facility or at any other facility of the named Defendants, Plaintiff's counsel may have a process server or qualified person to deliver such Notice letter(s) to the residents in question, in which case the Defendants and their facility staff shall cooperate with the delivery of such

Notice letter(s) to the residents in question. Should the Defendant wish to handle the delivery of these Notice letters to the residents in question, it may do so and in which case the person who delivers such Notice letters shall sign a Certificate of Service pertaining to such delivery. The parties shall cooperate in the logistics of the delivery of the Notice letter so that such is promptly accomplished. The Court encourages the parties to cooperate fully in the aforesaid process.

(C) In the event that no written objection is filed with the Court by or on behalf of a resident within 14 days of the delivery of the Notice letter, then production of the records, as set forth herein, shall proceed. In the event of a filing of any such written objection by or on behalf of any such resident within the time period prescribed, the parties shall notify the undersigned Judge of such filing. The undersigned Judge will review any such written objection, and may issue a ruling on such objection, with or without formal Hearing, in his own discretion.

(D) Within 10 days of the expiration of the 14-day time period, as to any resident not having filed a timely written objection, all of the requested records shall be made available by Defendants for review by Plaintiff's counsel, as set forth herein. In the event of any timely filing of written objection by or on behalf of a resident, and in the event that this Court were to overrule such objection and approve production, all of the requested records shall be made available to Plaintiff's counsel within 10 days of this Court's ruling.

(E) The review of the requested records by Plaintiff's counsel shall take place at the Spartanburg office of Defendant's counsel, or at any suitable location agreed to by the parties. Plaintiff's counsel may bring staff to assist with such reviews and/or designate staff employed by him to review, which staff will also be subject to the protection and confidentiality provisions of this Order. Defendant's counsel and/or its staff and/or designees may observe Plaintiff's review of the records in the room provided for the review. Plaintiff will be afforded reasonable sufficient time for such review.

(F) Plaintiff's counsel is entitled to make a photocopy of those portions of the resident's records for which he has a good faith belief are discoverable and/or reasonably calculated to lead to admissible evidence. Nothing contained in this Order shall be deemed to affect any ultimate rulings regarding admissibility at trial.

3. The parties shall maintain Confidentiality pursuant to the Consent Confidentiality Order and shall not use or disclose the protected health information for any purpose other for the purposes of litigation in this matter.

4. Any protected health information produced pursuant to this Consent Order shall not be disclosed to or discussed with any person except, and only for purposes of this litigation, and shall be used in accord with applicable statutes and regulations referenced herein.

5. Upon the conclusion of this litigation, protected health information shall be returned to the producing party or destroyed.

Greenville Common Pleas

Case Caption: Virginia Parsons Estate , plaintiff, et al vs. Atlas Senior Living LLC , defendant, et al

Case Number: 2024CP2306777

Type: Order/Other

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-09-03 15:06:44 page 7 of 7

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiffs, vs. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC; Defendants.	)	C. A No. 2024-CP-23- **SUMMONS**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to the Complaint at their offices, 215 Magnolia Street, Post Office Box 1571, Spartanburg, South Carolina, 29306 (29304) within thirty (30) days after service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Gary W. Poliakoff
GARY W. POLIAKOFF S.C. Bar # 4488
atty@gpoliakoff.com
RAYMOND P. MULLMAN, JR. S.C. Bar #8662
rmullmanjr@gmail.com
Poliakoff & Associates, P.A.
215 Magnolia Street
P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472

November 11, 2024

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiffs, vs. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC; Defendants.	)	C. A No. 2024-CP-23- **COMPLAINT** **(Jury trial demanded)**

The Plaintiffs, Estate of Virginia Parsons, deceased and her statutory beneficiaries, by and through its Personal Representative, do respectfully allege as follows:

1. That Plaintiff Virginia Parsons was a vulnerable adult as defined by the South Carolina Omnibus Adult Protection Act. S.C. Code 43-5-10(11) and a resident at Defendants' assisted living facility in Greenville County, South Carolina. Further, the acts and delicts of Defendants causing injury occurred at Defendants' facility.
2. That Plaintiff Virginia Parsons was a citizen and resident of the County of Greenville, State of South Carolina until her premature and wrongful death on October 5, 2023.
3. That Plaintiff Sandra P. Whites is the duly appointed Personal Representative of the Estate of Virgnia Parsons, and resident of the County of Greenville, State of South Carolina.
4. The Personal Representative brings this action on behalf of the Claimant #1, the Estate of Virginia Parsons, for damages recoverable pursuant to §15-5-90, Code of

Laws of South Carolina (1976).

5. Upon information and belief, AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living ("Facility") is a limited liability corporation organized and existing under the laws of the State of South Carolina and conducts business in Greenville, South Carolina.

6. Upon information and belief, Atlas Senior Living, LLC is a limited liability corporation organized and existing under the laws of the State of Delaware and conducts business in Greenville, South Carolina.

7. Upon information and belief, Atlas Senior Living II, LLC, is a corporation organized and existing under the laws of the State of Delaware and conducts business in Greenville, South Carolina.

8. Upon information and belief, AFF18 Oakview Park PropCo, LLC, is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Greenville, South Carolina.

9. Upon information and belief, AFF18 Greenville Borrower, LLC, is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Greenville, South Carolina.

10. Upon information and belief, AFF18 Greenville Borrower, LLC, is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Greenville, South Carolina.

11. Upon information and belief, Oakview Park Developer, LLC, is a corporation organized and existing under the laws of the State of South Carolina and conducts business in Greenville, South Carolina.

12. That the Defendants participate in a joint venture to own, operate, directs and manage the facility and had the right and/or power to direct and control their employees and/or agents in the operation of the Facility and profitable business of delivering care for a fee through community residential care facilities, including Oakview Park Assisted Living and the Defendants are personally, directly, jointly and severally liable for the acts and omissions they committed including but not limited to inadequate staffing, resources, and training provided to caregivers.

13. That the Plaintiffs paid the Defendants a fee to deliver reasonable care to the Plaintiff including the necessary supervision and assistance to maintain her health, safety, and well-being, and the Defendants had authority, express or implied, to control the means and agents employed to execute the type and method of care at the Defendants' facility, including but not limited to Oakview Park Assisted Living, at all times during the residency of the Plaintiff.

14. That all of the above-named Defendants are jointly and severally liable as to damages alleged herein because their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, are a direct and proximate cause of the Plaintiffs' damages, injuries and losses including hospitalization and permanent damage.

15. That this Court has personal and subject matter jurisdiction over this case and venue is proper in this Court, as all relevant acts and delicts took place at Defendants' facility in Greenville County, South Carolina.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

16. That relevant and consistent allegations contained in paragraphs 1 through 15 are incorporated by reference as if written verbatim herein.

17. That Defendants accepted Virginia Parson, a vulnerable adult, as a resident of Defendants' facility on March 21, 2023 and promised to provide the care and services to meet and maintain her health, safety, and well-being.

18. That the community residential care facility must comply with South Carolina Reg. 61-84 including there shall be sufficient staff members/direct care volunteers to provide supervision, direct care and basic services for all residents.

19. At the time of her admission to the Defendants' facility, Plaintiff's life was dependent upon the care, supervision, and assistance provided by the employees and agents of the Defendants, and the Defendants were required to, but failed to, operate the facility in an appropriate manner that would keep the residents safe and maintain their health.

20. It is well known in the nursing and long-term care industry that resident to resident incidents are foreseeable and must be anticipated and prevented.

21. Failure to provide adequate supervision resulting in harm to residents, including altercations or acts of assault between residents, constitutes neglect.

22. As a result of Defendants' neglect, Virginia Parsons' health condition declined requiring emergency treatment and hospitalization, and causing permanent mental and physical damage. As a further result, her injuries led to her untimely and wrongful death.

23. That at all times material hereto, the assisted living facility known as Oakview Park Assisted Living located at Hood Road, was and is owned and operated by Atlas Senior Living, LLC and Atlas Senior Living II, LLC in a joint enterprise to derive substantial economic benefits to the owners at the expense of the vulnerable adults under their care and supervision.

24. That the Defendants through Oakeview Park Assisted Living's officers, agents, servants and/or employees, and/or as a corporate promised Virginia Parsons's family to provide proper assessment, care, treatment, and supervision for Virginia Parsons, and were advised before accepting Virginia as a resident of the nature and extent of her functional limitations, cognitive issues, disabilities and necessary level of care, treatment and supervision to maintain her health, safety, and well-being.

25. Defendants knew or should have known that failure to provide sufficient and competent staff contributes to resident agitation from neglect and violent outbursts.

26. Defendants knew or should have known that failure to remediate known issues as reported to the Department of Health would lead to harm to resident like Virginia.

27. That upon information and belief, the Facility allowed Virginia Parsons to suffer an assault, and failed to maintain her health, safety, and well-being as promised including adequate supervision and assistance and other safety measures to prevent foreseeable injuries.

28. That from March 21, 2023 through August 22, 2023, Defendants failed to provide sufficient and competent staff to meet the health and safety needs of vulnerable adult, Virginia Parsons, failed to intervene or take other further necessary precautions, causing direct and proximate injury to Virginia Parsons while under the care and supervision of Defendants' facility including but not limited to

Virginia Parsons.

29. That Defendants held themselves out to the Plaintiffs and the general public as qualified to provide the safety necessary to operate an assisted living facility with vulnerable residents, and to have the necessary expertise to maintain and promote the health, safety, and well-being of vulnerable persons including Virginia Parsons. Defendants further held themselves out to maintain sufficient and safe nursing and custodial staffing to adequately provide 24-hour care and supervision to residents, including Virginia Parsons.

30. Defendants had the duty to protect Virginia as a vulnerable adult against known dangers and threats from other residents or transfer the resident when Defendants knew or should have known that the Facility could no longer provide the care and services necessary to provide the necessary care to Virginia Parsons and keep her safe from foreseeable harm.

31. The Defendants failed to meet the reasonable and customary industry standards related to safety, supervision, and resident nutritional well-being. The failure to recognize her obvious changes of condition and transfer her to the hospital for emergency care indicates a reckless indifference to her health and safety, and falls well below any reasonable standards of nursing or custodial care.

32. Upon information and belief, the Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent care to Virginia Parsons pursuant to S.C. Code Ann. § 44-7-260 and Reg. 61-84 and industry standards pertinent to assisted living facilities caring for vulnerable adults.

33. The Defendants had an obligation to employ sufficient nursing assistants, nurses and orderlies who were qualified to render reasonable care to Virginia Parsons, a vulnerable adult, in accordance with reasonable safe care, state regulations and industry standards, as well as in accordance with the representations made by the Defendants.

34. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care and services were provided effectively and safely, and to implement safety measures and precautions, including providing appropriate supervision and

assistance to residents, as needed, in activities of daily living, including the monitoring of behavior issues and providing appropriate interventions, and in providing requisite levels of supervision of residents.

35. Furthermore, without limitation, the Defendants had a duty to comply with all current federal, state and local laws and regulations concerning resident care, resident rights and protections, including, but not limited to: The Adult Protection Act of South Carolina, S.C. Code Ann. § 43-35-5, *et seq*; South Carolina Department of Health and Environmental Control Regulations for Community Residential Care Facilities, Regs. 61-84, *et seq*; the South Carolina Nurse Practice Act; Board of Nursing Advisory Opinions; Section 44-81-10, *et seq*, of the S.C. Code of Laws, 1976, as amended; Resident's Bill of Rights; as well as all local, state, and federal laws and current professional organization standards and industry standards.

36. That the acts and delicts of Defendants proximately caused Virginia Parsons injuries, conscious pain and suffering, mental distress, reduction of quality of life and medical bills. Pursuant to S.C. Code §15-5-90, said causes of action survive the wrongful and untimely death of Virginia Parsons and are properly brought by the Personal Representative on behalf of Virginia Parsons' Estate. Further, the acts and delicts of Defendants caused, and were the proximate cause of, the wrongful death of Virginia Parsons.

37. That the Plaintiffs institute this action in order to recover for Virginia Parsons' injuries and wrongful death and for damages to her statutory heirs and beneficiaries, pursuant to and under authority of S.C. Code §15-51-10.

38. Pursuant to S.C. Code Section §15-51-20, the wrongful death beneficiaries have suffered grief and sorrow, mental shock and suffering, wounded feelings, loss of companionship, and deprivation of the use and comfort of Virginia Parsons' society. These damages were the proximate result of the acts and delicts of Defendants.

39. That prior to Virginia Parsons' injuries from abuse and neglect, Defendants knew or should have known that she needed nursing home care; skilled nursing services;

and more supervision and assistance than the facility could provide to maintain her health, safety, and well-being and that failure to provide the required care would cause Plaintiff conscious pain and suffering and mental distress, and would cause her untimely and wrongful death.

40. Upon information and belief, the Defendants failed to assign sufficient staff and assistance for the safety, health, and well-being of Virginia Parsons, and neglected to meet her safety needs.

41. Upon information and belief, the Defendants failed to provide adequate supervision over Virginia Parsons and over their own staff, and failed to meet reasonable and customary standards in the industry.

42. That the Defendants were jointly, directly and vicariously liable and responsible for the acts and delicts of their employees, agents and servants.

43. That the Defendants, their officers, agents, servants, and employees negligently, recklessly, and carelessly failed to provide supervision, care and treatment to Virginia Parsons to keep her safe.

44. As a proximate result of the negligence, recklessness and/or breach of fiduciary duty, and/or breach of contract, and other actions and inactions by defendants, through their officers, agents, servants, and/or employees, and/or as corporate entities), as hereafter alleged, Virginia Parsons suffered severe permanent injuries, substantial pain and suffering, emotional distress, reduction of quality of life, medical expenses, and which caused her untimely and wrongful death.

FOR A FIRST CAUSE OF ACTION
(Negligence/Recklessness)

45. Relevant and consistent allegations contained in paragraphs 1 through 44 are incorporated by reference as if written verbatim herein.

46. That Defendants had a duty of due care to residents, to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

47. That the facility was negligently managed and operated by Defendants, who had the

duty to properly manage and operate the facility in a manner which met Virginia Parsons needs and in compliance with statutes, regulations and industry standards.

48. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the relevant standards of care, in their treatment of Virginia Parsons, as follows:

a. failing to properly supervise as required, and as promised to the family upon admission;
b. failing to provide the care, supervision and monitoring of residents, and in particular Virginia Parsons, which was required by law and which was necessary for her health and safety;
c. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Virginia Parsons;
d. failing to provide sufficient numbers of qualified personnel including nurses, nurses' assistants, medication aides, and/or orderlies to meet the total needs of Virginia Parsons;
e. failing to provide sufficient staffing to meet the needs of the residents, including monitoring those residents at risk for exploitation and assault;
f. failing to properly train staff on how to monitor residents;
g. failing to have adequate interventions in place, such as alarms and security cameras and/or other safety interventions;
h. failing on the part of the staff to timely respond to residents needs in order to prevent traumatic injuries;
i. such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

49. That as a proximate result, Virginia Parsons experienced hospitalization, injuries, incurred significant medical bills, prolonged conscious pain and suffering, mental anguish and wrongful death. As a further proximate result, her wrongful death beneficiaries suffered the damages and injuries stated herein.

FOR A SECOND CAUSE OF ACTION
(Negligence Per Se)

50. Relevant and consistent allegations contained in paragraphs 1 through 49 are incorporated by reference as if written verbatim herein.

51. That in addition to the above, the Defendants were negligent per se in their failure to comply with all current federal, state and local laws and regulations concerning resident care, resident rights and protections, including but not limited to The Adult Protection Act of South

Carolina Code §42-35-5, *et seq*; South Carolina Department of Health and Environmental Control Regulations for Community Residential Care Facilities at Regulation 61-84, *et seq*; the South Carolina Nurse Practice Act; the South Carolina Long Term Care Administrators Code, SC Code §40-35-10 et seq. Board of Nursing Advisory Opinions; Section 44-81-10, *et seq*. Of the S.C. Code of Laws, 1976, as amended, Resident's Bill of Rights; as well as all local, state and federal laws.

52. That each and/or all of the foregoing state and federal laws, rules and regulations prescribe certain actions or define the standard of conduct. Virginia Parsons was and remains in the class of persons sought to be protected by each regulation and/or statute. Moreover, Virginia Parsons' injuries were the type of harm that each of these regulations was intended to prevent. Defendants' conduct amounts to negligence per se as the term is defined and is known and understood at law. Each act or omission constituting negligence per se was the proximate cause of the damages and injuries suffered by Virginia Parsons.

53. That as a direct and proximate result of the Defendants' acts of delicts, Virginia Parsons endured extreme conscious pain and suffering, mental distress, reduction of quality of life, and medical bills, and which caused her untimely and wrongful death.

54. That prior to Virginia Parsons' death, the acts and delicts of Defendants caused, and were the proximate causes of conscious pain and suffering, mental distress, medical bills, and disability to Virginia Parsons (Claimant #1). Pursuant to S.C. Code §15-5-90, said causes of action survive the wrongful and untimely death Virginia Parsons and are properly brought by the Personal Representative on behalf of Virginia Parsons' Estate. Further, the acts and delicts of Defendants caused, and were the proximate cause, of the wrongful death of Virginia Parsons, and the resulting damages to her statutory beneficiaries.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

55. Relevant and consistent allegations contained in paragraphs 1 through 54 are Incorporated by reference as if written verbatim herein.

56. That, according to the South Carolina Adult Protection Act, at all times relevant hereto Plaintiff Virginia Parsons was considered a vulnerable adult.

57. That Plaintiff Virginia Parsons trusted in, confided in and relied upon Defendants to use their expertise and discretion for her care, as did her guardian and her family.

58. That Defendants accepted Plaintiff Virginia Parsons' trust and reliance and so became responsible Virginia Parsons' health while residing at the assisted living facility.

59. That as a result of relying and trusting Defendants, Plaintiff Virginia Parsons' physical, mental and emotional health was placed in the hands of Defendants.

60. That Defendants breached their fiduciary relationship by allowing Virginia Parsons' to suffer preventable injuries while under the care of the facility, and in failing to respond to her significant change of condition in a timely manner and in failing to keep her safe from unreasonable and foreseeable harm, proximately resulting in the damages and injuries to Virginia Parsons and to her statutory beneficiaries.

FOURTH CAUSE OF ACTION
(Wrongful Death)

61. Relevant and consistent allegations contained in paragraphs 1-60 are incorporated by reference as if written verbatim herein.

62. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants and employees, Virginia Parsons was severely injured in Defendants' facility.

63. That the injuries so inflicted on Virginia Parsons significantly contributed to her premature, untimely and wrongful death on October 5, 2023.

64. That the sole and proximate cause of all the harms, losses, injuries and death suffered by Virginia Parsons, and the damages suffered by her wrongful death beneficiaries, were the combined and concurrent acts and delicts of Defendants and their agents.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for actual and punitive damages in the sums deemed appropriate by the jury, for the costs of this action, and for such other relief as this Court may deem just and proper.

*s/Gary W. Poliakoff*__________________
GARY W. POLIAKOFF S.C. Bar # 4488
atty@gpoliakoff.com
RAYMOND P. MULLMAN, JR. S.C. Bar #8662
rmullmanjr@gmail.com
Poliakoff & Associates, P.A.
215 Magnolia Street

P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472

November 11, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.: 2024-CP-23-06777
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,	)	
Plaintiff,	)	
v.	)	**ANSWER TO COMPLAINT OF ALL DEFENDANTS WITH THE EXCEPTION OF OAKVIEW PARK DEVELOPER, LLC**
Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC.	)	
Defendants.	)	

Defendants Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC ("Defendants"), in answering the Plaintiff's Complaint, do hereby allege as follows:

1. All allegations contained in the Complaint which are not hereinafter admitted, qualified, or otherwise explained are denied.

FOR A FIRST DEFENSE

2. In responding to the allegations contained in paragraph 1, it is admitted that Virginia Parsons was a resident of Defendants' assisted living facility in Greenville County, South Carolina. The remaining allegations of paragraph 1 call for legal conclusions to which no response is required. To the extent a response may be deemed to be requited,

Defendants deny those allegations.

3. Defendants admit, upon information and belief, that Virginia Parsons was a citizen and resident of the County of Greenville, State of South Carolina until her death. The remaining allegations of paragraph 2 are denied, as is any insinuation that Defendants were in any way responsible for her alleged premature and wrongful death on October 5, 2023.

4. The allegations of paragraph 3 are admitted upon information and belief.

5. The allegations of paragraph 4 calls for legal conclusions to which no response is necessary. To the extent said paragraph contains any allegations of wrongdoing by Defendants, those allegations are denied.

6. The allegations of paragraphs 5, 6, 7, 8, 9, 10, and 11 are admitted upon information and belief.

7. The allegations of paragraphs 12, 13, and 14 call for legal conclusions to which no response is necessary. To the extent said paragraphs contain any allegations of wrongdoing by Defendants, those allegations are denied.

8. Defendants deny the allegations of paragraph 15 and expressly deny that this Court has jurisdiction over this matter based on the terms of the *Residency Agreement* executed by Sandra White on behalf of Virginia Parsons, which contains a binding and enforceable *Arbitration and Limitation of Liability Provision*.

9. Defendants admit so much of paragraph 16 as previously admitted, and deny or qualify so much of paragraph 16 as previously denied or qualified.

10. In responding to the allegations of paragraph 17, it is admitted that Virginia Parsons became a resident at AFF 18 Oakview Park ALF LLC dba Oakview Park in March,

2023.

11. The allegations of paragraph 18 call for legal conclusions to which no response is necessary.

12. The allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 are denied.

13. In responding to the allegations of paragraph 29, it is admitted that Defendants are qualified to properly and safely operate an assisted living facility, and that they properly cared for the needs of Virginia Parsons.

14. The allegations of paragraph 30 call for legal conclusions to which no response is required or necessary. Defendants deny any wrongdoing related to the care of Virginia Parsons.

15. The allegations of paragraph 31 are denied.

16. The allegations of paragraphs 32, 33, 34, and 35 call for legal conclusions to which no response is required or necessary.

17. The allegations of paragraph 36 are denied.

18. The statement contained in paragraph 37 requires no response.

19. The allegations of paragraphs 38, 39, 40, and 41 are denied.

20. The allegations of paragraph 42 call for legal conclusions to which no response is required or necessary. Defendants deny any wrongdoing related to the care of Virginia Parsons.

21. The allegations of paragraphs 43 and 44 are denied.

22. Defendants admit so much of paragraph 45 as previously admitted, and deny or qualify so much of paragraph 45 as previously denied or qualified.

23. The allegations of paragraph 46 call for legal conclusions to which no response is required or necessary.

24. The allegations of paragraph 47, 48 (including all subparagraphs) and 49 are denied.

25. Defendants admit so much of paragraph 50 as previously admitted, and deny or qualify so much of paragraph 50 as previously denied or qualified.

26. The allegations of paragraphs 51, 52, 53, and 54 are denied.

27. Defendants admit so much of paragraph 55 as previously admitted, and deny or qualify so much of paragraph 55 as previously denied or qualified.

28. The allegations of paragraph 56 call for legal conclusions to which no response is necessary.

29. In responding to the allegations of paragraph 57, 58, and 59, Defendants have no way of knowing what Virginia Parsons or her guardian and her family trusted in, confided in or relied upon relative to her care. However, Defendants deny any wrongdoing or breaching any standards of care relative to the care provided to Virginia Parsons.

30. The allegations of paragraph 60 are denied.

31. Defendants admit so much of paragraph 61 as previously admitted, and deny or qualify so much of paragraph 61 as previously denied or qualified.

32. The allegations of paragraphs 62, 63, and 64 are denied.

FOR A SECOND DEFENSE

33. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

34. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against the named Defendants and therefore should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

35. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

36. Plaintiff's claim for punitive damages against Defendants and any award of punitive damages against Defendants would violate those clauses of the United States Constitution and the South Carolina Constitution related to privileges and immunities, due process and equal protection.

FOR A FOURTH DEFENSE

37. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

38. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damage Awards Act of 2005 which is codified at §15-32-200, *et seq* of the South Carolina Code of Laws (1976 as amended), and all pertinent provisions of that Act are pled as an affirmative defense in this action.

FOR A FIFTH DEFENSE

39. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

40. Defendants reserve their rights arising under §15-32-520, Code of Laws of South Carolina, as amended, as to all issues described therein, and these Defendants

plead the limitations on punitive damages as set forth in §15-32-530, Code of Laws of South Carolina, as amended, as a defense.

FOR A SIXTH DEFENSE

41. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

42. The damages allegedly sustained by Plaintiff were not proximately caused by the actions of Defendants.

FOR A SEVENTH DEFENSE

43. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

44. The care and treatment provided by the Defendants conformed to and was in compliance with the applicable standard of care, and was within acceptable medical standards and methods. At no time did Defendants deviate from any medical standard while caring for Virginia Parsons. Therefore, Plaintiff is barred from recovery against the Defendants.

FOR AN EIGHTH DEFENSE

45. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

46. That even if Defendants were negligent as alleged in the Complaint, which is specifically denied, the negligence of the Defendants was not the direct or proximate cause of any alleged injury suffered by the Plaintiff. Therefore, Defendants are not liable for any damages allegedly suffered by the Plaintiff.

FOR A NINTH DEFENSE

47. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

48. Any injuries and damages Plaintiff may have sustained were due to superseding and/or intervening causes beyond the control of the Defendants.

FOR A TENTH DEFENSE

49. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

50. Any alleged injuries suffered by Virginia Parsons were the result of pre-existing medical conditions.

FOR AN ELEVENTH DEFENSE

51. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

52. Any injuries and damages sustained by Virginia Parsons were due to, caused by, or occasioned by the natural disease process over which the Defendants had no control. As such, Defendants plead such a natural disease process as a complete bar to this action.

FOR A TWELFTH DEFENSE

53. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

54. Defendants are not responsible or liable to the Plaintiff for any damages caused as the result of the negligent, careless, reckless, willful, and/or wanton conduct of any third

party, which conduct was unforeseeable to Defendants and which was the sole proximate cause of Plaintiff's damages, if any.

FOR A THIRTEENTH DEFENSE

55. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

56. Defendants acted reasonably, without malice, and in good faith at all times during their interactions with and care of Virginia Parsons.

FOR A FOURTEENTH DEFENSE

57. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

58. Defendants anticipate filing a Motion to Compel Arbitration pursuant to the arbitration agreement between the parties and hereby plead that arbitration is the appropriate forum for this dispute.

WHEREFORE, having fully answered the Complaint and asserting these affirmative defenses, Defendants pray that the Complaint be dismissed with prejudice, that Defendants be awarded their costs and disbursements associated with this matter, and such other relief as this Court may deem just and proper.

HOLCOMBE BOMAR, P.A.

By: *A. Todd Darwin*

A. Todd Darwin, SC Bar 7032
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300
tdarwin@holcombebomar.com

Attorneys for Defendants Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

February 7, 2025
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF GREENVILLE CASE NO.:2024-CP-23-0677

***** TRANSCRIPTION OF DIGITAL COURTROOM *****

August 28, 2025

BEFORE: The Honorable Patrick C. Fant, III

ESTATE of VIRGINIA PARSONS, by and through her Personal Representative, SANDRA P. WHITE, individually and on behalf of statutory beneficiaries,

Plaintiffs,

vs.

ATLAS SENIOR LIVING, LLC; ATLAS SENIOR LIVING II, LLC; AFF18 OAKVIEW PARK ALF, LLC, d/b/a OAKVIEW PARK ASSISTED LIVING; AFF18 OAKVIEW PARK PROP CO, LLC; AFF18 GREENVILLE BORROWER, LLC; OAKVIEW PARK DEVELOPER, LLC,

Defendants.

APPEARANCES:

Gary Poliakoff, Esq.
Appearing for the Plaintiffs.

Timothy Maio, Esq.
Appearing for the Defendants.

Recorded by: Webex/Video Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Court Reporter

INDEX

EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) written as said, but said in error.

P R O C E E D I N G S

THE COURT: All right. Now, 2024-CP-23-06777, Virginia Parsons Estate versus Atlas Senior Living. And I know we're here on three motions. As far as the plaintiff's motion to compel the records, I think -- you know, obviously, I have no idea how I'll ultimately rule on the compelling of arbitration, but I know that an arbiter is not going to have the power to get records. And so I'm going to go ahead -- I mean, you all can argue, if you wish, on that. But, I mean, I think it's proper -- it sounded to me as if you all needed me to order it anyway.

MR. MAIO: Yes, sir. We would disagree with that, actually, Your Honor. So if we could get some arguments on the record.

THE COURT: All right. Well, then, I'll listen to arguments on it.

MR. MAIO: Okay. Do you want me to just go first then? It's not my motion, but....

THE COURT: The motion to compel?

MR. MAIO: Yes, Your Honor.

MR. POLIAKOFF: It's my motion. I can present it pretty quickly, though.

THE COURT: Yeah. You all just put your

names on the record.

Mr. Poliakoff.

MR. POLIAKOFF: Yes, thank you. Gary Poliakoff for the plaintiff. Yes, Your Honor, this first motion would be way less time than the arbitration issues that are the subject of defendants' motions.

Our motion is a motion for an order pursuant to HIPAA for assailant records. As Your Honor knows, HIPAA doesn't prevent disclosure of PHI -- what's known as Protected Health Information. It actually has provisions for disclosure of other people's, other residents', other patients' protected health information -- PHI, if you will -- particularly in litigation. It simply says that if a court finds it appropriate, that a court issues an order. And I fully agree, I don't think the arbitrator has the authority to do it, if you were to put us in arbitration, which I hope you don't, but we'll get to that after this one. But I don't think an arbitrator has that authority. So, yes, we request that Your Honor rule on this particular motion.

So we start with what we know about it. The plaintiff is now deceased, Virginia Parsons. As brief background to the facts of the case, she was -- had advanced dementia. She was on a walker. She had a fair amount of quality of life, and she had lucidity up and down. All of this is reflected in the records. The records reflect that she's oriented to -- I think I'm stating it right -- she's oriented to time and place sometimes, but not person, or maybe it's the other way. She's oriented to some things, but not other things. And as frequently occurs with dementia, she's up and down.

So, anyway, she's in the facility. She stands up, and she's got her weight bearing on her walker that she needs to walk. It says Resident 416 and 417. We have a copy of the facility incident report. The facility incident report simply refers to them as Resident 416 and Resident 417. It is a husband and wife, we know that much.

One of them goes over -- we think that they -- we understand that they had some level of dementia themselves, but that they also had known and documented behaviors, behaviors including violent behaviors, combative behaviors, aggressive behaviors that they had exhibited that, and the facility knew about it. Those are all, of course, subjects ultimately for the case on the merits.

But the facility incident report does say that, and it's noted in a number of other places. The hospital admission records, which were based on the hospital's gathering of information from the facility also, indicate that another resident jerked the walker out from under her. She fell and broke her hip pretty badly. She had to have a rod put in her femur, and a second rod put into her hip. She lived fitfully for another 44 days. She was in lots of pain, lots of suffering, lots of heavy medication, but still suffered terribly for 44 days until she passed. But we would like to get the records of those two residents, 416, 417.

Your Honor, I have some proposals if Your Honor wants to hear that today as to how we might logistically go about doing that. Basically, issuing an order, if Your Honor wants us to, to provide some notice to those people, or to their families. If -- if their dementia is severe enough, we're happy to do that. And if Your Honor wants to give them some opportunity or some number of days, perhaps, to appear and object. I don't expect that is going to happen.

We also are entirely respectful of their privacy rights, and we have proposed throughout -- and, in fact, we've attached as exhibits to our motion things like the confidentiality order, protective order. We're willing to agree to anything to keep their records confidential. I don't need to know -- some things can be redacted. I mean their Social Security numbers, for example, dates of birth, etc.

Obviously, what the plaintiff is entitled to know and wants to know is what was known to the facility about any violent, aggressive, combative behaviors, that type of situation. And it is all in regard to the knowledge and notice and foreseeability that the facility had -- likely had prior to this incident.

So we believe that substantively we're entitled to get this information. We will be a hundred percent respectful of their privacy. We'll agree to the confidentiality protective orders that we've attached as exhibits, or to any other provisions that Your Honor might want to place on it. But, again, we'll keep everything a hundred percent confidential, and we'll be respectful of that.

We have no intention of filing any litigation against those people. Our case is against the facility for not protecting Virginia Parsons from those aggressive, violent, and combative behaviors.

So, Your Honor, it is well provided for by HIPAA, we just need a court order to do it. And I can go on, but I believe that does it, Your Honor.

THE COURT: Mr. Darwin.

MR. MAIO: Good afternoon, Your Honor. Timothy Maio on behalf of the defendant in this case.

THE COURT: I'm trying to age you.

MR. MAIO: What's that?

THE COURT: I just called you Darwin, but --

MR. MAIO: I work with --

THE COURT: You're a little bit younger than -- all right, Counsel.

MR. MAIO: Thank you, Your Honor.

So, there was an agreement between the parties to arbitrate, so we think that the arbitrator should resolve this discovery dispute.

Under HIPAA, there's a number of different ways that these records can be produced and the covered entity, the facility, can still comply with HIPAA. The notice can be given to the other residents in arbitration. And the confidentiality, HIPAA says that that can be accomplished just via stipulation between the parties. So I think the Court could just not rule on this issue at all, and could just send this case to arbitration, and let the arbitrator decide this in its entirety. That would be one option.

Another option would be in the Court's order, hopefully granting our motion for arbitration, it could also include language in there about the confidentiality and the notice requirements for those documents. That would be another option.

But if the Court doesn't grant --

THE COURT: So you're -- you're saying that an arbiter would have the power to obtain confidential records? Is that what I'm hearing you say?

MR. MAIO: If you don't believe me, Your Honor, I have it right in front of me. I can give you a copy of it.

THE COURT: Look, I'm here to be educated. I assure you I don't know everything.

MR. MAIO: This is 45-CFR-164.152, entitled, "Uses and Disclosures for which an Authorization or Opportunity to Agree or Object is Not Required." It deals with how covered entities are supposed to use and disclose protected health information under HIPAA. I'm looking under Subsection E, which governs disclosures for judicial and administrative proceedings. Again, there is a number of different options that this regulation gives you.

Option one is in response to a court order. So if the court orders it, that is one way to do it.

Then, Subparagraph No. 2, it says: "In response to a subpoena, discovery request, or other lawful process." So you don't even need -- I mean, we would interpret "other lawful process" to encompass an arbiter's order, but this says "discovery requests." So you don't even need an order from anybody, according to this paragraph. It says, "Subpoena, discovery requests, or other lawful process," as long as there's confidentiality in place, and then the people are notified.

So we think --

THE COURT: Tell me this: You get your wish and you go to arbitration. And we're in arbitration, and the arbiter does what you are asking, and they say, It's not going to fly. What is their remedy?

MR. MAIO: What do you mean, "It's not going to fly," Your Honor?

THE COURT: I mean, like, say they are not going to respond to that, to what the arbiter says. I mean, aren't you saying that it would be coming from the arbiter?

MR. MAIO: Well, who is "they"? I mean, we have the documents, Your Honor, so we would be the one to produce it.

THE COURT: Yeah. But, I mean, you would have to -- you're saying that you would honor whatever was requested by the arbiter?

MR. MAIO: Correct. Yes. The arbiter is in charge of discovery, the terms of the scope of the discovery. If the arbiter says --

THE COURT: Well, that's kind of where -- because you would argue that they would not be entitled to that because they would be limited to what they could discover, you know, in arbitration.

MR. MAIO: No. We wouldn't argue that, Your Honor. We would argue -- and I was going to get to this later on.

THE COURT: Tell me this: Isn't it just a cleaner way to go ahead and just do it? I'll order it, and there is absolutely no question about it, and then you got that going into arbitration.

MR. MAIO: That would be one option, Your Honor. What I was going to say is if the Court would like to handle it that way, or if the Court denies arbitration -- as a covered entity under HIPAA, we do feel like we have an obligation to try to protect the privacy interests of these non-party residents as much as possible.

They are looking for any evidence of aggression or violence, and we understand that. Our concern is that, you know, they are asking for the entire chart. The entire chart could be thousands -- tens of thousands of pages. If there's anything in there relevant at all to this case, it's likely only going to be maybe a handful of pages, at the most. We would hate to just produce these residents' entire charts if there is nothing in there at all that's relevant, or there's only a few pages.

So we think it would be appropriate to do an in-camera review. And if Your Honor would like to do that -- or we were going to ask the same thing of the arbitrator, if this goes to arbitration. We think the arbitrator can do the in-camera review as well.

MR. POLIAKOFF: I have proposal short of your viewing these tens of thousands of pages of documents, Your Honor, if you want to hear it at this point. I don't want to interrupt.

THE COURT: Continue, and then we'll hear from you, Mr. Poliakoff.

MR. POLIAKOFF: I'm sorry.

MR. MAIO: I think that is all I have on this motion, Your Honor.

THE COURT: Okay. I find myself sometimes having to -- you know, a lot of times we'll come up and say, I didn't mean to interrupt, and then I'll say, You know what, I did mean to interrupt, but forgive me.

All right. What would be your suggestion?

MR. POLIAKOFF: And I proposed this to Counsel as recently as a few days ago: A reading room type of situation. They obtain the patients' chart, defense counsel has it at his office, I'll come to his office, and in the presence of him or whatever staff he wants to assign, sit there and watch me go through it, and then I'll tag any pages that I believe are relevant and appropriate. If there is any dispute about that, we can come back before you. Hopefully, that wouldn't occur, but that would save Your Honor from going through a patient's chart.

THE COURT: You would have a confidentiality agreement or whatever restrictions? I'm not going to say I would do that, but....

MR. POLIAKOFF: We absolutely would agree.

MR. MAIO: That would be fine with us, Your Honor. But of course before that were to happen, the parties would have to be notified, given a chance to object, and then we would have to have the confidentiality. But as long as that is done, that would be fine with us.

THE COURT: I had something about a year ago that came up on a -- kind of a somewhat similar situation, so I know I need to go and look at some of that.

If you will, just send a proposed order on that issue, and you all can collaborate.

MR. POLIAKOFF: I'll propose a method of notice to Residents Nos. 416 and 417, as well as a reading-room situation, covered with confidentiality and protective order provisions.

THE COURT: Well, and just send it in for my consideration, okay.

MR. POLIAKOFF: Thank you, sir.

THE COURT: All right. So I'm technically taking it under advisement.

All right. I guess the motion to compel arbitration and motion for protection for discovery.

MR. MAIO: So our motion for protection from discovery is probably moot at this point, so long as Your Honor rules on our motion on arbitration in the near future. So I'm just going to tackle our motion to compel arbitration.

So we filed a memo in support of our motion a few weeks ago. Counsel just filed a memo in opposition about an hour ago today.

THE COURT: You will have 10 days to respond to that.

MR. MAIO: Thank you.

THE COURT: And I just -- you know, you've heard me earlier, you know, we've got a local rule of at least three days in advance that all of the judges around here would prefer. Just because -- I mean, like me, I like to look at this stuff before I come in here so I have a little bit of knowledge of what is going on. And so you can have 10 days to respond to that.

MR. MAIO: Thank you, Your Honor.

So looks like a number of things plaintiff does not appear to dispute. Plaintiff does not appear to dispute that the Federal Arbitration Act applies to the arbitration agreement.

Plaintiff does not appear to dispute that the signer of the arbitration agreement had the authority to sign it on behalf of the resident. So, in this case, it was the resident's daughter, Sandra Parsons White, who signed the admission agreement, the residency agreement, that contained the arbitration provision.

At the time that she signed it, there was a duly executed durable power of attorney that was executed and recorded in the register of deeds office naming Sandra as the resident's agent. The language of the power of attorney gave Sandra the expressed authority to enter into agreements of this sort, including arbitration. Plaintiff does not appear to dispute any of that, so he doesn't appear to dispute that Sandra signed it on behalf of Virginia Parsons, and that she had the authority to do so.

What plaintiff does dispute is a number of things. So, first, plaintiff argues that the agreement to arbitrate does not bind the statutory beneficiaries on the wrongful death claim, and that's an argument I addressed in my memo in support that was filed a few weeks ago.

The South Carolina wrongful death statute is derivative in nature. So it says that the statutory beneficiaries can only bring claims that the decedent had at the time of the decedent's death while the decedent was still alive. And I cite to a number of cases where the courts have said that if the decedent settled the case while he or she was alive, or if the decedent -- or if the claim was just extinguished while the decedent was alive, then the statutory beneficiaries can't pursue that claim, because that claim is extinguished under the Wrongful Death Act.

So, by the same token, if it's true that the decedent had agreed to arbitrate these claims, then that would also bind the statutory beneficiaries. And, again, plaintiff does not appear to dispute that the arbitration agreement did bind her while she was alive and before she died. So we think that the case law does say that the statutory beneficiaries are bound by that arbitration agreement, and that the arbitration agreement does apply to the wrongful death claim that was brought.

Next, plaintiff claims that we waived our contractual right to arbitration. So there was -- there used to be the standard for many years that in order to prove that a party waived arbitration, you had to prove that the other party was prejudiced. A few years ago, I think it was 2022, the U.S. Supreme Court came out with a case called Morgan v. Sundance. And the U.S. Supreme Court clarified that you don't have to show that the other party was prejudiced.

So they say that, you know, an arbitration right is a contract right, so it should be treated just like any other contract right. So the standard for whether or not a party waived their contract right to arbitration, is the same as if they waived any other contract right.

THE COURT: Tell me, doesn't your agreement limit them to like $400,000 in punitives?

MR. MAIO: Yes, Your Honor.

THE COURT: Okay. What could they arbitrate?

MR. MAIO: I think it says any and all disputes between both of the parties. I was going to get to those.

THE COURT: Okay. All right. Listen, the way I break, I ask questions while we're going through the arguments. That's just me. I mean, it just helps me rather than try to wait until the end and put everything together.

MR. MAIO: Fair enough, Your Honor.

So right now I was going to do the waiver, and then get to the unconscionability arguments.

So, again, it's about how you waive a contract right. I actually did file a memo in reply about a half hour before this hearing, so I'm sure you haven't had a chance to read it yet. I do have a copy of it, though, if you would like a paper copy?

THE COURT: You are going to say that you do not need 10 days; is that what you were going to say?

MR. MAIO: So I don't need 10 days to file a memo in reply, Your Honor, however --

THE COURT: You need to supplement. You have 10 days, okay.

MR. MAIO: Thank you, Your Honor. And I was also going to say that in their memo in opposition, they included affidavits. And according to Rule 6(d) of the South Carolina Rules of Civil Procedure, you are supposed to file affidavits at least two days before the hearing. So that's not just a local rule. That is actually in the rules of civil procedure.

THE COURT: That is accurate.

MR. MAIO: So we would ask that those affidavits be stricken from the record and not considered by the Court. But we don't need time to respond to the memo, if that makes sense. I was hoping for a ruling on our motion to strike those.

THE COURT: I'll strike the affidavits.

MR. MAIO: Thank you, Your Honor.

THE COURT: Well, I'll tell you what. Let me just hear from Mr. Poliakoff on that. But, I mean, that's what I'm inclined to do. A rule is a rule.

MR. MAIO: Thank you, Your Honor. Going back to --

THE COURT: Hold on.

Mr. Poliakoff, do you wish to make any kind of argument on that with regards to the affidavits?

MR. POLIAKOFF: I would like to, and I can do it now or --

THE COURT: Do it right now so we can just rule on it, please, sir.

MR. POLIAKOFF: I offer my apologies. We fully intended to get it in earlier. I find myself at age 73, I don't work nearly as fast as I used to. In fact, I was involved with this until about

4:00 a.m. last night putting this together, which is why it's late. But the affidavits were signed a couple of days ago, and of course I didn't send them in advance of the memo that went with it.

But the affidavit, one of them is from the plaintiff herself, which is the daughter of the decedent, who is also the personal representative. It's basically talking about not having any opportunity to review the more than 20 pages of documents put into her face, that she was basically vastly concerned, as most people are --

MR. MAIO: Your Honor, I would object to him getting this into the record if it's going to be stricken.

THE COURT: I'm just listening. I'm taking his argument. I can always reconsider my decision. I did not give him an opportunity to respond, okay. So that's why I'm allowing him to respond, okay.

MR. POLIAKOFF: Basically, it talks about her having no information about arbitration or any issues related to it, the fact that she had no knowledge of it, the fact that she had no time, the fact that she was rushed through the process, the fact that her mother had immediate needs for her own well-being, emotional and physical, at that moment in time that all of that went down.

The second one is an affidavit from me, Your Honor, based on my experience with arbitration. Basically it's showing that arbitration, contrary to what defendants who put arbitration clauses in their contracts always -- always allege, it is vastly more expensive than anything. For $180, Your Honor, I get this entire courthouse use, I get the judge, I get the judge staff, I get the clerk of court staff, I get the jury, I get the space here to try the case, and I get all of that for, roughly, a $180 filing fee, and maybe a few $25 motion fees.

Arbitration is vastly expensive to people, Your Honor. It's not cheap. It's not money saving. It's not time saving. The arbitrations I've participated in drag on typically longer than what litigation is, because arbitrators want to get along with everybody; whereas, judges realize they have a duty to actually get cases ordered to be tried at some point.

I give one example of an arbitration that I participated in where it was a three-arbitrator panel. It was a two-week trial. We had multiple hearings prior -- discovery hearings mostly --

prior to the hearing on the merits, and the total cost for the arbitrators alone was $220,000.

I had another one where at summary judgment stage the cost of arbitration exceeded a hundred thousand dollars.

In other arbitrations I've been in, it's tens of thousands of dollars. These are all costs that litigants wouldn't have, other than the $180 and a few $25 filing fees.

That is the substance of the two affidavits, Your Honor. I think Your Honor has the discretion to allow or disallow. I agree that the rule says what the rule says and would simply request that Your Honor consider those when Your Honor is ruling on the arbitration itself.

I have plenty of other arguments, but....

THE COURT: That's fine. I am going to strike them.

Continue your argument.

Thank you, Counsel.

MR. MAIO: Thank you, Your Honor.

So I cite to a learned treatise called "Corpus Juris Secundum." I think that's how you pronounce it. That gives the --

THE COURT: You are asking me about

pronunciation? You obviously have not been in my courtroom. I strike out all the time trying to pronounce attorneys, litigants, everybody.

MR. MAIO: Yes, sir.

But it lays out what the legal standard is for determining whether a party has waived a contract right just in general, any contract right. It says that the legal standard is if the party acts in a way that indicates an intention to renounce that right such that no other reasonable explanation of the conduct is possible.

It goes on to say that because the effect of a waiver is to relinquish a contract protection, waiver should not be lightly presumed. So it's very difficult to prove waiver, and in this case that burden to prove it would be on the plaintiff.

This case was -- the Answer was filed in February of 2025. The Answer included arbitration as an affirmative defense. The Answer did not request a jury trial. Before the defendants had even filed the Answer, defendants emailed plaintiff's counsel alerting them to the existence of the arbitration provision, and alerting them of their intent to enforce the arbitration provision. That's emails attached as Exhibit 1 to my reply memo. And, again, I have paper copies of this if you would like some, but it's also been filed.

The attorney for the defense at that time was Todd Darwin.

THE COURT: Are you talking about your reply?

MR. MAIO: Correct.

THE COURT: Okay. It's not -- sometimes it takes a while to get in. I mean, my law clerk just looked to see if it was in there. So if you have a paper copy, that would be great.

MR. MAIO: Okay. May I approach, Your Honor?

THE COURT: Thank you. And did you bring one for Mr. Poliakoff?

Okay. Thank you.

All right. Please continue, Mr. Maio.

MR. MAIO: The only difference between this paper copy and the one that I filed is that I changed the title of it, because I didn't know if he was going to file something or not. But other than that, it's substantively the same.

So the attorney for the defense in February was Todd Darwin. Just about a week or so after he sent this e-mail that is Exhibit 1, Todd Darwin had to take a leave of absence from the practice of law for medical reasons. There was actually a motion I think that was heard by Judge Gravely. I think some medical records may have even been submitted to him under seal. We do have some medical records if the Court wants to get into that. But he was granted a leave of absence for medical reasons.

At the time, it was anticipated that he might return fairly quickly, as early as May. But as we sit here today in August, he still has not returned from the practice of law. So I ended up inheriting this case in June.

And, so, in June, as soon as I got the case, I saw there was an arbitration agreement. I saw that there was these past communications. Like the first thing I did was follow up on that past communication. That is Exhibit 3 where I am personally emailing plaintiff's counsel following up on Todd Darwin's prior email trying to work out -- you know, trying to see if we can come to an agreement to arbitrate the case. And that was on June 27th.

Then, there was some back and forth, but once it seemed apparent like we weren't going to be able to agree on a consent order to arbitrate, we filed the motion to compel just a few days later, on July 3rd of 2025.

Nothing happened in the case. Defendants did not do anything to participate in litigation between February and June. Even to date, no depositions has been taken. No written discovery has been exchanged or conducted. We have not done anything to indicate an intention to renounce a right to arbitrate, much less do anything that would indicate such clear intention that no other reasonable explanation is possible, which is what the legal standard is for waiver.

I'm not aware of any published South Carolina case in which a court has found that a delay of about five months, which is what we're looking at here, is sufficient to constitute a waiver. In fact, there is a number of published cases that say that longer than that with participation of discovery was still not sufficient.

So I cite to Clover Cove's Homeowners Association. In that case, there was a 13-month delay in which merits discovery was conducted by both parties, and the court still found that that was not waiver of arbitration.

Rich v. Walsh, again, a 13-month delay in which discovery was conducted by both parties. The defense even took a deposition, and they still found that there was no waiver.

General Equipment and Supply Company, eight-month period in which discovery was done, but no depositions. But written discovery was done, and that was not enough to constitute waiver.

There's federal cases from all across the country that says the same thing. I cite to one recent Fourth Circuit case. And this case is interesting because this case came out after the Morgan v. Sundance case. This case is called SZY Holdings. This is a Fourth Circuit case. It came out in 2024. So they talk about the new standard for waiver under Morgan v. Sundance, and they say the nine-month delay was not enough to constitute waiver. They said they gave little significance to the delay of nine months because -- as I have done today -- counsel produced emails showing that there was communication throughout those nine months about arbitration, that they were talking about arbitration, trying to work something out for those nine months, and so that did not constitute waiver.

So, just in closing on that argument, it's a very difficult thing to prove waiver, and I don't believe plaintiff has done it here. We don't think there is waiver.

Moving now to the unconscionability argument. So unconscionability, there is two main prongs. There's sometimes called "procedural unconscionability," which has to do with the absence of meaningful choice. And then there's sometimes called "substantive unconscionability," which is about oppressive terms in the agreement itself.

So, first, I'll talk about procedural unconscionability. I cite to a case called Gladden v. Boykin. This is a South Carolina case. It talks about procedural unconscionability. It says unless -- even if the terms -- even if the substance are grossly unreasonable, it is still not appropriate to find that it was unconscionable, unless the circumstances surrounding the formation of the contract presents such an extreme inequality of bargaining power, together with factors such as a lack of basic reading ability, and the drafter's intent to obscure the terms, that that's what they are talking about.

They're talking -- it is about misconduct, essentially, on the part of one of the parties. That is what it means to have procedural unconscionability. And you just don't have that here at all.

So going to the facts of Gladden. In Gladden, that case is about a limitation of liability clause in a home inspection contract that limited the home inspector's liability to the amount paid for the inspection, which is probably only about a few hundred dollars.

The court noted that the plaintiff, Gladden, Ms. Gladden, was herself a licensed real estate agent. And so the court noted that there is no allegation that Ms. Gladden lacks the education to understand the terms of this contract. On the contrary, you know, she's actually a pretty sophisticated individual.

They also noted that there is nothing in the record to suggest that home inspection contracts that don't have clauses like this are somehow unavailable in the market. So they are saying if you didn't like this clause, why didn't you just go out and hire some other home inspector?

The court also noted that there is no evidence that the home inspector tried to, like, hide the provision. The provision was on the same font as everything else. There is no evidence of it being hidden in any way.

All those facts also apply in this case. So, in this case, the arbitration clause is just as conspicuous as every other provision in the contract. It's not in smaller font or anything like that. The name, "Arbitration Provision," the heading, is actually in all caps, emboldened, and underlined. It is not hidden, by any means.

Interestingly enough, just like Ms. Gladden, Sandra Parsons White is also a licensed real estate agent. And that's interesting for a number of reasons; but for one thing, in order to become a licensed real estate agent, you have to take classes on contract law and agency law, and you have to pass a test administered by the State demonstrating that you understand the tenets of contract law and agency law. She passed that test, because she's been a licensed real estate agent for many years now, and was before she signed this agreement.

So she was a licensed professional who reads, interprets, drafts, and negotiates contracts on behalf of her clients. She is a sophisticated party. She is not an unsophisticated party. Just like in Gladden, there is no evidence to suggest that --

MR. POLIAKOFF: Your Honor, may I note an objection at this point? I don't want to interrupt Counsel, but if Your Honor wants to hear me now or later?

THE COURT: You can state your objection.

MR. POLIAKOFF: Understanding that I'm not arguing with your ruling on the --

THE COURT: Affidavits.

MR. POLIAKOFF: Counsel is talking about a lot of history of my client, some of which is accurate, and some of which is not exactly accurate. There has been no discovery of any of this in the case so far. So there should be some limitation on Counsel's comments in this area. There is no affidavit supporting what Counsel is saying.

MR. MAIO: Your Honor --

THE COURT: Counsel, if I'm not going to take into consideration his affidavits, then I think you probably need to....

MR. MAIO: Well, in support of this reply, I have a printout from the real estate commission showing that she's licensed, and has been licensed since 2013. So I think the Court can take judicial notice of that fact. That's a public record. It's appropriate for courts to take judicial notice of public records that are not in dispute, and that's in the record. I don't know if you've seen it yet, but that's the basis for that. We're not just making that up or something, Your Honor.

THE COURT: I don't think it's a question of whether or not it is being made up, it is just that you asked for the affidavits not to be considered, and the substance of those affidavits, based on the little that I've heard -- I mean, basically, you are trying to make the same kind of arguments.

MR. MAIO: The affidavits did not have to do with whether or not she was a licensed real estate agent, Your Honor.

THE COURT: You are still asking me to consider stuff to help me get a better picture, which is exactly what he would be trying to accomplish with the affidavits.

MR. MAIO: I'm -- I'm -- if they want time to respond to the allegation that she was a licensed real estate agent, that would be fine with me.

THE COURT: Okay.

Continue with your argument.

MR. MAIO: Like in Gladden, there is also no evidence to suggest that there aren't other assisted living facilities who don't contain arbitration agreements in their provision. In fact, there's a whole bunch of assisted living facilities within driving distance of this very facility that don't have arbitration provisions in their residency agreements. The residency agreement here even says that. The residency agreement says, You understand other assisted living companies may not have arbitration provisions. That is in the contract itself.

So if she felt, in any way, uncomfortable signing the agreement because it had an arbitration provision, she could have shopped around at any one of the other many facilities within driving distance. So there wasn't an absence of meaningful choice here. There wasn't procedural unconscionability here.

Moving now to substantive unconscionability. This has been defined as terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. That's the definition that the court gave in the Simpson case.

So the plaintiff alleges that one thing that's unconscionable is that the contract says that the arbitrator's decision shall be final and binding without the right to appeal. However, there are a number of federal cases that I cite to that have said language identical to that. When it says in an arbitration agreement that you don't have the right to appeal, what that means is that you don't have the right to appeal the merits of the arbitrator's decision. They've construed that language to mean, you know -- it is not attempting to waive your right under the statute, under the FAA, to appeal anything under the FAA. It is just saying that you don't have the right to appeal the merits of the decision.

So federal case law has interpreted that language that way. We had a right to rely on that -- on the federal case law interpreting the FAA. So I don't think that language stands for the proposition that the plaintiff seems to think it stands for.

The arbitration provision also calls for an expedited and streamline discovery process, but that is exactly what you would expect and hope for in an arbitration proceeding. The reason why arbitrations are supposed to be faster and less expensive is because discovery is supposed to be limited and streamlined. So this does exactly that.

There's a case I cite to in Georgia where it says that discovery limitations promote the goals of the FAA, and accordingly such discovery limitations are rarely grounds for avoiding an arbitration agreement.

The plaintiff takes issue with the fact that the agreement limits the number of depositions that can be taken. However, there is no limit to the number of witnesses who can be called upon and who can testify at the arbitration hearing itself. So that's interesting.

I spent the beginning of my career doing criminal work, and of course in criminal cases there are no depositions. But the reason why that's okay is because anybody can call whoever they want at the actual trial. And that's the same here. So just like a criminal trial, plaintiff can call whoever they want to the arbitration, to the arbitration hearing itself.

And, you know, candidly, all this -- these are just the default rules that we're talking about. The arbitration agreement says that if the parties agree otherwise, then the parties can agree otherwise. If the plaintiff says they want to call somebody to the arbitration hearing, there is a pretty decent chance we'll want to take their depositions as well.

So there is no terms of the arbitration provision that are so oppressive that no reasonable person would ever accept them.

They also take issue with the limitation liability provisions, so I want to deal with each of those. There are four of those. They're lettered Subsections A through D.

Subsection D states that punitive damages cannot be awarded. Interestingly, there is actually a published South Carolina case directly on point here. This is the Maybank v. BB&T Corp. case. In that case, the court expressly held that a limitation liability provision that exclaims punitives are neither violative of public policy or unconscionable. So as a matter of law, that provision is not unconscionable. We have case law on that.

Subsection C states that no interest or late fees on unpaid assisted living charges can be awarded. So that is only to the benefit of the resident. That can hardly be unconscionable from her perspective.

And, then, Subsections B and A limit the amount of damages that can be awarded. But, again, I would go back to that Gladden case. The Gladden case did limited damages to the amount paid for the inspection, which would have been surely less than a thousand dollars. If that's not unconscionable, then the limitation on damages here are not unconscionable either. So we don't think that there is any substantive unconscionability either.

And then just last, Your Honor, there are multiple severability clauses in this agreement. The first sentence of the arbitration provision, there's a severability clause saying that if anything is, you know, deemed to be invalid, the remainder shall remain. At the end of the limitation liability provision, there's another severability clause. And towards the end of the residency agreement itself, there is also another severability clause.

So should the Court find that any term or terms are unconscionable or otherwise unenforceable, in accordance with the terms of the agreement itself, we would ask that the Court just simply sever the offending term or terms, and enforce the remainder of the argument -- of the agreement.

And I think that is all I have to say for now, but thank you.

THE COURT: Thank you, Counsel.

Mr. Powalie.

MR. POLIAKOFF: Thank you, Your Honor. I'm just going to go ahead and lead off, Your Honor, with the substantive unconscionability portion. I'll get to the procedural unconscionability and the waiver and the inapplicability of the arbitration to wrongful death claims, all of which are supported by ample case law in South Carolina.

Taking a look at this agreement, Your Honor, it is an unconscionable agreement, which I'll explain to the Court. It is a combination of terms. It has been suggested that there's case law that says that Provision A or Provision B or Provision C says that something is not unconscionable. Actually, that is not how it works. How it works is in courts of South Carolina, and pretty much all over that have dealt with these issues, have said you look at the totality of the contract, you look at the total effects, you look at the total circumstances, and you do a case-by-case analysis.

In this case, when you put all of this together, this is an unconscionable -- it is a terrible contract for anybody who is unfortunate enough to be a resident in this particular facility. The idea that this is a streamline process, arbitration just is not, and it's certainly -- as I mentioned before -- vastly more expensive.

Substantive unconscionability, I would like to talk about the particular arbitration agreement at issue to start with, just so Your Honor can see what the Court is dealing with. So there's -- it's called the Oakview Park Residency Agreement, and itself is 20 pages long. I understand that there were other documents to be signed at the same time during the admission, the fast, quickly done admission process.

But, in any case, of the Oakview Park Residency Agreement, one of those documents being 20 pages long, Pages 7 through 11, the arbitration provisions are set forth. It actually starts at the bottom of Page 7, so it's mostly Pages 8 through 11 of that residency agreement. So if we look at Page 8 of the residency agreement, first of all, number one has provisions combined -- Paragraph No. 1 at the top of Page 8, in combination with Paragraph No. 10 on Page 10, where this purports to take away the role of the courts that has been extremely well established -- specifically well established and verbalized and articulated by the South Carolina Supreme Court and every other court in the state -- that the courts absolutely have two issues. The courts have the role of handling the gateway issues, which is what we're doing right here, right now. Courts also have the right to handle the appeals of arbitrations. This seeks to take away that well-established law, which I don't believe it can do. Some things can be done away with by an agreement. Some things in law can be done away with by an agreement.

I suggest emphatically that this cannot be taken away. Our state supreme court in Doe v. TCSD, South Carolina Supreme Court case that is cited in our brief, says specifically that courts handle the gateway issues. Courts also handle the appeal issues. And so Paragraphs 1 on Page 8, and Paragraph 10 on Paragraph 10, try to circumvent, and not only circumvent, they try to undo what the courts have said for a long time that the courts handle.

It is not within the purview of the arbitrator to decide whether the arbitration agreement itself is unconscionable. It is not within the purview of the arbitrator to determine whether an alleged arbitration agreement is enforceable. Those are the role of the courts, the gateway role of the courts, well established, as is appeal. So those provisions cannot stand legally, Your Honor.

Going further into the arbitration agreement, the discovery provisions are extremely unfair --

THE COURT: It says, "Governed by South Carolina Rules of Civil Procedure."

MR. POLIAKOFF: With exceptions so as to make them meaningless, Your Honor. And this is craftily worded, cunningly worded. And at first blush, seems to be reasonable. If Your Honor -- once I tell Your Honor, I hope that the Court would agree with me, at least for the substantive portions here.

So, Your Honor just correctly identified Paragraph No. 6 on Page 8 of the agreement. Going to Page 9 of this agreement, C on Page 9, the only depositions allowed shall be of experts. No other individuals may be deposed.

Now, again, I've got to present this in combination of these unconscionable terms that I'm about to go over with, Your Honor. That's an unconscionable term right there, and here's why it is extremely unconscionable to the plaintiff. This is a contract of adhesion drafted by the defendant. I mean, defendants love to try to claim that the parties bargained for the contract or that the parties have the benefit of their bargain. There was no bargain here. This was a contract of adhesion. It was prepared by the facility. It was given to the family of Virginia Parsons, who significantly had dementia -- had significant dementia at the time.

But, in any case, the reason that is so onerous, Your Honor, and can't even be defended legitimately, almost a hundred percent of the evidence in a long-term care facility case is held by the defendant, controlled by the defendant, in the possession of the defendant.

All of the witnesses -- all or nearly all of the witnesses -- I mean, conceivably there could be some witnesses that weren't in the employ of the defendant, but pretty much all or almost all of the witnesses was in the employ of the defendant, and typically are still in the employ of the defendant. Plaintiff can't even take their depositions. Plaintiff has to prove their case. The plaintiff has the burden of proof of the case.

Again, all of the documents pertaining to everything are held by the facility. They don't even have to give us a list of documents until 14 working days before the arbitration hearing. I'll get to that provision in just a minute. But this is how the plaintiff's hands are tied while the defendant is sitting on all of this evidence and information crucial to its case and crucial to the plaintiff's case.

Why this is such a despicable clause -- I mean, some cunning attorney, I assume, drafted this. Perhaps a soulless, cunning attorney drafted this. But when the defendant controls and possesses, holds all of the -- excuse me -- all or almost all of the relevant evidence for the plaintiff to prove the case, burden of proof on the plaintiff of course, to not be -- for the plaintiff not to get that information is a terrible disaster for the plaintiff. So what it does is it allows the defendant to conceal evidence. It allows the defendant to withhold evidence. It allows the defendant to never disclose evidence. The plaintiff doesn't even have the ability to find out about what evidence there is. We can't take an expert -- we can't take any deposition except of an expert. We can't take a 30(b)(6) deposition.

I handle -- most of my practice these days is long-term care facility neglect cases, nursing homes, assisted living facilities, typically. In almost every case, we find that taking an early 30(b)(6) deposition is helpful. We want to know what documents are out there, where they are held, how difficult is it to access them, who has them, where are they, what are the circumstances of their preparation, how have they been maintained, where they are maintained. We can't do any of that. We can't take that 30(b)(6) deposition in this case. We're deprived of that.

The plaintiff can't prove its case with these clauses in combination. These clauses are so contrary to justice and fairness that this is an unconscionable arbitration agreement. Cleverly, cunningly drafted, Your Honor.

But, again, that is a provision basically that says, in effect, that the defendant -- who in a case -- in long-term care neglect facilities, the defendant (sic) is almost always the defendant, and likely if the plaintiff proves his case, owes some money. The defendant has all of this evidence.

Your Honor, even when we are in a court in front of judges in these cases, we frequently have multiple hearings on motions to compel evidence when judges are in the midst of ordering things. We don't get any of this in arbitration at all. These provisions -- there's not much point in going forward, but of course we would just to do the best we could. But I don't know how the plaintiff can prove the case.

Earlier, when we were arguing the motion, plaintiff's motion, about trying to get the records of these other residents, if we're -- and it was suggested that we can do all of this in arbitration, but in arbitration we don't get discovery, any meaningful discovery at all. I'll get to the whys and the wherefores of that shortly here. But, again, we can't take a 30(b)(6) in the case. We can't depose any of their staff. We can't depose staff that was present and witnessed the occurrence. We can't depose somebody to talk about what the facility knew or how had they handled Resident 416 and Resident 417 previously, or what had occurred with those. That is all information held by the facility.

So with this provision in particular, in combination with the other provisions that I'll get to, plaintiff likely won't be able to prove her case, or at least can't prove it sufficiently to have any chance of having any justice or opportunity for redress in the case.

So, again, that's Paragraph C on Page 9. Combined with that, we go down -- skip down to -- again, on Page 9 of the arbitration agreement, Paragraph little "I," it says: "The following shall be exchanged no later than 14 working days before the arbitration hearing."

It has 1, 2, 3: "List of witnesses to be called to the arbitration hearing."

Number 2: "List of documents to be relied upon at the arbitration hearing."

Number 3: "Any sworn, recorded statements to be relied upon at the arbitration hearing."

So, in other words, plaintiff probably doesn't even know who all the witnesses are. Certainly, plaintiff might know some just from family having visited here and there, but the witnesses that would know the most about what led up to this occurrence where this lady ended up suffering for the last 44 days of her life, while at the time she had a reasonable quality of life, with enjoyment of life up until then, and then the grief and sorrow of the family members that they suffered in the loss of their mother and seeing her suffer those 44 last days of her life that took away whatever quality of life she had left at that point in time.

So the list of witnesses to be called to the arbitration hearing, number one, we don't even get that list of witnesses until 14 days before. We can't take their depositions, so we don't even know who they are. But worse than that is they only have to tell us witnesses to be called at the arbitration hearing. So if they've got a witness that they know dealt with combative behaviors by these two other residents for some extensive period of time and under some serious situations, they don't have to put that list -- that witness down even, because this provision says: "List of witnesses to be called at the arbitration hearing." Well, the defendant knows who of their employees knows what, and they are not going to list an employee, under these provisions, that they know is going to give testimony that might be harmful to their position. Plaintiff has no way of even knowing about those witnesses, and this allows the defendant to conceal the evidence.

Again, the plaintiff doesn't run the facility. The defendant runs the facility. The defendant has these witnesses, employs these witnesses.

Number 2: "List of documents to be relied upon at the arbitration hearing." This allows the defendant to conceal any documents it doesn't like. Doesn't even have to tell us about them. They just have to list the ones they want to bring, that they want to rely on at the arbitration agreement. So whatever array of documents there are in this case, defendant gets to hide, conceal, withhold any documents it doesn't like, and it only puts on that list 14 days before the hearing documents it likes. This is unconscionable.

We get down to Number 3: "Any sworn, recorded statements to be relied upon at the arbitration hearing." The way that's worded, Your Honor, if they have a sworn, recorded statement that they don't like, if they don't intend to, quote, "rely upon it at the arbitration hearing," they don't even have to put it on the list. Plaintiff will never know about it. It's -- and even if we learned something about it, we can't take a deposition of anybody. So without taking any depositions, we don't know who knows what or what they are going to say. And the only people they are going to bring to the hearing are the people favorable to them.

Can we bring people favorable to us at the hearing that know anything about the occurrences at the nursing facility? The answer is likely no -- or likely nearly one hundred percent, no.

The family can talk about their grief and sorrow. They can talk about what they observed at times when they came and visited or times where they interacted or communicated with the people at the facility, but they don't know who knows what about, for example, the crucial issues, including Residents 416 and 417, the history of their combative behavior.

If I can't take a deposition, and if they don't have to bring to the hearing anybody except who they want to bring, and we don't even know how to identify somebody to even ask the arbitrator to subpoena or issue a subpoena, plaintiff cannot prove her case.

But the defendant can come to this hearing and give a one-sided presentation, which would be -- it would be -- frankly, it would be fraudulent because it would be a presentation. Lawyers are supposed to present in good faith. I'm not saying Mr. Maio would do this. I'm just saying the Rules allow this to occur. And, apparently, the facility would do this, because the facility is relying on this document that it had created to do away with the plaintiff's rights, basically, is what it does.

So they can take a sworn, recorded statement, in other words. And if they don't like it, they don't even have to put it on this list. We can't take a deposition of anybody to even find out about it. We can only depose experts, and they're going to give their experts whatever they want to give them. We won't have any information as to what was held back from the experts, and they're certainly not going to tell their expert, yeah, we also got three witnesses who -- you know, if they were asked, they would have to say that, yeah, they interacted with Residents 416 and 417 many times and found them to be highly violent, highly combative, dangerous, and highly risky to the other residents there.

Going forward, Your Honor, Paragraph 10, which I have already mentioned previously, this is on Page 10: "Arbitrator's decision shall be final and binding without right to appeal." Again, that takes away the well-established role of the courts in South Carolina to at least -- appeal grounds of arbitration are limited, but at least they are there.

For example, if we found evidence that the arbitrator somehow acted under some type of fraudulent interest of his own, we can't even appeal on any ground, whatsoever. Have no appeal grounds at all. Substantive law violations, nothing. Zero chance to appeal whatever he does.

It goes on here: "The arbitrator's fees and costs of the arbitration shall be divided equally among the parties." Arbitrators charge hourly. My experience with arbitrators is they typically charge 400, 450, 500 an hour, and it gets very, very expensive. This is based on my own personal experience that I can tell the Court about. Arbitrations get very expensive.

And, so, for example, the estate of Virginia Parsons doesn't have assets to pay that. So I guess they could say, Oh, the daughter, Virginia's daughter, holds a realtor's license, and so she can pay tens of thousands of dollars in arbitration costs. Or even if she had her attorneys advance those costs, that takes a huge bite out of her final award. This is unfair.

I mean to split -- A, the cost of arbitration is exquisitely high in almost every arbitration that goes to the (inaudible). And splitting it without any other ability -- I mean, frequently arbitration agreements provide that the arbitrator can decide who pays. And if the arbitrator finds that the facility is liable for the acts complained of, they typically make the facility pay, or sometimes occurs.

Some arbitration agreements, like this, say it's split between the parties no matter how bad the conduct of the defendant is, and I would suggest to Your Honor that a defendant who wants to go forward and claim that this is some type of hearing of rights of people and that it's fair, is trying to mislead everybody, including the Court. This is a terrible, terrible unconscionable agreement.

Going further into the agreement, limitation of liability provision. It's way worse than what it would appear to be at first blush. In fact, I had to read it -- even though working at it --

THE COURT: It says: "Read carefully before signing."

MR. POLIAKOFF: It does. But everybody is not an attorney. It took me several readings through it to really understand the import of it. For someone who is not an attorney, even if they have a realtor's license, they are not going to understand how bad this is, Your Honor. I didn't at first.

But, as examples, Your Honor: "To limit in advance each party's liability." Well, that sounds good and fair. They are going to limit each party's liability. So once we get into here, the only liability benefit to the plaintiff is that it says that there won't be interest or late fees on his monthly resident bill. That is the only financial benefit to the plaintiff. And then it can't be much money because the contract in other sections says if he doesn't pay monthly, they'll evict him. So he doesn't even get out of the monthly payments. The only financial benefit to the plaintiff is he doesn't have to pay interest or late fees.

So this great paragraph here that says -- that's going to limit each party's liability is (inaudible) to be ludicrous, Your Honor.

And, so, going further into the agreement, 2(a) at the bottom of Page 10: "Net economic damages shall be awardable." Okay. That sounds good. When I first read that, I thought, okay, plaintiff gets some benefit here. "Net economic damages shall be awardable."

It goes on to say: "Included, but not limited to past and future medical expenses offset by any collateral source payments, such as payments made by medical insurance." And so for economic damages -- this is in a long-term care facility. First of all, net economic damages in litigation almost always means wage loss and medical bills. Sometimes other things, but in a personal injury case, it's wage loss and medical bills. There is no wage loss claim in a long-term care facility case. I've never seen one. It's hard to conceive that anybody could still be earning wages. I mean, somebody might have an investment that provides passive income, but nobody's going to have a wage loss claim from an injury in a long-term care facility. They're all well past the ability to work. So there is no economic loss for wage loss.

So then we get to medical. Everybody is on Medicare and Medicaid. Plenty of them have, in addition to that Medicare supplements, Medicare Advantage plans, and/or private insurance coverages. Whatever the medical bills are, once you reduce -- once you subtract out of that all the collateral source payments, if it's Medicaid, the balance is zero because the plaintiff never has to pay any balance under Medicaid. So a patient who has Medicaid covering his or her bills, zero. Gets zero related to any medical bill, whatsoever.

Medicare pays most of the bills. You know, Medicare has not only the -- they pay certain percentages for this procedure or that procedure, but they also have write-downs similar to Blue Cross and private insurance companies that have contracts with medical providers. But, I mean, one might expect in a $200,000 hospital bill to have a couple of thousand, maybe three, four thousand dollars of bills not covered by insurance. And so this provision is almost meaningless to a plaintiff. It's cunningly worded. It starts out: "Net economic damages shall be awardable." That is misleading to anybody that is not an attorney because it looks like, okay, I can get my medical bills paid at least, but the plaintiff gets nothing.

A patient on Medicaid for economic loss would get zero for any -- related to any medical bills of any kind. And, again, they are not going to have any wage loss claims. So this negates any ability of the plaintiff to collect anything in most cases, and perhaps minuscule amounts in other cases, just whatever is not covered by insurance.

Now, that benefits the defendant massively. There can be a $200,000 bill or more caused by the defendant's reckless conduct, and the defendant doesn't have to cover any of that. But what this does to the plaintiff is -- I deal with Medicare and Medicaid all the time. Every time I settle a case, then I have to go to work for the next stage to try to help the client with Medicare and Medicaid. I don't charge for it, but sometimes I spend massive amounts of time and energy and effort dealing with Medicare and Medicaid. They take positions that are very difficult sometimes.

Sometimes they are better to work with; sometimes they are terrible to work with.

Conceivably, Your Honor, the plaintiff has filed an action for -- that includes his injuries. He's asking for medical bills. And so if the plaintiff has a $200,000 hospital -- gross hospital bill, which is not uncommon these days, and let's say all but $3,000 has been paid by various types of insurance, so that plaintiff might get $3,000 for that $200,000 worth of medical treatment. However, Medicare still probably paid $60-, $70,000 towards that $200,000 bill, maybe a hundred thousand. Sometimes Medicare pays in the realm of 40, 50 percent; sometimes more. It is usually more like 45 to 50 percent, roughly -- roughly of a gross medical bill. Medicare is still going to claim that subrogation, so the plaintiff hasn't been paid.

The plaintiff has had to put in his case a claim for his injuries, which is what gives Medicare and Medicaid and private insurance the right to have -- whether you call it (inaudible) or subrogation or right to reimbursement, the plaintiff is exposed to that.

Now, clearly, Your Honor is probably

thinking, well, it would make sense that the plaintiff would say, I didn't get any money other than maybe some peanuts for the bills, and so that's all you should get. That sounds logical. I can tell Your Honor it's an exposure for the plaintiff that I wouldn't want to have to fight with no money in hand or in my trust account related to it.

So it is a meaningless paragraph, whether or not the plaintiff would be doubly screwed like that. It is a paragraph that says that the defendant doesn't have to pay anything -- or dang near anything, whatsoever, related to medical bills.

Thank you, sir, I'll move forward.

THE COURT: (Microphone is not on.)

MR. POLIAKOFF: Yes, sir. Non-economic damages, such as pain and suffering, shall be limited to a maximum of $400,000.

Now, certainly, Your Honor is well aware of Tort Claims Act caps and charitable caps, et cetera, but this -- when you read this in combination with the fact that the plaintiff can recover zero or close to zero for economic loss, then having a cap like this on non-economic damages -- so, in this case, you've got a lady who had lucidity off and on. She had some quality of life, appreciation of life. She could recognize her loved ones. She could communicate with her loved ones, better at times, less at times, but she had some quality of life still. For the 44 days that she managed to live after this injury -- with the two rods placed -- she suffered horribly to the moment of death.

So all of her pain and suffering, fears -- there have been many, many medical -- much medical literature written about fears of people even when they're deep into dementia. They're fearful. They're unsettled. They feel pain. They suffer.

To cover that, now, that $400,000, if wrongful death is subject to the arbitration, which I'll get to also shortly in just a minute, then that would mean that that $400,000 has to cover that poor woman's suffering for the rest of her life, and ruining what quality of life she had left, and the damages of the wrongful death beneficiary are grief and sorrow, wounded feelings, mental distress, loss of society, loss of companionship, all those things that are non-economic damages.

So that $400,000 has to cover both the suffered -- suffering injured person, and the grieving family members who lost their loved one as a result of the reckless acts that we think we can prove, if we're allowed a fair and open forum proceeding, that we think we can prove was ongoing, recklessness, that they went on for a significant period of time.

So these all have to be read together, Your Honor. Alone, I think a case could be at least argued that one provision by itself might not be unconscionable. Read together, these are unconscionable.

So then we get to D: "Punitive damages aren't awarded." Now, there are circumstances -- Tort Claim Act, et cetera -- which punitive damages don't get awarded. There is public policy reasons for that. There is no public policy reason for them to escape punitive damages. All of the reasons for punitive damages that have been highly litigated and well established in case law, and now embodied in statutes in South Carolina, the purpose is to deter conduct.

Looking at how long the defendant participated in the wrongful conduct, the egregious conduct, how did the defendant profit from the egregious conduct, on and on and on. All of the public policy things which have been embodied in case law, well established, and embodied in a structural framework in South Carolina for punitive damages are all eliminated. They have no incentive to do better the next time around. They escape almost any payment of any damages here under these provisions, if these provisions are all upheld.

And so there is zero deterrent for them to do better next time. They are not going to lose the income of Residents 416 and 417, so that is $7,000 a month, roughly, at this place. They are not going to lose that income out of fear they are going to hurt someone else. They have no reason to lose that $7,000 a month each. It's just not going to happen. All of those purposes for punitive damages are eliminated.

So then we get to ludicrous of all ludicrous: "Benefits of arbitration and limitation of liability provisions." It goes on about how it is cost effectiveness, which I've already discussed, but that is just simply false. That's the nicest way I can put that. Time savings, in my experience, has been no time savings. Defendants like to drag things out in these cases, and arbitrators are way more lax, I've found, than judges in letting things drag on. It's expensive. It not time saving.

Then it talks about the parties' decision to select arbitration. There is no decision making. This is a contract of adhesion. There's been no benefit of the bargain. There is no bargaining. There's been no negotiating. They just stated a fiction, a falsehood here: "The parties' decision to select arbitration."

Most people that sign a 20-page document with arbitration sandwiched deep in the middle of it have no earthly idea about any aspect of it when they sign it. Most of them are shocked. We've covered that in our brief, Your Honor, with a lot of literature -- competent literature -- to support that.

It goes on about the middle of that paragraph: "By limiting such exposure to liability, quick method of resolution." And it talks about the limiting of -- limiting of liability to both parties. As I mentioned before, reading through these provisions, on Page 11, looking at C, the only financial benefit to the plaintiff here, even though this contract talks about the benefits of arbitration to both parties, is that the plaintiff -- the injured resident won't have to pay interest or late fees on unpaid assisted living charges. That's all the defendant gets. And, again, that is not going to be a significant figure ever, because after a couple of months, they are going to evict the person if they are not paying their monthly bill.

So peanuts, again, for the maximum the plaintiff could get under this. For its benefits of arbitration would be that they don't have to pay interest if -- you know, a month or two of their monthly bill or late fees. They get out of paying -- in most situations, they get out of paying a hundred percent of economic loss, and they get caps on non-economic loss, and they have no exposure to punitive damages, whatsoever. This is an unconscionable agreement, Your Honor.

The plaintiff can't prove its case. The plaintiff cannot get a fair day in court or hearing, trial, whatever it's called, in arbitration. Just won't have a fair day. The plaintiff will go there with the burden of proof, unable of prove -- unable to meet its burden of proof. The defendant can hide, conceal documents. It can hide and conceal information. It can hide and conceal witnesses. It can even take sworn statements and hide and conceal them, and only have to put on the list what they are going to use at the hearing. They get to pick it. They hold it all. They hold all of the evidence. They get to pick and choose. We don't even know about most of that evidence.

I'll cover the other points quickly, Your Honor. Waiver has been well established in South Carolina. And the case was actually filed -- we filed the summons and complaint in November of last year. Yes, Mr. Darwin was on the case previously, but going back several months, Todd took his leave of absence, I think it was last spring. Not long after that, it was whenever Brown Parkinson came to the Holcombe Bomar firm. He called me. He had several messages from us to Todd, you know, asking this and that. We had had discussions ongoing since November. I'm not trying to take advantage of Todd's situation, Your Honor. But it's been eight months, and I raised that to Mr. Parkinson back several months ago. I could check and try to find the exact date, but it's been several months.

I said, Are you all going to raise this arbitration thing or not? Are you all abandoning it? He didn't know. He was in -- at that point in time, I think he was handed a load of cases, and since whenever those conversations had -- and I had more than -- I had several conversations with Mr. Parkinson. And, ultimately, Mr. Maio joined the same firm, and I think Mr. Parkinson then gave the case to Mr. Maio. So he's the third attorney that we worked with on this case.

But we have made requests for discovery the whole time. We sent a 30(b)(6) notice. Of course that's not been responded to. We've sent requests for discovery. I mean, things just haven't moved, and it's been eight months. There are plenty of cases on waiver. Yes, some cases have denied waiver for periods longer than eight months. Some cases have granted waiver for periods less than eight months. Again, it is a case-by-case analysis. It is looking at the total circumstances of everything.

I'm not asking Your Honor to give me any advantage from Mr. Darwin's leave of absence situation. However, I think that there's plenty of waiver here outside of that situation, Your Honor.

There's procedural unconscionability as well. Again, it's the inadequate disclosure, inadequate bargaining position. Those are not just high-flung notions of plaintiffs. Those are well established in South Carolina, Your Honor. The case law in our brief covers it. There is numerous cases on both procedural and substantive unconscionability. We believe that we can show both here.

As far as procedural, the case Doe v. TCSD, it's a South Carolina Supreme Court case. It is in our brief. It has very great information on point here.

Also, I know Your Honor is well familiar with Simpson v. MSA of North Myrtle -- excuse me, Simpson v. MSA of Myrtle Beach on substantive unconscionability.

Also, the Hooters v. Phillips case is cited frequently in these issues.

Carlson v. General Motors. These are all South Carolina Supreme Court cases.

We get to a case that I think -- if Your Honor reads any case, I would respectfully request Damaco v. Leonard Carolinas. It is in our brief as well. It is a South Carolina Supreme Court case. D-A-M-A-C-O v. Leonard Carolinas. It is extremely on point for the issues here, and it deals with a great review and a great history of unconscionable (inaudible).

Thank you.

THE COURT: (Microphone is not on.)

MR. POLIAKOFF: I got them on the list, but I'll relieve the Court from hearing that. But Damaco I think is on point. And the thing about Damaco is, is Damaco has a wonderful discussion of the history of unconscionability rulings in South Carolina, and it also talks about severability. Counsel for the defendant, in his presentation and in his brief, you know, talked about that some clauses can be severed. It talks about the court having discretion on when to sever and when to just void the entire arbitration agreement.

The case law talks about if the arbitration agreement is so infected with unconscionable provisions, that it is just unfair, that the Court is not supposed to start writing those provisions for everybody. If the defendant or the party asserting arbitration has put such clauses in its contract, the entire contract -- when appropriate -- should simply be rejected, voided, found to be unenforceable, and that is the situation we have here.

If Your Honor were to sever out those clauses, then the court would -- the court refers to it as "blue penciling in." The court says we don't want to be in the role of blue penciling bad contracts that have provisions that are unenforceable, unconscionable. And, here, you have enough of those infected unconscionable provisions that the entire arbitration agreement should be avoided and found to be unenforceable.

There is the clause after that, the savings clause of some type, that Counsel also referenced that says that if Your Honor does find it to be unenforceable, that the next step is that the parties agree that the case will proceed to a bench trial, in front of a real judge, in a real court, as opposed to an arbitrator. And, basically, subject to -- which would be, of course, subject to our Rules of Evidence and the Rules of Civil Procedure.

If Your Honor -- I don't know that Your Honor is, but if Your Honor were looking for a way that at least provides some fairness to each side, it would be hard to argue that that is not a fair resolution of where we are at this point, in this litigation. I would prefer to have a jury.

And, by the way, defendants don't put arbitration clauses in their contracts because it saves money and time, like they always say. They put arbitration clauses in their contracts because we don't get -- plaintiff's don't get discovery nearly as well with an arbitrator as we do with a judge. Regardless of how the arbitration provision provides for discovery, even when it allows for open discovery per the Rules, arbitrators just don't enforce like judges do. So they get to hide more stuff that they shouldn't be hiding.

And, number two, they put in there because they think that arbitrators aren't going to rule as some juries will rule in these cases. I mean, that's the white elephant in the room with all of these. You ask lawyers after a few drinks and a cocktail, I think lawyers on both sides would say, Yeah, we figure about half of what a case is worth we could get an arbitrator to rule, as opposed to what a jury might do. But I won't pursue that further at this point, Your Honor.

The wrongful death claims, that is not something invented by me, Your Honor. I'm sure you've heard the argument before. There are a number of cases in South Carolina that talk about the distinct and separate claims that a wrongful death beneficiary has from the injured patient, who is now deceased. The injured patient now deceased has a survival action that the personal representative brings. A personal representative also brings the wrongful death beneficiary claims. But those are entirely different from the survival claims.

There are a number of circuit court orders. We've attached I think around six circuit court orders that deal with unconscionability, and we've cited a number of them that also deal with wrongful death not applying. I'm not aware of a South Carolina appellate course (sic) on point that rules one way or the other on whether wrongful death beneficiaries are bound by someone previously signing an arbitration agreement. I'll just ask Your Honor to consider perhaps what other circuit judges have ruled on on that particular point.

I've got plenty more on my list, but I think that is sufficient at this point. Thank you.

THE COURT: (Microphone is not on.)

MR. MAIO: I'm very appreciative of the Court's patience. I'll be very, very brief and just hit the highlights in response.

The plaintiff's counsel seemed to argue that a delegation clause is in and of itself unconscionable. There's several decades of U.S. Supreme Court precedent that says otherwise, so I'm not sure what the legal basis is for that claim.

He, again, argued that the agreement says you can't appeal the arbitrator's decision. But, again, as I have already argued, there is federal cases that say that that language just means that you can't appeal the merits of the arbitrator's decision. That language doesn't mean that you're waiving any statutory right to appeal.

There is a long discussion about the discovery provisions. What he fails to mention is that the arbitration agreement itself repeatedly states that written discovery is to be conducted pursuant to the Rules of Civil Procedure. He said that, you know, we're going to hide witnesses, we're not even going to tell them what witnesses we have, we're not going to produce any documents. It says repeatedly the Rules of Civil Procedure apply to written discovery. It is one of the standard interrogatories. You have to tell the other side who your witnesses are.

We already have, essentially, agreed to produce the records of these other residents. Of course the written discovery obligations apply to this arbitration provision. The only thing that is limited is the number of depositions. But that makes a lot of sense, because one of the most time consuming and costly things of discovery are depositions. But, again, everybody is going to know everybody's witnesses. It's not going to be 14 days before the hearing. It is going to be way before that in response to an interrogatory. And anybody can subpoena whoever they want to appear, to testify live at the trial. They can cross-examine everybody who appears at the trial.

They argue that it's unconscionable that the agreement says that the arbitrator's fees and costs will be split evenly, but they don't read the entire sentence of -- they don't read the entire sentence. It says: "The arbitrator's costs will be divide equally, comma, unless the resident party is indigent." So if he is saying that she's indigent, under the terms of the agreement itself, she doesn't have to split cost half way. If anything, that just goes to show that this agreement is conscionable, not unconscionable.

There is discussion about the caps on damages, and I understand where the plaintiff is coming from on that, but the only case -- the only published South Carolina case I know of that deals with the enforceability of contractual caps on damages is that Gladden case. In that Gladden case, damages were capped at a pittance. It was a couple hundred dollar cap, and the court said that was neither -- that didn't violate public policy. It was enforceable. They said it was not unconscionable. Plaintiff did not cite any case to you that would conflict with that Gladden case.

He suggests that, you know, arbitration isn't actually faster and cheaper. The arbitration provision says that the hearing shall be conducted within 180 days after the start of the proceeding. That is a lot faster than any normal court going through the court system.

I find it interesting, too -- I mean, I've had arbitration matters with this law firm where we had discovery disputes, and then it's like literally the next day or the day after we're on a Zoom call with the arbitrator, and the arbitrator rules on the discovery dispute. So I don't understand that contention that arbitration isn't faster.

He talked about waiver. You know, most of the cases they measured the so-called delay from the time of the answer to the time of the motion being filed, I think that is about five months here; not eight months. He did say that, you know, plaintiff sent requests to the defendants, but he (inaudible).

Thank you, Your Honor.

THE COURT: (Microphone is not on.)

MR. MAIO: I'll move on from that. And then just that the last thing I want to say, Your Honor -- and, again, I'm very appreciative of your time and your patience. It's just this --

THE COURT: (Microphone is not on.)

MR. MAIO: Well, you do it very well, Your Honor.

This Damaco case, the facts are very, very different. In that case, they declined to sever any of the provisions. They said that, you know, the terms were absurd, factually incorrect, and grossly oppressive. What they were talking about -- there was all kinds of crazy stuff in that contract. They claim that the arbitration agreement itself was a restrictive covenant that ran with the land. They said that the parties agreed to waive the warranty of habitability for the valuable consideration and zero dollars and zero cents. You know, there was just all kinds of just patently, goofy, nonsensical illegal stuff in that contract. That's not the contract here, Your Honor. This is not that case, and that's all I have. Thank you.

THE COURT: (Microphone is not on. The video shows what appears to be a bench conference with the judge and the attorneys. The attorneys then exit the courtroom, and no other audio was given for this case.)

CERTIFICATE OF TRANSCRIBER

Case Name: Estate of Virginia Parsons v. Atlas Senior Living, et. al

Case No.: 2024-CP-23-06777

Date of Hearing: August 28, 2025

****

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording.

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

Natalie Dahl, RPR

____

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,	)	C. A No. 2024-CP-23-06777
Plaintiffs,	)	**MOTION FOR AN ORDER PURSUANT TO HIPAA FOR ASSAILANT RECORDS**
vs.	)	
Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;	)	
Defendants.		

TO: E. BROWN PARKINSON, JR., ESQ., ATTORNEY FOR DEFENDANTS:

This matter arises from allegations that Virginia Parsons, while a resident at Defendants' assisted living facility, suffered a fatal assault due to Defendants' failure to protect her from known dangerous residents. Plaintiffs request the records, incident reports, care plans, and other facility records pertaining to "Resident 416" and "Resident 417", as identified in Defendants' own Incident Report dated **August 22, 2023**. Plaintiffs attempted to resolve the issue with a Consent Order, and proposed Confidentiality Agreement. **Exhibit 1 and 2**. Defendants claim they cannot consent nor can they produce these records without a Court Order pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

Plaintiffs respectfully move this Court for an Order pursuant to 45 CFR Section 164.512(e.) allowing Defendants to produce documents related to known assailants involved in the fatal incident. This Health Insurance Portability and Accountability Act ("HIPAA") section controls disclosure of information contained in *medical records*.[1] The Facility accepts vulnerable adults to ensure a safe and comfortable environment. The Facility allowed Virginia to suffer a preventable traumatic incident causing damages that necessitated hospitalization and wrongful death.

[1] 45 C.F.R. §164 et seq.

LEGAL ANALYSIS

II. HIPPA PROVIDES FOR THE DISCLOSURE OF NURSING HOME RECORDS

There is no dispute that the Health Insurance Portability and Accountability Act ("HIPAA") controls the disclosure of information contained in medical records. See 45 C.F.R. § 164 *et seq.* While the Defendants may allege that HIPAA prohibits production of "Resident 416" and "Resident 417" records, there is a recognized mechanism in HIPAA that allows the disclosure of the records requested by plaintiff when accompanied by a qualified protective order per 45 CFR Section 164.512(e.) *See* T.M. v. Elwvn, Inc**.,** 950 A.2d 1050, 1060 (Pa. Super. Ct. 2008). This express provisions of HIPAA simply does not support the preclusion from production that defendants would have this Court sanction.

The preemption provision of the act provides that the federal regulations "supersede any contrary provision of State Law."[2] Under HIPPA, the disclosure of non-party medical information is permitted for:

> **judicial . . . proceedings . . . in response to a . . . discovery request . . . if: . . . the covered entity receives satisfactory assurance . . . from the party seeking the information that reasonable efforts have been made by such party to secure a *qualified protective order* that meets the requirements of paragraph (e)(1)(v) of the Section**.[3]

Under 45 CFR § 164.512(e)(1)(v), a qualified protective order or stipulation by the parties is one that:

> (A) Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and
> (B) Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.[4]

Per the applicable portions of the law, 45 CFR Section 164.512(e), there are provisions for disclosure of protected, non-party medical records without patient authorization in the context of judicial proceedings. That section of HIPAA bears reproduction in its entirety:

(e) *Standard: Disclosures for judicial and administrative proceedings*—

"(1) *Permitted disclosures.* **A covered entity may disclose protected health information in the course of any judicial or administrative proceeding**:

---

[2]45 C.F.R. §160.203.

[3]45 C.F.R. § 164.512 (e): *James v. Nocono*, Slip Copy 2007 WL 1237930 at 6 (N.D. Tex); *Hutton v. City of Martinez*, 219 F.R.D. 164, 167 (N.D.Cal. 2003).

[4] 45 C.F.R. § 164.512(e)(1)(v)(A) and (B); *James v. Nocono*, Slip Copy 2007 WL 1237930, at 6 (N.D. Tex).

(i) **In response to an order of a court** or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order; or

"(ii) **In response to** a subpoena, **discovery request**, or other lawful process, that is not accompanied by an order of a court or administrative tribunal**, if**:

> (A) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iii) of this section, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information that has been requested has been given **notice** of the request; **or**
>
> (B) The covered entity receives satisfactory assurance, as described in paragraph (e)(1)(iv) of this section, from the party seeking the information that **reasonable efforts have been made by such party to secure a qualified protective order** that meets the requirements of paragraph (e)(1)(v) of this section.

(v) For purposes of paragraph (e)(1) of this section, **a qualified protective order means**, with respect to protected health information requested under paragraph (e)(1)(ii) of this section, **an order of a court** or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

> (A) **Prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation** or proceeding for which such information was requested; and
>
> (B) **Requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation** or proceeding.

"(vi) Notwithstanding paragraph (e)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(ii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section." (**Emphasis supplied.)**

I. ASSAILANT RECORDS ARE RELEVANT AND DISCOVERABLE

The privacy interest in medical records is conditional and may be allowed if properly justified.[5] The known conditions of assailants, their documented behaviors, medical histories, and prior actions of belligerence, agitation, or violence is relevant for notice and foreseeability, and Defendants Failure to remediate. Courts have found assailant medical records to be reasonably calculated to lead to admissible evidence to establish Defendants' direct knowledge of the dangers to other patients, as well as evidence of measures Defendants took to mitigate the dangers posed by this patient.[6] Disclosure of relevant medical records under a qualified protective order is

[5] Hutton v. City of Martinez, 219 FRD 164, 166 (N.D. Cal. 2003).
[6] Coastal Health Services, Inc. v. Rozier, 335 S.E.2d 712, 714 (Ga.App. 1985).

required “even if no notice is or can be provided to the nonparty patient.”[7]

`“[W]here a patient engages in assaultive conduct, such conduct is not intended to be confidential for the purposes of candid discussion of medical concerns, which is the purpose of the patient-physician privileges.”[8]

The supersession clause of HIPPA, which allows states to impose “more stringent” privacy protections for individuals,[9] only applies to “individually identifiable *health information*.”[10] HIPPA provides the procedure by which a covered entity may “de-identify” the medical records by redacting the “individual identifiable health information”.[11] Once medical records are redacted in accordance with 45 C.F.R. §164.514, they contain no “individually identifiable health information” and the “supersession” clause is inapplicable[12] and HIPPA preempts state law.[13]

Furthermore, a qualified protective order, as proposed herein, will allow plaintiff to obtain the materials he must have in this litigation against Defendants while adequately balancing the privacy rights of the assailant. Discovery of the Assailant's records will allow Plaintiff to evaluate whether Defendants acted appropriately in dealing with his interactions with Plaintiff and other residents and employees; whether and how Defendants could have prevented his sexual assaults and physical attacks on Virginia; and whether plaintiff can thereby establish notice to Defendants and foreseeability of the harm. In short, the requested materials are crucial to the prosecution of Plaintiffs’ claim for wrongful death.

The above quoted and bolded language of this portion of HIPAA reflects realities that run contrary to any potential objections by defendants. Notably:

1. An order by this Court to provide plaintiff the requested materials will shield defendants from **any** exposure or legal complications for their disclosure; and
2. HIPAA, does not proscribe providing the requested records but rather sets forth a mechanism by which the privacy interests of Assailant will be balanced against and protected vis a vis the Plaintiffs’ need for documents and information to prosecute their lawful claims.

---

[7] Creely v. Genesis Health Ventures, Inc., 2004 WL 294 3661 at 3 (E.D. Pa.)
[8] Crawford v. Concepts, Inc., 625 N.W.2d 876, 833 (Wis. 2001).
[9] 45 C.F.R. §160.203(b).
[10] Northwestern Memorial Hospital v. Ashcroft, 362 F.2d 923, 926 (7th Cir. 2004).
[11] 45 C.F.R. § 164.514.
[12] Northwestern Memorial Hospital, 362 F.2d at 926.
[13] Id.

Accordingly, the law is clear: HIPAA will not support defendants' attempt to withhold the assailant records. The documents may be provided so long as this is done pursuant to the qualified protective order, the terms of which appear in the proposed order attached herewith.

Further delay in production impairs Plaintiff's ability to investigate the Defendants' knowledge of prior incidents, potential foreseeability, and their response (or lack thereof) to the risks posed by specific residents. The information sought is relevant, goes to the heart of the issue of notice and foreseeability, and is reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs also request the Court's assistance in scheduling the deposition of the Defendant Facility's 30(b)(6) designee as noticed on **May 23, 2025**. See **Exhibit 3.**

WHEREFORE, Plaintiff respectfully requests that this Court file an Order that allows Defendants to produce all documents concerning any known or suspected assailants of Virginia Parsons, including records relating to "Resident 416" and "Resident 417" consistent with the previously filed Consent Order and Confidentiality Agreement which protects Defendants pursuant to HIPAA. (See Exhibit 4 – Proposed Qualified Protective Order).

RESPECTFULLY SUBMITTED,

s/*Gary W. Poliakoff*
Gary W. Poliakoff, S.C. Bar # 4488
atty@gpoliakoff.com
Ray Mullman S.C. Bar # 8662
rmullmanjr@gmail.com
POLIAKOFF & ASSOCIATES, P.A.
215 Magnolia Street
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
Attorneys for Plaintiffs

Date: July 2, 2025

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-23-06777

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") respectfully request an Order from this Honorable Court staying this action and compelling Plaintiff to arbitrate the claims in the Complaint.

Argument

Virginia Parsons was a resident at the Oakview Park Assisted Living facility. On or about March 21, 2023, the Plaintiff, Sandra Parsons White, signed the Oakview Park Residency Agreement on behalf of Virginia Parsons. (**Exhibit 1**, Residency Agreement).

The Residency Agreement included an arbitration provision:

> Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law.

(**Exhibit 1**, Residency Agreement 000008).

Pursuant to Rule 11(a), SCRCP, undersigned counsel affirms that he has communicated with opposing counsel in a good faith attempt to resolve the subject of this motion.

Conclusion

For the foregoing reasons, and any raised in supporting memorandum, exhibits, and affidavits, and in oral argument, Defendants respectfully ask this Court to enforce the arbitration provision, compel Plaintiff to arbitrate the claims in the Complaint, and to stay this matter until such arbitration is complete.

Respectfully submitted,

HOLCOMBE BOMAR, PA

s/Timothy Maio
Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

Attorneys for Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

July 3, 2025
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-23-06777

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND TO STAY DISCOVERY UNRELATED TO THE THRESHOLD ISSUE OF ARBITRABILITY

Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") respectfully request an Order from this Honorable Court, pursuant to Rule 26(c), SCRCP, staying all discovery in this matter that is unrelated to the threshold issue of arbitrability, until the Defendants' pending Motion to Compel Arbitration is resolved.

Argument

"As the Supreme Court has emphasized, the FAA strongly favors the enforcement of agreements to arbitrate as a means of securing 'prompt, economical and adequate solution of controversies.'" *PCH Mut. Ins. Co. v. Cas. & Sur., Inc.*, 569 F. Supp. 2d 67, 71 (D.D.C. 2008) (quoting *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 479–80, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989)).

The South Carolina Court of Appeals has indicated that a party seeking arbitration should seek the protection of the Court to halt discovery during the pendency of motion to compel arbitration. *See Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551, 575 S.E.2d 74, 77 (Ct. App. 2003) ("[D]uring the pendency of a ruling on its motion to dismiss and compel arbitration, [Defendant] could have sought the circuit court's protection under SCRCP 26(c)(1) from requirements that it engage in further litigation. As the party seeking arbitration, [Defendant] bore the onus to halt discovery by seeking the court's protection.").

Although there is sparse South Carolina caselaw bearing specifically on this issue, it is recognized by federal courts that a stay of discovery during the pendency of a motion to compel arbitration is appropriate because it furthers judicial economy and because failing to stay discovery would frustrate the very purpose of the arbitration agreement.

"[R]equiring the parties to submit to full discovery [prior to a ruling on the arbitrability issue] may unnecessarily subject them to the very complexities, inconveniences and expenses of litigation that they determined to avoid." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Coors*, 357 F. Supp. 2d 1277, 1280 (D. Colo. 2004) (internal quotations omitted). A "state judge's refusal to stay discovery on the merits of the providers' breach of contract claims until the issue of arbitrability is resolved puts the cart before the horse. If a dispute is arbitrable, responsibility for the conduct of discovery lies with the arbitrators." *CIGNA HealthCare of St. Louis, Inc. v. Kaiser*, 294 F.3d 849, 855 (7th Cir. 2002), as amended (July 31, 2002). "[D]elaying a decision on a motion to compel arbitration until after discovery is completed defeats the goal of resolving arbitration issues promptly. We also agree that the trial court lacks discretion to defer ruling on a motion to compel arbitration until the completion of all discovery in the case because doing so forces the parties to litigate their dispute in the trial court even though it may ultimately be determined that all or some of the claims are subject to arbitration." *In re Champion Techs., Inc.*, 173 S.W.3d 595, 599 (Tex. App. 2005). "[T]he defendants will not be afforded the benefits of arbitration should discovery continue and they prevail on their motion to compel arbitration." *Brown v. CMH Mfg., Inc.*, No. CIV.A. 2:13-31404, 2014 WL 2973349, at 2 (S.D.W. Va. July 2, 2014). "[A] court order of discovery would be affirmatively inimical to appellee's obligation to arbitrate, if this court determines it to have such obligation." *Lummus Co. v. Commonwealth Oil Ref. Co.*, 273 F.2d 613, 613 (1st Cir. 1959).

Pursuant to Rule 11(a), SCRCP, undersigned counsel affirms that he has communicated with opposing counsel in a good faith attempt to resolve the subject of this motion.

Conclusion

For the foregoing reasons, and any raised in supporting memorandum, exhibits, and affidavits, and in oral argument, Defendants respectfully request an Order from this Court staying all discovery in this matter that is unrelated to the threshold issue of arbitrability, until the Defendants' pending Motion to Compel Arbitration is resolved.

[signature on next page]

Respectfully submitted,

HOLCOMBE BOMAR, PA

s/Timothy Maio
Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

Attorneys for Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

July 3, 2025
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-23-06777

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF 18 Oakview Park PropCo, LLC; and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") respectfully ask that this Honorable Court grant their Motion to Compel Arbitration and Stay Proceedings.

Factual Background

Virginia Parsons was a resident at the Oakview Park Assisted Living facility. On or about March 21, 2023, the Plaintiff, Sandra Parsons White, signed the Oakview Park Residency Agreement on behalf of Virginia Parsons. (**Exhibit 1**, Residency Agreement).

The Residency Agreement included an arbitration provision:

> Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law.

(**Exhibit 1**, Residency Agreement 000008).

The Residency Agreement also provides that the Federal Arbitration Act (FAA) governs the arbitration. "The Federal Arbitration Act (9 U.S.C. § 1, et seq) concerning arbitration shall govern the procedure . . ." (**Exhibit 1**, Residency Agreement 000008).

Legal Standard

The FAA provides that "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C.A. § 4.

However, if "a party denies the existence of an arbitration agreement, and the circuit court finds there is a bona fide dispute regarding whether an arbitration agreement was formed, then 'the court shall proceed summarily to the trial' to determine if a valid arbitration agreement was formed." *Hackworth v. Bayview Manor, LLC*, No. 2019-001536, 2023 WL 2519244, at 3 (S.C. Ct. App. Mar. 15, 2023) (quoting 9 U.S.C.A. § 4).

“When a court is deciding whether there is a bona fide dispute regarding the making of the arbitration agreement, the court is obliged to employ a standard such as the summary judgment test.” *Id.* (internal quotations and citations omitted).

“The party resisting arbitration bears the burden of showing an entitlement to a jury trial under the FAA and must produce some evidence to substantiate the allegations that the prevailing law would release him from a contractual obligation to arbitrate.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38 n.3, 524 S.E.2d 839, 844 n.3 (Ct. App. 1999).

<u>Argument</u>

I. The Arbitration Provision Must be Construed and Applied in Accordance with the Federal Arbitration Act.

“The basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590-91, 553 S.E.2d 110, 115 (2001). “To that end, the United States Supreme Court held in *Allied–Bruce* that, unless the parties specifically contracted otherwise, the FAA would apply whenever an arbitration agreement involves interstate commerce.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014).

> Since the Supreme Court decided *Allied–Bruce*, many—if not all—federal and state courts have held that nursing home residency contracts similar to the one at issue here implicate interstate commerce and the FAA. Generally, these holdings center on a common theme: nursing home residency contracts usually entail providing residents with meals and medical supplies that are inevitably shipped across state lines from out-of-state vendors. We likewise find the terms of the residency agreement implicate interstate commerce and, thus, the FAA.

> Appellants are contractually required to provide meals and medical supplies, which are instrumentalities of interstate commerce.

Id. at 381, 759 S.E.2d at 732.

"Generally, under South Carolina choice of law principles, if the parties to a contract specify the law under which the contract shall be governed, the court will honor this choice of law." *Howell v. Covalent Chem., LLC*, 435 S.C. 345, 351, 867 S.E.2d 264, 267 (Ct. App. 2021).

Here, the Residency Agreement provides that "[t]he Federal Arbitration Act (9 U.S.C. § 1, et seq) concerning arbitration shall govern." (**Exhibit 1**, Residency Agreement 000008).

Because the Residency Agreement states that the FAA applies and because the Residency Agreement implicates interstate commerce, the Agreement must be construed and applied in accordance with the FAA.

II. Under the FAA and the *Prima Paint* Doctrine, the Sole Issue Before the Court is Whether there was an Agreement to Arbitrate.

The FAA provides that "upon being satisfied that **the making of the agreement for arbitration** or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C.A. § 4 (emphasis added).

In *Prima Paint*, the petitioner alleged it was fraudulently induced by the respondent into entering a contract that contained an arbitration provision. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 397 (1967). Applying and interpreting the language of the FAA, the United States Supreme Court held that the arbitrator, and not a court, had to resolve the petitioner's fraudulent inducement claim because "arbitration clauses as a matter of federal law are separable from the contracts in which they are embedded, and that where no claim is made that fraud was directed to the arbitration clause itself, a broad arbitration clause will be held to encompass arbitration of the claim that the contract itself was induced by fraud." *Id.* at 402.

The Supreme Court explained that a "court may consider only issues relating to the making and performance of the agreement to arbitrate." *Id.* at 404.

"[I]n *Prima Paint* and subsequent decisions, the United States Supreme Court held challenges to the contract containing an arbitration provision (sometimes referred to as the "container contract") are for the arbitrator to decide, while challenges to the arbitration provision itself are for the court to decide." *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 384, 892 S.E.2d 112, 115 (2023), reh'g denied (Sept. 27, 2023).

Accordingly, the sole question before the Court is whether there was an agreement to arbitrate. If there was an agreement to arbitrate, the Court must submit this matter to arbitration. If there was an agreement to arbitrate, an arbitrator, and not a court, must decide any potential disputes between the parties regarding the scope of the arbitration provision, the scope of discovery, or the validity or enforceability of other provisions of the "container contract."

III. There was an Agreement to Arbitrate.

Here, there was an agreement in writing to arbitrate, as evidenced by the

Residency Agreement. (**Exhibit 1**, Residency Agreement). While Virginia Parsons did not sign the Residency Agreement herself, the Residency Agreement was signed by Sandra Parsons White on Virginia Parsons' behalf. As will be discussed below in greater detail, Sandra Parsons White had both the actual and apparent authority to sign the Residency Agreement on behalf of Virginia Parsons.

Because Sandra Parsons White was acting as Virginia Parsons' agent when she signed the Residency Agreement, Virginia Parsons and Virginia Parsons' estate and statutory beneficiaries are bound by the arbitration provision contained therein. *See Malloy v. Thompson*, 409 S.C. 557, 561–62, 762 S.E.2d 690, 692 (2014) ("The court of appeals has recognized that five theories arising out of common law principles of contract and agency law could provide a basis for binding nonsignatories to arbitration agreements: 1) incorporation by references; 2) assumption; 3) agency; 4) veil piercing/alter ego; and 5) estoppel.") (internal quotations omitted)).

A. Sandra Parsons White Acted with Actual Authority When She Signed the Residency Agreement on Behalf of Virgina Parsons.

On April 7, 2006, Virginia Parsons executed a general durable power of attorney. (**Exhibit 2**, POA 000001). The power of attorney named her husband, Robert Parsons, as her Agent, and her daughter, Sandra Parsons White, as substitute or Successor Agent should Robert Parsons be unable to continue serving as Agent. (**Exhibit 2**, POA 000001).

On or about July 4, 2016, Robert Parsons passed away. (**Exhibit 3**, Probate Case Summary). Accordingly, under the terms of the Power of Attorney, Sandra Parsons White became Virginia Parsons' Agent on or about July 4, 2016.

A trial court may take judicial notice of facts on its own accord and "shall take judicial notice if requested by a party and supplied with the necessary information." Rule 201, SCRE. The court may take judicial notice of a fact that is "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201(b), SCRE. The court may also take judicial notice of matters of public record. *See Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007)("[W]e may properly take judicial notice of matters of public record.").

Attached to this motion as Exhibit 3 is a "case summary" of Robert Parsons' probate estate case, reflecting that his date of death was July 4, 2016. This is a public record maintained by the Anderson County probate court and is available on the probate court's website.[1] Defendants ask this Court to take judicial notice of the fact that Robert Parsons passed away on or about July 4, 2016, as this is a matter of public record and cannot reasonably be disputed by the Plaintiff.

The power of attorney gave Sandra Parsons White the power, amongst other things, to "settle, compromise, or submit to arbitration all claims, demands, accounts, disputes, or differences between me and any other person or persons" on behalf of

[1] Available at:
https://govcloud2.hostedbyspartan.com/AndersonPRO/PublicProbate/pages/CaseDetailPage.aspx?AgencyId=04500&CaseId=57620&PartySeq=1

Virginia Parsons. (**Exhibit 2**, POA 000001, ¶3). Sandra Parsons White also had the express authority under the power of attorney to "do all acts necessary for maintaining my customary standard of living, to provide living quarters by purchase, lease or other arrangement, and if necessary to make all arrangements, for me at any hospital, nursing home, or similar establishment" on behalf of Virginia Parsons. (**Exhibit 2**, POA 000003, Section II).

Accordingly, Sandra Parsons White had the actual authority, under the express terms of the general durable power of attorney, to agree to the Residency Agreement, and the arbitration provision therein, on behalf of Virginia Parsons.

B. Sandra Parsons White Acted with Apparent Authority when she Signed the Residency Agreement on Behalf of Virgina Parsons.

"Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations." Restatement (Third) Of Agency § 2.03 (2006).

Sandra Parsons White told the Oakview Park facility that she had the authority to sign the Residency Agreement on behalf of Virginia Parsons and it was reasonable for the facility to believe and rely upon this representation. This reasonable belief was traceable to the principal's manifestations, to include the aforementioned power of attorney, which was a public record, accessible online, and duly recorded in the Anderson County Register of Deed's Office. (*See* **Exhibit 2**, POA).

Accordingly, in addition to acting with actual authority, Sandra Parsons White also acted with apparent authority when she signed the Residency Agreement on behalf of Virginia Parsons.

C. The Agreement to Arbitrate Binds Virginia Parsons' Estate and Statutory Beneficiaries.

Virginia Parsons' power of attorney states that:

> [A]ll acts lawfully done by my Agent hereunder are done with my consent and shall have the same validity and effect as if I were personally present and personally exercised the powers myself, and **shall inure to the benefit of and bind me and my heirs, assigns and personal representatives**.

(**Exhibit 2**, POA 000007) (emphasis added).

South Carolina's survival and wrongful death statutes are also both derivative in nature. They both allow personal representatives/heirs/beneficiaries of a decedent to pursue claims *that the decedent possessed while alive*. However, neither the survival statute nor the wrongful death statute permit a plaintiff to pursue a claim that was settled, extinguished, or that the decedent had agreed to arbitrate while the decedent was alive.

The wrongful death statute provides that:

> Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued**, have entitled the party injured to maintain an action and recover damages in respect thereof**, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured . . .

S.C. Code Ann. § 15-51-10 (emphasis added).

"If the decedent settled, or prosecuted to judgment, his personal injury claims against a certain defendant during his lifetime, his heirs or beneficiaries are precluded from bringing a wrongful death claim against that defendant after the decedent's death." *Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 667, 869 S.E.2d 819, 852 (Ct. App. 2021), aff'd sub nom. *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 905 S.E.2d 380 (2024).

"Although a wrongful death claim is for the benefit of the decedent's family, South Carolina treats this claim as derivative of the decedent's own personal claim during his lifetime." *Id.* at 667, 869 S.E.2d at 851. "The right of an administrator to sue for wrongful death in South Carolina depends upon whether the decedent could have sued for the injury had he survived." *Todd v. Sandidge Const. Co.*, 341 F.2d 75, 76 (4th Cir. 1964).

"Our jurisprudence makes clear that if the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate. Succinctly stated, if the decedent had no claim at his death, the estate has no claim." *Est. of Stokes ex rel. Spell v. Pee Dee Fam. Physicians, L.L.P.*, 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010). "We reaffirm today that a claim under the Wrongful Death Act lies in the decedent's estate only when the decedent possessed the right of recovery at his death." *Id.* at 349, 699 S.E.2d at 146.

"We note that courts may not refuse to compel arbitration simply because a wrongful death claim is involved." *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 378, 759 S.E.2d 727, 731 (2014).

Because Sandra Parsons White had the authority to sign the Residency Agreement on Virginia Parsons' behalf, Virginia Parsons was herself bound by the Residency Agreement and the arbitration provision therein. Because Virginia Parsons was bound by the arbitration provision at the time of her passing, Virginia Parsons' estate and statutory beneficiaries are also bound by the arbitration provision.

Conclusion

For the foregoing reasons, and any raised in oral argument or in subsequent memoranda of law, Defendants respectfully request that this Court grant their Motion to Compel Arbitration and to stay this proceeding until such arbitration is completed.

[signature on next page]

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/ Timothy Maio
Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

Attorneys for Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

August 13, 2025
Spartanburg, South Carolina

CERTIFICATE OF AUTHENTICITY
&
BUSINESS RECORDS CERTIFICATION

I am the records custodian for the Oakview Park Assisted Living facility and am the person responsible for keeping and maintaining the admissions documentation and records for the facility. As such, I have personal knowledge of how the admission documents and records at Oakview Park Assisted Living are created and maintained.

I hereby certify that the attached Residency Agreement 000001-000020 is a true, accurate, and authentic copy of the residency agreement that Sandra White signed on or about March 21, 2023. It was the regular practice of Oakview Park Assisted Living to create and maintain this documentation. Furthermore, the attached Residency Agreement 000001-000020:

a) Was made contemporaneously by someone with knowledge of the matters set forth therein;
b) Was kept in the course of regularly conducted business activity; and
c) Was made according to regular business practice.

I make the above statements and certifications based upon my personal knowledge as the records custodian for the Oakview Park Assisted Living facility and declare, certify, verify, and under penalty of perjury affirm that the foregoing is true and correct.

Date: 7/23/25 By: [signature]
(signature)

Jennifer A. Klein
(printed name)

Sworn to (or affirmed) and subscribed before me this 23 day of July, 2025.

[signature]
Official Signature of Notary

Notary Public of South Carolina

My commission expires: 07 July 2030

JENNIFER M. ROSE
NOTARY
My Comm. Expires
JULY. 7, 2030
PUBLIC
SOUTH CAROLINA

DEFENDANT'S EXHIBIT
1

OAKVIEW PARK

Assisted Living & Memory Care

RESIDENCY AGREEMENT

This Agreement ("Agreement") dated _3-17-2023___ is made by and between AFF18 Oakview Park ALF LLC dba Oakview Park (the "Company," "us," "we" or "our") and _Virginia Parsons/Sandy White_ ("you" or "your").

We own and operate the community located at 110 Hood Road Greenville, SC 29611 (the "Community") which is licensed by the State of South Carolina as an assisted living community and residency in the Community has been requested by you or on your behalf. The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS.

A. **BASIC SERVICES.** We will provide you with the following Basic Services, which are included in the Basic Service Rate, subject to the terms of this Agreement:

1. Accommodations - You have elected to live in the Suite described in Exhibit A. You are also entitled to use and enjoy with all other residents the common areas of the Community. You are to provide your own furnishings and personal property; however, we reserve the right to limit the number and type of furnishings/small appliances. You agree that you are responsible for the maintenance and repair of any personal belongings you bring to the Community. Resident is responsible for providing all personal care items. See attached form.

2. Dining Services - We will provide three meals daily. Snacks are available and offered to residents 24 hours a day.

3. Utility Service - The cost of gas, electric, heat, air conditioning and water service are included in the Basic Service Rate. The cost of basic cable, satellite or comparable television service is included in the Basic Service Rate. You are responsible for paying any other utility charges including, but not limited to, telephone, or premium cable charges.

4. Housekeeping Service - We will provide housekeeping once a week with a thorough cleaning of the resident's room. We will provide a daily tidy to include making the bed and taking the trash out.

5. Laundry and Linen Service - We will launder your personal belongings and bed linens once a week and on an as needed basis as included and agreed upon in the personal service plan.

6. Activities Program - We will provide planned social and recreational programs that the resident will be encouraged to participate in.

7. Scheduled Transportation - Scheduled routine transportation on Tuesdays is provided for medical, dental, financial, and shopping services within a twenty (20) mile radius of the Community, as well as for scheduled social and leisure activities. For transportation not on Tuesday, you will incur a $30 flat fee. If a community associate is needed to accompany the resident, you will incur a $15 hourly charge for the escort service. Please see the Executive Director for regularly scheduled doctor's appointments.

8. Emergency Transportation – Emergency transportation will always be available by local emergency personnel. **Oakview Park does not provide transportation services to and from the hospital for emergency care. The responsible party and the hospital are responsible for arranging transportation for return to Oakview Park.**

9. Personal Services - We will provide those personal services that are included as part of the care plan assessment as described in Section 1.B. below.

10. Staffing 24 hours a day - Associates are available 24 hours a day, seven days a week.

B. **CARE PLAN.** Within 7 days of moving in and at least every six months throughout your residency, we will use a care plan assessment to determine the personal services you require. The care plan assessment will be used to develop your Personal Care Plan. The results of the assessment will be shared with you.

C. **AVAILABLE SELECT SERVICES.** Select Services are available to you at your request. Such additional services are not included in the Basic Service Rate. Where available, such services may include, but are not limited to guest meals, transportation escort services, enhanced cable television, sitter services or special events.

D. **SERVICES NOT COVERED BY RESIDENCY AGREEMENT.** In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the Community. An outside agency or individual will be permitted to provide these services or any related personal services only if we have given prior approval. The Community is not staffed and not authorized to perform skilled nursing services nor provide care for any injury or acute condition that requires medical care that is expected to last for more than ninety (90) days. You understand and agree that if you should need skilled nursing services or require care for an injury or acute condition that is expected to last for more than ninety (90) days you will be discharged by the Community after prior written notice. This shall not apply to residents admitted to a hospice program.

You are responsible for obtaining and paying for all services that are not included in the Basic Services or Personal Care Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by us, our subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy, therapy, private companion, beauty/barber or other health care services. Fees for such services will be billed to you directly by the service provider, unless otherwise agreed to by the parties. All third party service providers (including, but not limited to, health care service providers) must agree to adhere

to our standards for outside providers prior to being permitted to provided services in the Community. Pharmacy services will be provided in accordance with the Pharmacy Services Agreement attached.

Exhibit B. You may not hire our current associates to provide services in the Community. You may contract with former associates to perform services at the Community only with our prior written consent. We reserve the right to refuse entry to (1) former associates; (2) persons whose actions may be disruptive to the Community; or (3) persons whose actions may threaten the safety of any resident or associate. We should be notified prior to any sitter service being contracted by the responsible party.

II. YOUR RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE. You agree that the Community and the Suite are in satisfactory, habitable condition and we have made no promise to decorate, alter or improve the Community or Suite unless otherwise provided in writing and attached as part of this Agreement. You agree to maintain the Suite and to leave the Suite upon termination of this Agreement in good condition, except for normal wear and tear. You agree to pay all damages, beyond normal wear and tear, which you (including your agent, employee, contractor, or other invitee) cause to our property and we may invoice you for the cost of such repairs. The community will split the cost of replacing the carpet one time during the resident's stay at the management's discretion and agreement with the responsible party. The community will clean the resident's carpet as needed at the discretion of management. If carpet requires cleaning more than one time per month, the cost will be split between resident and community.

B. ALTERATIONS. We, in our sole discretion, will permit reasonable alterations to the Suite if you have a disability and the proposed modification is necessary to afford you full enjoyment of the Suite. Structural or physical alterations, whether based on a handicap or not, may be made only upon our prior written approval. All structural or physical changes to the Suite shall remain at the Suite and be considered part of the Suite and the Community. Any changes or modifications to the Suite that require assistance of appropriately licensed and insured electricians, contractors or similar professionals must be approved in advance by us in writing in our sole discretion. The cost of any alterations made by you shall be paid by you unless we otherwise agree in writing. You agree that you will bear the cost of restoring the Suite to its original condition, reasonable wear and tear excepted, upon the termination of this Agreement, unless we specifically exempt you from this requirement in writing. We may enter and make any modifications or alterations to the Suite to meet the requirements of any applicable law.

C. RIGHT OF ENTRY. For your safety and comfort, our associates must be permitted to enter your Suite to provide services under the terms of this Agreement, to respond to emergencies, to make repairs and improvements, or if there is reasonable belief that your safety or the safety of others is in question or that our policies and procedures are being violated, as we deem necessary or advisable. Therefore, it is not permissible to change the locks or add additional locks to the entrance door to your Suite. When feasible, our associates will attempt to give you reasonable notice before entering your Suite. If you have a list of certain visitors that cannot visit your loved one, we ask that you give that in writing so we can keep in the residents file.

We reserve the right to relocate you to a more appropriate Suite within the Community as required for your health or safety, or because the residents of a companion Suite are incompatible.

D. HEALTH ASSESSMENT. You agree that we may assess your health to create and update a Personal Care Plan and/or to determine whether you are appropriate to remain at the Community. Not more than thirty (30) days prior to the date of this Agreement, and at least annually thereafter or upon our request, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree to undergo examination by a particular specialist, at your cost, as we determine is warranted by your current physical or mental status. You will request the examiner to provide us with recommendations, including a statement attesting to the appropriateness of your continued placement. Based upon the assessment(s) and our judgment, we may determine your appropriateness to remain in the Community. You will request the examiner to perform any tests and complete any forms required by us or applicable law.

E. HEALTH CARE PROVIDER NOTIFICATION. You authorize us to contact your legal representative/family, health care providers, and/or other persons listed in your records (1) if it is necessary to advise them of your situation; (2) to arrange for required health care services and other assistance; or (3) in case of an emergency.

If your designated health care providers are unavailable, you authorize us to arrange for the services of other health care providers. You agree we may provide such persons with copies of your records, including, but not limited to, resident records, advance directives, living will, and the names of persons empowered to make health care decisions.

F. SUBSTITUTE DECISION MAKERS/ADVANCE DIRECTIVES. You will provide us with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You will provide us with copies of any power of attorney, guardianship, living will, or conservator documents, or other legal documents relating to the making of health or financial decisions or decision-makers. You authorize us to rely on the instructions of such designees or appointees. You further agree to immediately notify us of changes relating to the information stated above.

It is strongly suggested that you have advance directives in place in the event you become incapacitated. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company). Neither we nor any of our associates or agents may be your guardian. If it is necessary for us to petition the court for appointment of a guardian, any costs associated therein shall be paid by you and we may invoice you for such costs.

G. ELECTRIC SCOOTERS. Electric scooters and similar vehicles will be allowed provided community management agrees that residents can maneuver the scooter in a safe manner. In the event this changes, the resident will not be allowed to operate an electric scooter inside the community.

H. RESPONSIBILITIES UPON TERMINATION. You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the

effective date of termination, you understand and agree that we may continue to charge you for the Basic Service Rate of your Suite, or have your belongings placed in storage at your cost. You further agree that we may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail. Termination will not release you or us from any liability or obligation to the other party under the terms of this Agreement.

I. **EXAMINATION OF RECORDS.** You acknowledge that we are licensed by the State of South Carolina as an assisted living community. You understand that regulatory officials having jurisdiction over the Community may inspect your records as part of an evaluation of the Community. You have the right to review and access your health care records in accordance with the requirements of applicable law.

J. **RULE AND REGULATION COMPLIANCE.** You understand that the Community has shared common areas, and you agree to honor all rules of courtesy and respect for others. You agree to abide by and conform to our rules (including, but not limited to, the Oakview Park House Rules attached hereto as Exhibit C), regulations, handbook, policies and procedures as they now exist and as amended from time to time. You understand that failure to abide by such policies may result in your discharge from the Community.

K. **GUESTS.** You have the right to associate with your friends and family during reasonable hours. Because the Community is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the circumstances.

L. **RESIDENT WORK.** The Community may not require you to work or to perform any services for the Company.

III. RATES.

A. **COMMUNITY FEE.** We require a one-time non-refundable Community Fee in an amount indicated in Exhibit A to be paid at the time this Agreement is signed. The Community Fee does not excuse you from financial responsibility for any damage to your Suite beyond normal wear and tear upon move-out.

B. **BASIC SERVICE RATE.**

1. Rate. You agree to pay the Basic Service Rate as indicated in Exhibit A.

2. Refund. We will refund a prorated share of the Basic Service Rate if this Agreement is terminated before the end of a month:

   a. Following written notice in accordance with Section IV;

   b. Because you require care that is not offered by us; or

   c. By reason of death.

Refunds will be prorated using 30 days to calculate the Daily Rate, from the later of the termination date or the date by which you have vacated, and all of your belongings are removed from Community. Unless prohibited by law, you agree we may offset such refunds by any amount due under the terms of this Agreement.

C. ABSENCES.

1. Notice of Absence. Except for an emergency medical absence, if you will be absent from the Community for any period of time, you must inform us of your plans prior to leaving and sign the Sign In/Sign Out Book upon exiting and re-entering the Community. We assume no responsibility or liability for your welfare during times that you are away from the Community.

2. Fees During Absence. If you are absent from the Community for any reason, such as, for a hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Basic Service Rate. If you provide written notice of your intent to terminate the Agreement pursuant to Section IV, termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES. In addition to the Basic Service Rate, you agree to pay the established charges for any Select Services provided to you by us.

E. PAYMENT. We will issue a monthly statement before the first day of the month itemizing the Basic Service Rate for the upcoming month and, if any, charges incurred for Select Services provided during prior months. Payment for all charges shown on the statement is due on the first (1^{st}) calendar day of each month. The first payment of the Basic Service Rate is due prior to taking occupancy. If you take occupancy after the first of the month, your first Basic Service Rate will be prorated using 30 days to calculate the Daily Rate.

We will charge a $50.00 late fee if we have not received all fees when due. We will also charge a $30.00 returned payment fee for each check or automatic withdrawal that is returned or denied for any reason. After two such occurrences, you agree to pay all amounts due by cashiers' check or such other method specified by us. You also agree to pay interest on all outstanding amounts based upon the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES. We will provide thirty (30) days written notice of any change in the rates for Basic Services or Select Services. We may offer or require a change in the Personal Care Plan when we determine additional services are requested or required.

G. GRIEVANCES/OMBUDSMAN. In the event you and/or your responsible party (on behalf of you) have a grievance regarding the Community or its services, you may follow the Community's grievance procedure as set forth in Exhibit D. In the event any dispute regarding payment of fees or monies owed arises and cannot be resolved by the Company and you or your legal representative, the local ombudsman may be able to provide assistance.

IV. TERM AND TERMINATION.

A. TERM. This Agreement begins on the date set forth above and continues until terminated as provided below.

B. TERMINATION BY RESIDENT. You may terminate this Agreement upon fourteen (14) days written notice to us. Termination occurs on the later of the end of the notice period or upon the removal of all of your personal belongings. You will be given a pro-rated refund based when your belongings are removed or when your 14-day notice is up.

C. TERMINATION BY THE COMPANY. We may terminate this Agreement, upon providing you thirty (30) days written notice, for any of the following events, as determined by us:

1. You require care or services that we are unable to provide or which requires staff that are not available at the Community.

2. You require more than 90 days of part-time intermittent skilled nursing care;

3. Your behavior or your visitors' behavior impairs the well-being, care or safety of yourself or others, creates unsafe conditions, is physically or verbally abusive to others, or otherwise interferes with the orderly operation of the Community;

4. For your welfare or the welfare of others in the Community;

5. You or your third-party payor fail to pay fees and charges when due, or you breach any representation, covenant, agreement, or obligation under this Agreement.

6. We are unable to meet the needs of the resident or responsible party.

We may, upon written notice to you, immediately terminate this Agreement, and transfer or discharge you for emergency medical or welfare reasons that would endanger the health and safety of yourself or others. If the emergency requires your immediate transfer, we will notify your legal representative as soon as practical. We will provide a written explanation for termination with less than thirty (30) days' notice.

D. TERMINATION BY EITHER PARTY. Either party may terminate this Agreement immediately upon written notice in the event of the resident's death or if a physician certifies to us in writing, based upon an examination prior to moving out, that you must be relocated due to your health. Consideration may be made for extenuating circumstances if belongings cannot be removed during this timeframe. The basic service rate will be charge on the last day that the resident's belongings are in the apartment.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION.

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

A. ARBITRATION PROVISION.

1. Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will <u>not</u> decide their case.** The Federal Arbitration Act (9 U.S.C. § 1, *et seq*) concerning arbitration shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.

2. A demand for arbitration by you, your legal representative, a person or organization acting on our behalf with your consent, or the personal representative of the estate of your estate (collectively "Resident Party") shall be made in writing and submitted to Atlas Senior Living, LLC, 2700 Highway 280 Suite 460 Birmingham, AL 35223 Attn: Manager, via certified mail, return receipt requested. Demand for arbitration by us shall be made in writing and submitted to you or your agent, representative, successor or assign and/or your legal representative via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.

4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of Section A.5, the parties shall agree upon an arbitrator that must either be a retired Georgia circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. I the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then each party will select an arbitrator. These arbitrators will act only for the purpose of appointing a sole arbitrator to h ear the case, subject to the criteria above. If either party fails to select their arbitrator within the twenty (20) days mentioned above, they effectively forfeit their right to choose an arbitrator.

5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

6. Discovery in the arbitration proceeding shall be governed by the South Carolina Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:

a. The Resident Party shall provide us with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and we shall reimburse Resident Party $0.25 per page.)

b. We shall provide the Resident Party with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse us $0.25 per page).

c. The only depositions allowed shall be of experts. No other individuals may be deposed.

d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.

e. We shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

f. We shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.

g. Resident Party shall have thirty (30) days after our expert designation is received in which to depose such experts.

h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.

i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:

   1) List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witness' intended testimony;

   2) List of documents to be relied upon at the arbitration hearing;

   3) Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.

j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.

7. The arbitrator shall designate a time and place within the county in which the Community is located for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.

8. The arbitrator shall apply the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, South Carolina law except as otherwise stated in this Arbitration Provision.

9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.

10. The arbitrator's decision shall be final and binding without the right to appeal.

11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

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

13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision.

14. The Arbitration Provision and the Limitation of Liability Provision below shall survive your death.

B. <u>LIMITATION OF LIABILITY PROVISION</u>. *Read Carefully Before Signing.*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.

2. Liability for <u>any</u> claim brought by a party to this Agreement against the other party, including but not limited to a claim by us for unpaid Basic Service Rate or other charges, or a claim by, or on behalf of you, Resident Party or your estate, agent or legal representative, arising out of the care or treatment received by you or your occupancy or presence at the Community, including, without limitation, claims for medical negligence, shall be limited as follows:

   a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.

b. Non-economic damages, such as pain and suffering, shall be limited to a maximum of $400,000.00.

c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.

d. Punitive damages shall not be awarded.

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

C. <u>BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS</u>. The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, we are better able to offer our services and accommodations at a rate that is more affordable to you. In terms of the time-savings offered by selecting arbitration, the parties recognize that selecting a quick method of resolution is potentially to a Resident's advantage.

You or your legal representative understands that other assisted living companies' Agreements may <u>not</u> contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

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

VI. MISCELLANEOUS.

A. <u>WAIVER OF TRIAL BY JURY</u>. If a court determines that the Arbitration Provision provided above is invalid, the parties express their desire to waive a jury trial and resolve any claims in the appropriate court solely before a judge.

B. <u>NON-DISCRIMINATION</u>. We operate on a non-discriminatory basis and afford equal treatment and access to services to eligible persons regardless of race, religion, color, national origin, sex, disability or any other category protected by applicable law.

C. <u>RISK AGREEMENT</u>. You are responsible for your personal, financial and health care decisions. You are also responsible for maintaining health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance in an amount adequate to cover your personal property and your general liability. You acknowledge that we do not insure your person or property. You understand and agree that:

1. We may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs.

2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss.

3. The standard of service for an assisted living community does not include one-on-one care, assistance or supervision, e.g., one resident assistant for each resident, or immediate response to non-emergent needs. There may be short and long periods of time in which you will be left alone, unsupervised such as while watching television, listening to music, reading, and sleeping at night.

4. We make no representations or guarantees that our associates can prevent falls. We do not represent or guarantee that your health condition will not change or deteriorate.

5. We make no representations or guarantees that our associates can prevent the onset of skin break down or the worsening of existing skin break down.

6. Our services may not meet all of your personal, social, or health care needs and we will attempt to assist you in arranging for such services which are not included in this Agreement.

7. Many residents suffer from cognitive impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior such as wandering, confusion, forgetfulness, agitation, and aggressive behavior towards others. We make no representations or guarantees that we can predict the behavior of our residents. Therefore, we also make no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical, or aggressive contact with another resident.

8. We make no representations or guarantees that we can prevent the loss of personal items, including but not limited to clothing, dentures, hearing aids or other medical equipment. We will not be responsible for the loss of such items. We make no representations or guarantees that we can prevent theft or other criminal acts perpetrated by another resident or person; therefore, we recommend that valuables such a jewelry and large sums of money, not be kept at the Community. If you choose to bring in valuables, you do so at your own risk and we will not be held responsible for any theft or loss of such items.

9. Due to state regulations and fire code, we may not lock our exterior doors against exiting. Therefore, we cannot guarantee that a resident will not wander from the Community. Some buildings have exterior doors that are alarmed with a delayed egress feature and our systems are designed to alert our associates to respond and assist a resident if they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold us, our associates and agents harmless for any damages, injury or other loss resulting from: (i)

reasonable acts or omissions made in good faith; (ii) action by a third party, fire, water, theft or the elements; or (iii) loss of personal property.

D. PETS. Pets are permitted in the Community considering that the resident can provide the needed care for the pet. In the event the resident cannot meet the pet's needs, the pet will no longer be able to remain at the community. There is a non-refundable pet fee of $400 due at move in. As needed/annual pet immunizations are to be given to the community.

E. SMOKING. Smoking is permitted in designated areas.

F. WEAPONS. Weapons, as defined by us, are not allowed in the Community or on Community property. This includes but is not limited to firearms, explosive materials, and collectible or antique weapons.

G. ASSIGNMENT. This Agreement is not assignable without our prior written consent. Our rights and obligations may be assigned to any person or entity which will be responsible to ensure our obligations under this Agreement are satisfied in full from the date of notification. We may engage another person or entity to perform any or all of the services under this Agreement.

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

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

J. FINANCIAL RESPONSIBILITY. You have designated a Guarantor, who has agreed to the terms of the Statement of Financial Responsibility attached hereto as Exhibit E.

K. SUBORDINATION. This Agreement and the parties' rights hereunder are subordinate to any lease, mortgage or deed of trust placed upon the Community, but you may remain in your Suite so long as you comply with the provisions of this Agreement.

L. REPRESENTATION AND WARRANTY. By executing this Agreement you represent and warrant that all representations made by you or on your behalf, whether written or verbal, with respect to your application for admission to the Community were true when made. You understand that we rely upon the truthfulness of this information in making our decision to enter into this Agreement. Your application forms, including personal data forms, statement of financial condition (if applicable), health history and medical reports submitted by you or on your behalf to us, are incorporated by reference into this Agreement and made an express part of it. You understand and agree that any material misrepresentation or omission made by you or on your behalf in connection with these documents shall make this Agreement voidable at our option, to the extent permitted by law.

M. CHOICE. You have a choice of providers for private sitters, therapy, rehabilitation, home health and other health care services. If you require such services, Community associates will assist you in obtaining such services from a provider of your choice. We will require that your provider of choice provide background checks and liability insurance for any employees that residents at the Community. Any outside provider must go through proper vetting and so prior authorization by the Executive Director is required.

N. ASSIGNMENT OF BENEFITS. To the extent that the Community participates in a government payor program, long term care insurance program or other insurance program ("Third Party Payor") of which you are a beneficiary, you authorize us to disclose any medical or administrative information and request payment. You certify that the information given in applying for payment from such Thirty Party Payor is correct. You authorize release of all medical and administrative records required to act on this request and request that payment of authorized benefits be made on your behalf. You authorize us to disclose any medical or administrative information required in the processing of applications for financial coverage for services rendered. To the extent permitted by your Third Party Payor, you authorize direct payment of all benefits to us.

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

Company:
Oakview Park
110 Hood Road
Greenville, SC 29611
Attn: Executive Director

Resident: Virginia Parsons

Legal Representative/Responsible Party: Sandy White
(as noted below on following page)

[signatures on following page]

WE BELIEVE IT IS IMPORTANT TO DISCLOSE ALL SERVICES AND FEES TO THE BEST OF OUR ABILITY AND IN ACCORDANCE WITH THE LAW. WE RECOMMEND THAT YOU CONSULT WITH LEGAL COUNSEL TO ENSURE UNDERSTANDING OF THIS AGREEMENT BEFORE SIGNING. I ACKNOWLEDGE RECEIPT OF RESIDENT BILL OF RIGHTS.

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

Sandy White 3/21/2023

Legal Representative/Responsible Party Date

Oakview Park, LLC
By: Atlas Senior Living, LLC, its manager

Sandy White ATF 3/21/2023
Signature Title Date

LEGAL REPRESENTATIVE/RESPONSIBLE PARTY ADDRESS:

Name: Sandy White

Address: [redacted]

Phone No.: [redacted]

Email: [redacted]

OTHER RELATED MATERIALS:

1. Resident Bill of Rights
2. Emergency Evacuation Plan
3. Admissions Package
4. Medical Records Release
5. Care Plan Assessment
6. Care Plan

EXHIBITS INCLUDED:

A. Schedule of Services and Rates

B. Pharmacy Services Agreement

C. Oakview Park Rules

D. Oakview Park Grievance Procedure

E. Statement of Financial Responsibility

F. Personal Allowance Waiver

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident: Virginia Parsons

Suite Number: [redacted]

COMMUNITY FEE: [redacted]

BASIC SERVICE RATE:

Second Person Fee
(Due upon Move-In)

Living with Dignity Incontinence Products Monthly Charge

If resident takes occupancy of their suite after the first of the month, that months Basic Service Rate will be prorated using 30 days to calculate the Daily Rate.

I agree to the above Schedule of Services and Rates to commence as 03/17/2023.

I understand and agree that the Company has the right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

[illegible] 3/21/2023
Legal Representative Date

Oakview Park, LLC By: Atlas Senior Living, LLC, its Manager

Signature:________ Title: __________ Date______________

EXHIBIT B
PHARMACY SERVICES AGREEMENT

We work closely with pharmacy providers to meet the needs of our residents. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

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

Guardian Pharmacy is our preferred provider for pharmacy services ("Preferred Provider"). The Preferred Provider will review your current medications upon your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed. Guardian will assess a monthly re-packaging fee of $45 if medications are being filled by another provider such as the VA.

If you decide to use another pharmacy provider other than the Preferred Provider, it will be required to meet our medication management standards.

Regardless of whether you use the Preferred Provider or another pharmacy provider, all pharmacy billing is exclusively handled between you and your selected pharmacy and the Community will not be responsible in any way for your pharmacy billing.

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

I understand that I will be required to provide medications that are packaged in a unit of use packaging system. **If at any time I am not able or no longer willing to provide this type of packaging system, I understand that I need to find alternative housing, unless an exemption is agreed upon by the Executive Director.** Under no circumstances may you or your legal representative hire a healthcare proxy to administer your medications.

If I do not use the Community's Preferred Provider, I also understand that I will have the responsibility for reordering medications. If medications are not delivered **within two days prior to their depletion,** the Community will reorder my medications with the Preferred Provider. **I agree to pay for the**

medications and any associated service charges. The fees associated with reordering medications from the Preferred Provider are determined by the Preferred Provider and are in addition to the service fee described above.

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

Sandy Witt ______________________ 3/21/2020

Legal Representative Signature   Date

EXHIBIT C
Oakview Park HOUSE RULES

1. Oakview Park does not allow the use of tobacco products inside the community.

2. Alcohol consumption is permitted as ordered by the resident's physician.

3. Public telephone use is available anytime for appropriate reasons.

4. Visitors are allowed to visit anytime but the door are open from 7 a.m. to 7 p.m. Special accommodations are considered upon staff approval. All visitors must sign in and out when entering and exiting the community.

5. All residents are required to sign out when leaving the community and sign in when returning. Elopement from the community will be considered when the resident has exited the community without prior knowledge of staff and without properly signing out. Please see elopement policy for more information.

6. Audio visual components may be listened to and view anytime. If another resident's wellbeing is threatened, the violating resident will be asked to decrease the volume of the equipment or discontinue further use of the equipment.

7. Oakview Park staff will not be responsible for the well-being of any pet. Residents are allowed to have pets visit during normal visiting hours.

8. Residents are allowed to use any personal property of Oakview Park. Residents are not allowed to use the personal property of another resident without prior authorization.

EXHIBIT D

Oakview Park GRIEVANCE PROCEDURE

Updated: 7/29/19

Grievance Procedure:

Oakview Park is committed to quality customer service. We believe that good communication fosters our ability to provide quality services.

In the event a resident and/or resident's responsible party (on behalf of the resident) has a grievance regarding the community or its services, we request the following steps be taken:

1. The resident and/or resident's responsible party should discuss the complaint with the associate and Executive Director.

2. If unable to resolve grievance with step 1, the grievance should be submitted in writing to the Executive Director. The Executive Director should respond to the resident and/or resident's responsible party within fourteen (14) days of receipt of the complaint.

3. If unable to resolve grievance with step 2, the written grievance should be submitted to the Owner. The Owner should respond to the resident and/or resident's responsible party within fourteen (14) days of receipt of the complaint.

4. A resident and/or resident's responsible party may file a grievance with the local Ombudsman at any point in this process. If requested, a community representative should assist the resident or resident's responsible party in forwarding the written grievance to the appropriate address and contact person.

5. Residents and/or their responsible parties may submit grievances to associates, outside agencies, and other individuals without fear of restraint, interference, coercion, discrimination or reprisal.

EXHIBIT E

Sandy White ("Guarantor" or "you") and Oakview Park, LLC (the "Company," "us," "we" or "our"), agree as follows:

The Resident named in the attached Residency Agreement desires to live at the Community and we are willing to enter into the Residency Agreement if the Resident has an individual who is willing to fulfill the conditions of this Statement of Financial Responsibility; and

In consideration for our accepting the Resident into the Community, you agree to fulfill the provisions of this Statement of Financial Responsibility, if and as necessary.

Therefore, in consideration of the mutual covenants contained in this Statement of Financial Responsibility, the parties agree as follows:

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

A. Participating with our associates in evaluating Resident's needs and in planning and implementing an appropriate plan for Resident's care;

B. Maintaining Resident's welfare and fulfilling Resident's obligations under the Residency Agreement;

C. Relocating Resident following termination and removing the Resident's property;

D. Transferring Resident to a hospital, nursing home, or other facility in the event that Resident requires care we do not offer; and

E. Making necessary arrangements for funeral services and burial in the event of death.

II. **FINANCIAL RESPONSIBILITY.** If Resident fails to make payments due to us under the Residency Agreement, you agree to pay us such amounts within thirty (30) days of receiving written notice of nonpayment.

III. **REVIEW OF RESIDENCY AGREEMENT.** You acknowledge that you have received and reviewed a copy of the Residency Agreement and have had an opportunity to ask questions.

BY THEIR SIGNATURES, the parties have executed this Agreement to be effective as of _03-17-2023_.

Sandy Wolf 3/21/2022

Guarantor Date

Oakview Park, LLC
By: Atlas Senior Living, LLC, its manager

Signature Title Date

SEND NOTICES TO GUARANTOR AT:

Street Address: [redacted]

Primary Phone: [redacted]

Email: [redacted]

GENERAL DURABLE POWER OF ATTORNEY

GIVEN BY VIRGINIA L. PARSONS, AS PRINCIPAL

I, **Virginia L. Parsons,** of the County of Anderson, State of South Carolina, as principal (the "Principal"), have this day appointed my husband, **Robert L. Parsons,** to serve as my agent ("Agent") and to exercise the powers set forth below.

If **Robert L. Parsons** shall be unable or unwilling to serve or to continue to serve, then I appoint my daughter, **Sandra Parsons White**, as substitute or Successor Agent to serve with the same powers.

I

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

1. To demand, sue for, collect, receive and give discharges for all moneys, and other personal property which now belongs or shall hereafter belong to me.

2. To commence, prosecute, and defend all actions, suits, and other proceedings touching my estate and property.

3. To settle, compromise, or submit to arbitration all claims, demands, accounts, disputes, or differences between me and any other person or persons.

4. To receive any and every sum of money which now is or hereafter shall be due or belonging to me upon the security or by virtue of any mortgage or other pledge and to execute a good and sufficient release, satisfaction, or other discharge of such mortgage or other pledge by deed or otherwise.

5. To sell, either at public or private sale, or exchange any part or all of my real or personal property for such consideration and upon such terms as my Agent shall think fit and to execute and deliver good and sufficient deeds or other instruments for the conveyance or transfer thereof, with such covenants of warranty or otherwise as my Agent shall see fit.

6. To deposit any moneys, checks, and other credits that may come into my Agent's hands for my account with any depository institution. Any money which I now am or hereafter may be entitled to which now is or shall be so deposited, my Agent may withdraw and either 1) employ as my Agent shall think fit in the payment of any debts or other obligations owing by me or otherwise for my use and benefit, including my support, maintenance care, and well being; or 2) invest and/or reinvest in my name in any stock, shares, bonds, securities, or other property, real or personal, as my Agent may think proper.

DEFENDANT'S EXHIBIT
2

7. To withdraw any money that I now or hereafter may have on deposit to my credit and to have access to any safe deposit box(es) I may have.

8. To redeem, withdraw, or otherwise convert into cash any and all bonds and shares of stock that I now or shall hereafter own or have in my name.

9. To exercise my right to vote in any corporation, or otherwise to act as my attorney or proxy, in respect to any stocks, or other interests now or hereafter held by me therein.

10. To enter for any purpose into a lease as Lessor or Lessee with or without option to purchase or renew for such terms, conditions, and consideration as my Agent shall think fit.

11. To sign, seal, execute, and deliver any and all contracts, agreements, deeds, and other instruments whatsoever, and acknowledge the same, and to make, draw, sign, endorse, accept, discount, and otherwise deal with, checks, notes, bills, drafts, and other commercial paper, in execution of any and all powers hereby conferred.

12. To contract with any institution for the maintenance of a safe deposit box in my name; to have access to all authorized signatory, whether or not the contract for such safe deposit box was executed by me, (either alone or jointly with others) or by my Agent in my name; to add to and remove from the contents of any such safe deposit box and to terminate any and all contracts for such boxes.

13. To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession. In exercising such discretion, my Agent may take into account such matters as shall include but not be limited to any reduction in estate or inheritance taxes on my estate and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property; provided, however, that my Agent shall make no disclaimer that is expressly prohibited by other provisions of this instrument.

14. To do in general and without exception, limitation, qualification or restriction any and all other deeds, acts, and things whatsoever in or about my estate, property, and affairs and to concur with any other person or persons jointly interested with me therein in doing any and all such deeds, acts, and things as fully and as effectually to all intents and purposes as I, myself, in my own proper person could personally do.

15. To represent me in all tax matters; to prepare, sign and file federal, state, and/or local income, gift and other tax returns of all kinds, including, where appropriate, joint returns, FICA returns, payroll tax returns, claims for refunds, requests for extensions of time to file returns and/or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts, including the tax court, regarding tax matters, and any and all other tax related documents, including but not limited to consents and agreements under Section 2032a of the Internal Revenue Code or any successor section thereto and consents to split gifts, closing agreements, and any power of attorney form required by the Internal Revenue Service

VP

and/or any state and/or local taxing authority with respect to any tax year between the years 2002 and 2030; to pay taxes due, collect and make such disposition of refunds as my Agent shall deem appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service and/or any state and/or local taxing authority; to exercise any elections I may have under federal, state or local tax law; to allocate any generation-skipping tax exemption to which I am entitled; and generally to represent me or obtain professional representation for me in all tax matters and proceedings of all kinds and for all periods between the years 2002 and 2030 before all officers of the Internal Revenue Service and state and local authorities and in any and all courts; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants to represent and/or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have or may have an interest or responsibility.

II

My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time, with respect to the control and management of my person, and in addition to any other rights, powers and authorities as follows:

To do all acts necessary for maintaining my customary standard of living, to provide living quarters by purchase, lease or other arrangement, and if necessary to make all arrangements, for me at any hospital, nursing home, or similar establishment; and if in the judgment of my Agent I will never be able to return to my living quarters from such an establishment, to lease, sublease or assign my interest as lessee in any lease or protect or sell or otherwise dispose of my living quarters and my tangible personal property therein (investing the proceeds of any such sale as my Agent deems appropriate) for such price and upon such terms, conditions and security, if any, as my Agent shall deem appropriate; and as an alternative to such storage and safeguarding, to transfer custody and possession (but not title) for such storage and safe keeping of any such tangible personal property of mine to the person, if any, named in my will as the recipient of such property.

III

My Agent is authorized in my Agent's sole and absolute discretion from time to time and at any time to exercise the authority described below relating to matters involving my health and medical care. In exercising the authority granted to my Agent herein, I first direct my Agent to try to discuss with me the specifics of any proposed decision regarding my medical care and treatment if I am able to communicate in any manner, however rudimentary. My Agent is further instructed that if I am unable to give an informed consent to medical treatment, and my Agent cannot determine the treatment choice I would want made under the circumstances, my Agent shall give or withhold such consent for me based upon any treatment choices that I may previously have expressed on the subject while competent, whether under this instrument or otherwise. If my Agent cannot determine the treatment choice I would want made under the circumstances, then my Agent should make such choice for me based upon what my Agent believes to be in my best interests. Accordingly, my Agent is authorized as follows:

VP

1. To request, receive and review any information, verbal or written, regarding my personal affairs or my physical or mental health, including medical and hospital records, and to execute any releases or other documents that may be required in order to obtain such information, and to disclose or deny such information to such persons, organizations, firms or corporations as my Agent shall deem appropriate;

2. To employ and discharge medical personnel including physicians, psychiatrists, dentists, nurses, and therapists as my Agent shall deem necessary for my physical, mental and emotional well-being, and to pay them (or cause them to be paid) reasonable compensation;

3. To give or withhold consent to any medical procedures, tests or treatments, including surgery; to arrange for my hospitalization, convalescent care, hospice or home care; to summon paramedics or other emergency medical personnel and seek emergency treatment for me, as my Agent shall deem appropriate; and under circumstances in which my Agent determines that certain medical procedures, tests or treatments are no longer of any benefit to me or where the benefits are outweighed by the burdens imposed, to revoke, withdraw, modify or change consent to such procedures, tests and treatments, as well as hospitalization, convalescent care, hospice or home care which I or my Agent may have previously allowed or consented to or which may have been implied due to emergency conditions. My Agent's decisions should be guided by taking into account (1) the provisions of this instrument, (2) any reliable evidence of preferences that I may have expressed on the subject, whether before or after the execution of this instrument, (3) what my Agent believes I would want done in the circumstances if I were able to express myself, and (4) any information given to my Agent by the physicians treating me as to my medical diagnosis and prognosis and the intrusiveness, pain, risks, and side effects of the treatment;

4. To consent to and arrange for the administration of pain-relieving drugs of any kind, or other surgical or medical procedures calculated to relieve my pain, including unconventional pain-relief therapies which my Agent believes may be helpful to me, even though such drugs or procedures may lead to permanent physical damage, addiction or even hasten the moment of (but not intentionally cause) my death;

5. To grant, in conjunction with any instructions given under this Article, releases to hospital staff, physicians, nurses and other medical and hospital administrative personnel who act in reliance on instructions given by my Agent or who render written opinions to my Agent in connection with any matter described in this Article from all liability for damages suffered or to be suffered by me; to sign documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice" as well as any necessary waivers of or releases from liability required by any hospital or physician to implement my wishes regarding medical treatment or non-treatment.

IV

I wish to live and enjoy life as long as possible. However, I do not wish to receive medical treatment that will only postpone the moment of my death from an incurable and terminal condition or prolong an irreversible coma. For purposes of this instrument, (1) "terminal condition" shall refer

VP

to a condition that is reasonably expected to result in my death within twelve (12) months regardless of the treatment I may receive, and (2) "irreversible coma" shall refer to a permanent loss of consciousness from which there is no reasonable possibility that I will return to a cognitive and sapient life and shall include but shall not be limited to a persistent vegetative state.

Therefore, if it is reasonably concluded that:

(1) I am unable to give informed consent to medical treatment that is proposed or available for my condition and my condition is terminal as defined above, or

(2) I have been in a coma and that the coma is irreversible as defined above, then my Agent is authorized as follows:

(a) To direct that medical treatment which will only postpone the moment of my death or prolong an irreversible coma not be instituted or, if previously instituted, to require that such treatment be discontinued;

(b) To request, require or consent to the writing of a "No-Code" or "Do Not Resuscitate" order by any attending physician;

(c) To sign on my behalf any documents necessary to carry out the authorizations described in this instrument (including waivers or releases of liability required by any health care provider);

(d) To order whatever is appropriate to keep me as comfortable and free of pain as is reasonably possible, including the administration of pain-relieving drugs of any kind or other surgical or medical procedures calculated to relieve my pain, including unconventional pain-relief therapies which my Agent believes may be helpful, even though such drugs or procedures may lead to permanent physical damage, addiction or hasten the moment of (but not intentionally cause) my death.

I desire that my wishes be carried out through the authority given to my Agent by this instrument despite any contrary feelings, beliefs or opinions of members of my family, relatives, friends, or conservator.

In exercising the authority granted to my Agent herein, my Agent shall first follow the instructions of this document and any other subsequent instructions, oral or written, that I may give my Agent while I am competent. Notwithstanding such instructions, if my Agent cannot determine the treatment choice I would want made under the circumstances, then my Agent should make such choice for me based upon what my Agent believes to be in my best interest.

VP

If no Agent designated in this instrument is available or able or willing to serve as my Agent or to exercise the powers granted in this article, then I request that this document be given the same force and effect as any other written expression of intent under applicable law.

With respect to nutrition and hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that I intend to include these procedures among the medical treatment that may be withheld or withdrawn under the conditions given above. My Agent may authorize the withholding or discontinuance of food and water.

In addition, my Agent is authorized to receive and retain custody of any instrument signed by me that is effective under law to require the withdrawal or withholding of life sustaining treatment or procedures, including but not limited to a "Living Will," "Directive to Physician" and a "Declaration of a Desire for Natural Death," and if the circumstances described above authorizing my Agent to require that life sustaining treatment be withheld or withdrawn have occurred, then as an alternative or supplement act, I authorize my Agent to deliver to my physicians, health care providers and other appropriate recipients, this instrument and any other writings signed by me that express my desire under the circumstances to require the withholding or withdrawal of futile medical treatment (including but not limited to a "Living Will," "Directive to Physician" and a "Declaration of a Desire for Natural Death") and to instruct such physicians, health care providers and other appropriate recipients to act immediately in accordance with my desires.

CERTIFICATION

I CERTIFY THAT I HAVE READ THE PROVISIONS OF THIS ARTICLE AUTHORIZING MY AGENT TO REFUSE MEDICAL TREATMENT FOR ME UNDER THE CIRCUMSTANCES SPECIFIED IN THIS ARTICLE, THAT SUCH PROVISIONS HAVE BEEN EXPLAINED TO ME TO MY SATISFACTION, THAT I UNDERSTAND SUCH PROVISIONS, AND THAT SUCH PROVISIONS STATE MY WISHES AND DESIRES UNDER THE CIRCUMSTANCES DESCRIBED.

Virginia L. Parsons

Virginia L. Parsons

V

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

VP

1. To employ, compensate and discharge such domestic, and professional personnel as my Agent deems appropriate;

2. To open, read, respond to and redirect my mail; to represent me before the U.S. Postal Service in all matters relating to mail service; and to establish, cancel, continue or initiate my membership in organizations and associations of all kinds, to take and give or deny custody of all of my important documents, and to disclose or refuse to disclose such documents.

VI

For the purpose of inducing all persons, organizations, corporations and entities, to act in accordance with the instructions of my Agent given in this instrument, I hereby represent, warrant and agree that:

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

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

3. No person who acts in reliance upon any representations my Agent may make as to (a) the fact that my Agent's powers are then in effect, (b) the scope of my Agent's authority granted under this instrument, (c) my competency at the time this instrument is executed, (d) the fact that this instrument has not been revoked, or (e) the fact that my Agent continues to serve as my Agent shall incur any liability to me, my estate, my heirs or assigns for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property.

VII

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing principal's own estate.

VP

VIII

The following provisions shall apply:

1. My Agent shall be entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by my Agent on my behalf under any provision of this instrument.

2. My Agent and my Agent's heirs, successors and assigns are hereby released and forever discharged from any and all liability upon any claim or demand of any nature whatsoever by me, my heirs and assigns, arising out of the acts or omissions of my Agent, except for willful misconduct or gross negligence. My Agent shall have no responsibility to make my property productive of income, to increase the value of my estate or to diversify my investments. My Agent shall have no liability for entering into transactions authorized by this instrument with my Agent in my Agent's individual capacity so long as my Agent believes in good faith that such transactions are in my best interests or the best interests of my estate and those persons interested in my estate.

3. If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provisions of this instrument.

4. This instrument shall be governed by the laws of the State of South Carolina in all respects.

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

6. This instrument may be amended or revoked by me, and my Agent and any alternate Agent may be removed by me at any time by the execution by me of a written instrument of revocation, amendment or removal delivered to my Agent and to all alternate Agents. If this instrument has been recorded in the public records, then the instrument of revocation, amendment or removal shall be filed or recorded in the same public records. My Agent and any alternate Agent may resign by the execution of a written resignation delivered to me or, if I am mentally incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me or in the case of an alternate Agent, by delivery to my Agent.

7. My Agent is authorized to make photocopies of this instrument as recorded with the recording data reflected thereon, as frequently and in such quantity as my Agent shall deem appropriate. All such photocopies shall have the same force and effect as any original.

IX

I hereby revoke any and all Powers of Attorney heretofore granted by me.

VP

IN WITNESS WHEREOF, as Principal, I have executed this Power of Attorney as of this 7th day of April, 2006.

Virginia L. Parsons

Virginia L. Parsons

The foregoing Durable Power of Attorney consisting of 10 typewritten pages, this included, was this 7th day of April, 2006, signed, sealed, published and declared by the Principal, by signature on page 9 hereof, in our presence, and we, at Principal's request and in Principal's presence and in the presence of each other have hereunto subscribed our names as witnesses on the above date.

Lewey C. Hackett, Jr. at Anderson, South Carolina

Denee D. Graydon at Anderson, South Carolina

VLP

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF ANDERSON)

PERSONALLY appeared before me deponent and made oath that deponent saw the within named **Virginia L. Parsons** sign, seal, and as the Principal's act and deed, deliver the within written Durable Power of Attorney, and deponent with the other witness whose name is subscribed above, witnessed the execution thereof.

Dena A. Graydon
Witness

SUBSCRIBED AND SWORN TO BEFORE ME

this 7th day of April, 2006.

Lewey C. Hammett, Jr.
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/07/12

060011463 4/07/2006 04:31:31 PM
FILED, RECORDED, INDEXED
Bk: 07296 Pg: 00129 Pages:010
Rec Fee: 21.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

This document prepared by:

Lewey C. Hammett, Jr.
Lewey C. Hammett, Jr., P.A.
1821 N. Boulevard
Anderson, South Carolina 29621
Telephone: (864) 226-5006

C:\Word\Estate Planning\Parsons, Robert & Virginia\POA-Virginia-APR06.doc

Public Probate Inquiry
Spartan Technology Solutions

Public Inquiry > Search Cases > Case Detail

Search Cases Search Parties

Case Summary

Case No.	Status	Filed	Judicial Assistant	Assigned
2016ES0401259	CLOSED	9/19/2016		

Primary Parties

Name	Type	Date of Death	Address
PARSONS, ROBERT L.	DECEDENT	7/4/2016	1017 COVE CIRCLE ANDERSON, SC 29626

Case Parties

Name	Type
PARSONS, ROBERT L.	DECEDENT
WHITE, SANDRA PARSONS	PETITIONER

DEFENDANT'S EXHIBIT
3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

vs.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

C. A No. 2024-CP-23-06777

MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO COMPEL ARBITRATION

TO: BROWN PARKINSON AND TIMOTHY MAIO, ATTORNEYS FOR THE DEFENDANTS:

Plaintiff respectfully opposes Defendants' Motion to Compel Arbitration and Stay Proceedings and requests that this Court deny said motion for the reasons set forth below.

I. INTRODUCTION

Defendants seek to compel arbitration under an unconscionable arbitration agreement that was apparently signed by the daughter of an 89-year-old woman with advanced dementia. The agreement contains severely restrictive damages caps and inequitable, one-sided procedural limitations that render it unenforceable under South Carolina law. This Court should deny the motion and allow this wrongful death action to proceed in court.

II. FACTUAL BACKGROUND

Virginia Parsons was an 89-year-old woman with documented "advanced dementia" and "Alzheimer's Disease" who was admitted to Defendants' memory care facility on March 17, 2023.

On March 21, 2023, just four days after admission, her daughter Sandra P. White appears to have signed a residency agreement on Virginia's behalf that contained an arbitration provision.

Virginia suffered a fall on August 22, 2023, when "resident 417 pulled virginas [sic] walker from her as Virgina was holding on to it room 417 yanked it and Virgina fell when 416 took it and she fell on her right side hit her head hard on the floor." She sustained a right hip fracture requiring surgical repair and died on October 5, 2023. The Death Certificate states "BLUNT FORCE TRAUMA OF RIGHT HIP WITH FRACTURE AND SURGICAL REPAIR" as a contributing factor to her death. Plaintiff will show that Defendants had notice, knowledge and foreseeability, of the risks and dangers of known combative, violent, and aggressive behaviors of residents 416 and 417 for an appreciable time, yet exposed Virginia Parsons and other residents to such harms and dangers through their reckless failures to take steps to prevent such, and through their reckless indifference.

III. ARGUMENT

A. The Oakview Park Arbitration Agreement is Procedurally Unconscionable

1. Vulnerable Population and Lack of Meaningful Choice

Virginia Parsons was a member of an especially vulnerable population - an 89-year-old woman with advanced dementia residing in a memory care unit. The medical records demonstrate she was "oriented to person only (not oriented to place, situation, or time)" and required assistance with basic activities of daily living due to her cognitive impairment.

Despite the agreement's assertion that signing is "voluntary" and "not a condition of admission," families of dementia patients face severely limited options for memory care placement. The practical reality eliminates meaningful choice when such restrictive arbitration terms are presented as part of the admission process.

2. Inadequate Disclosure and Complexity

The arbitration provision spans multiple pages within a comprehensive 20-page residency agreement. The severe damages limitations and procedural restrictions are buried within complex legal language. The document does not show that these critical limitations and restrictions were specifically or printed in Bold type. Nor is there any evidence that these crucial provisions, which drastically limit the Plaintiff's rights and severely limit her ability to obtain justice, were called to the attention of the Plaintiff, her daughter, or her family, or explained to any of them during the admission process.

As stated in the Affidavit of Sandra Parsons White **(Exhibit 1**), daughter of Virginia Parsons and current Personal Representative of the Estate, she was rushed through the admission paperwork signing process, and was not allowed time to review it. She signed the admission paperwork under pressure by the facility and unaware of the arbitration provision which was buried therein. No one informed her of any issues of arbitration, and the overriding issue of concern expressed by the facility staff was that of payment and the details of the payment process. Mrs. White, at the time of the rushed paperwork signing, was focused on her many serious concerns regarding her mother's physical and emotional needs and her well-being. Further, the Estate does not have funds to pay for the extensive costs for the arbitration, as imposed by the arbitration agreement, and she personally does not have available funds to cover such arbitration costs. (**See Affidavit, Exhibit 1**).

The arbitration agreement (**Exhibit 3, pp. 7-11**) also requires the Plaintiff to equally pay the arbitrator's fees and costs associated with the arbitration, "divided equally among the parties, unless the resident Party is proven indigent." This places an undue and unjustifiable financial burden on the Plaintiff, and/or prevents the Plaintiff from participation in the arbitration, thereby eliminating her ability to present her claim, Arbitration is a process massively more expensive to litigants than a court proceeding, as the typically high fees and costs of arbitration are not incurred in court proceedings, and are in addition to all other costs of litigation such as expert witness fees deposition costs, and other expenses. (**See Exhibit 2, Affidavit of Gary W. Poliakoff, regarding arbitration costs**.)

B. The Oakview Park Arbitration Agreement is Substantively Unconscionable

1. Severe and Unreasonable Damages Cap

The agreement contains an unconscionably low damages cap stating: "Non-economic damages, such as pain and suffering, shall be limited to a maximum of $400,000.00." (**Exhibit 3, p. 11**). This cap is particularly unconscionable given the facts of this case, where Virginia Parsons endured 44 days of severe conscious pain and suffering following her fall, and fractured hip and surgical repairs, requiring extensive pain management with morphine, oxycodone, and other medications, leading up to and contributing to her death. The $400,000 limit on "non-economic damages" is grossly insufficient and inexplicable inadequate to compensate for Virginia Parsons' pain, suffering, mental distress, fear, and reduced quality of life, or the grief and sorrow, wounded feelings, mental shock and suffering, loss of society, and loss of companionship suffered by her daughter, the wrongful death beneficiary.

2. **Further Limitation of Liability**

In defendant's arbitration agreement (**Ex. 3, pp. 10-11**) further Limitation of Liability is imposed. In addition to the aforesaid cap on "non-economic damages," as set forth therein (**Ex. 3, p. 10**), the limitation on economic damages nearly eliminates any obligation for payment whatsoever for economic damages by the defendant:

> a. (Limitation of Liability Provision)
> Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.

This slyly worded Limitation of Liability first nullifies the well-established South Carolina Collateral Source Rule. Further, in the context of long-term care facility litigation, almost nothing in the way of "economic damages" would remain, once the collateral Source Rule is eliminated. In civil litigation for personal injury, "economic damages" for the most part refers to medical bills and wage loss. For residents of a long-term care facility, wage loss damages are rarely, if ever, advanced. A resident of a long-term care facility is considered a "vulnerable adult" by South Carolina's statute, has medical limitations, and almost always is long past any ability to earn wages by the time of admission. The likelihood of a resident asserting a wage loss claim against a long-term care facility is so remote as to not be a factor. Any obligation of a long-term care facility to pay "economic damages" for medical bills, after deducting "any collateral source payments such as payments made by medical insurance," is reduced to nothing, or almost nothing. Nearly every resident of a long-term care facility has Medicare and/or Medicaid benefits, and many also have Medicare supplemental insurance, Medicare Advantage insurance, or other private insurance. After deducting for such medical insurance, in most instances there would be no medical bills remaining, or at most, a tiny remnant of a bill.

At first blush, defendant's cunning language appears to indicate an obligation or liability of the defendant to compensate a resident injured by defendant's negligence. Most non-attorneys reading defendant's provision would not realize that all or almost all obligation of the defendant to pay anything for "economic damages" is eliminated. Defendant's language in this paragraph is intended to deceive most readers. By starting the paragraph with "*Net economic damages shall be awardable*," most readers would be misled, intentionally by the defendant, to believe there would be some benefit to the resident in the event of injury resulting from facility negligence.

Yet, for an injured long-term care resident, defendant's deceptive language would effectively harm the Plaintiff even worse. By deducting any amounts of medical bills covered by medical insurance, an injured resident would receive nothing, or almost nothing, for "economic damages." Yet, the liens and/or claims for reimbursement or subrogation by Medicare, Medicaid, and/or private insurers would likely still be asserted. Thus, an injured resident, having filed a claim for his injuries, would receive little or nothing from the offending facility for "economic damages," yet could still be required to reimburse Medicare, Medicaid and/or private insurance carriers, for payments made toward medical bills resulting from his injuries.

This "Limitation of Liability" protects the defendant by nearly eliminating any obligation to compensate for "economic damages," while exposing the Plaintiff to serious financial detriment.

3. Complete Elimination of Punitive Damages

The agreement categorically states "Punitive damages shall not be awarded." (**Exhibit 3, p. 11**). This provision eliminates any deterrent effect for gross negligence or willful misconduct, even in cases involving gross negligence and reckless disregard of the rights of a vulnerable adult in an institutional/custodial care setting, such as presented in this case. The factors determining punitive damages for egregious conduct, as set forth in S.C. Code Ann Sec. 15-32-520(E), including the defendant's degree of culpability, the severity of the harm caused by the defendant, the duration of the conduct, the defendant's awareness, any concealment by the defendant, the existence of similar past conduct, the profitability of the conduct to the defendant, and the likelihood that the award will deter the defendant or others from like conduct, are all entirely eliminated from consideration by the unconscionable arbitration agreement. The purposes for punitive damage awards, as established by decades of case law and by statute, are all nullified and disregarded.

4. One-Sided Discovery Limitations

The agreement severely restricts discovery by providing that "The only depositions allowed shall be of experts. No other individuals may be deposed." (**Exhibit 3, p. 9**). This asymmetrically benefits Defendants, who have superior access to witnesses, policies, and information about the incident, while hampering Plaintiff's ability to discover facts about staffing, supervision, and the circumstances of Virginia's fall and the reckless acts and delicts leading up to her fall. Further, all or nearly all of the witnesses to these events are in the employ of, and under the control of, the Defendants. This provision prevents the Plaintiff from discovery of much crucial information.

Further, the Defendant, who possesses all or nearly all of the pertinent information regarding the incidents in question and the conduct, acts and circumstances which led to the incidents, is not required to even provide to the Plaintiff the list of witnesses to be called at the arbitration hearing, the list of documents to be relied upon at the arbitration hearing, or any sworn recorded statements to be relied upon at the arbitration hearing, until 14 working days before the arbitration hearing. This outlandish provision deprives the Plaintiff of crucial discovery, allows the defendant to conceal evidence harmful to it, allows the defendant to present only the evidence which defendant believes is helpful to itself, and deprived Plaintiff of any reasonable opportunity to even learn of facts, evidence and testimony crucial to proving her case. As a result, the Plaintiff, who bears the burden of proof, has extensively limited ability to present her case. This is an unconscionable and inexplicable restriction on Plaintiff's right to learn such crucial information, while rewarding the defendant, which is the party that Plaintiff intends to show committed the egregious acts, thereby allowing the culpable party to conceal evidence from the plaintiff and prevent the plaintiff from ability to present her case, and allowing the defendant to present only that evidence which it deems to be favorable to itself.

This combination of restrictions on the Plaintiff's ability to obtain necessary evidence, i.e., the inability to depose non-expert witnesses, coupled with no right to even learn of the defendant's list of witnesses, list of documents, or sworn recorded statements until 14 working days before the arbitration hearing, effectively precludes the Plaintiff from obtaining the information and evidence necessary to prove her case. Thus, the culpable party, which typically (especially in long-term care facility neglect litigation) holds, possesses and controls all or nearly all of the evidence regarding the incidents in question and the facts and circumstances leading to them, can fully present the evidence which it deems favorable, while preventing the Plaintiff from obtaining or learning of other evidence crucial toward proving her case. This limitation severely harms the Plaintiff, and unjustifiably rewards the culpable defendant by allowing it to hold, conceal, and/or withhold from the injured Plaintiff the evidence it has.

5. The Complete Delegation of Authority to the Arbitrator, Including Gateway Issues of Determination of Unconscionability and Enforceability, and Elimination of Any Appeal, Is Itself Unconscionable

The agreement attempts to prevent any and all judicial review of any kind, including review authority that has been granted to the Courts through long-established case law. It is well established law that a Court has the authority and jurisdiction to determine whether a contract, specifically including an arbitration agreement is valid, enforceable, and/or unconscionable. The agreement provides:

> V.A.I. [Arbitration Provision]
>
> Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community…and including disputes regarding interpretation of this agreement…shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. (Ex. 3, p. 8).

The agreement further provides:

V.A. 10.
The arbitrator's decision shall be final and binding without the right to appeal. **(Exhibit 3, p. 10).**

The agreement further is repugnant to well-established law that provides for appeal of arbitrability issues to appellate courts. The Circuit Courts and Appellate Courts of South Carolina have consistently ruled upon arbitrability issues. In Pearson v. Hilton Head Hosp., 400 S.C. 281, 286, 733 S. E. 2d 597, 599 (Ct. App. 2012), our Court of Appeals held that "Determinations of arbitrability are subject to de novo review," and set out the process of such review by the Circuit Courts, and further review by our Appellate Courts.

In Dee v. TCSC, LLC 430 S.C. 602, 608, 846 S.E. 2d 874, 877 (St. App. 2020), the Court held:

> "[T]he court, rather than an arbitrator will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it covers the parties' dispute."

Defendants here are attempting to rob courts of their well-established authority to determine arbitrability and enforceability issues.

These provisions are unconscionable and unenforceable.

C. Defendants Waived Their Right to Arbitration Through Substantial Delay and Conduct Inconsistent With Arbitration

1. Legal Standard for Waiver Under Morgan v. Sundance

The United States Supreme Court decision in Morgan v. Sundance, Inc. 596 U.S. 411 (2022) simplifies the analysis for arbitration waiver. As recognized by the United States Supreme Court and South Carolina courts applying Morgan, "arbitration agreements are not supposed to be any more enforceable than any other type of contract" and "arbitration waivers do not require proof of prejudice because prejudice is not required to waive any other contractual right"

South Carolina law is clear that parties may waive rights to pursue arbitration due to delay in litigation. The traditional South Carolina analysis considered whether a significant length of time transpired between the commencement of the action and the motion to compel arbitration, and whether the non-moving party was prejudiced. However, as South Carolina courts have since noted, "Plaintiffs no longer have to prove prejudice as part of the waiver analysis" following Morgan.

2. Defendant's Substantial and Unjustified Delay

The timeline for this case clearly supports waiver through delay. Virginia Parsons was injured on August 22, 2023, and died on October 5, 2025. Defendants were aware of the potential for litigation and their obligation to assert any arbitration rights from the moment of the incident. Furthermore, Defendants participated in litigation proceedings for months, prior to asserting any arbitration rights. Defendants filed a Motion to Compel Arbitration on July 3, 2025. Plaintiff had served Defendants with Summons and Complaint on November 11, 2024, nearly 8 months earlier. Defendants filed an Answer to Complaint on February 7, 2025. Plaintiff's counsel and Defendant's counsel communicated at length during this time about litigation proceedings, including but not limited to; deposition scheduling, consent orders, and offers of judgement. Yet Defendants asserted no arbitration rights for almost 8 months after the case was filed. Any right to arbitration was waived.

D. Wrongful Death Claims Are Not Subject to the Arbitration Agreement

While the arbitration agreement purports to apply to all claims relating to Virginia Parsons' residency at eh facility, it cannot apply to the Wrongful Death claim which has been asserted in this case. Wrongful Death beneficiaries are determined by statute, particularly S.C. Code Ann Sec. 15-51-20. The Wrongful Death beneficiary was not a party to the arbitration agreement (in her capacity as wrongful death beneficiary). Only Virginia Parsons and the defendant facility were parties to the arbitration agreement. Any signature by a person holding a Power of Attorney from Virigina Parsons and acting in that capacity, or signing as attorney-in-fact for Virginia Parsons, is a signature on behalf of Virginia Parsons. A signature in the capacity of attorney-in-fact for Virginia Parsons might bind Virginia Parsons, but cannot be interpreted to bind the signatory individually. When a person acts in the capacity as attorney-in-fact for a person, through a valid Power of Attorney granted by said person, such act is on behalf of the grantor, and does not bind the holder of the POA individually.

Further, the damages to which a wrongful death beneficiary is entitled are entirely different from the damages to which the injured person (now deceased) was entitled. For example, a Survival Action is for the pain and suffering and expenses and damages experienced by the now-deceased injured person while such injured person was alive. The damages available to a Wrongful Death beneficiary are for the losses of the Wrongful Death beneficiary's own grief and sorrow, wounded feelings, mental shock and suffering, loss of society, and loss of companionship, resulting from the death of the person.

The arbitration agreement is not applicable to the claims of a Wrongful Death beneficiary.

E. Public Policy Considerations

Virginia Parsons is classified as a "vulnerable adult" under South Carolina law. The arbitration agreement undermines statutory protections for this vulnerable adult population by severely limiting damages, preventing the Plaintiff from obtaining crucial discovery, and preventing meaningful accountability for Defendants' substandard care and gross negligence. Further, the confidentiality provisions shield the facility from public disclosure of its systemic problems, thereby preventing other vulnerable residents from obtaining information critical to making choices of residency.

BURDEN OF PROOF

The Facility now seeks to compel arbitration. Defendant carries the burden to prove that a valid and enforceable arbitration agreement exists. Not all arbitration clauses are per se enforceable as Defendant represents. The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement.[1] In interpreting a jury trial waiver narrowly, some courts have also emphasized "the basic principle that ambiguities in a contract are construed against the drafting party."[2] Whether the parties agreed to arbitrate is a question of substantive state law.[3] In Chassereau v. Global Sun Pools, Inc., 644 S.E.2d 718 (S.C. 2007), the Supreme Court stated:

> Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we hold that these claims are not covered by the arbitration agreement at issue in the instant case.

While there is a presumption in favor of arbitration agreements, this presumption only applies *after* the court finds there is a valid enforceable arbitration agreement.[4] The mandatory language in the FAA only applies in instances where a valid arbitration agreement has been well established. This is self-evident from the FAA provisions: "The court shall make an order directing the parties to proceed to arbitration" but only "upon being satisfied that the making of the agreement…is not in issue." 9 U.S.C. § 4. The U.S. Supreme Court has often cited the FAA's savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability.[5] The FAA looks to state law to decide the

---

[1] See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008).
[2] Nat'l Acceptance Co., 381 F.Supp. at 271).
[3] Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007)("General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").
[4] EEOC v. Waffle House, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581 (2003).
[5] Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985); 9 U.S.C. § 2.

threshold questions of contract formation.[6] Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts.[7] The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability.[8] Pro-arbitration policy does not validate a contract that lacks the building blocks of a binding contract.

The Arbitration Agreement does not govern the wrongful death claim

If there is a valid and enforceable arbitration agreement, it should not include the wrongful death cause of action because no one with legal authority could enter into an agreement that waives the right to a jury trial on behalf of the statutory beneficiaries. No person other than the court-appointed personal representative can waive the rights of the statutory beneficiaries. The wrongful death claims are separate claims apart from the Decedent's claims. According to South Carolina's Wrongful Death Act:

> Whenever the death of a person shall be caused by the wrongful act, negligent or the fault of another and the act, negligent or the fault is such as would, if death had not ensued, had entitled party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued shall be liable to an action for damages.
>
> South Carolina Code Annotated §15-51-10 (1977)

The wrongful death beneficiaries are as follows:

> Every such action shall be for the benefit of the wife, or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband,

[6] Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360, 364 (2001); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'").

[7] Rent-A-Center, West. Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) Simpson, 373 S.C at 14, 644 S.E.2d at 663 ("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

[8] See Sydnor v. Conseco Fin. Servicing Corp., 252 F.3d.302, 205 (4th Cir.2001).

> child or children, then for the benefit of the parent or parents, and if there be none, for the benefit of the heirs or the person whose death shall have been so caused

As this Honorable Court decided in Young v. NHC (**Exhibit 4**) the wrongful death cause of action should not be included in the arbitration proceeding even if a valid and enforceable arbitration agreement is found by the Court for the Survival cause of action:

> It appears that the question of whether a wrongful death action is subject to mandatory arbitration pursuant to the terms of a contract is one of first impression in South Carolina. Case law across many jurisdictions within the United States is split as to whether an arbitration agreement covers a wrongful death claim brought by the decedent's statutory beneficiaries who were not a party to the contract. [cite omitted]
>
> This Court finds persuasive the reasoning of those jurisdictions that have held that an arbitration agreement executed by a decedent cannot bind the decedent's statutory beneficiaries who were not parties to the agreement. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries, and that such claims are distinct and separate claims from those that are brought under the survival statute. *See* Bennett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914).
>
> However, this Court agrees with the Supreme Court of Kentucky which said regarding binding non-signatory wrongful death beneficiaries in Ping v. Beverly Enterprises, "[A]s interesting as life might be if we could bind one another to contracts merely by referring to each other in them, we are not persuaded that a non-signatory who receives no substantive benefit under a contract may be bound to the contract's procedural provisions, including arbitration clauses, merely by being referred to in the contract. It is one thing to say that a third party for whose substantive benefit a contract is made may not enforce his or her rights under the contract without also abiding by the contract's other terms. That is the general third-party beneficiary rule discussed above. It may even be that tort claims by such a directly benefitting third party are appropriately subjected to the contract's arbitration provisions, at least where the tort and the contract are significantly intertwined. It is something else entirely, however, to say that incidental beneficiaries of a contract-individuals or entities with no substantive rights under the contract and no direct benefits-may have their tort claims against the parties swept up into the contract's arbitration provisions merely by being mentioned in the contract as potential claimants."
>
> Ping, 376 S.W.3d at 599-600.

A similar analysis and holding can be found in Wilson v. NHC by the Honorable Judge Michael Nettles (**Exhibit 5**) which held:

> [T]the Arbitration Agreement is unenforceable against the Decedent's wrongful death statutory beneficiaries under South Carolina contract law defenses. The Arbitration

Agreement neither covers the wrongful death statutory beneficiaries' claims within the scope of the agreement nor was the Arbitration Agreement signed by an individual who had authority to bind the statutory beneficiaries.

South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims. Bennett v. Spartanburg Railway Gas and Electric Co., 97 S.C. 27, 81 S.E. 189 (1914). The alleged Arbitration Agreement by its own terms is an agreement between "Kenneth Wilson ('patient')" and "NHC Healthcare/Mauldin, LLC ('center')". While at some point during Decedent's admission to the facility, he might have had the authority to bind himself and his claims to arbitration but was never given the chance. However, even if Decedent had agreed to arbitration, he did not have the legal authority to bind his statutory beneficiaries who are not parties to the Arbitration Agreement. The signatories to the agreement are Daughter on behalf of Decedent and NHC Healthcare/Mauldin, LLC. No other persons are parties to this agreement. The scope of the agreement does not include the statutory beneficiaries' claims.

However, even if the Arbitration Agreement did contemplate the wrongful death statutory beneficiaries' claims, Decedent and/or Daughter had no authority to waive the statutory beneficiaries' claims. Daughter signed the Arbitration Agreement in her *individual capacity*. However, as the Hodge court noted, actions taken by Daughter in her *individual capacity* will not be held against the estate as the estate has other beneficiaries and may have other creditors.

Further confirming the separateness of each statutory beneficiary's claim from that of the survival action, a Federal District Court in South Carolina has analyzed this issue under the South Carolina Non-Economic Awards Act of 2005. Diane Boyle as Personal Representative of the Estate of John Francis Boyle v. United States of America, 944 F.Supp.2d 577 (D.S.C. 2012). In Boyle, the Court concluded that the wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants. This analysis supports the contention that the wrongful death claimants have separate and distinct claims apart from that of the survival action.

The Arbitration Agreement is both procedurally and substantively unconscionable, and should not be enforced even if the Court finds it is a valid agreement.

In South Carolina, unconscionability 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. Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004). 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 agreement. S.C. Code Ann.§ 36-2-302(1) (2003). In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. See Hooters of Am., Inc. v. Phillips, 173 F.3d 933, 938 (4th Cir.1999). It is under this general rubric that courts must determine whether a contract is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms.

Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. See Carlson v. General Motors Corp., 883 F.2d 287, 295 (4th Cir.1989). In determining whether a contract was "tainted by an absence of meaningful choice," Id. at 295, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. Id. at 293. See also Holler v. Holler, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.2005) ("A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." (quoting 17 A Am.Jur.2d Contracts§ 279 (2004))); see also Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007).

The choice of a nursing home is made in the midst of a crisis brought on by a precipitous deterioration in health status, disability level, or the loss of a care giver or spouse.[9] The need to

[9] *See, e.g.,* Podolosky v. First Healthcare Corp., 58 Cal.Rptr. 2d 89, 101 (Cal. Ct. App. 1996) (*citing* Donna Ambrogi, *Legal Issues in Nursing Home Admissions*, 18 Law Med. & Health Care 254, 258 (1990)); *see also* Marshall B. Kapp, *The "Voluntary" Status of Nursing Facility Admissions: Legal, Practical, and Public Policy Implications*, 24 N.E. J. on Crim. & Civ. Confinement. 1, 3 (1998) (stating that an older person's move to a nursing home also follows a period of acute hospitalization, when their care giving family is unable to adequately manage the demands of home care).

find a placement arises quickly[10] and nursing home admissions are often unplanned; there is little time to investigate options or to wait for an opening at a nursing home of choice.[11] Time pressure significantly impairs the ability to seek and carefully consider alternatives.[12] The Plaintiff in this case had no choice or time in making such a decision. (**See Exhibit 1**). Many facilities lack a coherent admissions process, adding to the chaos surrounding the admission of a resident.[13] Residents and their family members do not have time to read and deliberate on the terms of the agreement. An arbitration clause is not part of the core transaction involved in a contract for medical care or service.[14] It is not, therefore, likely to get much attention from the non-drafting party.[15] As is true in the present action, facilities often present the contract *after* the person decides to apply for admission, rather than beforehand, when the individual can assess the rights affected by the contract.[16]

"In South Carolina, unconscionability 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, 24-25, 644 S.E.2d 663, 668 (2007).

[10] In the 1980's, the government changed the way hospitals were paid for their Medicare patients; since the change, hospital discharge planning occurs "quicker and sicker." Linda S. Whitton, *Navigating the Hazards of the Eldercare Continuum*, 6 J. Mental Health and Aging 145, 150 (2000). See also Maureen Armour, *A Nursing Home's Good Faith Duty "to" Care: Redefining A Fragile Relationship Using the Law of Contract*, 39 St. Louis L.J. 217, 222 (1994).
[11] Denise Ashbugh Vlosky, et al., "*Say-so*" as a *Predictor of Nursing Home Readiness*, 93 J. of Family & Consumer Science 59 (2001).
[12] Potential residents and their family members can experience panic when they feel there is insufficient time to consider different facilities, and they may choose a facility they would not have chosen if they had more time to weigh their options. Whitton, *supra*, at 150.
[13] Donna Ambrogi & Frances Leonard, *The Impact of Nursing Home Admission Agreements on Resident Autonomy*, 28 The Gerontologist 82, 83-88 (1988).
[14] See Stanley D. Henderson, *Contractual Problems in the Enforcement of Agreements to Arbitrate Medical Malpractice,* 58 VA. L. REV. 947, 987 (1972) ("The arbitration provision, viewed from the perspective of the patient, is indeed subsidiary to the primary exchange of medical services for an undertaking of payment.")
[15] The drafting party, on the other hand, has a great deal of information about these repetitive transactions and a great deal of incentive to prepare form contracts so that they are optimal from the drafter's perspective. Melvin Aaron Eisenberg, *The Limits of Cognition and the Limits of Contract*, 47 Stan.L.Rev. 211, 243 (1995).
[16] California Advocates for Nursing Home Reform, *Better Read the Small Print! An Analysis of Admission Agreements in California's Residential Care Facilities for the Elderly* 1 (Mar. 2003).

The "[a]bsence of meaningful choice" requirement "speaks to the fundamental fairness of the bargaining process in the contract at issue." Id. at 25, 644 S.E.2d at 669. Even if an arbitration clause is technically conspicuous, it may be improper if it is "sprung on [a consumer] along with a flurry of other" documents during a hasty transaction. Doe v. TSDC, LLC, 430 S.C. at 613–14, 846 S.E.2d at 879-80. "Unconscionability is gauged at the time the contract was made." Id. at 612, 846 S.E.2d at 879. The following should be taken into account by courts in determining unconscionability: "the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." Id. (quoting Simpson, 373 S.C. at 25, 644 S.E.2d at 669).

The Honorable Judge Diane Goodstein found an arbitration agreement unconscionable in a similar circumstance in Rawl v. West Ashley Rehab (**Exhibit 6**) based on the following facts that also apply to the circumstances in this case:

1. Resident lacked a meaningful choice and the terms in the Arbitration Agreement are oppressive, one-sided terms.
2. Upon admission the standard Arbitration Agreement form was presented on a take-it-or leave it basis.
3. Resident did not contribute to the drafting of the Arbitration Agreement
4. Resident did possess the bargaining power to negotiate the terms of the Arbitration Agreement.
5. An inherent disparity in bargaining power between the parties to the transaction.
6. The Arbitration Agreement was inconspicuous.
7. The injuries include wrongful death.
8. Resident did not have sufficient time to allow any meaningful explanation of the terms and significance of the alleged arbitration agreement, considering the number and complexity of admission documents other than that alleged arbitration agreement.[17]

[17] The Admission paperwork in Rawl included 56 pages of documents for the resident to review and sign. These documents include the following: Admission Agreement, Admissions and Re-admissions, Arbitration Agreement, Assignment Agreement, Consent for Release of Medical Records, Consent to Treat, Pharmacy Consultant, Questionnaire, Room and Board Rates, Statement for Disclosures, and Therapy Services. Further Note: the Circuit Court Order of Judge Goodstein is referenced here. An affirmation by the Cout of Appeals was issued as a "No Precedential Value" decision, and was an unpublished opinion.

The terms of the Arbitration Agreement in this case are unfair and no person would voluntarily agree to them. The arbitration agreement at issue restricts Plaintiff's ability to discover crucial evidence. The costs of the arbitration are not disclosed. The restricted discovery alone makes the agreement unconscionable *when Defendants possess all the material information about the operation of the facility and what happened to Mrs. Parsons at their facility.*

Further, the cost of arbitration far outweighs the cost of proceeding in Court and therefore the agreement is unconscionable. (**See Exhibit 1 - Affidavit of Sandra Parsons White** and **Exhibit 2 – Affidavit of Gary W. Poliakoff**). Also, the cost of the arbitration must be paid by the parties including the Estate of Virginia Parsons, which contains insufficient money or assets. Plaintiff did not and does not have the financial wherewithal to pay or prepay arbitration fees. The amount of money that it would cost to begin and proceed through the arbitration process, including hearing, exceeds that available to the Plaintiff.

> Although the costs of arbitration may be a basis for determining that an agreement to arbitrate is substantially unconscionable, since Green Tree the issue of the prohibitive costs of arbitration has developed into a separate defense to the enforcement of an arbitration agreement. See Zephyr Haven, 122 So.3d at 921–22. "[W]here 'a party seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive, that party bears the burden of showing the likelihood of incurring such costs.' " Id. at 921 (quoting Green Tree, 531 U.S. at 92, 121 S.Ct. 513). In determining whether the costs of arbitration in a fee splitting arrangement are so prohibitive as to render the agreement unenforceable because it denies the plaintiff access to the arbitral forum, a case-by-case analysis is appropriate. Id. at 922. The focus is on the claimant's ability to pay the arbitration fees and costs, the expected cost differential between arbitration and litigating in court, and whether the cost differential is so substantial as to deter the bringing of the claims. Id. In order to invalidate the arbitration agreement, the plaintiff, at an evidentiary hearing, must show the expected cost of arbitrating the specific claim is greater than litigating it and that the cost of arbitration would be prohibitively expensive. Id.
>
> Fi-Tampa, LLC v. Kelly-Hall, 135 So.3d 563 (Fla. App., 2014)
>
> An arbitration agreement may be substantively unconscionable if the fees and costs to arbitrate are so excessive as to "deny a potential litigant the opportunity to vindicate his or her rights." [Cite omitted] Green Tree Fin. Corp. Ala. v. Randolph,

531 U.S. 79, 81, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000) (holding that excessive arbitration costs may preclude litigants from effectively vindicating their rights). The party seeking to invalidate an arbitration agreement on such grounds has the burden of proving that arbitration would be prohibitively expensive. [cites omitted] Whether arbitration is prohibitively expensive is a question of fact that depends on the unique circumstances of each case. See Harrington, 119 P.3d at 1055 (explaining that "the Supreme Court adopted a case-by-case approach to determining whether fees imposed under an arbitration agreement deny a potential litigant the opportunity to vindicate his or her rights") (citing Randolph, 531 U.S. at 92, 121 S.Ct. 513). In determining whether arbitration costs are prohibitively expensive, courts have considered several factors. First, the party seeking to invalidate the arbitration agreement must present evidence concerning the cost to arbitrate. [cite omitted]. This evidence cannot be speculative; it must be based on specific facts showing with reasonable certainty the likely costs of arbitration. [cite omitted]see also Phillips v. Assocs. Home Equity Servs., Inc., 179 F.Supp.2d 840, 847 (N.D.Ill.2002) (party must make "a reasonable, good faith effort to estimate" arbitration costs). Second, a party must make a specific, individualized showing as to why he or she would be financially unable to bear the costs of arbitration. This evidence must consist of more than conclusory allegations stating a person is unable to pay the costs of arbitration. Rather, parties must show that based on their specific income/assets, they are unable to pay the likely costs of arbitration. Third, a court must consider whether the arbitration agreement or the applicable arbitration rules referenced in the arbitration agreement permit a party to waive or reduce the costs of arbitration based on financial hardship. Id. (holding an arbitration agreement was not substantively unconscionable because, in part, the agreement provided that any claim or dispute would be resolved under the American Arbitration Rules ("AAA"); the applicable AAA rules provided for waiver or reduction in arbitration fees based on "extreme hardship"); Jones v. Gen. Motors Corp., 640 F.Supp.2d 1124, 1134 (D.Ariz.2009) (finding arbitration fee not substantively unconscionable under Arizona law in part because arbitration rules referenced in arbitration agreement provided for waiver and deferral of fees based on financial hardship). We conclude there is reasonable evidence to support the trial court's finding that "[i]n this particular case, Plaintiff has established that he has a fixed, limited income that would make it extremely difficult, if not impossible, to pay to arbitrate the claim."

Clark v. Renaissance W., LLC, 232 Ariz. 510, 307 P.3d 77, 666 Ariz. Adv. Rep. 29 (Ariz. App., 2013).

When Provisions in an Arbitration Agreement Are Found to Be Unconscionable an Unenforceable The Court Should Decline Severance of the Offensive Terms And Void The Entire Arbitration Agreement

The South Carolina Supreme Court in Damico v. Lennar Carolinas, LLC 437 S.C. 596, 879 S.E. 2d 746 (S.C. 2022) as to the general law of unconscionability. The Court, *citing* Fanning v. Fritz's Pontian-Cadillac-Buick, Inc., 322 S.C. 399, 403, 472 S.E. 2d 242, 245 (1996), stated, "At its core, unconscionability is defined "as the absence of meaningful choice on the part of one party duce to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them."

As to the issue of lack of meaningful choice in the bargaining process, and the consideration of onerous arbitration terms in an adhesion contract, the Damico Court held:

> "Whether one party lacks a meaningful choice…typically speaks to the fundamental fairness of the bargaining process." *D.R. Horton*, 417 S.C. at 49, 790 S.E.2d at 4 (citation omitted). Thus, in determining whether an absence of meaningful choice taints a contract term, such as an arbitration provision, courts must consider, among all facts and circumstances, the relative disparity in the parties' bargaining power, the parties; relative sophistication and whether the plaintiffs are a substantial business concern of the defendant. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669; *see generally* 17A Am Jur. 2d *Contracts* § 272 (listing a number of factors that courts may considering in conducting an unconscionability analysis); 17 C.J.S. *Contracts* § 10 (same).
>
> Parties frequently claim they lack a meaningful choice when a contract of adhesion is involved. *D.R. Horton*, 417 S.C. at 49, 790 S.E.2d at 4 (explaining adhesion contracts are "standard form contracts offered on a take-it or leave-it basis with terms that are not negotiable" (internal alteration marks omitted) (citation omitted)). Because contracts of adhesion are non-negotiable, "[a]n offeree faced with such a contract has two choices: complete adherence or outright rejection." *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388,394,498 S.E.2d 898, 901 (Ct.App. 1998) (citation omitted).

As to arbitration clauses within adhesion contracts, "courts tend t view adhesive arbitration agreements with 'consideration skepticism,' as it remains doubtful 'any true agreement ever existed to submit disputes to arbitration."

Damico, Id., *citing* Simpson, Id., 373 S.C. at 26, 644 S.E. 2d at 699 (citations omitted). "The fact that a contract is one of adhesion is strong indicator that [there was] an absence of meaningful choice." Damico, Id. *citing* 17A Am. Jur. 2d Contracts Sec. 274.

The Damico Court declined the defendant's request to sever the terms found to be unconscionable from the rest of the contract, based upon a severability clause in the contract.

Instead, the Damico Court voided the entire agreement, *citing* Doe v. TCSC, Id. and Simpson, Id., for the Court's authority to decline severance of the unconscionable terms when the unconscionability infects the agreement sufficiently that it is more appropriate to refuse to enforce the entire agreement. Rather than the Court attempting to re-write the infected terms, Damico held that it was more appropriate to scrap the entire agreement, rather than enforce "the remaining, fragmented agreement." The Damico Court stated, "We decline to blue-pencil that provision." Damico, Id., also cited Shotts v. OP Winter Haven, Inc., 86 So. 3d 456, 478 (Fla. 2011) in refusing to sever unconscionable terms in a nursing home agreement:

> Given the nature of the relationship between a nursing home and its patient, the courts ought to expect nursing homes to proffer form contracts that fully comply with [the law], not to revise them when they are challenged to make them compliant. Otherwise, nursing homes have no incentive to proffer a fair form agreement."

In accord with the appellate Court decisions regarding unconscionability as relates to arbitration provisions, numerous Circuit Court decisions are also instructive as to provisions and circumstances regarding the findings of unconscionability and thereby refusing to enforce arbitration.

Examples include:

- Young v. NHC, 2014 (Judge Stillwell) (**Exhibit 4**)
- Wilson v. NHC, 2018 (Judge Nettles) (**Exhibit 5**)
- Rawl v. West Ashley Rehab, 2018 (Judge Goodstein) (**Exhibit 6**)
- Arrendondo/Whaley v. SNH, 2017 (Judge Nicholson) (**Exhibit 7**)

  Note: Judge Nicholson denied arbitration on the grounds of (A) lack of authority to sign; and (b) unconscionability. The S.C. Supreme Court in 2021 also denied arbitration in this case on the grounds of lack of authority, stating that it need not address remaining issues such as unconscionability.
- Williams/Meador v. Pacifica Skylyn, 2022 (Judge Mark Hayes) (**Exhibit 8**)

- Whitfield v. North Pointe, 2015 (Judge Sprouse) (**Exhibit 9**)

IV. CONCLUSION

The Oakview Park arbitration agreement is both procedurally and substantively unconscionable. The combination of the targeted vulnerable population, inadequate disclosure, severe damages limitations, elimination of the right to seek punitive damages, and the self-serving, one-sided procedural restrictions, in combination render the agreement unenforceable under South Carolina law.

WHEREFORE, Plaintiff respectfully requests this Court deny Defendants' Motion to Compel Arbitration and allow this action to proceed in court.

s/Gary W. Poliakoff
GARY W. POLIAKOFF S.C. Bar # 4488
atty@gpoliakoff.com
RAYMOND P. MULLMAN, JR. S.C. Bar #8662
rmullmanjr@gmail.com
Poliakoff & Associates, P.A.
215 Magnolia Street
P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472

August 28, 2025

OAKVIEW PARK

Assisted Living & Memory Care

RESIDENCY AGREEMENT

This Agreement ("Agreement") dated _3-17-2023___ is made by and between AFF18 Oakview Park ALF LLC dba Oakview Park (the "Company," "us," "we" or "our") and _Virginia Parsons/Sandy White_ ("you" or "your").

We own and operate the community located at 110 Hood Road Greenville, SC 29611 (the "Community") which is licensed by the State of South Carolina as an assisted living community and residency in the Community has been requested by you or on your behalf. The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS.

A. BASIC SERVICES. We will provide you with the following Basic Services, which are included in the Basic Service Rate, subject to the terms of this Agreement:

1. Accommodations - You have elected to live in the Suite described in Exhibit A. You are also entitled to use and enjoy with all other residents the common areas of the Community. You are to provide your own furnishings and personal property; however, we reserve the right to limit the number and type of furnishings/small appliances. You agree that you are responsible for the maintenance and repair of any personal belongings you bring to the Community. Resident is responsible for providing all personal care items. See attached form.

2. Dining Services - We will provide three meals daily. Snacks are available and offered to residents 24 hours a day.

3. Utility Service - The cost of gas, electric, heat, air conditioning and water service are included in the Basic Service Rate. The cost of basic cable, satellite or comparable television service is included in the Basic Service Rate. You are responsible for paying any other utility charges including, but not limited to, telephone, or premium cable charges.

4. Housekeeping Service - We will provide housekeeping once a week with a thorough cleaning of the resident's room. We will provide a daily tidy to include making the bed and taking the trash out.

5. Laundry and Linen Service - We will launder your personal belongings and bed linens once a week and on an as needed basis as included and agreed upon in the personal service plan.

DEFENDANT'S EXHIBIT 1

6. Activities Program - We will provide planned social and recreational programs that the resident will be encouraged to participate in.

7. Scheduled Transportation - Scheduled routine transportation on Tuesdays is provided for medical, dental, financial, and shopping services within a twenty (20) mile radius of the Community, as well as for scheduled social and leisure activities. For transportation not on Tuesday, you will incur a $30 flat fee. If a community associate is needed to accompany the resident, you will incur a $15 hourly charge for the escort service. Please see the Executive Director for regularly scheduled doctor's appointments.

8. Emergency Transportation – Emergency transportation will always be available by local emergency personnel. **Oakview Park does not provide transportation services to and from the hospital for emergency care. The responsible party and the hospital are responsible for arranging transportation for return to Oakview Park.**

9. Personal Services - We will provide those personal services that are included as part of the care plan assessment as described in Section 1.B. below.

10. Staffing 24 hours a day - Associates are available 24 hours a day, seven days a week.

B. CARE PLAN. Within 7 days of moving in and at least every six months throughout your residency, we will use a care plan assessment to determine the personal services you require. The care plan assessment will be used to develop your Personal Care Plan. The results of the assessment will be shared with you.

C. AVAILABLE SELECT SERVICES. Select Services are available to you at your request. Such additional services are not included in the Basic Service Rate. Where available, such services may include, but are not limited to guest meals, transportation escort services, enhanced cable television, sitter services or special events.

D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT. In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the Community. An outside agency or individual will be permitted to provide these services or any related personal services only if we have given prior approval. The Community is not staffed and not authorized to perform skilled nursing services nor provide care for any injury or acute condition that requires medical care that is expected to last for more than ninety (90) days. You understand and agree that if you should need skilled nursing services or require care for an injury or acute condition that is expected to last for more than ninety (90) days you will be discharged by the Community after prior written notice. This shall not apply to residents admitted to a hospice program.

You are responsible for obtaining and paying for all services that are not included in the Basic Services or Personal Care Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by us, our subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy, therapy, private companion, beauty/barber or other health care services. Fees for such services will be billed to you directly by the service provider, unless otherwise agreed to by the parties. All third party service providers (including, but not limited to, health care service providers) must agree to adhere

to our standards for outside providers prior to being permitted to provided services in the Community. Pharmacy services will be provided in accordance with the Pharmacy Services Agreement attached.

Exhibit B. You may not hire our current associates to provide services in the Community. You may contract with former associates to perform services at the Community only with our prior written consent. We reserve the right to refuse entry to (1) former associates; (2) persons whose actions may be disruptive to the Community; or (3) persons whose actions may threaten the safety of any resident or associate. We should be notified prior to any sitter service being contracted by the responsible party.

II. YOUR RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE. You agree that the Community and the Suite are in satisfactory, habitable condition and we have made no promise to decorate, alter or improve the Community or Suite unless otherwise provided in writing and attached as part of this Agreement. You agree to maintain the Suite and to leave the Suite upon termination of this Agreement in good condition, except for normal wear and tear. You agree to pay all damages, beyond normal wear and tear, which you (including your agent, employee, contractor, or other invitee) cause to our property and we may invoice you for the cost of such repairs. The community will split the cost of replacing the carpet one time during the resident's stay at the management's discretion and agreement with the responsible party. The community will clean the resident's carpet as needed at the discretion of management. If carpet requires cleaning more than one time per month, the cost will be split between resident and community.

B. ALTERATIONS. We, in our sole discretion, will permit reasonable alterations to the Suite if you have a disability and the proposed modification is necessary to afford you full enjoyment of the Suite. Structural or physical alterations, whether based on a handicap or not, may be made only upon our prior written approval. All structural or physical changes to the Suite shall remain at the Suite and be considered part of the Suite and the Community. Any changes or modifications to the Suite that require assistance of appropriately licensed and insured electricians, contractors or similar professionals must be approved in advance by us in writing in our sole discretion. The cost of any alterations made by you shall be paid by you unless we otherwise agree in writing. You agree that you will bear the cost of restoring the Suite to its original condition, reasonable wear and tear excepted, upon the termination of this Agreement, unless we specifically exempt you from this requirement in writing. We may enter and make any modifications or alterations to the Suite to meet the requirements of any applicable law.

C. RIGHT OF ENTRY. For your safety and comfort, our associates must be permitted to enter your Suite to provide services under the terms of this Agreement, to respond to emergencies, to make repairs and improvements, or if there is reasonable belief that your safety or the safety of others is in question or that our policies and procedures are being violated, as we deem necessary or advisable. Therefore, it is not permissible to change the locks or add additional locks to the entrance door to your Suite. When feasible, our associates will attempt to give you reasonable notice before entering your Suite. If you have a list of certain visitors that cannot visit your loved one, we ask that you give that in writing so we can keep in the residents file.

We reserve the right to relocate you to a more appropriate Suite within the Community as required for your health or safety, or because the residents of a companion Suite are incompatible.

D. **HEALTH ASSESSMENT**. You agree that we may assess your health to create and update a Personal Care Plan and/or to determine whether you are appropriate to remain at the Community. Not more than thirty (30) days prior to the date of this Agreement, and at least annually thereafter or upon our request, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree to undergo examination by a particular specialist, at your cost, as we determine is warranted by your current physical or mental status. You will request the examiner to provide us with recommendations, including a statement attesting to the appropriateness of your continued placement. Based upon the assessment(s) and our judgment, we may determine your appropriateness to remain in the Community. You will request the examiner to perform any tests and complete any forms required by us or applicable law.

E. **HEALTH CARE PROVIDER NOTIFICATION.** You authorize us to contact your legal representative/family, health care providers, and/or other persons listed in your records (1) if it is necessary to advise them of your situation; (2) to arrange for required health care services and other assistance; or (3) in case of an emergency.

If your designated health care providers are unavailable, you authorize us to arrange for the services of other health care providers. You agree we may provide such persons with copies of your records, including, but not limited to, resident records, advance directives, living will, and the names of persons empowered to make health care decisions.

F. **SUBSTITUTE DECISION MAKERS/ADVANCE DIRECTIVES.** You will provide us with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You will provide us with copies of any power of attorney, guardianship, living will, or conservator documents, or other legal documents relating to the making of health or financial decisions or decision-makers. You authorize us to rely on the instructions of such designees or appointees. You further agree to immediately notify us of changes relating to the information stated above.

It is strongly suggested that you have advance directives in place in the event you become incapacitated. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company). Neither we nor any of our associates or agents may be your guardian. If it is necessary for us to petition the court for appointment of a guardian, any costs associated therein shall be paid by you and we may invoice you for such costs.

G. **ELECTRIC SCOOTERS.** Electric scooters and similar vehicles will be allowed provided community management agrees that residents can maneuver the scooter in a safe manner. In the event this changes, the resident will not be allowed to operate an electric scooter inside the community.

H. **RESPONSIBILITIES UPON TERMINATION**. You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the

effective date of termination, you understand and agree that we may continue to charge you for the Basic Service Rate of your Suite, or have your belongings placed in storage at your cost. You further agree that we may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail. Termination will not release you or us from any liability or obligation to the other party under the terms of this Agreement.

I. **EXAMINATION OF RECORDS.** You acknowledge that we are licensed by the State of South Carolina as an assisted living community. You understand that regulatory officials having jurisdiction over the Community may inspect your records as part of an evaluation of the Community. You have the right to review and access your health care records in accordance with the requirements of applicable law.

J. **RULE AND REGULATION COMPLIANCE.** You understand that the Community has shared common areas, and you agree to honor all rules of courtesy and respect for others. You agree to abide by and conform to our rules (including, but not limited to, the Oakview Park House Rules attached hereto as Exhibit C), regulations, handbook, policies and procedures as they now exist and as amended from time to time. You understand that failure to abide by such policies may result in your discharge from the Community.

K. **GUESTS.** You have the right to associate with your friends and family during reasonable hours. Because the Community is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the circumstances.

L. **RESIDENT WORK.** The Community may not require you to work or to perform any services for the Company.

III. RATES.

A. **COMMUNITY FEE.** We require a one-time non-refundable Community Fee in an amount indicated in Exhibit A to be paid at the time this Agreement is signed. The Community Fee does not excuse you from financial responsibility for any damage to your Suite beyond normal wear and tear upon move-out.

B. **BASIC SERVICE RATE.**

1. Rate. You agree to pay the Basic Service Rate as indicated in Exhibit A.

2. Refund. We will refund a prorated share of the Basic Service Rate if this Agreement is terminated before the end of a month:

   a. Following written notice in accordance with Section IV;

   b. Because you require care that is not offered by us; or

   c. By reason of death.

Refunds will be prorated using 30 days to calculate the Daily Rate, from the later of the termination date or the date by which you have vacated, and all of your belongings are removed from Community. Unless prohibited by law, you agree we may offset such refunds by any amount due under the terms of this Agreement.

C. ABSENCES.

1. Notice of Absence. Except for an emergency medical absence, if you will be absent from the Community for any period of time, you must inform us of your plans prior to leaving and sign the Sign In/Sign Out Book upon exiting and re-entering the Community. We assume no responsibility or liability for your welfare during times that you are away from the Community.

2. Fees During Absence. If you are absent from the Community for any reason, such as, for a hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Basic Service Rate. If you provide written notice of your intent to terminate the Agreement pursuant to Section IV, termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES. In addition to the Basic Service Rate, you agree to pay the established charges for any Select Services provided to you by us.

E. PAYMENT. We will issue a monthly statement before the first day of the month itemizing the Basic Service Rate for the upcoming month and, if any, charges incurred for Select Services provided during prior months. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Basic Service Rate is due prior to taking occupancy. If you take occupancy after the first of the month, your first Basic Service Rate will be prorated using 30 days to calculate the Daily Rate.

We will charge a $50.00 late fee if we have not received all fees when due. We will also charge a $30.00 returned payment fee for each check or automatic withdrawal that is returned or denied for any reason. After two such occurrences, you agree to pay all amounts due by cashiers' check or such other method specified by us. You also agree to pay interest on all outstanding amounts based upon the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES. We will provide thirty (30) days written notice of any change in the rates for Basic Services or Select Services. We may offer or require a change in the Personal Care Plan when we determine additional services are requested or required.

G. GRIEVANCES/OMBUDSMAN. In the event you and/or your responsible party (on behalf of you) have a grievance regarding the Community or its services, you may follow the Community's grievance procedure as set forth in Exhibit D. In the event any dispute regarding payment of fees or monies owed arises and cannot be resolved by the Company and you or your legal representative, the local ombudsman may be able to provide assistance.

IV. TERM AND TERMINATION.

A. TERM. This Agreement begins on the date set forth above and continues until terminated as provided below.

B. TERMINATION BY RESIDENT. You may terminate this Agreement upon fourteen (14) days written notice to us. Termination occurs on the later of the end of the notice period or upon the removal of all of your personal belongings. You will be given a pro-rated refund based when your belongings are removed or when your 14-day notice is up.

C. TERMINATION BY THE COMPANY. We may terminate this Agreement, upon providing you thirty (30) days written notice, for any of the following events, as determined by us:

1. You require care or services that we are unable to provide or which requires staff that are not available at the Community.

2. You require more than 90 days of part-time intermittent skilled nursing care;

3. Your behavior or your visitors' behavior impairs the well-being, care or safety of yourself or others, creates unsafe conditions, is physically or verbally abusive to others, or otherwise interferes with the orderly operation of the Community;

4. For your welfare or the welfare of others in the Community;

5. You or your third-party payor fail to pay fees and charges when due, or you breach any representation, covenant, agreement, or obligation under this Agreement.

6. We are unable to meet the needs of the resident or responsible party.

We may, upon written notice to you, immediately terminate this Agreement, and transfer or discharge you for emergency medical or welfare reasons that would endanger the health and safety of yourself or others. If the emergency requires your immediate transfer, we will notify your legal representative as soon as practical. We will provide a written explanation for termination with less than thirty (30) days' notice.

D. TERMINATION BY EITHER PARTY. Either party may terminate this Agreement immediately upon written notice in the event of the resident's death or if a physician certifies to us in writing, based upon an examination prior to moving out, that you must be relocated due to your health. Consideration may be made for extenuating circumstances if belongings cannot be removed during this timeframe. The basic service rate will be charge on the last day that the resident's belongings are in the apartment.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION.

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

A. ARBITRATION PROVISION.

1. Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The Federal Arbitration Act (9 U.S.C. § 1, *et seq*) concerning arbitration shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.

2. A demand for arbitration by you, your legal representative, a person or organization acting on our behalf with your consent, or the personal representative of the estate of your estate (collectively "Resident Party") shall be made in writing and submitted to Atlas Senior Living, LLC, 2700 Highway 280 Suite 460 Birmingham, AL 35223 Attn: Manager, via certified mail, return receipt requested. Demand for arbitration by us shall be made in writing and submitted to you or your agent, representative, successor or assign and/or your legal representative via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.

4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of Section A.5, the parties shall agree upon an arbitrator that must either be a retired Georgia circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. I the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then each party will select an arbitrator. These arbitrators will act only for the purpose of appointing a sole arbitrator to h ear the case, subject to the criteria above. If either party fails to select their arbitrator within the twenty (20) days mentioned above, they effectively forfeit their right to choose an arbitrator.

5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

6. Discovery in the arbitration proceeding shall be governed by the South Carolina Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:

a. The Resident Party shall provide us with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and we shall reimburse Resident Party $0.25 per page.)

b. We shall provide the Resident Party with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse us $0.25 per page).

c. The only depositions allowed shall be of experts. No other individuals may be deposed.

d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.

e. We shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

f. We shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.

g. Resident Party shall have thirty (30) days after our expert designation is received in which to depose such experts.

h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.

i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:

   1) List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witness' intended testimony;

   2) List of documents to be relied upon at the arbitration hearing;

   3) Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.

j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.

7. The arbitrator shall designate a time and place within the county in which the Community is located for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.

8. The arbitrator shall apply the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, South Carolina law except as otherwise stated in this Arbitration Provision.

9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.

10. The arbitrator's decision shall be final and binding without the right to appeal.

11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

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

13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision.

14. The Arbitration Provision and the Limitation of Liability Provision below shall survive your death.

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

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.

2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by us for unpaid Basic Service Rate or other charges, or a claim by, or on behalf of you, Resident Party or your estate, agent or legal representative, arising out of the care or treatment received by you or your occupancy or presence at the Community, including, without limitation, claims for medical negligence, shall be limited as follows:

   a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.

b. Non-economic damages, such as pain and suffering, shall be limited to a maximum of $400,000.00.

c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.

d. Punitive damages shall not be awarded.

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

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

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

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

VI. MISCELLANEOUS.

A. WAIVER OF TRIAL BY JURY. If a court determines that the Arbitration Provision provided above is invalid, the parties express their desire to waive a jury trial and resolve any claims in the appropriate court solely before a judge.

B. NON-DISCRIMINATION. We operate on a non-discriminatory basis and afford equal treatment and access to services to eligible persons regardless of race, religion, color, national origin, sex, disability or any other category protected by applicable law.

C. RISK AGREEMENT. You are responsible for your personal, financial and health care decisions. You are also responsible for maintaining health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance in an amount adequate to cover your personal property and your general liability. You acknowledge that we do not insure your person or property. You understand and agree that:

1. We may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs.

2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss.

3. The standard of service for an assisted living community does not include one-on-one care, assistance or supervision, e.g., one resident assistant for each resident, or immediate response to non-emergent needs. There may be short and long periods of time in which you will be left alone, unsupervised such as while watching television, listening to music, reading, and sleeping at night.

4. We make no representations or guarantees that our associates can prevent falls. We do not represent or guarantee that your health condition will not change or deteriorate.

5. We make no representations or guarantees that our associates can prevent the onset of skin break down or the worsening of existing skin break down.

6. Our services may not meet all of your personal, social, or health care needs and we will attempt to assist you in arranging for such services which are not included in this Agreement.

7. Many residents suffer from cognitive impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior such as wandering, confusion, forgetfulness, agitation, and aggressive behavior towards others. We make no representations or guarantees that we can predict the behavior of our residents. Therefore, we also make no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical, or aggressive contact with another resident.

8. We make no representations or guarantees that we can prevent the loss of personal items, including but not limited to clothing, dentures, hearing aids or other medical equipment. We will not be responsible for the loss of such items. We make no representations or guarantees that we can prevent theft or other criminal acts perpetrated by another resident or person; therefore, we recommend that valuables such a jewelry and large sums of money, not be kept at the Community. If you choose to bring in valuables, you do so at your own risk and we will not be held responsible for any theft or loss of such items.

9. Due to state regulations and fire code, we may not lock our exterior doors against exiting. Therefore, we cannot guarantee that a resident will not wander from the Community. Some buildings have exterior doors that are alarmed with a delayed egress feature and our systems are designed to alert our associates to respond and assist a resident if they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold us, our associates and agents harmless for any damages, injury or other loss resulting from: (i)

reasonable acts or omissions made in good faith; (ii) action by a third party, fire, water, theft or the elements; or (iii) loss of personal property.

D. PETS. Pets are permitted in the Community considering that the resident can provide the needed care for the pet. In the event the resident cannot meet the pet's needs, the pet will no longer be able to remain at the community. There is a non-refundable pet fee of $400 due at move in. As needed/annual pet immunizations are to be given to the community.

E. SMOKING. Smoking is permitted in designated areas.

F. WEAPONS. Weapons, as defined by us, are not allowed in the Community or on Community property. This includes but is not limited to firearms, explosive materials, and collectible or antique weapons.

G. ASSIGNMENT. This Agreement is not assignable without our prior written consent. Our rights and obligations may be assigned to any person or entity which will be responsible to ensure our obligations under this Agreement are satisfied in full from the date of notification. We may engage another person or entity to perform any or all of the services under this Agreement.

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

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

J. FINANCIAL RESPONSIBILITY. You have designated a Guarantor, who has agreed to the terms of the Statement of Financial Responsibility attached hereto as Exhibit E.

K. SUBORDINATION. This Agreement and the parties' rights hereunder are subordinate to any lease, mortgage or deed of trust placed upon the Community, but you may remain in your Suite so long as you comply with the provisions of this Agreement.

L. REPRESENTATION AND WARRANTY. By executing this Agreement you represent and warrant that all representations made by you or on your behalf, whether written or verbal, with respect to your application for admission to the Community were true when made. You understand that we rely upon the truthfulness of this information in making our decision to enter into this Agreement. Your application forms, including personal data forms, statement of financial condition (if applicable), health history and medical reports submitted by you or on your behalf to us, are incorporated by reference into this Agreement and made an express part of it. You understand and agree that any material misrepresentation or omission made by you or on your behalf in connection with these documents shall make this Agreement voidable at our option, to the extent permitted by law.

M. CHOICE. You have a choice of providers for private sitters, therapy, rehabilitation, home health and other health care services. If you require such services, Community associates will assist you in obtaining such services from a provider of your choice. We will require that your provider of choice provide background checks and liability insurance for any employees that residents at the Community. Any outside provider must go through proper vetting and so prior authorization by the Executive Director is required.

N. ASSIGNMENT OF BENEFITS. To the extent that the Community participates in a government payor program, long term care insurance program or other insurance program ("Third Party Payor") of which you are a beneficiary, you authorize us to disclose any medical or administrative information and request payment. You certify that the information given in applying for payment from such Thirty Party Payor is correct. You authorize release of all medical and administrative records required to act on this request and request that payment of authorized benefits be made on your behalf. You authorize us to disclose any medical or administrative information required in the processing of applications for financial coverage for services rendered. To the extent permitted by your Third Party Payor, you authorize direct payment of all benefits to us.

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

Company:
Oakview Park
110 Hood Road
Greenville, SC 29611
Attn: Executive Director

Resident: Virginia Parsons

Legal Representative/Responsible Party: Sandy White
(as noted below on following page)

[signatures on following page]

WE BELIEVE IT IS IMPORTANT TO DISCLOSE ALL SERVICES AND FEES TO THE BEST OF OUR ABILITY AND IN ACCORDANCE WITH THE LAW. WE RECOMMEND THAT YOU CONSULT WITH LEGAL COUNSEL TO ENSURE UNDERSTANDING OF THIS AGREEMENT BEFORE SIGNING. I ACKNOWLEDGE RECEIPT OF RESIDENT BILL OF RIGHTS.

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

Sandy White 3/21/2023

Legal Representative/Responsible Party Date

Oakview Park, LLC
By: Atlas Senior Living, LLC, its manager

Sandy White ATF 3/21/2023
Signature Title Date

LEGAL REPRESENTATIVE/RESPONSIBLE PARTY ADDRESS:

Name: Sandy White

Address: [redacted]

Phone No.: [redacted]

Email: [redacted]

OTHER RELATED MATERIALS:

1. Resident Bill of Rights
2. Emergency Evacuation Plan
3. Admissions Package
4. Medical Records Release
5. Care Plan Assessment
6. Care Plan

EXHIBITS INCLUDED:

A. Schedule of Services and Rates

B. Pharmacy Services Agreement

C. Oakview Park Rules

D. Oakview Park Grievance Procedure

E. Statement of Financial Responsibility

F. Personal Allowance Waiver

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident: Virginia Parsons

Suite Number: [redacted]

COMMUNITY FEE:

BASIC SERVICE RATE:

Second Person Fee
(Due upon Move-In)

Living with Dignity Incontinence Products Monthly Charge [redacted]

If resident takes occupancy of their suite after the first of the month, that months Basic Service Rate will be prorated using 30 days to calculate the Daily Rate.

I agree to the above Schedule of Services and Rates to commence as 03/17/2023.

I understand and agree that the Company has the right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

Sandy [illegible] 3/21/2023
Legal Representative Date

Oakview Park, LLC By: Atlas Senior Living, LLC, its Manager

Signature:________ Title: ___________ Date_______________

EXHIBIT B
PHARMACY SERVICES AGREEMENT

We work closely with pharmacy providers to meet the needs of our residents. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

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

Guardian Pharmacy is our preferred provider for pharmacy services ("Preferred Provider"). The Preferred Provider will review your current medications upon your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed. Guardian will assess a monthly re-packaging fee of $45 if medications are being filled by another provider such as the VA.

If you decide to use another pharmacy provider other than the Preferred Provider, it will be required to meet our medication management standards.

Regardless of whether you use the Preferred Provider or another pharmacy provider, all pharmacy billing is exclusively handled between you and your selected pharmacy and the Community will not be responsible in any way for your pharmacy billing.

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

I understand that I will be required to provide medications that are packaged in a unit of use packaging system. **If at any time I am not able or no longer willing to provide this type of packaging system, I understand that I need to find alternative housing, unless an exemption is agreed upon by the Executive Director.** Under no circumstances may you or your legal representative hire a healthcare proxy to administer your medications.

If I do not use the Community's Preferred Provider, I also understand that I will have the responsibility for reordering medications. If medications are not delivered **within two days prior to their depletion**, the Community will reorder my medications with the Preferred Provider. **I agree to pay for the**

medications and any associated service charges. The fees associated with reordering medications from the Preferred Provider are determined by the Preferred Provider and are in addition to the service fee described above.

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

Sandy Witt
Legal Representative Signature

3/21/2020
Date

EXHIBIT C
Oakview Park HOUSE RULES

1. Oakview Park does not allow the use of tobacco products inside the community.

2. Alcohol consumption is permitted as ordered by the resident's physician.

3. Public telephone use is available anytime for appropriate reasons.

4. Visitors are allowed to visit anytime but the door are open from 7 a.m. to 7 p.m. Special accommodations are considered upon staff approval. All visitors must sign in and out when entering and exiting the community.

5. All residents are required to sign out when leaving the community and sign in when returning. Elopement from the community will be considered when the resident has exited the community without prior knowledge of staff and without properly signing out. Please see elopement policy for more information.

6. Audio visual components may be listened to and view anytime. If another resident's wellbeing is threatened, the violating resident will be asked to decrease the volume of the equipment or discontinue further use of the equipment.

7. Oakview Park staff will not be responsible for the well-being of any pet. Residents are allowed to have pets visit during normal visiting hours.

8. Residents are allowed to use any personal property of Oakview Park. Residents are not allowed to use the personal property of another resident without prior authorization.

EXHIBIT D
Oakview Park GRIEVANCE PROCEDURE

Updated: 7/29/19

Grievance Procedure:

Oakview Park is committed to quality customer service. We believe that good communication fosters our ability to provide quality services.

In the event a resident and/or resident's responsible party (on behalf of the resident) has a grievance regarding the community or its services, we request the following steps be taken:

1. The resident and/or resident's responsible party should discuss the complaint with the associate and Executive Director.
2. If unable to resolve grievance with step 1, the grievance should be submitted in writing to the Executive Director. The Executive Director should respond to the resident and/or resident's responsible party within fourteen (14) days of receipt of the complaint.
3. If unable to resolve grievance with step 2, the written grievance should be submitted to the Owner. The Owner should respond to the resident and/or resident's responsible party within fourteen (14) days of receipt of the complaint.
4. A resident and/or resident's responsible party may file a grievance with the local Ombudsman at any point in this process. If requested, a community representative should assist the resident or resident's responsible party in forwarding the written grievance to the appropriate address and contact person.
5. Residents and/or their responsible parties may submit grievances to associates, outside agencies, and other individuals without fear of restraint, interference, coercion, discrimination or reprisal.

EXHIBIT E

Sandy White ("Guarantor" or "you") and Oakview Park, LLC (the "Company," "us," "we" or "our"), agree as follows:

The Resident named in the attached Residency Agreement desires to live at the Community and we are willing to enter into the Residency Agreement if the Resident has an individual who is willing to fulfill the conditions of this Statement of Financial Responsibility; and

In consideration for our accepting the Resident into the Community, you agree to fulfill the provisions of this Statement of Financial Responsibility, if and as necessary.

Therefore, in consideration of the mutual covenants contained in this Statement of Financial Responsibility, the parties agree as follows:

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

A. Participating with our associates in evaluating Resident's needs and in planning and implementing an appropriate plan for Resident's care;

B. Maintaining Resident's welfare and fulfilling Resident's obligations under the Residency Agreement;

C. Relocating Resident following termination and removing the Resident's property;

D. Transferring Resident to a hospital, nursing home, or other facility in the event that Resident requires care we do not offer; and

E. Making necessary arrangements for funeral services and burial in the event of death.

II. **FINANCIAL RESPONSIBILITY.** If Resident fails to make payments due to us under the Residency Agreement, you agree to pay us such amounts within thirty (30) days of receiving written notice of nonpayment.

III. **REVIEW OF RESIDENCY AGREEMENT.** You acknowledge that you have received and reviewed a copy of the Residency Agreement and have had an opportunity to ask questions.

BY THEIR SIGNATURES, the parties have executed this Agreement to be effective as of _03-17-2023_.

Sandy Wolt 3/21/2023

Guarantor Date

Oakview Park, LLC
By: Atlas Senior Living, LLC, its manager

Signature Title Date

SEND NOTICES TO GUARANTOR AT:

Street Address: [redacted]

Primary Phone: [redacted]

Email: [redacted]

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-23-06777

DEFENDANTS' REPLY TO PLAINTIFF'S MEMORADUM IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") reply to Plaintiff's Memorandum in Opposition to Defendants' Motion to Compel Arbitration and Stay Proceedings as follows.

I. Defendants have not waived their contractual right to arbitration.

"Neither delay nor the filing of pleadings by the party seeking a stay will suffice, without more, to establish waiver of arbitration." *Rich v. Walsh*, 357 S.C. 64, 71, 590 S.E.2d 506, 510 (Ct. App. 2003). "[T]here is a presumption against finding a party has waived its right to compel arbitration and a party seeking to prove a waiver of a right to arbitrate carries a heavy burden." *Dean v. Heritage Healthcare of*

Ridgeway, LLC, 408 S.C. 371, 388, 759 S.E.2d 727, 736 (2014) (internal quotations and citation omitted).

"A party can default, or waive, its right to arbitration if it knew of the right to arbitrate and acted inconsistently with that right, **namely through participation in litigation**." *Bryce v. SP Plus Corp*., 741 F. Supp. 3d 385, 391 (E.D. Va. 2024) (emphasis added). "In order for a party to waive a right under a contract, the party's conduct must be so manifestly consistent with and indicative of an intention to renounce a particular right or benefit **that no other reasonable explanation of the conduct is possible**." 17B C.J.S. Contracts § 749 (emphasis added). "Because the effect of a waiver is to relinquish contractual protection, waiver should not be lightly presumed." *Id*.

In February of 2025, before Defendants had even answered the complaint, Defendants alerted Plaintiff to the existence of the arbitration provision and of their intent to enforce the same. (See **Exhibit 1**, Email from Todd Darwin).

Unfortunately, however, shortly after attorney Todd Darwin filed an answer on behalf of Defendants in February, he had to take a leave of absence from the practice of law for medical reasons. (See **Exhibit 2**, Order of Protection). While it was initially anticipated that Todd Darwin would be able resume the practice of law as soon as May of 2025, to date, Todd Darwin has not been able to do so.

On June 27, 2025, attorney Timothy Maio reached out to plaintiff's counsel to follow up on Todd Darwin's attempt in February to agree upon a consent order to arbitrate. (See **Exhibit 3**, Email from Timothy Maio). When it became apparent that the parties were likely not going to be able to agree upon a consent order to arbitrate, Defendants filed a motion to compel arbitration on July 3, 2025.

Defendants did nothing to "participate in litigation" between February and June. No depositions have been taken. No written discovery has been conducted. Defendants have not acted in a manner that is inconsistent with its right to arbitrate, much less acted in a manner that was so indicative of an intention to renounce its right to arbitrate "that no other reasonable explanation of the conduct is possible." *See* 17B C.J.S. Contracts § 749.

Furthermore, undersigned counsel is not aware of any published South Carolina case in which a Court has found that a delay of approximately four to six months in filing a motion to compel arbitration was sufficient to constitute waiver. To the contrary, there are a number of South Carolina cases in which the Court has found that that even much longer delays did not constitute waiver. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co*., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (finding that **a thirteen month delay in which merits discovery was conducted** by both parties did not demonstrate waiver); *Rich v. Walsh*, 357 S.C. 64, 67, 590 S.E.2d 506, 507 (Ct.App.2003) (finding that **a thirteen month period** where "[l]imited discovery was conducted" and the party requesting arbitration took one deposition lasting fifteen minutes did not demonstrate waiver); *Gen. Equip. & Supply Co. v. Keller Rigging & Const., SC, Inc*., 344 S.C. 553, 557, 544 S.E.2d 643, 645 (Ct. App. 2001) (finding a period of less than **eight months** where the "litigation consisted of routine administrative matters and limited discovery which did not involve the taking of depositions or extensive interrogatories" did not establish waiver).

Federal jurisdictions across the country have also held that a delay of a few months in filing a motion to compel arbitration does not constitute waiver. To take just the Fourth Circuit as an example, in a recent case the Fourth Circuit held:

> Appellants did not knowingly relinquish their arbitration right by acting inconsistently with it. True, they waited more than **nine months** after they were sued to move to compel arbitration. But we give little significance to the failure to file a formal demand for arbitration when the party invoking that right persisted in its claim for arbitration.

SZY Holdings, LLC v. Garcia, No. 23-1305, 2024 WL 3983944, at 3 (4th Cir. Aug. 29, 2024) (internal citations and quotations omitted) (emphasis added).

South Carolina and the Fourth Circuit are certainly not aberrations in this respect. For a brief survey of some similar holdings from jurisdictions across the country, please see the following: in **the First Circuit**, *see J & S Const. Co. v. Travelers Indem. Co.*, 520 F.2d 809, 809 (1st Cir. 1975) (finding that a delay of thirteen months and participation in discovery, including the taking of depositions, did not constitute waiver); in the **Second Circuit**, *see PPG Indus., Inc. v. Webster Auto Parts, Inc.*, 128 F.3d 103, 108 (2d Cir. 1997) ("This five-month delay, by itself, is not enough to infer waiver of arbitration."); in the **Third Circuit**, *see Baumwoll v. Brightview Senior Living, LLC*, No. 19-CV-07278, 2020 WL 13543767, at 2 (D.N.J. Apr. 30, 2020) ("The Court finds that the relatively short five-month period before Defendant filed the Motion and Defendant's limited engagement in discovery do not constitute active participation in litigation sufficient to constitute waiver of the right to arbitrate."); in the **Fourth Circuit**, *see Patten Grading & Paving, Inc. v. Skanska USA Bldg*., Inc., 380 F.3d 200, 205 (4th Cir. 2004) ("As Skanska moved to compel arbitration on August 19, 2003, the delay properly attributable to it is no more than four months. We have previously concluded that delays of such length, without more, are insufficient to demonstrate a party's waiver of its right to arbitration."); in the **Fifth Circuit**, *see Baricuatro v. Indus. Pers. & Mgmt. Servs., Inc*., 927 F. Supp. 2d 348, 356-57 (E.D. La. 2013) (finding that "five months is not a significant delay" and is not sufficient to constitute waiver); in the **Sixth Circuit**, *see Healthcare Mgmt. Sys., Inc. v. Syntel Ltd*., No. 3:12-0845, 2013 WL 3834043, at 5 (M.D. Tenn. July 24, 2013) (finding that "[t]he delay of five months is not extraordinary" and is insufficient to constitute waiver); in the **Seventh Circuit**, *see Huser v. Midland Funding, LLC*, No. 17-CV-04490, 2019 WL 4393017, at 7 (N.D. Ill. Sept. 13, 2019) (finding that a nearly seventeen month delay did not constitute waiver); in the **Eighth Circuit**, *see Anderson v. Hansen*, 550 F. Supp. 3d 725, 730 (E.D. Mo. 2021), aff'd, 47 F.4th 711 (8th Cir. 2022) "The Court cannot say the delay of approximately six months, engaging in discovery, and filing three non-dispositive motions, without more, constitutes an action inconsistent with the right to arbitrate claims . . ."); in the **Ninth Circuit**, *see Armstrong v. Michaels Stores, Inc*., 59 F.4th 1011, 1016 (9th Cir. 2023) (finding that "[Defendant] never wavered from the view that it had a right to arbitration, as evidenced by [Defendant] moving to compel arbitration within a year after [Plaintiff] filed the complaint" and that there was therefore no waiver); in the **Tenth Circuit**, *see Hill v. Ricoh Americas Corp.*, 603 F.3d 766, 775 (10th Cir. 2010) (finding that a delay of about four months was insufficient to constitute waiver); and in the **Eleventh Circuit**, *see Hodgson v. Royal Caribbean Cruises, Ltd.*, 706 F. Supp. 2d 1248, 1257 (S.D. Fla. 2009) (finding that a six month delay was insufficient to constitute waiver).

It is a heavy burden to prove that a party waived its contractual right to arbitration and Plaintiff has not met it here. There is no waiver.

II. The arbitration provision is not unconscionable.

"In South Carolina, unconscionability 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, 24-25, 644 S.E.2d 663, 668 (2007).

"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 so as to avoid any unconscionable result." *Id.* at 25, 644 S.E.2d at 668.

"In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker." *Id.* "It is under this general rubric that we determine whether a contract provision is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms." *Id.* at 25, 644 S.E.2d at 669.

a. There was not an absence of meaningful choice.

"Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Id.*

"Courts should not refuse to enforce a contract on 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).

"In determining whether a contract was tainted by an absence of meaningful choice, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (internal quotations and citations omitted).

In *Gladden*, the Plaintiff alleged that a limitation of liability clause in a home inspection contract that limited the home inspector's liability to the amount paid for the inspection was unconscionable. *See Gladden v. Boykin*, 402 S.C. 140, 739 S.E.2d

882. However, Gladden was a licensed real estate agent and the Court noted that "there is no allegation that Mrs. Gladden lacks the education to understand the terms of a contract or protect her own interests. On the contrary, the record demonstrates that Mrs. Gladden directly engaged in sophisticated negotiations throughout the process of buying the home . . ." *Id*. at 145-46, 739 S.E.2d at 885.

"Moreover, we have no record on which to find that home inspection contracts without exculpatory clauses are unavailable in the market." *Id*. at 146, 739 S.E.2d at 885. The Court also noted that "the contract consisted of one page, the heading of the limitation clause was in all capital letters and in bold, and the clause and its heading were in the same print as the contract's other terms." *Id*. "Thus, the record does not support a conclusion that the Gladdens lacked a meaningful choice whether to accept the terms of the contract." *Id*.

As in *Gladden*, here, the arbitration clause was just as conspicuous as every other provision in the contract and there was no element of surprise in its inclusion. The arbitration provision here was printed in the same font and font size as every other part of the Residency Agreement. (*See* **Exhibit 4**, Residency Agreement). The term "**ARBITRATION PROVISION**" is underlined and emboldened – not hidden by any means. (**Exhibit 4**, Residency Agreement 000007).

Like Mrs. Gladden, Sandra Parsons White has been a licensed real estate agent since 2013. (**Exhibit 5**, Real Estate License)[1]. Defendants ask that this court take judicial notice of the fact that Sandra Parsons White has been a licensed real

[1] Accessible at: https://verify.llronline.com/LicLookup/Rec/Rec.aspx?div=19&AspxAutoDetectCookieSupport=1

estate agent since 2013 as this is a matter of public record and cannot reasonably be disputed by the Plaintiff. *See* Rule 201(b), SCRE (noting that the court may take judicial notice of a fact that is "not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); *see also Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007)("[W]e may properly take judicial notice of matters of public record.").

To become a licensed real estate agent, one has to pass a test demonstrating one's understanding of both contract law and agency law. (*See* **Exhibit 6**, Real Estate Test Bulletin). Attached to this memo as Exhibit 6, is the test bulletin promulgated by the South Carolina Real Estate Commission for the test prospective real estate agents must pass in order to become licensed.[2] It lists the topics that are tested on the test, and among them are sections on agency law and contract law. (*See* **Exhibit 6**, Real Estate Test Bulletin 000005-000006). Defendants ask that this court take judicial notice of these facts as they are accessible online, a matter of public record, and cannot reasonably be disputed by the plaintiff.

Real estate agents are licensed professionals who read, interpret, draft, and negotiate contracts on behalf of their clients. Like Mrs. Gladden, Sandra Parsons White was certainly not an unsophisticated party unversed in how to read and understand the agreement she signed.

[2] Accessible at: https://test-takers.psiexams.com/scre/test/TYME9MQW

Like in *Gladden*, there is no evidence to suggest that assisted living facility residency agreements that do not contain arbitration provisions are unavailable within the market. To the contrary, according to the South Carolina Department of Public Health, there are over thirty assisted living facilities within driving distance of The Oakview Park facility. (*See* **Exhibit 7**). Many of these assisted living facilities do not have arbitration provisions within their residency agreements. Indeed, the Residency Agreement itself even informed Sandra Parsons White of this fact: "You or your legal representative understands that other assisted living companies' Agreements may not contain an arbitration provision." (**Exhibit 4**, Residency Agreement 000011). If Sandra Parsons White was in any way uncomfortable signing the Residency Agreement because it contained an arbitration provision, she could have explored placing her mother at any of the many other assisted living communities in the area.

There was not an absence of meaningful choice here.

b. The terms of the arbitration provision are not "so oppressive that no reasonable person would make them and no fair and honest person would accept them."

The arbitration provision provides that "[t]he arbitrator's decision shall be final and binding without the right to appeal." (**Exhibit 4**, Residency Agreement 000010). However, "generally, a contract provision stating that arbitration is 'non-appealable' signifies that the parties to the contract may not appeal the merits of the arbitration; not that the parties agree to waive a right to appeal the district court's judgment confirming or vacating the arbitration decision." *Southco, Inc. v. Reell Precision Mfg. Corp.*, 331 F. App'x 925, 927 (3d Cir. 2009); *See also Rollins, Inc. v.*

Black, 167 Fed.Appx. 798, 799 n. 1 (11th Cir.2006) ("[A 'binding, final, and non-appealable' arbitral award] simply means the parties have agreed to relinquish their right to appeal the merits of their dispute; it does not mean the parties relinquish their right to appeal an award resulting from an arbitrator's abuse of authority....").

The arbitration provision calls for an expedited and streamlined discovery process, which is exactly what you would expect and hope for in an arbitration proceeding. "Plaintiff next contends that the limited scope of discovery in arbitration proceedings inhibits her ability to pursue her claims. In this respect, Plaintiff attacks the very foundations of arbitration as a method for dispute resolution, and both the Supreme Court and the Eleventh Circuit reject this species of argument." *Hopkins v. World Acceptance Corp.*, 798 F. Supp. 2d 1339, 1349 (N.D. Ga. 2011). "Discovery limitations promote the goals of the FAA, and such limitations are rarely grounds for avoiding an arbitration agreement." *Id.* at 1350.

The arbitration provision limits the number of depositions that can be taken, unless the parties agree otherwise. However, there is no limit to the number of witnesses who can be called at the arbitration hearing itself, or a limit on how many sworn recorded statements may be used at the arbitration hearing. (*See* **Exhibit 7**, Residency Agreement 000009).

In criminal proceedings no depositions are permitted to be taken. If a criminal defendant, who may have his very life and liberty at stake, is not entitled to take any depositions, it cannot be unconscionable to merely limit the number of depositions that a civil litigant may take in an arbitration proceeding.

As in a criminal trial, there is no limit on who can appear at the arbitration proceeding in person to testify or who may testify via sworn recorded statements. The arbitration provision does not deprive either party of the right to "an unbiased decision by a neutral decision-maker." *See Simpson*, 373 S.C. at 25, 644 S.E.2d at 668.

None of the terms of arbitration provision are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." *See Gladden*, 402 S.C. at 145, 739 S.E.2d at 884.

c. The terms of the limitation on liability provision are also not "so oppressive that no reasonable person would make them and no fair and honest person would accept them."

The limitation of liability provision consists of four sub-paragraphs lettered "a-d." Sub-section "d" states that punitive damages shall not be awarded. However, the Court in *Maybank* expressly held that a contractual waiver of the right to recover punitive damages is neither unconscionable nor violative of public policy. *See Maybank v. BB&T Corp.*, 416 S.C. 541, 576, 787 S.E.2d 498, 516 (2016). In *Maybank*, the Court held that:

> Turning to [the limitation of liability provision], we find the clause is neither violative of public policy nor unconscionable. Under its terms, it does not deprive Maybank of all damages arising under the contract but merely limits the type of damages he is entitled to recover. Specifically, Maybank is precluded from seeking consequential damages, indirect damages, special damages, or punitive damages in claims arising from his relationships with Appellants; he is still entitled to actual damages. While clauses limiting liability are to be strictly construed, we find no reason to ignore the plain language of the clause based on either public policy or unconscionability grounds.

Id.

Sub-section "c" states that no interest or late fees on unpaid assisted living charges can be awarded.

Sub-sections "b" and "a" limit the amount of damages that can be awarded. However, as previously discussed, in the *Gladden* case, the Court found that a contractual provision that limited a home inspector's liability to only the amount paid for the inspection (which was likely less than $1,000) was neither unconscionable nor violative of public policy. See *Gladden*, 402 S.C. 140, 739 S.E.2d 882. If a limitation of liability clause that limits damages to a few hundred dollars is not unconscionable or violative of public policy, then neither are the limitation of liability terms present here.

The Court noted that "[l]imitation of liability and exculpation clauses are routinely entered into. Moreover, they are commercially reasonable in at least some cases, since they permit the provider to offer the service at a lower price, in turn making the service available to people who otherwise would be unable to afford it". *Id.* at 144-45, 739 S.E.2d at 884. "We cannot say that a limitation of liability clause in a home inspection contract is so oppressive that no reasonable person would make it and no fair and honest person would accept it." *Id.* at 145, 739 S.E.2d at 884.

Like in *Gladden* the terms of limitation of liability clause in the Residency Agreement are not so oppressive that no reasonable person would make it and no fair and honest person would accept it.

III. There are multiple severability clauses in the Residency Agreement.

The first sentence of the arbitration and limitation of liability provision states that, "[s]hould any of the sub-sections A, B, or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected." (**Exhibit 4**, Residency Agreement 000007).

The last paragraph of the limitation of liability provision states that, "[s]hould sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected." (**Exhibit 4**, Residency Agreement 000011).

Finally, the Residency Agreement provides on its thirteenth page that "**SEVERANCE.** Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected." (**Exhibit 4**, Residency Agreement 000014).

Should the Court find that any term(s) of the arbitration provision is unenforceable, Defendants respectfully ask that the Court sever the offending term(s) and enforce the remainder of the arbitration agreement, in accordance with the terms of the agreement itself.

Conclusion

For the foregoing reasons, and any raised in oral argument or in subsequent memoranda of law, Defendants respectfully request that this Court grant their Motion to Compel Arbitration and to stay this proceeding until such arbitration is completed.

[signature on next page]

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/ Timothy Maio

Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

Attorneys for Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

August 28, 2025
Spartanburg, South Carolina

Subject: FW: Estate of Parsons v. Oakview Park - 2024-CP-23-06777
Date: Friday, June 27, 2025 at 12:57:26 PM Eastern Daylight Time
From: Brown Parkinson
To: Timothy Maio
Attachments: image001.gif

E. Brown Parkinson, Jr.
HOLCOMBE BOMAR, PA
101 W. St. John St., Ste 200
Spartanburg, SC 29306
Mobile 864.380.5218

From: Todd Darwin <tdarwin@holcombebomar.com>
Sent: Thursday, May 22, 2025 4:32 PM
To: Brown Parkinson <ebparkinson@holcombebomar.com>
Subject: Fw: Estate of Parsons v. Oakview Park - 2024-CP-23-06777

From: Todd Darwin
Sent: Friday, February 7, 2025 11:40 AM
To: Ray Mullman <rmullmanjr@gmail.com>
Cc: Gary Poliakoff <atty@gpoliakoff.com>; Raymond Manigan <rmanigan@gmail.com>; Rhonda Mitchell <rmitchell@holcombebomar.com>
Subject: RE: Estate of Parsons v. Oakview Park - 2024-CP-23-06777

Thanks, Ray. That sounds like a logical compromise to me.

Holcombe Bomar, P.A.

A. Todd Darwin
101 West St. John Street, Suite 200
Spartanburg, SC 29306
Post Office Box 1897
Spartanburg, SC 29304

DEFENDANT'S EXHIBIT
1

(864) 594-5300 (Phone)
(864) 585-3844 (Fax)
tdarwin@holcombebomar.com

CONFIDENTIALITY NOTICE: This email and any attachments with it may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. This communication is intended only for the individual(s) or entity named or their authorized agent. If you have received this communication in error, you are not authorized to read, print, copy, retain or disseminate the contents of this email or its attachments, and you should delete all copies of this email and its attachments. If you are not the named addressee, please immediately notify the sender by email reply or our firm by mail, phone or fax at the address and numbers shown above. Thank you.

From: Ray Mullman <rmullmanjr@gmail.com>
Sent: Friday, February 7, 2025 11:30 AM
To: Todd Darwin <tdarwin@holcombebomar.com>
Cc: Gary Poliakoff <atty@gpoliakoff.com>; Raymond Manigan <rmanigan@gmail.com>; Rhonda Mitchell <rmitchell@holcombebomar.com>
Subject: Re: Estate of Parsons v. Oakview Park - 2024-CP-23-06777

Hey Todd

Gary is primary on this case, and will call you next week to discuss.
My brief review of the arbitration clause with it's prohibition on punitive damages, disallowance of depositions of fact witnesses, and other unconscionable provisions make it unenforceable under the current law of South Carolina. However, perhaps we can agree to arbitration with different provisions to avoid a lengthy appeal.

Have a good weekend.

Ray

Ray Mullman
Poliakoff & Associates
(864) 582-5472
(864) 582-7280 (f)
215 Magnolia St.
https://gpoliakoff.com/news/
P.O. Box 1571
Spartanburg, S.C. 29304

The burning candle of life is so precious a light in anyone's existence that no one has the right to extinguish it before it flickers out into perpetual darkness and oblivion."

On Fri, Feb 7, 2025 at 11:03 AM Todd Darwin <tdarwin@holcombebomar.com> wrote:

Ray,

I'm about to file the answer in this case for all Defendants except Oakview Park Developer, LLC. When I Google the Registered Agent for that company he appears to be some type of builder or general contractor, but not affiliated with any of my folks.

I have also attached the Move In Form and Residency Agreement. There is an arbitration provision starting on page 7 of the Residency Agreement. I have a motion to compel arbitration ready to file, but obviously would like to discuss that with you prior to filing. Once you've reviewed the language give me a call to discuss.

The Confidentiality Agreement is fine with me.

You can reach me directly at (864) 594-5322 or on my cell at (864) 316-6732.

Thanks.

Todd

Holcombe Bomar, P.A.

A. Todd Darwin
101 West St. John Street, Suite 200
Spartanburg, SC 29306
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300 (Phone)
(864) 585-3844 (Fax)
tdarwin@holcombebomar.com

CONFIDENTIALITY NOTICE: This email and any attachments with it may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. This communication is intended only for the individual(s) or entity named or their authorized agent. If you have received this communication in error, you are not authorized to read, print, copy, retain or disseminate the contents of this email or its attachments, and you should delete all copies of this email and its attachments. If you are not the named addressee, please immediately notify the sender by email reply or our firm by mail, phone or fax at the address and numbers shown above. Thank you.

From: Ray Mullman <rmullmanjr@gmail.com>
Sent: Friday, January 17, 2025 3:37 PM
To: Todd Darwin <tdarwin@holcombebomar.com>
Cc: Gary Poliakoff <atty@gpoliakoff.com>; Raymond Manigan <rmanigan@gmail.com>; Rhonda Mitchell <rmitchell@holcombebomar.com>
Subject: Re: Estate of Parsons v. Oakview Park - 2024-CP-23-06777

Hey Todd

Feb. 7 is fine.

Let me know about the Confidentiality Agreement and the Arbitration Agreement when you can.

Thanks and have a good weekend.
Ray Mullman
Poliakoff & Associates
(864) 582-5472
(864) 582-7280 (f)
215 Magnolia St.
https://gpoliakoff.com/news/
P.O. Box 1571
Spartanburg, S.C. 29304

The burning candle of life is so precious a light in anyone's existence that no one has the right to extinguish it before it flickers out into perpetual darkness and oblivion."

On Fri, Jan 17, 2025 at 9:22 AM Todd Darwin <tdarwin@holcombebomar.com> wrote:

> I hope you are both doing well.

Gary, I know we have been exchanging telephone calls in this case this week, and I'm sure we'll connect soon. However, when Ray and I spoke on December 20, 2024, my notes reflect that my extension request to answer or otherwise plead for the defendants we are representing was granted. I just wanted to make sure that was accurate, which would make my responsive pleading due no later than February 7, 2025.

No need to reply to this email unless I am incorrect.

Thank you both, and I hope y'all have a nice weekend.

Todd

Holcombe Bomar, P.A.

A. Todd Darwin
101 West St. John Street, Suite 200
Spartanburg, SC 29306
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300 (Phone)
(864) 585-3844 (Fax)
tdarwin@holcombebomar.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE/PICKENS

In Re: Andrew Todd Darwin, Esq.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

ORDER OF PROTECTION

Due to personal circumstances, Andrew Todd Darwin, Esq. is granted Protection from any court proceedings, trials or hearings until May 1, 2025. After May 1, 2025, the Chief Administrative Judge for Common Pleas will status each of the matters involving Mr. Darwin during this period for rescheduling purposes.

It is so Ordered.

February 27, 2025

Greenville, S.C.

Perry H. Gravely
Chief Administrative Judge-Common Pleas
Thirteenth Judicial Circuit

DEFENDANT'S EXHIBIT
2

Subject: Re: Estate of Parsons v. Oakview Park - 2024-CP-23-06777
Date: Friday, June 27, 2025 at 1:32:50 PM Eastern Daylight Time
From: Timothy Maio
To: atty@gpoliakoff.com, rmullmanjr@gmail.com
CC: Brown Parkinson, Rhonda Mitchell
Attachments: image001.gif

Good Afternoon Gary and Ray,

Happy Friday.

I have inherited this case from Todd Darwin, who, as you may know, has been out on medical leave the past few months now.

Can we agree to arbitrate this case if we agree not to enforce the limitation on damages provisions? If so, I can distribute a proposed consent order to arbitrate next week.

Thank you and have a nice weekend.

Timothy Maio
Associate Attorney
Holcombe Bomar, PA
101 W. St. John St., Ste 200
Spartanburg, SC 29306
Mobile 864.940.8305

From: Ray Mullman <rmullmanjr@gmail.com>
Sent: Friday, February 7, 2025 11:30 AM
To: Todd Darwin <tdarwin@holcombebomar.com>
Cc: Gary Poliakoff <atty@gpoliakoff.com>; Raymond Manigan <rmanigan@gmail.com>; Rhonda Mitchell <rmitchell@holcombebomar.com>
Subject: Re: Estate of Parsons v. Oakview Park - 2024-CP-23-06777

Hey Todd

Gary is primary on this case, and will call you next week to discuss.
My brief review of the arbitration clause with it's prohibition on punitive damages, disallowance of depositions of fact witnesses, and other unconscionable provisions make it unenforceable under the current law of South Carolina. However, perhaps we can agree

DEFENDANT'S EXHIBIT 3

to arbitration with different provisions to avoid a lengthy appeal.

Have a good weekend.

Ray

Ray Mullman
Poliakoff & Associates
(864) 582-5472
(864) 582-7280 (f)
215 Magnolia St.
https://gpoliakoff.com/news/
P.O. Box 1571
Spartanburg, S.C. 29304

The burning candle of life is so precious a light in anyone's existence that no one has the right to extinguish it before it flickers out into perpetual darkness and oblivion."

On Fri, Feb 7, 2025 at 11:03 AM Todd Darwin <tdarwin@holcombebomar.com> wrote:

> Ray,
>
> I'm about to file the answer in this case for all Defendants except Oakview Park Developer, LLC. When I Google the Registered Agent for that company he appears to be some type of builder or general contractor, but not affiliated with any of my folks.
>
> I have also attached the Move In Form and Residency Agreement. There is an arbitration provision starting on page 7 of the Residency Agreement. I have a motion to compel arbitration ready to file, but obviously would like to discuss that with you prior to filing. Once you've reviewed the language give me a call to discuss.
>
> The Confidentiality Agreement is fine with me.
>
> You can reach me directly at (864) 594-5322 or on my cell at (864) 316-6732.
>
> Thanks.
>
> Todd

Holcombe Bomar, P.A.

A. Todd Darwin
101 West St. John Street, Suite 200
Spartanburg, SC 29306
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300 (Phone)
(864) 585-3844 (Fax)
tdarwin@holcombebomar.com

From: Ray Mullman <rmullmanjr@gmail.com>
Sent: Friday, January 17, 2025 3:37 PM
To: Todd Darwin <tdarwin@holcombebomar.com>
Cc: Gary Poliakoff <atty@gpoliakoff.com>; Raymond Manigan <rmanigan@gmail.com>; Rhonda Mitchell <rmitchell@holcombebomar.com>
Subject: Re: Estate of Parsons v. Oakview Park - 2024-CP-23-06777

Hey Todd

Feb. 7 is fine.

Let me know about the Confidentiality Agreement and the Arbitration Agreement when you can.

Thanks and have a good weekend.
Ray Mullman
Poliakoff & Associates
(864) 582-5472
(864) 582-7280 (f)
215 Magnolia St.

https://gpoliakoff.com/news/
P.O. Box 1571
Spartanburg, S.C. 29304

The burning candle of life is so precious a light in anyone's existence that no one has the right to extinguish it before it flickers out into perpetual darkness and oblivion."

On Fri, Jan 17, 2025 at 9:22 AM Todd Darwin <tdarwin@holcombebomar.com> wrote:

> I hope you are both doing well.
>
> Gary, I know we have been exchanging telephone calls in this case this week, and I'm sure we'll connect soon. However, when Ray and I spoke on December 20, 2024, my notes reflect that my extension request to answer or otherwise plead for the defendants we are representing was granted. I just wanted to make sure that was accurate, which would make my responsive pleading due no later than February 7, 2025.
>
> No need to reply to this email unless I am incorrect.
>
> Thank you both, and I hope y'all have a nice weekend.
>
> Todd
>
> Holcombe Bomar, P.A.
>
> A. Todd Darwin
> 101 West St. John Street, Suite 200
> Spartanburg, SC 29306
> Post Office Box 1897
> Spartanburg, SC 29304
> (864) 594-5300 (Phone)
> (864) 585-3844 (Fax)
> tdarwin@holcombebomar.com
>
> ***CONFIDENTIALITY NOTICE:*** This email and any attachments with it may contain

information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. This communication is intended only for the individual(s) or entity named or their authorized agent. If you have received this communication in error, you are not authorized to read, print, copy, retain or disseminate the contents of this email or its attachments, and you should delete all copies of this email and its attachments. If you are not the named addressee, please immediately notify the sender by email reply or our firm by mail, phone or fax at the address and numbers shown above. Thank you.

CERTIFICATE OF AUTHENTICITY
&
BUSINESS RECORDS CERTIFICATION

I am the records custodian for the Oakview Park Assisted Living facility and am the person responsible for keeping and maintaining the admissions documentation and records for the facility. As such, I have personal knowledge of how the admission documents and records at Oakview Park Assisted Living are created and maintained.

I hereby certify that the attached Residency Agreement 000001-000020 is a true, accurate, and authentic copy of the residency agreement that Sandra White signed on or about March 21, 2023. It was the regular practice of Oakview Park Assisted Living to create and maintain this documentation. Furthermore, the attached Residency Agreement 000001-000020:

a) Was made contemporaneously by someone with knowledge of the matters set forth therein;
b) Was kept in the course of regularly conducted business activity; and
c) Was made according to regular business practice.

I make the above statements and certifications based upon my personal knowledge as the records custodian for the Oakview Park Assisted Living facility and declare, certify, verify, and under penalty of perjury affirm that the foregoing is true and correct.

Date: 7/23/25 By: [signature]
(signature)

Jennifer A. Klein
(printed name)

Sworn to (or affirmed) and subscribed before me this 23 day of July, 2025.

[signature]
Official Signature of Notary

Notary Public of South Carolina

My commission expires: 07 July 2030

JENNIFER M. ROSE NOTARY My Comm. Expires JULY 7, 2030 PUBLIC SOUTH CAROLINA

DEFENDANT'S EXHIBIT
4

OAKVIEW PARK
Assisted Living & Memory Care

RESIDENCY AGREEMENT

This Agreement ("Agreement") dated _3-17-2023___ is made by and between AFF18 Oakview Park ALF LLC dba Oakview Park (the "Company," "us," "we" or "our") and _Virginia Parsons/Sandy White_ ("you" or "your").

We own and operate the community located at 110 Hood Road Greenville, SC 29611 (the "Community") which is licensed by the State of South Carolina as an assisted living community and residency in the Community has been requested by you or on your behalf. The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS.

A. BASIC SERVICES. We will provide you with the following Basic Services, which are included in the Basic Service Rate, subject to the terms of this Agreement:

1. Accommodations - You have elected to live in the Suite described in Exhibit A. You are also entitled to use and enjoy with all other residents the common areas of the Community. You are to provide your own furnishings and personal property; however, we reserve the right to limit the number and type of furnishings/small appliances. You agree that you are responsible for the maintenance and repair of any personal belongings you bring to the Community. Resident is responsible for providing all personal care items. See attached form.

2. Dining Services - We will provide three meals daily. Snacks are available and offered to residents 24 hours a day.

3. Utility Service - The cost of gas, electric, heat, air conditioning and water service are included in the Basic Service Rate. The cost of basic cable, satellite or comparable television service is included in the Basic Service Rate. You are responsible for paying any other utility charges including, but not limited to, telephone, or premium cable charges.

4. Housekeeping Service - We will provide housekeeping once a week with a thorough cleaning of the resident's room. We will provide a daily tidy to include making the bed and taking the trash out.

5. Laundry and Linen Service - We will launder your personal belongings and bed linens once a week and on an as needed basis as included and agreed upon in the personal service plan.

6. Activities Program - We will provide planned social and recreational programs that the resident will be encouraged to participate in.

7. Scheduled Transportation - Scheduled routine transportation on Tuesdays is provided for medical, dental, financial, and shopping services within a twenty (20) mile radius of the Community, as well as for scheduled social and leisure activities. For transportation not on Tuesday, you will incur a $30 flat fee. If a community associate is needed to accompany the resident, you will incur a $15 hourly charge for the escort service. Please see the Executive Director for regularly scheduled doctor's appointments.

8. Emergency Transportation – Emergency transportation will always be available by local emergency personnel. **Oakview Park does not provide transportation services to and from the hospital for emergency care. The responsible party and the hospital are responsible for arranging transportation for return to Oakview Park.**

9. Personal Services - We will provide those personal services that are included as part of the care plan assessment as described in Section 1.B. below.

10. Staffing 24 hours a day - Associates are available 24 hours a day, seven days a week.

B. **CARE PLAN.** Within 7 days of moving in and at least every six months throughout your residency, we will use a care plan assessment to determine the personal services you require. The care plan assessment will be used to develop your Personal Care Plan. The results of the assessment will be shared with you.

C. **AVAILABLE SELECT SERVICES.** Select Services are available to you at your request. Such additional services are not included in the Basic Service Rate. Where available, such services may include, but are not limited to guest meals, transportation escort services, enhanced cable television, sitter services or special events.

D. **SERVICES NOT COVERED BY RESIDENCY AGREEMENT.** In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the Community. An outside agency or individual will be permitted to provide these services or any related personal services only if we have given prior approval. The Community is not staffed and not authorized to perform skilled nursing services nor provide care for any injury or acute condition that requires medical care that is expected to last for more than ninety (90) days. You understand and agree that if you should need skilled nursing services or require care for an injury or acute condition that is expected to last for more than ninety (90) days you will be discharged by the Community after prior written notice. This shall not apply to residents admitted to a hospice program.

You are responsible for obtaining and paying for all services that are not included in the Basic Services or Personal Care Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by us, our subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy, therapy, private companion, beauty/barber or other health care services. Fees for such services will be billed to you directly by the service provider, unless otherwise agreed to by the parties. All third party service providers (including, but not limited to, health care service providers) must agree to adhere

to our standards for outside providers prior to being permitted to provided services in the Community. Pharmacy services will be provided in accordance with the Pharmacy Services Agreement attached.

Exhibit B. You may not hire our current associates to provide services in the Community. You may contract with former associates to perform services at the Community only with our prior written consent. We reserve the right to refuse entry to (1) former associates; (2) persons whose actions may be disruptive to the Community; or (3) persons whose actions may threaten the safety of any resident or associate. We should be notified prior to any sitter service being contracted by the responsible party.

II. YOUR RESPONSIBILITIES AND REPRESENTATIONS

A. CARE OF SUITE. You agree that the Community and the Suite are in satisfactory, habitable condition and we have made no promise to decorate, alter or improve the Community or Suite unless otherwise provided in writing and attached as part of this Agreement. You agree to maintain the Suite and to leave the Suite upon termination of this Agreement in good condition, except for normal wear and tear. You agree to pay all damages, beyond normal wear and tear, which you (including your agent, employee, contractor, or other invitee) cause to our property and we may invoice you for the cost of such repairs. The community will split the cost of replacing the carpet one time during the resident's stay at the management's discretion and agreement with the responsible party. The community will clean the resident's carpet as needed at the discretion of management. If carpet requires cleaning more than one time per month, the cost will be split between resident and community.

B. ALTERATIONS. We, in our sole discretion, will permit reasonable alterations to the Suite if you have a disability and the proposed modification is necessary to afford you full enjoyment of the Suite. Structural or physical alterations, whether based on a handicap or not, may be made only upon our prior written approval. All structural or physical changes to the Suite shall remain at the Suite and be considered part of the Suite and the Community. Any changes or modifications to the Suite that require assistance of appropriately licensed and insured electricians, contractors or similar professionals must be approved in advance by us in writing in our sole discretion. The cost of any alterations made by you shall be paid by you unless we otherwise agree in writing. You agree that you will bear the cost of restoring the Suite to its original condition, reasonable wear and tear excepted, upon the termination of this Agreement, unless we specifically exempt you from this requirement in writing. We may enter and make any modifications or alterations to the Suite to meet the requirements of any applicable law.

C. RIGHT OF ENTRY. For your safety and comfort, our associates must be permitted to enter your Suite to provide services under the terms of this Agreement, to respond to emergencies, to make repairs and improvements, or if there is reasonable belief that your safety or the safety of others is in question or that our policies and procedures are being violated, as we deem necessary or advisable. Therefore, it is not permissible to change the locks or add additional locks to the entrance door to your Suite. When feasible, our associates will attempt to give you reasonable notice before entering your Suite. If you have a list of certain visitors that cannot visit your loved one, we ask that you give that in writing so we can keep in the residents file.

We reserve the right to relocate you to a more appropriate Suite within the Community as required for your health or safety, or because the residents of a companion Suite are incompatible.

D. HEALTH ASSESSMENT. You agree that we may assess your health to create and update a Personal Care Plan and/or to determine whether you are appropriate to remain at the Community. Not more than thirty (30) days prior to the date of this Agreement, and at least annually thereafter or upon our request, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree to undergo examination by a particular specialist, at your cost, as we determine is warranted by your current physical or mental status. You will request the examiner to provide us with recommendations, including a statement attesting to the appropriateness of your continued placement. Based upon the assessment(s) and our judgment, we may determine your appropriateness to remain in the Community. You will request the examiner to perform any tests and complete any forms required by us or applicable law.

E. HEALTH CARE PROVIDER NOTIFICATION. You authorize us to contact your legal representative/family, health care providers, and/or other persons listed in your records (1) if it is necessary to advise them of your situation; (2) to arrange for required health care services and other assistance; or (3) in case of an emergency.

If your designated health care providers are unavailable, you authorize us to arrange for the services of other health care providers. You agree we may provide such persons with copies of your records, including, but not limited to, resident records, advance directives, living will, and the names of persons empowered to make health care decisions.

F. SUBSTITUTE DECISION MAKERS/ADVANCE DIRECTIVES. You will provide us with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You will provide us with copies of any power of attorney, guardianship, living will, or conservator documents, or other legal documents relating to the making of health or financial decisions or decision-makers. You authorize us to rely on the instructions of such designees or appointees. You further agree to immediately notify us of changes relating to the information stated above.

It is strongly suggested that you have advance directives in place in the event you become incapacitated. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company). Neither we nor any of our associates or agents may be your guardian. If it is necessary for us to petition the court for appointment of a guardian, any costs associated therein shall be paid by you and we may invoice you for such costs.

G. ELECTRIC SCOOTERS. Electric scooters and similar vehicles will be allowed provided community management agrees that residents can maneuver the scooter in a safe manner. In the event this changes, the resident will not be allowed to operate an electric scooter inside the community.

H. RESPONSIBILITIES UPON TERMINATION. You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the

effective date of termination, you understand and agree that we may continue to charge you for the Basic Service Rate of your Suite, or have your belongings placed in storage at your cost. You further agree that we may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail. Termination will not release you or us from any liability or obligation to the other party under the terms of this Agreement.

I. **EXAMINATION OF RECORDS.** You acknowledge that we are licensed by the State of South Carolina as an assisted living community. You understand that regulatory officials having jurisdiction over the Community may inspect your records as part of an evaluation of the Community. You have the right to review and access your health care records in accordance with the requirements of applicable law.

J. **RULE AND REGULATION COMPLIANCE.** You understand that the Community has shared common areas, and you agree to honor all rules of courtesy and respect for others. You agree to abide by and conform to our rules (including, but not limited to, the Oakview Park House Rules attached hereto as Exhibit C), regulations, handbook, policies and procedures as they now exist and as amended from time to time. You understand that failure to abide by such policies may result in your discharge from the Community.

K. **GUESTS.** You have the right to associate with your friends and family during reasonable hours. Because the Community is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the circumstances.

L. **RESIDENT WORK.** The Community may not require you to work or to perform any services for the Company.

III. RATES.

A. **COMMUNITY FEE.** We require a one-time non-refundable Community Fee in an amount indicated in Exhibit A to be paid at the time this Agreement is signed. The Community Fee does not excuse you from financial responsibility for any damage to your Suite beyond normal wear and tear upon move-out.

B. **BASIC SERVICE RATE.**

1. Rate. You agree to pay the Basic Service Rate as indicated in Exhibit A.

2. Refund. We will refund a prorated share of the Basic Service Rate if this Agreement is terminated before the end of a month:

    a. Following written notice in accordance with Section IV;

    b. Because you require care that is not offered by us; or

    c. By reason of death.

Refunds will be prorated using 30 days to calculate the Daily Rate, from the later of the termination date or the date by which you have vacated, and all of your belongings are removed from Community. Unless prohibited by law, you agree we may offset such refunds by any amount due under the terms of this Agreement.

C. ABSENCES.

1. Notice of Absence. Except for an emergency medical absence, if you will be absent from the Community for any period of time, you must inform us of your plans prior to leaving and sign the Sign In/Sign Out Book upon exiting and re-entering the Community. We assume no responsibility or liability for your welfare during times that you are away from the Community.

2. Fees During Absence. If you are absent from the Community for any reason, such as, for a hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Basic Service Rate. If you provide written notice of your intent to terminate the Agreement pursuant to Section IV, termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. SELECT SERVICES. In addition to the Basic Service Rate, you agree to pay the established charges for any Select Services provided to you by us.

E. PAYMENT. We will issue a monthly statement before the first day of the month itemizing the Basic Service Rate for the upcoming month and, if any, charges incurred for Select Services provided during prior months. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Basic Service Rate is due prior to taking occupancy. If you take occupancy after the first of the month, your first Basic Service Rate will be prorated using 30 days to calculate the Daily Rate.

We will charge a $50.00 late fee if we have not received all fees when due. We will also charge a $30.00 returned payment fee for each check or automatic withdrawal that is returned or denied for any reason. After two such occurrences, you agree to pay all amounts due by cashiers' check or such other method specified by us. You also agree to pay interest on all outstanding amounts based upon the lesser of 1.5% per month or the highest rate permitted by law.

F. RATE CHANGES. We will provide thirty (30) days written notice of any change in the rates for Basic Services or Select Services. We may offer or require a change in the Personal Care Plan when we determine additional services are requested or required.

G. GRIEVANCES/OMBUDSMAN. In the event you and/or your responsible party (on behalf of you) have a grievance regarding the Community or its services, you may follow the Community's grievance procedure as set forth in Exhibit D. In the event any dispute regarding payment of fees or monies owed arises and cannot be resolved by the Company and you or your legal representative, the local ombudsman may be able to provide assistance.

IV. TERM AND TERMINATION.

A. TERM. This Agreement begins on the date set forth above and continues until terminated as provided below.

B. TERMINATION BY RESIDENT. You may terminate this Agreement upon fourteen (14) days written notice to us. Termination occurs on the later of the end of the notice period or upon the removal of all of your personal belongings. You will be given a pro-rated refund based when your belongings are removed or when your 14-day notice is up.

C. TERMINATION BY THE COMPANY. We may terminate this Agreement, upon providing you thirty (30) days written notice, for any of the following events, as determined by us:

1. You require care or services that we are unable to provide or which requires staff that are not available at the Community.

2. You require more than 90 days of part-time intermittent skilled nursing care;

3. Your behavior or your visitors' behavior impairs the well-being, care or safety of yourself or others, creates unsafe conditions, is physically or verbally abusive to others, or otherwise interferes with the orderly operation of the Community;

4. For your welfare or the welfare of others in the Community;

5. You or your third-party payor fail to pay fees and charges when due, or you breach any representation, covenant, agreement, or obligation under this Agreement.

6. We are unable to meet the needs of the resident or responsible party.

We may, upon written notice to you, immediately terminate this Agreement, and transfer or discharge you for emergency medical or welfare reasons that would endanger the health and safety of yourself or others. If the emergency requires your immediate transfer, we will notify your legal representative as soon as practical. We will provide a written explanation for termination with less than thirty (30) days' notice.

D. TERMINATION BY EITHER PARTY. Either party may terminate this Agreement immediately upon written notice in the event of the resident's death or if a physician certifies to us in writing, based upon an examination prior to moving out, that you must be relocated due to your health. Consideration may be made for extenuating circumstances if belongings cannot be removed during this timeframe. The basic service rate will be charge on the last day that the resident's belongings are in the apartment.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION.

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

A. ARBITRATION PROVISION.

1. Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will <u>not</u> decide their case.** The Federal Arbitration Act (9 U.S.C. § 1, *et seq*) concerning arbitration shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.

2. A demand for arbitration by you, your legal representative, a person or organization acting on our behalf with your consent, or the personal representative of the estate of your estate (collectively "Resident Party") shall be made in writing and submitted to Atlas Senior Living, LLC, 2700 Highway 280 Suite 460 Birmingham, AL 35223 Attn: Manager, via certified mail, return receipt requested. Demand for arbitration by us shall be made in writing and submitted to you or your agent, representative, successor or assign and/or your legal representative via certified mail, return receipt requested.

3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.

4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of Section A.5, the parties shall agree upon an arbitrator that must either be a retired Georgia circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. I the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then each party will select an arbitrator. These arbitrators will act only for the purpose of appointing a sole arbitrator to h ear the case, subject to the criteria above. If either party fails to select their arbitrator within the twenty (20) days mentioned above, they effectively forfeit their right to choose an arbitrator.

5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

6. Discovery in the arbitration proceeding shall be governed by the South Carolina Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:

a. The Resident Party shall provide us with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and we shall reimburse Resident Party $0.25 per page.)

b. We shall provide the Resident Party with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse us $0.25 per page).

c. The only depositions allowed shall be of experts. No other individuals may be deposed.

d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.

e. We shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.

f. We shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.

g. Resident Party shall have thirty (30) days after our expert designation is received in which to depose such experts.

h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.

i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:

   1) List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witness' intended testimony;

   2) List of documents to be relied upon at the arbitration hearing;

   3) Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.

j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.

7. The arbitrator shall designate a time and place within the county in which the Community is located for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.

8. The arbitrator shall apply the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, South Carolina law except as otherwise stated in this Arbitration Provision.

9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.

10. The arbitrator's decision shall be final and binding without the right to appeal.

11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.

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

13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision.

14. The Arbitration Provision and the Limitation of Liability Provision below shall survive your death.

B. <u>LIMITATION OF LIABILITY PROVISION</u>. *Read Carefully Before Signing.*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.

2. Liability for <u>any</u> claim brought by a party to this Agreement against the other party, including but not limited to a claim by us for unpaid Basic Service Rate or other charges, or a claim by, or on behalf of you, Resident Party or your estate, agent or legal representative, arising out of the care or treatment received by you or your occupancy or presence at the Community, including, without limitation, claims for medical negligence, shall be limited as follows:

   a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.

b. Non-economic damages, such as pain and suffering, shall be limited to a maximum of $400,000.00.

c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.

d. Punitive damages shall not be awarded.

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

C. <u>BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS</u>. The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, we are better able to offer our services and accommodations at a rate that is more affordable to you. In terms of the time-savings offered by selecting arbitration, the parties recognize that selecting a quick method of resolution is potentially to a Resident's advantage.

You or your legal representative understands that other assisted living companies' Agreements may <u>not</u> contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.

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

VI. MISCELLANEOUS.

A. <u>WAIVER OF TRIAL BY JURY</u>. If a court determines that the Arbitration Provision provided above is invalid, the parties express their desire to waive a jury trial and resolve any claims in the appropriate court solely before a judge.

B. <u>NON-DISCRIMINATION</u>. We operate on a non-discriminatory basis and afford equal treatment and access to services to eligible persons regardless of race, religion, color, national origin, sex, disability or any other category protected by applicable law.

C. <u>RISK AGREEMENT</u>. You are responsible for your personal, financial and health care decisions. You are also responsible for maintaining health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance in an amount adequate to cover your personal property and your general liability. You acknowledge that we do not insure your person or property. You understand and agree that:

1. We may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs.

2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss.

3. The standard of service for an assisted living community does not include one-on-one care, assistance or supervision, e.g., one resident assistant for each resident, or immediate response to non-emergent needs. There may be short and long periods of time in which you will be left alone, unsupervised such as while watching television, listening to music, reading, and sleeping at night.

4. We make no representations or guarantees that our associates can prevent falls. We do not represent or guarantee that your health condition will not change or deteriorate.

5. We make no representations or guarantees that our associates can prevent the onset of skin break down or the worsening of existing skin break down.

6. Our services may not meet all of your personal, social, or health care needs and we will attempt to assist you in arranging for such services which are not included in this Agreement.

7. Many residents suffer from cognitive impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior such as wandering, confusion, forgetfulness, agitation, and aggressive behavior towards others. We make no representations or guarantees that we can predict the behavior of our residents. Therefore, we also make no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical, or aggressive contact with another resident.

8. We make no representations or guarantees that we can prevent the loss of personal items, including but not limited to clothing, dentures, hearing aids or other medical equipment. We will not be responsible for the loss of such items. We make no representations or guarantees that we can prevent theft or other criminal acts perpetrated by another resident or person; therefore, we recommend that valuables such a jewelry and large sums of money, not be kept at the Community. If you choose to bring in valuables, you do so at your own risk and we will not be held responsible for any theft or loss of such items.

9. Due to state regulations and fire code, we may not lock our exterior doors against exiting. Therefore, we cannot guarantee that a resident will not wander from the Community. Some buildings have exterior doors that are alarmed with a delayed egress feature and our systems are designed to alert our associates to respond and assist a resident if they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold us, our associates and agents harmless for any damages, injury or other loss resulting from: (i)

reasonable acts or omissions made in good faith; (ii) action by a third party, fire, water, theft or the elements; or (iii) loss of personal property.

D. PETS. Pets are permitted in the Community considering that the resident can provide the needed care for the pet. In the event the resident cannot meet the pet's needs, the pet will no longer be able to remain at the community. There is a non-refundable pet fee of $400 due at move in. As needed/annual pet immunizations are to be given to the community.

E. SMOKING. Smoking is permitted in designated areas.

F. WEAPONS. Weapons, as defined by us, are not allowed in the Community or on Community property. This includes but is not limited to firearms, explosive materials, and collectible or antique weapons.

G. ASSIGNMENT. This Agreement is not assignable without our prior written consent. Our rights and obligations may be assigned to any person or entity which will be responsible to ensure our obligations under this Agreement are satisfied in full from the date of notification. We may engage another person or entity to perform any or all of the services under this Agreement.

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

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

J. FINANCIAL RESPONSIBILITY. You have designated a Guarantor, who has agreed to the terms of the Statement of Financial Responsibility attached hereto as Exhibit E.

K. SUBORDINATION. This Agreement and the parties' rights hereunder are subordinate to any lease, mortgage or deed of trust placed upon the Community, but you may remain in your Suite so long as you comply with the provisions of this Agreement.

L. REPRESENTATION AND WARRANTY. By executing this Agreement you represent and warrant that all representations made by you or on your behalf, whether written or verbal, with respect to your application for admission to the Community were true when made. You understand that we rely upon the truthfulness of this information in making our decision to enter into this Agreement. Your application forms, including personal data forms, statement of financial condition (if applicable), health history and medical reports submitted by you or on your behalf to us, are incorporated by reference into this Agreement and made an express part of it. You understand and agree that any material misrepresentation or omission made by you or on your behalf in connection with these documents shall make this Agreement voidable at our option, to the extent permitted by law.

M. **CHOICE.** You have a choice of providers for private sitters, therapy, rehabilitation, home health and other health care services. If you require such services, Community associates will assist you in obtaining such services from a provider of your choice. We will require that your provider of choice provide background checks and liability insurance for any employees that residents at the Community. Any outside provider must go through proper vetting and so prior authorization by the Executive Director is required.

N. **ASSIGNMENT OF BENEFITS.** To the extent that the Community participates in a government payor program, long term care insurance program or other insurance program ("Third Party Payor") of which you are a beneficiary, you authorize us to disclose any medical or administrative information and request payment. You certify that the information given in applying for payment from such Thirty Party Payor is correct. You authorize release of all medical and administrative records required to act on this request and request that payment of authorized benefits be made on your behalf. You authorize us to disclose any medical or administrative information required in the processing of applications for financial coverage for services rendered. To the extent permitted by your Third Party Payor, you authorize direct payment of all benefits to us.

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

Company:
Oakview Park
110 Hood Road
Greenville, SC 29611
Attn: Executive Director

Resident: Virginia Parsons

Legal Representative/Responsible Party: Sandy White
(as noted below on following page)

[signatures on following page]

WE BELIEVE IT IS IMPORTANT TO DISCLOSE ALL SERVICES AND FEES TO THE BEST OF OUR ABILITY AND IN ACCORDANCE WITH THE LAW. WE RECOMMEND THAT YOU CONSULT WITH LEGAL COUNSEL TO ENSURE UNDERSTANDING OF THIS AGREEMENT BEFORE SIGNING. I ACKNOWLEDGE RECEIPT OF RESIDENT BILL OF RIGHTS.

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

Sandy White 3/21/2023

Legal Representative/Responsible Party Date

Oakview Park, LLC
By: Atlas Senior Living, LLC, its manager

Sandy White | ATF | 3/21/2023

Signature | Title | Date

LEGAL REPRESENTATIVE/RESPONSIBLE PARTY ADDRESS:

Name: Sandy White

Address: [redacted]

Phone No.: [redacted]

Email: [redacted]

OTHER RELATED MATERIALS:

1. Resident Bill of Rights
2. Emergency Evacuation Plan
3. Admissions Package
4. Medical Records Release
5. Care Plan Assessment
6. Care Plan

EXHIBITS INCLUDED:

A. Schedule of Services and Rates

B. Pharmacy Services Agreement

C. Oakview Park Rules

D. Oakview Park Grievance Procedure

E. Statement of Financial Responsibility

F. Personal Allowance Waiver

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident: Virginia Parsons

Suite Number: [redacted]

COMMUNITY FEE: [redacted]

BASIC SERVICE RATE:

Second Person Fee
(Due upon Move-In)

Living with Dignity Incontinence Products Monthly Charge

If resident takes occupancy of their suite after the first of the month, that months Basic Service Rate will be prorated using 30 days to calculate the Daily Rate.

I agree to the above Schedule of Services and Rates to commence as 03/17/2023.

I understand and agree that the Company has the right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

Legal Representative 3/21/2023
Date

Oakview Park, LLC By: Atlas Senior Living, LLC, its Manager

Signature:________ Title: ___________ Date______________

EXHIBIT B
PHARMACY SERVICES AGREEMENT

We work closely with pharmacy providers to meet the needs of our residents. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

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

Guardian Pharmacy is our preferred provider for pharmacy services ("Preferred Provider"). The Preferred Provider will review your current medications upon your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed. Guardian will assess a monthly re-packaging fee of $45 if medications are being filled by another provider such as the VA.

If you decide to use another pharmacy provider other than the Preferred Provider, it will be required to meet our medication management standards.

Regardless of whether you use the Preferred Provider or another pharmacy provider, all pharmacy billing is exclusively handled between you and your selected pharmacy and the Community will not be responsible in any way for your pharmacy billing.

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

I understand that I will be required to provide medications that are packaged in a unit of use packaging system. **If at any time I am not able or no longer willing to provide this type of packaging system, I understand that I need to find alternative housing, unless an exemption is agreed upon by the Executive Director.** Under no circumstances may you or your legal representative hire a healthcare proxy to administer your medications.

If I do not use the Community's Preferred Provider, I also understand that I will have the responsibility for reordering medications. If medications are not delivered **within two days prior to their depletion,** the Community will reorder my medications with the Preferred Provider. **I agree to pay for the**

medications and any associated service charges. The fees associated with reordering medications from the Preferred Provider are determined by the Preferred Provider and are in addition to the service fee described above.

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

Sandy Witt — 3/21/2020

Legal Representative Signature — Date

EXHIBIT C
Oakview Park HOUSE RULES

1. Oakview Park does not allow the use of tobacco products inside the community.

2. Alcohol consumption is permitted as ordered by the resident's physician.

3. Public telephone use is available anytime for appropriate reasons.

4. Visitors are allowed to visit anytime but the door are open from 7 a.m. to 7 p.m. Special accommodations are considered upon staff approval. All visitors must sign in and out when entering and exiting the community.

5. All residents are required to sign out when leaving the community and sign in when returning. Elopement from the community will be considered when the resident has exited the community without prior knowledge of staff and without properly signing out. Please see elopement policy for more information.

6. Audio visual components may be listened to and view anytime. If another resident's wellbeing is threatened, the violating resident will be asked to decrease the volume of the equipment or discontinue further use of the equipment.

7. Oakview Park staff will not be responsible for the well-being of any pet. Residents are allowed to have pets visit during normal visiting hours.

8. Residents are allowed to use any personal property of Oakview Park. Residents are not allowed to use the personal property of another resident without prior authorization.

EXHIBIT D
Oakview Park GRIEVANCE PROCEDURE

Updated: 7/29/19

Grievance Procedure:

Oakview Park is committed to quality customer service. We believe that good communication fosters our ability to provide quality services.

In the event a resident and/or resident's responsible party (on behalf of the resident) has a grievance regarding the community or its services, we request the following steps be taken:

1. The resident and/or resident's responsible party should discuss the complaint with the associate and Executive Director.
2. If unable to resolve grievance with step 1, the grievance should be submitted in writing to the Executive Director. The Executive Director should respond to the resident and/or resident's responsible party within fourteen (14) days of receipt of the complaint.
3. If unable to resolve grievance with step 2, the written grievance should be submitted to the Owner. The Owner should respond to the resident and/or resident's responsible party within fourteen (14) days of receipt of the complaint.
4. A resident and/or resident's responsible party may file a grievance with the local Ombudsman at any point in this process. If requested, a community representative should assist the resident or resident's responsible party in forwarding the written grievance to the appropriate address and contact person.
5. Residents and/or their responsible parties may submit grievances to associates, outside agencies, and other individuals without fear of restraint, interference, coercion, discrimination or reprisal.

EXHIBIT E

Sandy White("Guarantor" or "you") and Oakview Park, LLC (the "Company," "us," "we" or "our"), agree as follows:

The Resident named in the attached Residency Agreement desires to live at the Community and we are willing to enter into the Residency Agreement if the Resident has an individual who is willing to fulfill the conditions of this Statement of Financial Responsibility; and

In consideration for our accepting the Resident into the Community, you agree to fulfill the provisions of this Statement of Financial Responsibility, if and as necessary.

Therefore, in consideration of the mutual covenants contained in this Statement of Financial Responsibility, the parties agree as follows:

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

A. Participating with our associates in evaluating Resident's needs and in planning and implementing an appropriate plan for Resident's care;

B. Maintaining Resident's welfare and fulfilling Resident's obligations under the Residency Agreement;

C. Relocating Resident following termination and removing the Resident's property;

D. Transferring Resident to a hospital, nursing home, or other facility in the event that Resident requires care we do not offer; and

E. Making necessary arrangements for funeral services and burial in the event of death.

II. **FINANCIAL RESPONSIBILITY.** If Resident fails to make payments due to us under the Residency Agreement, you agree to pay us such amounts within thirty (30) days of receiving written notice of nonpayment.

III. **REVIEW OF RESIDENCY AGREEMENT.** You acknowledge that you have received and reviewed a copy of the Residency Agreement and have had an opportunity to ask questions.

BY THEIR SIGNATURES, the parties have executed this Agreement to be effective as of _03-17-2023_.

Sandy Wolf   3/21/2023

Guarantor   Date

Oakview Park, LLC
By: Atlas Senior Living, LLC, its manager

Signature   Title   Date

SEND NOTICES TO GUARANTOR AT:

Street Address: [redacted]

Primary Phone: [redacted]

Email: [redacted]

Print this page

Board: Real Estate Commission

SANDRA (Sandy) WHITE
BEAUFORT, SC

License number: 85809
License type: Associate
Date of Initial Licensure: 07/22/2013
Status: Active
Expiration: 06/30/2027
Office: THE HOMESFINDER REALTY GROUP

Board Public Action History:

View Orders View Other License for this Person

No Orders Found

File a Complaint against this licensee

DEFENDANT'S EXHIBIT 5

PSI Services LLC
https://test-takers.psiexams.com/scre
Email: LLRSupport@psionline.com

SOUTH CAROLINA REAL ESTATE COMMISSION
DEPARTMENT OF LABOR, LICENSING AND REGULATION

REAL ESTATE
CANDIDATE INFORMATION BULLETIN

Please refer to https://test-takers.psiexams.com/scre for the latest updates to this bulletin.

Updated 7/1/2024

DEFENDANT'S EXHIBIT
6

Test Bulletin 000001

EXAMINATIONS BY PSI

This Candidate Information Bulletin provides you with information about the examination and application process for becoming licensed as a real estate associate or broker in South Carolina. To be licensed, you must pass an examination to confirm that you have attained at least a minimum level of knowledge regarding the principles, practices, statutes and regulations relating to real estate. The South Carolina Department of Labor, Licensing and Regulation has contracted with PSI Services LLC (PSI) to conduct its examination program. PSI provides examinations through a network of computer examination centers in South Carolina. PSI works closely with the South Carolina Real Estate Commission to be certain that examinations meet local as well as national requirements and basic principles of real estate and examination development standards.

Apply to the Real Estate Commission prior to registering with PSI for an examination. Once you are approved, you will receive an Examination Eligibility letter. Examination Eligibility is valid for 1 year. If you fail you may retest on an unlimited basis during the 1 year period.

The following are the South Carolina real estate licensing examinations offered by PSI licensure: certification:

- Real Estate Associate
- Real Estate Broker

Each examination consists of state and national portions. You must pass both portions to apply for licensure.

All questions and requests for information about examinations should be directed to:

PSI
(855) 340-3701
https://test-takers.psiexams.com/scre

Questions about applications for licensure should be directed to the:

South Carolina Real Estate Commission
Synergy Business Park; Kingstree Building
110 Centerview Dr.
Columbia, South Carolina 29210
(803) 896-4300
www.llr.state.sc.us

GUIDELINES FOR LICENSE APPLICATION/QUALIFICATION

To make the license qualification process go as smoothly as possible, be certain that you:

1. Obtain the appropriate eligibility (e.g., number of hours of education) in advance of applying to the Commission.
2. After approval by the Commission of your eligibility, prepare for the examination by using the examination outline in this Candidate Information Bulletin as a guide for reviewing your prelicense course material along with any of the supplementary references provided on page 2.
3. Be sure that the examination registration form that you submit to PSI is complete and accurate, and that you include the correct fees.
4. Be sure to take proper identification with you to your scheduled examination appointment.
5. Candidates for licensure are required to pass both portions of the examination within 1 year of approval of your eligibility by the Commission. If your Examination Eligibility has expired, you will need to reapply to the Commission before you can register to take or retake the examination with PSI.

TIPS FOR PREPARING FOR YOUR LICENSE EXAMINATION

The following suggestions will help you prepare for the license examination. Preparation, in addition to the required classroom hours, increases your likelihood of passing.

- Start with a current copy of this South Carolina Real Estate Candidate Information Bulletin and use the examination content outline as the basis of your study.
- Review your prelicense course material with a special emphasis on the topics listed in the examination content outline.
- Take notes on what you study. Putting information in writing helps you commit it to memory; it is also an excellent business practice. Underline or highlight key ideas that will help with a later review.
- Your studies will be most effective if you study frequently, for periods of about 45 to 60 minutes. Concentration tends to wander when you study for longer periods of time.

EXAMINATION STUDY MATERIALS

The following is a list of possible study materials for the real estate examinations. The list is given to identify resources and does not constitute an endorsement by PSI or by the South Carolina Real Estate Commission. Use the latest edition available.

National Portion References

- Modern Real Estate Practice, 21st Edition, Galaty, Allaway, Kyle, and Williams, Dearborn Real Estate Education, www.dearborn.com, ISBN: 978-1-0788-1887-2
- Mastering Real Estate Math, 9th Edition, 2022, Denise Evans www.dearborn.com ISBN: 9781078819008

- The Language of Real Estate, 8th Edition, 2019, Reilly and Spodek, Dearborn Real Estate Education, www.dearborn.com
- Property Management, 11th edition, 2016, Kyle, Robert C., Baird, Floyd M. and Kyle, C. Donald, Chicago: Dearborn Real Estate Education www.dearborn.com
- Real Estate Law, 11th Edition, 2022, Elliot Klayman, Dearborn Real Estate Education www.dearborn.com
- Real Estate Fundamentals, 10th Edition, 2019, Gaddy, Hart, Spodek, Dearborn Real Estate Education,www.dearborn.com
- Real Estate Principles, 12th Edition, Charles Jacobus, OnCourse Publishing, N19W24075 Riverwood Drive, Suite 200, Waukesha, WI 53188, 855-733-7239, www.oncoursepublishing.com ISBN 1285420985
- Real Estate Principles, 12th Edition, 2021, Floyd and Allen, Dearborn Real Estate Education,www.dearborn.com
- Mastering Real Estate Principles, 8th Edition, 2022, Gerald Cortesi
- Real Estate Principles & Practices, 9th Edition, 2014, Arlyne Geschwender, OnCourse Publishing, N19W24075 Riverwood Drive, Suite 200, Waukesha, WI 53188, 855-733-7239, www.oncoursepublishing.com ISBN 0324784554
  Principles of Real Estate Practice, 6th edition, 2019, Mettling, Stephen and Cusic, David, Performance Programs Company, www.performanceprogramscompnay.com

State Portion References

- AWARE in South Carolina. 10th Edition, Charles D. Wyatt, Jr., Wyatt Institute, 710 E. North Street, Greenville, SC 29601, (800) 922-9252 or (864) 271-9732
- Real Estate Broker, Salesmen, and Property Managers License Laws; South Carolina Code of Laws, Title 40, Chapter 57 - https://llr.sc.gov/re/laws.aspx
- South Carolina Fair Housing Laws; South Carolina Code of Laws, Title 31, Chapter 21 - https://www.scstatehouse.gov/Archives/CodeofLaws2017/t31c021.php
- South Carolina Residential Landlord and Tenant Act; South Carolina Code of Laws Title 27, Chapter 40 - https://www.scstatehouse.gov/code/t27c040.php
- South Carolina Vacation Rental Act; South Carolina Code of Laws, Title 27, Chapter 50, Article 2 - https://www.scstatehouse.gov/code/t27c050.php
- South Carolina Vacation Time Sharing Plans Act; South Carolina Code of Laws, Title 27, Chapter 32, Article 1 - https://www.scstatehouse.gov/code/t27c032.php
- State Fire Marshal Law; South Carolina Code of Laws, Title 23, Chapter 9, Article 1 - https://www.scstatehouse.gov/code/t23c009.php
- Building Codes and Fire Prevention, South Carolina Code of Laws, Title 5, Chapter 25, Section 5-25-1310 - https://www.scstatehouse.gov/code/t05c025.php
- Homestead and Other Exemptions; South Carolina Coded Laws, Title 15, Chapter 41, Article 1 - https://www.scstatehouse.gov/code/t15c041.php
- Assessment of Property Taxes; South Carolina Coded Laws, Title 12, Chapter 37 - https://www.scstatehouse.gov/code/t12c037.php
- Residential Property Condition Disclosure Statement; South Carolina Code of Laws, Title 27, Chapter 50, Article 1 - https://www.scstatehouse.gov/code/t27c050.php
- Taxation Deed Recording Fee; South Carolina Code of Laws, Title 12 Taxation Chapter 24 - https://www.scstatehouse.gov/code/t12c024.php
- Taxation County Equalization and Reassessment; South Carolina Code of Laws, Title 12 Taxation Chapter 43, Section 12-43-220 – https://www.scstatehouse.gov/code/t12c043.php
- Consumer Protection Code; South Carolina Code of Laws, Title 37 - https://www.scstatehouse.gov/code/title37.php

DESCRIPTION OF EXAMINATIONS & EXAMINATION CONTENT OUTLINES

EXAMINATION SUMMARY TABLE

The Examination Summary Table below shows the number of questions and the time allowed for each examination portion.

Examination	Portion	# of Questions	Time Allowed
Associate	National	80 (80 points)	120 Minutes
	State	40 (40 points)	80 Minutes
	Both	(120 points)	200 Minutes
Broker*	National	75 (80 points)	120 Minutes
	State	50 (50 points)	80 Minutes
	Both	(130 points)	200 Minutes

*Note: National broker exams include questions that are scored up to two points

EXPERIMENTAL QUESTIONS

A small number of "experimental" questions (i.e., 5 to 10) may be administered to candidates during the examinations. These questions will not be scored and the time taken to answer them will not count against testing time. The administration of such unscored, experimental questions is an essential step in developing future licensing exams.

EXAMINATION CONTENT OUTLINES

The Examination Content Outlines have been prepared and are periodically updated by committees of professionals who are subject matter experts in real estate practice, real estate instruction, and regulatory issues. The examination content outlines these professionals have prepared identify areas of importance to licensees in order for them to perform their duties to the public in a competent and legally responsible manner.

Use the outline as a guide for pre-examination review of course material. The outlines list the topics that are on the examination and the number of questions for each topic. Do not schedule your examination until you are familiar with the topics in the outline.

NATIONAL PORTION
(REAL ESTATE PRINCIPLES AND PRACTICES)

I. Property Ownership *(Associate 10%, Broker 10%)*

A. Real and personal property; conveyances

B. Land characteristics and legal descriptions

1. Metes and bounds method of legal property description
2. Lot and block (recorded plat) method of legal property description
3. Government survey (rectangular survey) method of legal property description
4. Measuring structures (linear and square footage)
5. Land measurement

C. Encumbrances and effects on property ownership

1. Types of liens and their effect on the title and value of real property
2. Easements, rights of way and licenses, including their effect on the title, value and use of real property
3. Encroachments and their effect on the title, value and use of real property
4. Potential encumbrances on title, such as probate, leases, or adverse possession
5. Property rights that may be conveyed separately from use of the land surface, such as mineral and other subsurface rights, air rights, or water rights

D. Types of ownership

1. Ownership in severalty/sole ownership
2. Implications of ownership as tenants in common
3. Implications of ownership in joint tenancy
4. Forms of common-interest ownership, such as Timeshares, Condominiums and Co-ops
5. Property ownership held in a trust or by an estate
6. Ownership by business entities
7. Life Estate ownership

II. Land use Controls *(Associate 5%, Broker 5%)*

A. Government rights in land

1. Government rights to impose property taxes and special assessments
2. Government rights to acquire land through eminent domain, condemnation and escheat

B. Government controls on land use

C. Private controls

1. Deed conditions or restrictions on property use
2. Subdivision covenants, conditions and restrictions (CC&Rs) on property use
3. Condominium and owners' associations regulations or bylaws on property use

III. Valuation *(Associate 8%, Broker 8%)*

A. Appraisals

1. Appraisals for valuation of real property
2. Situations which require appraisal by a licensed or certified appraiser and brokerage-related actions that constitute unauthorized appraisal practice
3. General steps in appraisal process

B. Estimating Value

1. Economic principles and property characteristics that affect value of real property
2. Sales or market comparison approach to property valuation and appropriate uses
3. Cost approach to property valuation and appropriate uses
4. Income analysis approach to property valuation and appropriate uses

C. Comparative Market Analysis (CMA)

1. Competitive/Comparative Market Analysis (CMA), BPO or equivalent
2. Automated Valuation Method (AVM), appraisal valuation and Comparative Market Analysis (CMA)

IV. Financing *(Associate 10%, Broker 9%)*

A. Basic Concepts and Terminology

1. Loan financing (for example, points, LTV, PMI, interest, PITI)
2. General underwriting process (e.g., debt ratios, credit scoring and history)
3. Standard mortgage/deed of trust clauses and conditions
4. Essential elements of a promissory note

B. Types of Loans

1. Conventional loans
2. Amortized loans, partially amortized (balloon) loans, interest-only loans
3. Adjustable-rate mortgage (ARM) loans
4. Government Loans
   a. FHA insured loans
   b. VA guaranteed loans
   c. USDA/Rural Development loan programs
5. Owner financing (for example, installment or land contract/contract for deed)
6. Reverse-mortgage loans
7. Home equity loans and lines of credit
8. Construction loans
9. Rehab loans
10. Bridge loans

C. Financing and Lending

1. Real Estate Settlement Procedures Act (RESPA), including kickbacks
2. Truth-in-Lending Act (Regulation Z), including advertising
3. Requirements and time frames of TRID (TILA-RESPA Integrated Disclosures)
4. Equal Credit Opportunity Act
5. Lending Process (application through loan closing)
6. Risky loan features, such as prepayment penalties and balloon payments

V. Contracts *(Associate 19%, Broker 19%)*

A. General Contract Law

1. General principles of contract law
2. Elements necessary for a contract to be valid

3. Effect of the Statute of Frauds
4. Offer and a contract
5. Enforceability of contracts
6. Void, voidable and unenforceable contracts
7. Bilateral and unilateral contracts
8. Nature and use of option agreements
9. Notice, delivery, acceptance and execution of contracts
10. Appropriate use, risks, and advantages of electronic signatures and paperless transactions
11. Rights and obligations of the parties to a contract
12. Possible remedies for breach or non-performance of contract
13. Termination, rescission and cancellation of contracts

B. Purchase and Lease Contracts

1. Addenda and amendments to contracts
2. Purchase agreements
3. Contract contingencies and methods for satisfying them
4. Leases and rental agreements
5. Lease-purchase agreements
6. Types of leases

C. Proper handling of multiple offers and counteroffers

VI. Agency *(Associate 13%, Broker 13%)*

A. Agency and non-agency relationships

1. Agency relationships and how they are established
2. Types of listing contracts
3. Buyer brokerage/tenant representation contracts
4. Other brokerage relationships, including transaction brokers and facilitators
5. Powers of attorney and other assignments of authority
6. Conditions for termination of agency or brokerage service agreements

B. Agent Duties

1. Fiduciary duties of agents
2. Agent's duties to customers/non-clients, including honesty and good faith

C. Agency Disclosures

1. Disclosure of agency/representation
2. Disclosure of possible conflict of interest or self-interest

VII. Property Disclosures *(Associate 7%, Broker 7%)*

A. Property Condition

1. Seller's property condition disclosure requirements
2. Property conditions that may warrant inspections or a survey
3. Red flags that warrant investigation of public or private land use controls

B. Environmental and Government Disclosures

1. Environmental issues requiring disclosure
2. Federal, state, or local disclosure requirements regarding the property

C. Disclosure of material facts and material defects

VIII. Property Management *(Associate 3%, Broker 5%)*

A. Duties and Responsibilities

1. Procurement and qualification of prospective tenants
2. Fair housing and ADA compliance specific to property management
3. How to complete a market analysis to identify factors in setting rents or lease rates
4. Property manager responsibility for maintenance, improvements, reporting and risk management *(BROKER ONLY)*
5. Handling landlord and tenant funds; trust accounts, reports and disbursements *(BROKER ONLY)*
6. Provisions of property management contracts *(BROKER ONLY)*

B. Landlord and tenant rights and obligations

IX. Transfer of Title *(Associate 6%, Broker 6%)*

A. Types of deeds

B. Title Insurance and Searches

1. Title insurance policies and title searches
2. Potential title problems and resolutions
3. Marketable and insurable title

C. Closing Process

1. When transfer of ownership becomes effective
2. Process and importance of recordation
3. Settlement procedures (closing) and parties involved
4. Home and new construction warranties

D. Special Processes

1. Special issues in transferring foreclosed properties
2. Special issues in short sale transactions
3. Special issues in probate transactions

X. Practice of Real Estate *(Associate 12%, Broker 12%)*

A. Antidiscrimination

1. Federal Fair Housing Act general principles and exemptions
2. Protected classes under Federal Fair Housing Act
3. Protections against discrimination based on gender identity and sexual orientation
4. Prohibited conduct under Federal Fair Housing Act (Redlining, Blockbusting, Steering, Disparate Treatment)
5. Fair housing advertising rules
6. Americans with Disabilities Act (ADA) obligations pertaining to accessibility and reasonable accommodations

B. Legislation and Regulations

1. Licensees' status as employees or independent contractors
2. Antitrust laws and types of violations, fines and penalties
3. Do-Not-Call List rule compliance
4. Proper use of Social Media and Internet communication and advertising

C. Duties and Responsibilities

1. Protection of confidential personal information (written, verbal or electronic)
2. Duties when handling funds of others in transactions
3. Licensee responsibility for due diligence in real estate transactions

D. Supervisory Responsibilities *(BROKER ONLY)*

1. Broker's supervisory responsibilities (licensees, teams and unlicensed assistants and employees) *(BROKER ONLY)*
2. Broker relationship with licensees (employees or independent contractors and governing rules) *(BROKER ONLY)*

XI. Real Estate Calculations *(Associate 7%, Broker 6%)*

A. Calculations for Transactions

1. Seller's net proceeds
2. Buyer funds needed at closing
3. Real property tax and other prorations
4. Real property transfer fees
5. PITI (Principal, Interest, Taxes and Insurance) payments estimate given loan rate and term

B. General Concepts

1. Equity
2. Rate of return/Capitalization rate
3. Loan-to-Value ratio
4. Discount points and loan origination fees

STATE-SPECIFIC PORTION (SOUTH CAROLINA REAL ESTATE LAWS AND REAL ESTATE COMMISSION RULES)

South Carolina Real Estate Commission and Licensing Requirements *(Associate-9 items, Broker-10 items)*

A. Real Estate Commission Purpose, Powers, and Duties
B. Activities Requiring a License and Exemptions from Licensure
C. License Types, Maintenance, Duration, Statuses, and Changes

Statutes Governing the Activities of Licensees and Non-Licensees *(Associate-11 items, Broker-16 items)*

A. Advertising
B. Broker, Associate, and Non-Licensee Relationships
C. Commissions and Other Compensation
D. Disclosure of Licensee's Interest in Real Estate Transactions
E. Offers and Counteroffers
F. Handling of Documents and Record Keeping
G. Handling of Monies and Accounting Practices
H. License Law Violations, Investigations, and Penalties

South Carolina Agency and Non-agency Relationships and Issues *(Associate-11 items, Broker-13 items)*

A. Permissible Relationships and Obligations to Parties
B. Disclosure Requirements and Issues
C. Creation and Termination of Agency
D. South Carolina Agency and Non-agency Contracts

Additional South Carolina Statutes and Topics *(Associate-6 items, Broker-7 items)*

A. Consumer Protection Code
B. Homestead Exemption
C. Residential Landlord and Tenant Act
D. Vacation Rental Act (Associate and Broker) and Time Sharing Plan Act (Broker Only)
E. Residential Property Condition Disclosure Statements
F. SC Fair Housing Law
G. SC Smoke Detector Law

Closing Details (*Associate-3 items*, *Broker-4 items*)

SAMPLE QUESTIONS

The following questions are offered as examples of the types of questions you will be asked during the course of the National real estate associate and broker examinations. They are intended primarily to familiarize you with the style and format of questions you can expect to find in the examinations. The examples do NOT represent the full range of content or difficulty levels found in the actual examinations.

SAMPLE ASSOCIATE QUESTIONS

A. Which of the following interests in property is held by a person who is granted a lifetime use of a property that will be transferred to a third party upon the death of the lifetime user?

1. A life estate.
2. A remainder estate.
3. An estate for years.
4. A reversionary estate.

B. Which of the following statements BEST identifies the meaning of the term, "rescission of a contract"?

1. A ratification of a contract by all parties.
2. A return of all parties to their condition before the contract was executed.

3. A transfer or assignment of a particular responsibility from one of the parties to another.
4. A review of the contract by the legal counsel of either party that may result in a cancellation without penalty or further obligation.

C. Which of the following clauses in a mortgage allows the lender to demand loan repayment if a borrower sells the property?

1. Defeasance
2. Prepayment
3. Acceleration
4. Alienation

D. How much cash MUST a buyer furnish in addition to a $2,500 deposit if the lending institution grants a 90% loan on an $80,000 property?

1. $5,500.
2. $6,975.
3. $7,450.
4. None of the above.

E. Which of the following single-family residences would get the MOST accurate appraisal by applying the reproduction cost approach to value?

1. A rental property.
2. A vacant property.
3. A new property.
4. An historic property.

Answers to Sample Associate Questions:
A: 1; B: 2; C: 4; D: 1; E: 4

SAMPLE BROKER QUESTIONS (SCENARIO-BASED)

Scenario:

You are hosting an open house. Mr. and Mrs. Charles Martin come into the house. You greet them and show them the house. The Martins tell you the house is exactly what they are looking for and they are very interested in purchasing it. You then give them information showing the various types of financing available with down payment options and projected payments.

Mr. Martin tells you they have been working with Mary Hempstead of XX Realty, a competing real estate company. Before leaving, you thank them for coming and give them your business card.

A. The first thing on Monday morning, Mrs. Martin calls and indicates they have tried to reach Mary and cannot. They indicate they have a written buyer's agent agreement with Mary's broker. They are afraid someone else is going to buy the house. Which of the following should you do? Select the best answer.

1. Seek advice from your supervising broker.
2. Tell them to come to your office.
3. Ask them to bring the buyer's agency agreement to you for your interpretation.
4. Tell them to be patient and continue trying to reach Mary.
5. Tell them to call Mary's supervising broker or branch manager.
6. Tell them you are really sorry, but there is nothing you can do.

B. The Martins come to your office and explain that neither Mary nor her supervising broker are available. They insist you immediately write an offer for the house. How should you proceed? Select the best answer.
1. Write the offer after entering into a buyer's broker agreement with them.
2. Write the offer after explaining they may owe Mary's broker a commission.
3. Write the offer after trying to contact Mary's broker yourself.
4. Refuse to write an offer and explain that doing so would be unethical.
5. Refuse to write and offer since it would be illegal.
6. Refuse to write the offer and tell the Martins to contact another Salesperson in Mary's office.

Answers (Points) to Sample Broker Questions:

A. 1 (2 points), 2 (1 point), 3 (0 point), 4 (0 point), 5 (1 point) , 6 (0 point);

B. 1 (1 point), 2 (2 points), 3 (1 point), 4 (0 point), 5 (0 point) , 6 (0 point);

SCHEDULING PROCEDURES

FEE SCHEDULE

Fees apply to both Broker and Associate Examinations.

Both Portions	$63
One Portion	$55

ATTENTION: EXAMINATION FEES ARE NOT REFUNDABLE OR TRANSFERABLE. EXAMINATION FEE IS VALID FOR ONE YEAR FROM THE DATE OF PAYMENT.

INTERNET REGISTRATION

For the fastest and most convenient test scheduling process, PSI recommends that candidates register for their exams using the Internet. Candidates register online by accessing PSI's registration website at https://test-takers.psiexams.com/scre. Internet registration is available 24 hours a day.

Log onto PSI's website and select Sign in / Create Account. Select Create Account. You are now ready to pay and schedule for the exam. Enter your zip code and a list of the testing sites closest to you will appear. Once you select the desired test site, available dates will appear.

TELEPHONE REGISTRATION

Call 855-340-3701 and speak to a PSI registrar Monday through Friday between 7:30 am and 10:00 pm, and Saturday-Sunday between 9:00 am and 5:30 pm, Eastern Time.

EXAM ACCOMMODATIONS

All PSI examination centers are equipped to provide access in accordance with the Americans with Disabilities Act (ADA) of 1990, and exam accommodations will be made in meeting a candidate's needs. A candidate with a disability or a candidate who would otherwise have difficulty taking the examination should request for alternative arrangements by Clicking Here.

Candidates granted accommodation in accordance with the ADA, MUST schedule their examination by telephone and speak directly with a PSI registrar.

CANCELING OR RESCHEDULING AN APPOINTMENT

You may cancel and reschedule an examination appointment without forfeiting your fee if your *cancellation notice is received 2 days before the scheduled examination date*. For example, for a Monday appointment, the cancellation notice would need to be received on the previous Saturday.

Note: A voice mail message is NOT an acceptable form of cancellation. Please use the PSI Website or call PSI and speak to a Customer Service Representative.

IMPORTANT NOTE
ABOUT SCHEDULING OR RESCHEDULING!

It is not possible to make a new examination appointment on the same day you have taken an examination; this is due to processing and reporting scores. A candidate who tests unsuccessfully on a Wednesday can call the next day, Thursday, and retest as soon as Friday, depending upon space availability.

MISSED APPOINTMENT OR LATE CANCELLATION

Your registration will be invalid, and you will not be able to take the examination as scheduled, and you will forfeit your examination fee, if you:

- Do not cancel your appointment 2 days before the schedule examination date; or
- Do not appear for your examination appointment; or
- Arrive after examination start time; or
- Do not present proper identification when you arrive for the examination.

EMERGENCY EXAMINATION CENTER CLOSING

In the event that severe weather or another emergency forces the closure of a examination center on a scheduled testing date, your examination will be rescheduled. PSI personnel will attempt to contact you in this situation; however, you may check the status of your testing schedule by calling (855) 340-3701. Every effort will be made to reschedule your examination at a convenient time as soon as possible.

EXAMINATION CENTER LOCATIONS

GREENVILLE/SPARTANBURG
Park East, Anderson Building
150 Executive Center Drive, Suite 104
Greenville, South Carolina 29615
From I-85, take I-385 North towards Greenville. Take Roper Mountain exit (Exit 37) and go right (East). Turn right at the first street (Independence Blvd). Go 0.7 miles and turn left on Executive Center Drive. The Anderson Building will be on your right.

COLUMBIA
Synergy Business Park
Congaree Building
121 Executive Center Drive, Suite 143
Columbia, South Carolina 29210
From I-20, take exit 63 (Bush River Road). Proceed west and turn right onto Berryhill Road. Turn left onto Executive Center Drive. Enter the Congaree Building through the front door. From the lobby take the corridor to the right to the end and turn left. PSI Suite 143 is on the left.

CHARLESTON
4600 Goer Drive, Suite 112A
North Charleston, South Carolina 29406
At juncture of I-26 and I-526, head Southeast in the direction of Charleston. Next exit is Montague Ave, exit East Montague. Take first right at Goer Drive. Site is adjacent to the Marriott Hotel.

BEAUFORT/HILTON HEAD
Regions Bank Building
69 Robert Smalls Pky/SC-170, Unit 4D
Beaufort, South Carolina 29906
From I-95, take the US-17N exit (Exit Number 33) towards Beaufort. After approximately 9 miles, US 21 splits off to the right and goes to Beaufort and US 17 goes to the left towards Charleston. Continue towards Beaufort on US 21 for approximately 12 miles. Turn sharp right onto SC 170 (McDonalds is on the corner) and continue for .3 miles. The building is on your left.

MYRTLE BEACH
1601 North Oak Street, Suite 305
Myrtle Beach, South Carolina 29577
From the west: Take Rte 501 to 17 Bypass North. Take 17 Bypass North one exit to 10th Avenue (Mr Joe White Ave). Turn right and go about 2 miles to Oak St. Take left on Oak St and follow to #1601(Myrtle Offices). Go around to back of building. PSI is in Suite #305
From the south: Take 17 Bypass North to 10th Avenue. Turn right and follow above directions.
From the North: Take Rte 31 to Robert Grissom Parkway. Follow RGP to 21st Avenue. Turn left on 21st Ave and follow to Oak St. Turn right on Oak St and follow to #1601. (Myrtle Offices). PSI is around the back of building.

CHARLOTTE
Tyvola Executive Park 1
5701 Westpark Dr, #202
Charlotte, NC 28217

From I-77S towards Columbia, exit Tyvola Road (Exit #5). Turn left at Tyvola Road. Make a right at Westpark Dr. From I-77N, exit Tyvola Road (Exit #5) towards Coliseum Area. Bear right at Tyvola Road. Turn right at Westpark Dr.

Additionally, PSI has examination centers in many other regions across the United States. You may take the written examination at any of these locations by following the instructions on the Out-Of-State Request Form at the end of this Candidate Information Bulletin.

REPORTING TO THE EXAMINATION CENTER

On the day of the examination, you should arrive at least 30 minutes before your appointment. This extra time is for sign-in, identification and familiarizing you with the examination process. **If you arrive late, you may not be admitted to the examination center and you will forfeit your registration fee.**

REQUIRED IDENTIFICATION

Candidates need to provide one (1) form of identification.

Candidates must register for the exam with their LEGAL first and last name as it appears on their government issued identification. The required identification below must match the first and last name under which the candidate is registered. Candidates are required to bring one (1) form of a valid (non-expired) signature bearing identification to the test site.

REQUIRED IDENTIFICATION (with photo) - Choose One

- State issued driver's license
- State issued identification card
- US Government Issued Passport
- US Government Issued Military Identification Card
- US Government Issued Alien Registration Card
- Canadian Government Issued ID

  NOTE: ID must contain candidate's photo, be valid and unexpired.

SECURITY PROCEDURES

The following security procedures will apply during the examination:

- Candidates will be issued scratch paper and pencil to use during the examination. Scratch paper may not be written on prior to the beginning of the test. You must launch your test and the test time must start before you can start writing on any approved and issued scratch paper. The scratch paper may not be copied nor removed from the test center at the conclusion of the exam.
- Only non-programmable calculators that are silent, battery-operated, do not have paper tape printing capabilities, and do not have a keyboard containing the alphabet will be allowed in the examination site.
- Candidates may take only approved items into the examination room.
- All personal belongings of candidates, with the exception of close-fitting jackets or sweatshirts, should be placed in the secure storage provided at each site prior to entering the examination room. Personal belongings **include, but are not limited to**, the following items:
  - **Electronic devices of any type**, including cellular / mobile phones, recording devices, electronic watches, cameras, pagers, laptop computers, tablet computers (e.g., iPads), music players (e.g., iPods), smart watches, radios, or electronic games.
  - **Bulky or loose clothing or coats** that could be used to conceal recording devices or notes, including coats, shawls, hooded clothing, heavy jackets, or overcoats.
  - **Hats or headgear not worn for religious reasons** or as religious apparel, including hats, baseball caps, or visors.
  - **Other personal items**, including purses, notebooks, reference or reading material, briefcases, backpacks, wallets, pens, pencils, other writing devices, food, drinks, and good luck items.
- Person(s) accompanying an examination candidate may not wait in the examination center, inside the building or on the building's property. This applies to guests of any nature, including drivers, children, friends, family, colleagues or instructors.
- No smoking, eating, or drinking is allowed in the examination center.
- During the check in process, all candidates will be asked if they possess any prohibited items. Candidates may also be asked to empty their pockets and turn them out for the proctor to ensure they are empty. The proctor may also ask candidates to lift up the ends of their sleeves and the bottoms of their pant legs to ensure that notes or recording devices are not being hidden there.
- Proctors will also carefully inspect eyeglass frames, tie tacks, or any other apparel that could be used to harbor a recording device. Proctors will ask to inspect any such items in candidates' pockets.
- If prohibited items are found during check-in, candidates shall put them in the provided secure storage or return these items to their vehicle. PSI will not be responsible for the security of any personal belongings or prohibited items.
- Any candidate possessing prohibited items in the examination room shall immediately have his or her test results invalidated, and PSI shall notify the examination sponsor of the occurrence.
- Any candidate seen giving or receiving assistance on an examination, found with unauthorized materials, or who violates any security regulations will be asked to surrender all examination materials and to leave the examination center. All such instances will be reported to the examination sponsor.
- Copying or communicating examination content is violation of a candidate's contract with PSI, and federal and state law. Either may result in the disqualification of examination results and may lead to legal action.
- Once candidates have been seated and the examination begins, they may leave the examination room only to use the restroom, and only after obtaining permission from the proctor. Candidate will not receive extra time to complete the examination.

TAKING THE EXAMINATION BY COMPUTER

The examination will be administered via computer. You will be using a mouse and computer keyboard.

TUTORIAL

Before you start your examination, an introductory tutorial is provided on the computer screen. The time you spend on this tutorial, up to 15 minutes, DOES NOT count as part of your examination time. Sample questions are included following the tutorial so that you may practice answering questions and reviewing your answers.

TEST QUESTION SCREEN

One question appears on the screen at a time. During the examination, minutes remaining will be displayed at the top of the screen and updated as you record your answers.

IMPORTANT: After you have entered your responses, you will later be able to return to any question(s) and change your response, provided the examination time has not run out.

EXAMINATION REVIEW

PSI, in cooperation with the South Carolina Real Estate Commission, will be consistently evaluating the examinations being administered to ensure that the examinations accurately measure competency in the required knowledge areas. Comments may be entered on the computer keyboard during the examination. Comments may be entered by clicking the Comments link on the function bar of the test question screen.

Your comments regarding the questions and the examinations are welcomed. Comments will be analyzed by PSI examination development staff. While PSI does not respond to individuals regarding these comments, all substantive comments are reviewed. If a discrepancy is found during the comment review, PSI and the department may re-evaluate candidates' results and adjust them accordingly. **This is the only review of the examination available to candidates.**

SCORE REPORTING

In order to pass the examination, you must achieve the minimum score shown on each part of the examination.

	Number Correct
Associate	
National Portion	56
State Portion	28
Broker	
National Portion	60
State Portion	36

Your score will be given to you immediately following completion of the examination. Examination results are confidential and will be reported only to you and the South Carolina Real Estate Commission.

The following summary describes the score reporting process:

On screen - Your score will appear immediately on the computer screen.

- If you **pass**, you will immediately receive a successful notification on the screen.
- If you **do not pass**, you will immediately receive an unsuccessful notification on the screen along with a diagnostic report indicating your strengths and weaknesses by examination type.

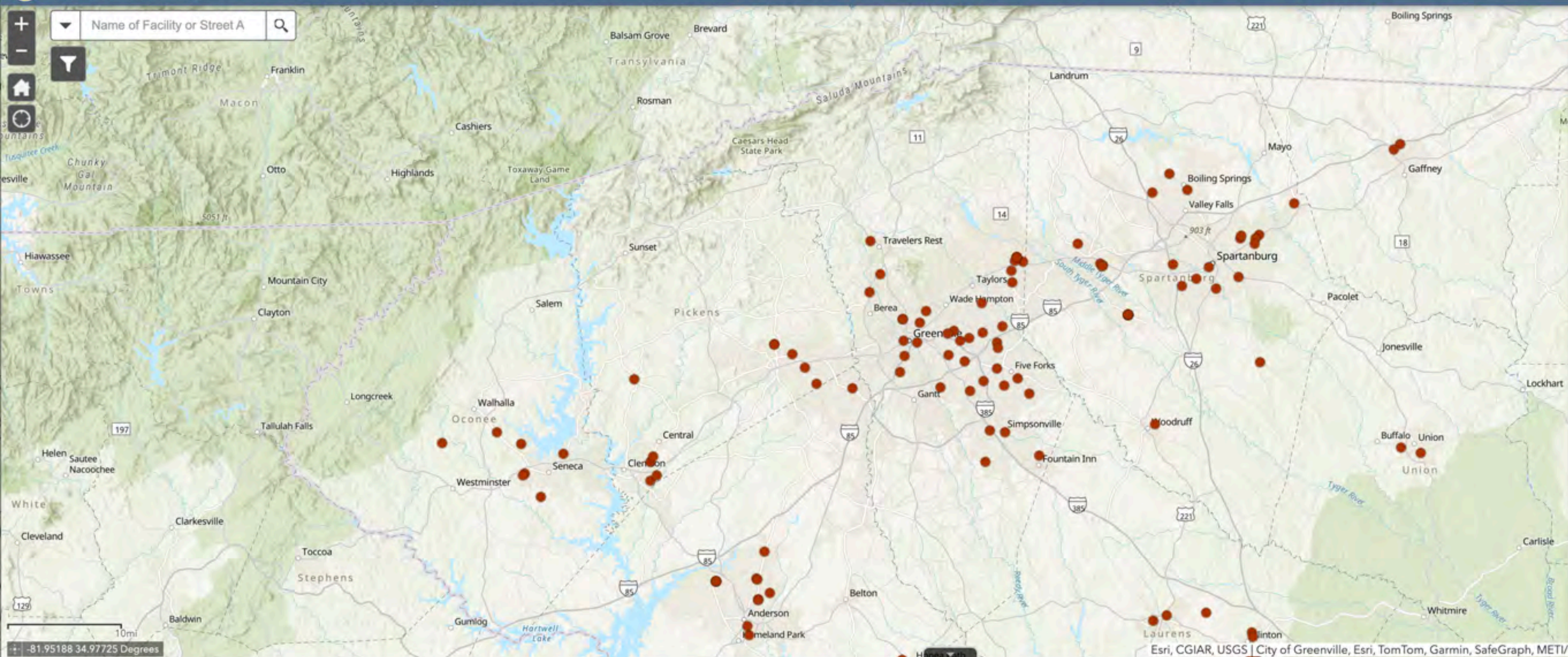
On Paper - An official result report will be printed at the examination center.

DUPLICATE SCORE REPORTS

You may request a duplicate score report after your examination by emailing scorereport@psionline.com or by calling (855) 340-3701.

Find a Health Facility   SC Department of Public Health

Name of Facility or Street A



Layer List

Layers

- All Health Facilities
- Abortion Clinics
- Adult Day Care Facilities
- Ambulatory Surgical Facilities
- Birthing Centers
- Body Piercing Facilities
- Crisis Stabilization Units
- Community Residential Care Facilities
- Hearing Aid Specialists
- Hearing Aid Specialists: Temporary
- Home Health Agencies
- Hospice Facilities
- Hospice Programs
- Hospitals
- Intermediate Care Facilities; 15- Beds

Health Facilities | Abortion Clinics | Adult Day Care Facilities | Ambulatory Surgical Facilities | Birthing Centers | Body Piercing Facilities | Crisis Stabilization Units | Community Residential Care Facilities | Hearing Aid Specialists | Hearing Aid Specialists: Temporary | Home Health Agencies | Hospice Facilities | Hospice Programs | Hospitals | Intermediate Care Facili

Options   Filter by map extent   Zoom to   Clear selection   Refresh

Name of Facility	Location Street	Location City	Location State	ZIP Code	County	Facility #	Admin Name & Phone	Facility Email	Fac. Cont. Email	License / Expiration	County / Ownership Type	Mailing Address	Mailing City	Mailing State	Mailing ZIP	Licensee	Alzheimer Unit	Alzheimer Care	# of Licensed Beds	Max # of Bec
GARDENS AT EASTSIDE	275 COMMONWEALT DR	GREENVILLE	SC	29615-4814	Greenville	864-329-1200	FORD, JANE A. PH#: 864-329-1200	JANE.FORD@ARE	JFORD@ARBORC	CRC-1222 / 08/31/2025	Greenville / Ltd. Liability	275 COMMONWEALT DR	GREENVILLE	SC	29615-4814	EASTSIDE ASSISTED LIVING LLC	Y	Y	83	[illegible]

DEFENDANT'S EXHIBIT

7

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiffs, v. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF 18 Oakview Park PropCo, LLC; AFF 18 Greenville Borrower, LLC; Oakview Park Developer, LLC; Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2024-CP-23-06777 **DEFENDANTS' RULE 59(e) MOTION TO RECONSIDER, ALTER, AND AMEND THE COURT'S SEPTEMBER 24, 2025 ORDER(s)**

Pursuant to Rule 59(e), SCRCP, Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") respectfully request that this Honorable Court reconsider, alter, and amend its Order(s) of September 24, 2025.

I. The burden of proving unconscionability lies with the party asserting it.

The Court's Order incorrectly states that Defendants bear the burden of proving that the arbitration provision was *not* unconscionable. The Order cites to two cases in support of this contention; however, neither case says anything about which party bears the burden of proving unconscionability.

To the contrary, it is well-established that the burden of proving unconscionability lies with the party asserting it. *See Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) ("The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration."); *Doe v. TCSC, LLC*, 430 S.C. 602, 612, 846 S.E.2d 874, 879 (Ct. App. 2020) ("To prove the arbitration provision unconscionable, [the party resisting arbitration] must show that (1) she lacked a meaningful choice as to whether to arbitrate because the Agreement's provisions were one-sided, and (2) the terms were so oppressive no reasonable person would make them and no fair and honest person would accept them."); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38 n.3, 524 S.E.2d 839, 844 n.3 (Ct. App. 1999) (finding that the party resisting arbitration bears the burden of showing that "the prevailing law would release him from a contractual obligation to arbitrate."); *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 81 (2000) ("[A] party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs."); *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct. App. 2008) ("The [party] asserting an affirmative defense bears the burden of its proof.").

Here, it is undisputed that there was an agreement to arbitrate between the parties. Plaintiff does not dispute that Sandra Parsons White signed the Residency Agreement and that she had the authority to do so on behalf of Virginia Parsons. Rather, Plaintiff asserts that the agreement should not be enforced, because it is unconscionable. As unconscionability is an affirmative defense, Plaintiff bears the burden of establishing it.

II. Plaintiff has not met her burden of demonstrating procedural unconscionability.

For a contract provision to be unconscionable, both procedural and substantive unconscionability must be present. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007). "Substantive unconscionability appears in the content of the contract per se, while procedural unconscionability entails an examination of the contract formation process, and both are generally necessary to establish unconscionability." 17A Am. Jur. 2d Contracts § 272.

"Procedural unconscionability involves 'bargaining naughtiness' in contract formation. It is determined by analyzing the respective bargaining power of the contracting parties, and the ability of the particular contracting party, in light of education, intelligence, or lack thereof, to understand the terms of the contract." *Id.*

"As early as 1924, this Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986). Accordingly, "when there is no dispute a party has signed an agreement, there can generally be no bona fide dispute he or she is aware of all terms in the agreement." *Hackworth v. Bayview Manor, LLC*, No. 2019-001536, 2023 WL 2519244, at 3 (S.C. Ct. App. Mar. 15, 2023); *see also Towles v. United HealthCare Corp.*, 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct. App. 1999) ("After receiving and signing the Acknowledgment, Towles cannot legitimately claim United failed to provide actual notice of the arbitration provisions because the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document.”).

The undisputed evidence before the Court is that Sandra Parsons White was a sophisticated party who had received formal instruction on, and demonstrated her understanding of, South Carolina contract law and agency law. (*See* **Exhibits 5 and 6** to Defendants’ Reply Memo). It is undisputed that there were over thirty assisted living facilities within driving distance of The Oakview Park facility. (*See* **Exhibit 7** to Defendants’ Reply Memo). It is undisputed that the Residency Agreement itself informed Sandra Parsons White of the fact “that other assisted living companies’ Agreements may not contain an arbitration provision.” (*See* **Exhibit 4** to Defendants’ Reply Memo).

There is no evidence before the Court that indicates Sandra Parsons White lacked the education or intelligence to be able to read and understand the terms of the arbitration provision. There is no evidence that Defendants engaged in any “bargaining naughtiness.” There is no evidence of an absence of meaningful choice. Plaintiff has not met her burden of establishing procedural unconscionability.

III. Plaintiff has not met her burden of demonstrating substantive unconscionability.

Substantive unconscionability exists when the terms of the contract “are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Gladden v. Boykin*, 402 S.C. 140, 144, 739 S.E.2d 882, 884 (2013).

As previously argued in Defendants' memorandums of law and in oral argument, there is no South Carolina caselaw indicating that any terms within the arbitration provision are unconscionable, violative of public policy, or otherwise unenforceable. Conversely, the caselaw that does exist appears to indicate that all of the provisions here are enforceable. *See Gladden*, 402 S.C. 140, 739 S.E.2d 882; and *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016).

There is no evidence before the Court indicating that Plaintiff is likely to incur prohibitively expensive costs should this case be referred to arbitration. *See Green Tree Fin. Corp.-Alabama*, 531 U.S. at 81 ("[A] party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs."). In fact, the arbitration provision itself provides that if Plaintiff is indigent, Plaintiff will not incur any arbitration costs. (*See* **Exhibit 4** to Defendants' Reply Memo).

Finally, while the Court's Order states that $400,000 will likely be an insufficient amount to fully compensate Plaintiff for the injuries alleged in this case, Plaintiff's counsel appears to disagree, given that on March 17, 2025, Plaintiff's counsel filed an offer of judgment for $375,000.

Plaintiff has not met her burden of establishing substantive unconscionability.

IV. The Court should sever any provision(s) it deems unenforceable.

In *Simpson*, the Supreme Court of South Carolina cited with approval a D.C. Circuit case called *Booker* for the proposition that "[i]f illegality pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts, the judicial effort begins to look more like rewriting the contract than fulfilling the intent of the parties." *Simpson,* 373 S.C. at 34, 644 S.E.2d at 673 (quoting *Booker v. Robert Half Int'l, Inc*., 413 F.3d 77, 84-85 (D.C. Cir. 2005).

However, in *Booker*, the D.C. Circuit did not invalidate the entire arbitration provision. Rather, the Court severed an unenforceable provision barring punitive damages and then upheld the remainder of the arbitration provision. *See Booker v. Robert Half Int'l, Inc*., 413 F.3d 77. The Court found that "severance is inappropriate when the entire clause represents an integrated scheme to contravene public policy" but noted that '[t]here is no evidence of that here" because when the contract was signed "the law of this circuit was unclear as to whether bars on punitive damages in arbitration clauses were enforceable in this context." *Id.* at 85 (internal quotations and citations omitted).

The same is true here. There is no South Carolina caselaw indicating that any of the provisions at issue here are unconscionable, violative of public policy, or otherwise unenforceable. Rather, the caselaw appears to indicate that all of the provisions here are enforceable. *See Gladden v. Boykin*, 402 S.C. 140, 739 S.E.2d 882; and *Maybank v. BB&T Corp*., 416 S.C. 541, 787 S.E.2d 498.

Defendants have a right to rely on existing caselaw when drafting contracts. Unlike in *Damico*, Defendants here have not engaged in "an integrated scheme to contravene public policy" for which they ought to be punished.[1]

The *Damico* Court also cited with approval to 17A Am. Jur. 2d Contracts § 314, which provides that:

> To determine whether an entire contract should be invalidated or whether only a particular term or set of terms should be severed, a court considers whether—
>
> — the illegality is central or collateral to the purpose of the contract.
>
> — the illegal provision involves moral turpitude.
>
> — the agreement is an integrated scheme to contravene public policy.
>
> — the party seeking enforcement has engaged in serious misconduct.
>
> — the provision can be eliminated without frustrating the basic purpose of the contract.
>
> — the contract would have been entered into independently of the invalid portion.
>
> — the considerations from both sides are sufficient for performance absent the invalid provision.
>
> — the invalid provision does not constitute the main or essential

[1] In *Damico*, the contract, amongst other things, purported to waive the implied warranty of habitability in exchange for the valuable consideration of $0 and gave Lennar the unilateral ability to control who Plaintiff could name as a co-defendant in any arbitration proceeding brought against Lennar. The arbitration agreement was also characterized as an equitable servitude that would run with the land in perpetuity. The Court held that "[w]e find these and other terms of the contracts to be absurd, factually incorrect, and grossly oppressive." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 617, 879 S.E.2d 746, 758 (2022).

purpose of the agreement.

— the allegedly unenforceable clause can easily be severed from the remainder of the contract without reforming the substance of the contract.

17A Am. Jur. 2d Contracts § 314.

All of these factors weigh in favor of severing any term(s) that the Court deems unenforceable here, rather than invalidating the entire arbitration provision. The essential purpose of the arbitration provision was to memorialize the parties' agreement to settle disputes via arbitration. This is not an illegal purpose; in fact, this is a purpose and an endeavor that Congress sought to encourage and protect by enacting the FAA. The arbitration provision does not involve any moral turpitude. Defendants have not engaged in any serious misconduct or perpetrated an integrated scheme to contravene public policy. Any terms regarding how the arbitration is to be conducted or what damages are recoverable therein can easily be severed without frustrating the essential purpose of the arbitration provision.

Finally, the plain language of the arbitration provision itself evinces the parties' intent to sever any provisions that a Court may deem unenforceable. (See the severance clauses contained in **Exhibit 4** to Defendants' Reply Memo). The intent of the parties should be enforced. *See Columbia Architectural Grp., Inc. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980) (holding that "[t]he entirety or severability of a contract depends primarily upon the intent of the parties.").

Conclusion

For the foregoing reasons, as well as those previously raised in oral argument and in previous memorandums of law, Defendants respectfully request that this Honorable Court reconsider, alter, and amend its Order(s)[2] of September 24, 2025 and grant Defendants' Motion to Compel Arbitration.

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/ Timothy Maio
Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

Attorneys for Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

October 3, 2025
Spartanburg, South Carolina

[2] The Court appears to have signed and filed two identical Orders on September 24, 2025.

STATE OF SOUTH CAROLINA GREENVILLE COUNTY	)))	COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Estate of Virginia Parsons, by and through her Personal Representative Sandra P. White, Individually and on behalf of statutory beneficiaries, Plaintiff, v. Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF 18 Oakview Park PropCo, LLC; AFF 18 Greenville Borrower, LLC; Oakview Park Developer, LLC Defendants.	)	Civil Action No.: 2024CP2306777 **PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO RECONSIDER, ALTER, AND AMEND**

Plaintiff the Estate of Virginia Parsons, by and through her Personal Representative Sandra P. White respectfully submits her memorandum of law in opposition to the Rule 59(e), SCRCP motion of Defendants Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living ("the Facility"); AFF 18 Oakview Park PropCo, LLC; AFF 18 Greenville Borrower, LLC; and Oakview Park Developer, LLC.

<u>KEY CONTRACT TERMS</u>

A number of unconscionable and otherwise unenforceable legal provisions are buried within the twenty-page "Oakview Park Residency Agreement" ("the Agreement"). Section V(A) is the Agreement's "Arbitration Provision" which begins on page 7 and contains the following unfair provisions:

- **Lack of Mutuality (1)**: While the Facility's residents are purportedly required to arbitrate any legal claim related to their residency, Defendants' legal rights are not equally curtailed. The Agreement expressly carves out "any action for eviction," thereby reserving access to the courts for Defendants while denying it to residents.

- **Onerous Discovery Limitations (6)**: The Agreement flatly refuses to offer residents the same level of access to key information that they would have in litigation ("discovery shall be modified . . ."). The improper discovery provisions include:
  - (b): A per-page charge to the resident for every document Defendants produce
  - (c): A blanket prohibition on non-expert depositions
  - (i): A pre-hearing schedule that prevents the resident from knowing Defendants' witness and exhibit list until just 14 days before the arbitration hearing.

- **Appeal Waiver (10)**: The Agreement purports to waive any right to appeal an arbitrator's decision.

- **Attorney Fee Waiver (11)**: A resident is purportedly barred from recovering attorneys' fees even if such recovery is permitted or even required by statute.

The Agreement's Section V(B) is titled "Limitation of Liability Provision," and it sets out to systematically eliminate a number of statutorily protected damages in a manner that no reasonable person in Defendants' position would expect a resident to accept. Specifically:

- **Economic Damages Limit (2(a))**: A resident may only recover "net economic damages" with a requirement that the recovery be "offset by any collateral source payments," which is directly at odds with South Carolina's long-standing collateral source rule.

- **Noneconomic Damages Limit (2(b))**: A resident may only recover \$ 400,000 for noneconomic damages even though South Carolina law imposes no noneconomic damages limits for most tort claims. This purported limitation is also well beneath the noneconomic damages limitation for medical malpractice claims (\$ 580,461). S.C. Code Ann. § 15-32-220; S.C. Revenue & Fiscal Affairs Office Mem., dated Feb. 3, 2025 (adjusting statutory damage limit for inflation). Moreover, the Agreement's purported limit would limit a resident to \$ 400,000 for recovery from all Defendants even though South Carolina's statutory noneconomic damages limitation functions on a per-claimant, per-provider basis allowing each claimant a recovery up to \$ 1,741,383. <u>Id.</u>

- **Punitive Damages Exclusion (2(d))**: The Agreement purports to bar punitive damages, another component of damages made available by South Carolina statute for instances of reckless misconduct.

COURT'S ORDER DENYING MOTION TO COMPEL ARBITRATION

After considering the parties written submissions and oral arguments at the August 28, 2025 WebEx hearing, the Court entered its order on September 24, 2025, denying Defendants' motion to compel arbitration and stay proceedings. The Court concluded the Agreement was unconscionable and, therefore, invalid. (Order at 5). The Court offered specific legal reasoning to support its conclusion on both procedural and substantive unconscionability. The Agreement was procedurally unconscionable because the conditions under which it was presented and entered indicated a lack of meaningful choice in the transaction. Specifically, the Court found a "significant" disparity in the bargaining power of Virginia Parsons (through her daughter Sandra P. White) and the Facility, a sophisticated business entity. (Order at 2). As for the Agreement, the Court found it was offered on a take-it-or-leave-it basis with "no opportunity for negotiation" and concluded the disputed arbitration/liability limitation provisions were not conspicuous within the document (on pages 7-11 of 20, not in bold type). (Order at 2).

The Agreement was also substantively unconscionable based on its one-sided and unfair terms. The Court made special note of the Agreement's "severe[]" noneconomic damages cap as well as its attempt to limit a resident's economic damages by eliminating the collateral source rule recognized by South Carolina law. (Order at 2). The total bar of punitive damages was also highlighted as a term no reasonable resident should be expected to accept. But, it was not just the damage issues that proved the Agreement was unconscionable, it was also the way in which it altered pre-hearing procedures. Barring a resident from obtaining lay witness testimony was determined to be especially egregious because, since the Facility is likely to control the key fact witnesses, the practical effect of the deposition ban is to ensure a resident would enter the arbitration hearing with an informational and strategic disadvantage. (Order at 3).

Finally, the Court recognized the unfair terms cover basically the entire arbitration process from the way in which a party prepares for the hearing to the way in which the hearing is conducted to the types of remedies that are available and even what recourse a losing party can pursue. Since the improper provisions are so pervasive, the Court concluded they could not be severed from the Agreement itself. (Order at 5). Accordingly, all of the Agreement's Section V was declared invalid. Without a valid arbitration contract on which they could rely, Defendants' motion to compel arbitration and to stay proceedings was denied. (Order at 5).

ARGUMENT

Defendants seek to force a former resident's family to arbitrate based on a contract that would deny her access to the information needed to prove her claim and slash the amount of compensatory damages available to cover her losses. The Court's order refusing to enforce this grossly unfair contract was well supported by the record and South Carolina law. The Agreement is procedurally unconscionable because Defendants used their grossly superior bargaining power to sneak the arbitration and damage limitation provisions into a twenty-page contract Ms. Parsons had no power to negotiate. The Agreement was also substantively unconscionable because, as South Carolina's appellate courts have recognized, eliminating core discovery devices and whole categories of damages are not the kind of contract provisions a reasonable nursing facility should demand or a reasonable resident should be made to accept.

1. Defendants' objections to the Court's procedural unconscionability ruling are incomplete and incorrect.

While Defendants ask the Court to reconsider its procedural unconscionability ruling, they neither cite nor attempt to apply all of the key factors for that doctrine. They argue mostly just that Sandra White was capable of reading the Agreement. (Defs.' Mot. at 3-4). However, procedural unconscionability is a much more extensive inquiry than Defendants' motion suggests. Under

South Carolina law, 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, 24-25, 644 S.E.2d 663, 668 (2007) (quoting Carolina Care Plan, Inc. United HealthCare Servs., Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004)). The procedural unconscionability or "absence of meaningful choice" requirement "speaks to the fundamental fairness of the bargaining process." Simpson, 3873 S.C. at 25, 664 S.E.2d at 669. The key factors on this element include (1) the nature of the injuries suffered by the plaintiff; (2) whether the plaintiff is a substantial business concern; (3) the relative disparity in the parties' bargaining power; (4) the parties' relative sophistication; (5) whether there is an element of surprise in the inclusion of the challenged clause; and (6) the conspicuousness of the arbitration clause. Id. (citing Carlson v. Gen. Motors Corp., 883 F.2d 287, 293 (4th Cir. 1989)).

Applying these factors to the Agreement shows the fundamental unfairness of the bargaining process. Initially, the Agreement is an adhesion contract in that it was printed on a standardized form, offered to Virginia Parsons (through her daughter) on a take-it-or-leave-it basis, and did not offer any chance to negotiate. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). Adhesion contracts are not per se unconscionable but identifying a document as an adhesion contract is a starting point for analyzing the substantive factors. Simpson, 373 S.C. at 27, 644 S.E.2d at 669. The first factor favors Ms. Parsons because her injuries were personal and substantial. Defendants' alleged negligence led to a fall, painful broken hip and ultimately her death.

The other factors also favor Ms. Parsons's position. Sandra White was not a substantial business concern. Defendants presented no evidence that she had any experience or familiarity with arbitration or the nursing home admission process. She was acting only as Ms. Parsons' daughter and representative with the aim of obtaining the nursing care she urgently needed. In contrast, Defendants are sophisticated business entities evidenced in many ways including the complex organization structure they have built to manage the Facility's operations. See Compl. 12. The disparity in bargaining power is considerable. Defendants own, operate, or otherwise control the Facility and routinely draft and present contracts like the Agreement to potential residents. Ms. Parsons, on the other hand, was a vulnerable woman in poor health in need of care to continue from day to day. Additionally, the key language of the Agreement was not conspicuous relative to any of the other admission paperwork the Facility presented to Sandra White. The offending provisions are buried on pages 7-11 of the twenty-page Agreement with nothing to distinguish them from terms related to dining services, the Facility's pets policy, and other miscellaneous provisions.

Plus, the lack of conspicuousness and surprise elements relate not only to how prominently an arbitration provision is featured in a contract but also consider whether the way in which the arbitration provision is drafted imposes substantive limitations that would not be immediately apparent to an unsophisticated person. E.g. Simpson, 373 S.C. at 27-28, 644 S.E.2d at 670 (finding arbitration provision "inconspicuous . . . in light of its consequences" including the deprivation of statutory remedies). Therefore, strong evidence of substantive unconscionability can bolster the types of procedural unconscionability described above. Damico v. Lennar Carolina, LLC, 437 S.C. 596, 612, 879 S.E.2d 746 (2022) ("the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable").

In sum, Defendants' procedural unconscionability arguments should be rejected because the Court's order correctly determined Defendants had greater bargaining power than Ms. Parsons and used that power to present to Sandra White—a layperson seeking nursing care for her mother—a form contract of adhesion with an inconspicuous arbitration provision.

2. The Court correctly cited discovery limitations and damages exclusions to find the Agreement is substantively unconscionable.

Defendants take a similarly selective view of substantive unconscionability. (Defs.' Mot. at 4-5). They incorrectly argue the Agreement's arbitration fee and noneconomic damages limit are fair but offer no defense of the Agreement's discovery limits or its exclusion of punitive and certain compensatory damages that are a core part of personal injury claims. Properly considering the full scope of the Agreement's questionable terms, the Court followed South Carolina law in finding the Agreement substantively unconscionable. In fact, courts in multiple jurisdictions have reached the same conclusion on this contract.

South Carolina courts have found substantive unconscionability where a contract includes limitations or prohibitions on statutory and punitive damages, a lack of mutuality in the rights of the parties, and terms aimed at curtailing claims rather than finding a more efficient or efficacious resolution of disputes. Simpson, 373 S.C. at 29, 644 S.E.2d at 670. The Agreement contains all of these prohibited provisions. Punitive damages are declared non-recoverable (Agreement § V(B) 2(d)) and actual damages are severely limited. Defendants overlook the fact that the Agreement's noneconomic damages cap goes far beyond what is permissible in South Carolina law. For one, the Agreement purports to apply the limitation to all claims, while South Carolina's statutory cap is limited to medical malpractice claims. S.C. Code Ann. § 15-32-220(A). Plus, the Agreement's limitation is a total cap for all individuals seeking noneconomic damages related to Ms. Parsons' death from all Defendants. That is a substantial departure from the South Carolina statutory cap that works on a per claimant, per provider basis. Id.

Defendants' motion also offers no argument that the Agreement is reasonable in limiting Ms. Parsons' *economic* damages. The Agreement purports to cancel out South Carolina's common-law collateral source rule (Agreement § V(B) 2(a))—a move that could reduce Ms. Parsons' actual damages to nearly nothing. In fact, the probable effect of this provision is that Defendants would rarely have to pay anything of significance for economic damages. The collateral source rule has a rich history in South Carolina law and it serves important policy purposes. As the South Carolina Supreme Court has held, the rule ensures a tortfeasor does not "take advantage of a contract between an injured party and a third person, no matter whether the source of the funds received" is an insurance company or any other source. Covington v. George, 359 S.C. 100, 103, 597 S.E.2d 142 (2004) (citing Pustaver v. Gooden, 350 S.C. 409, 413, 566 S.E.2d 199, 201 (Ct. App. 2002)). These exclusions would not apply to a traditional negligence claim by a nursing home resident. There is simply no benefit to Ms. Parsons in accepting these sorts of terms.

Defendants also fail to account for the Agreement's lack of mutuality. The purported arbitration requirement applies to all claims Ms. Parsons could ever file but not to all claims the Facility could pursue against her. Defendants—as the Agreement's sole drafter—sought fit to expressly carve out the right to pursue an eviction action against Ms. Parsons in court rather than in arbitration. Non-mutual arbitration burdens coupled with wholesale damage exclusions are precisely the type of grossly unfair terms recognized in Simpson. Another court labeled these types of provisions the dictionary definition of unconscionable contract language. Byrd Motor Lines, Inc. v. Dunlop Tire & Rubber Corp., 304 S.E.2d 773, 777 (N.C. App. 1983) (citing Black's Law

Dictionary 1367 (5th ed. 1979) (citing "gross one-sideness of a term . . . limiting damages" as typical example of unconscionability)).

Moreover, Defendants' motion offers no discussion of the Agreement's discovery limitations which were a core part of the Court's substantive unconscionability analysis. (Order at 3). The Agreement flatly bars arbitration parties from taking non-expert depositions. (Agreement § V(A) 6). South Carolina appellate courts have signaled their refusal to tolerate arbitration contracts with such extensive discovery restrictions. In Lucey v. Meyer, 401 S.C. 122, 143, 736 S.E.2d 274, 285 (Ct. App. 2012), the court found an employment arbitration contract was not unconscionable, rejecting the "oppressive terms" factor only after finding the contract "places no apparent restrictions on the introduction of depositions of witnesses into arbitration proceedings." The restrictions lacking there are present here. The inescapable reality of the Arbitration Agreement is that Respondent will have no opportunity to conduct depositions. South Carolina's federal district court has found an arbitration contract unconscionable because of "severe discovery limitations." Hooters of Am., Inc. v. Phillips, 39 F. Supp. 2d 582, 614 (D.S.C. 1998). In Hooters of America, the employer went too far when it limited its employee to noticing one deposition unless the arbitrator found a "substantial need" for more. Id. at 601. The Arbitration Agreement poses a far more restrictive view of discovery by excluding all non-expert depositions. Several rulings from other jurisdictions have likewise refused to allow nursing homes to shut their former residents out of discovery.[1]

[1] See e.g. Estate of Ruszala v. Brookdale Living Communities, Inc., 1 A.3d 806, 821 (N.J. Super. App. 2010) (limiting plaintiff to expert depositions is "palpably egregious" and "clearly intended to thwart' plaintiffs' ability to prosecute a case involving resident abuse"); Ostroff v. Alterra Healthcare Corp., 433 F. Supp. 2d 538, 540, 545 (E.D. Pa. 2006) (discovery limitations were unconscionable when they allowed expert depositions but barred deposition of NH employees or other fact witnesses); Prieto v. Healthcare & Retirement Corp. of Am., 919 So.2d 531, 533 (Fla.

Defendants may argue a zero-deposition process is acceptable because it applies with equal force to them. This argument fails for multiple reasons. First, an arbitration proceeding amounting to trial by ambush is hardly consistent with the South Carolina Rules of Alternative Dispute Resolution the Arbitration Agreement purports to incorporate. See Rule 1, SCADR (stating that arbitration "shall be construed to secure the *just*, speedy, inexpensive *and collaborative* resolution" of disputes) (emphasis added). Second, while a zero-deposition rule may seem like an equal burden for both sides, its effects are unequally detrimental to a plaintiff in a nursing home case. Nursing home neglect occurs almost exclusively on the nursing home's property, recorded in documents within the home's exclusive control, and performed or witnessed by individuals in the home's employ. If Defendants want to speak to the allegedly at-fault individuals, they can do so without limitation.

But, without the ability to send a notice of deposition to any of the Facility's employees, Ms. Parsons' counsel would be at a significant informational disadvantage when the arbitration hearing begins. She will know nothing from the Facility's employees about the incident or the operation and management of the Facility. The absence of fact witness depositions is especially harmful here because all of the relevant fact witnesses are Defendants' employees. That means attempting to speak with the key witnesses outside the deposition context would present a potential ethical violation. See Rule 4.2, RPC, Rule 407, SCACR. This case shows just how vast the information disparity can be and what a hurdle it poses to a plaintiff's efforts to investigate her claim. Plaintiffs (who bear the burden of proof) face a contractually-imposed hurdle to crucial evidence and a defendant is given cover to obscure key evidence adverse to its interests.

App. 2005) (reversing order compelling arbitration since contract included unconscionable discovery restrictions).

Forcing Respondent to arbitrate her claims would also impose on her a substantial, perhaps preclusive, financial burden. While often lauded for its time savings, arbitration proceedings can cost far more than litigating a legal claim because the parties may be called on to compensate the arbitrator and to cover their costs. As the Fourth Circuit recognizes, "it is undisputed that fee splitting can render an arbitration agreement unenforceable where the arbitration fees and costs are so prohibitive as to effectively deny the employee access to the arbitral forum." Bradford v. Rockwell Semiconductor Sys., Inc., 238 F.3d 549, 554 (4th Cir. 2001); see also Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 90-91 (2000). The arbitrator-related costs for arbitrating a nursing home negligence action are exponentially greater than court costs for litigating the same claim. G. Poliakoff Aff. 5-6. By one estimate, a nursing home resident's family could be expected to pay portion of a $220,000 arbitration bill for a case that, were it filed in state court, would cost the family only a couple hundred dollars in court costs. G. Poliakoff Aff. 6(A), **attached as EXHIBIT 1**; see e.g. Phillips v. Associates Home Equity Servs., Inc., 179 F. Supp. 2d 840, 846-47 (N.D. Ill. 2001) (finding arbitration costs prohibitive when cost to arbitrate was at least 12 times as much as costs to bring action in federal court). These are expenses Ms. Parsons' family cannot afford to pay. S. White Aff. 10-12, **attached as EXHIBIT 2**. Forcing Sandra to arbitration is an existential threat to the resolution of her claims on their merits.

Finally, the court is far from the first to find these specific arbitration and liability limitation provisions unconscionable. A federal district court in Pennsylvania reached the same conclusion in Ostroff v. Alterra Healthcare Corp., 433 F. Supp. 2d 538, 540, 545 (E.D. Pa. 2006). Discussing the fact witness deposition ban, the court first noted that a discovery restriction in an arbitration agreement does not render the agreement unconscionable unless the restriction denies the plaintiff "a fair opportunity to present their claims." Id. at 545 (quoting Gilmer v. Interstate/Johnson Lane

Corp., 500 U.S. 20, 31 (1991)). The deposition ban denied the plaintiff a fair opportunity because it denied access to two of the most vital sources of information, Alterra employees and the nursing home's other residents. While the plaintiff's attorney may have been able to convince some of the residents to speak voluntarily, the ban took away any means of compelling their testimony. As for Alterra employees, the plaintiff's lawyer was prevented from speaking with them by legal ethics rules. Ostroff, 433 F. Supp. 2d at 545; see also Rule 4.2, RPC, Rule 407, SCACR ("a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer"). The deposition ban put the plaintiff at a sizable disadvantage in the arbitration because the plaintiff will have "only limited information as to how the accident in question occurred." Ostroff, 433 F. Supp. 2d at 545.

The Ostroff court also pointed to the lack of mutuality evident from the arbitration agreement. This provision subjects every claim between the nursing home and the resident to arbitration except for "any action for eviction." This provision demonstrated that the nursing home "crafted an arbitration procedure that favored it over residents." 433 F. Supp. 2d at 547. The lack of mutuality combined with the grossly unfair discovery restriction rendered the contract unconscionable. Id.

Similarly, a New Jersey appellate court found the same arbitration and limitation of liability provisions to be unconscionable in Estate of Ruszala v. Brookdale Living Communities, Inc., 1 A.3d 806 (N.J. Super. Ct. App. Div. 2010). Ruszala called the fact witness deposition ban "palpably egregious" and "clearly intended to thwart plaintiff's ability to prosecute a case" against the nursing home. 1 A.3d at 821. Also, the noneconomic damages cap had the "insidious effect of permitting nursing home operators to budget potential liability as a mere cost of doing business" and prevented plaintiffs from full recovery for their losses. Id. Additionally, by prohibiting punitive damages, the contract took away the public vindication and deterrent benefit justifying punitive damages as a measure of judicial relief. Ruszala, 1 A.3d at 821-22. As a whole, the contract "form[ed] an unconscionable wall of protection for nursing home operators seeking to escape the full measure of accountability for tortious conduct that imperils a discrete group of vulnerable consumers." Id. at 822. Based on the binding South Carolina authority and persuasive authority from other jurisdictions, the Agreement's arbitration and limitation of liability provisions are unconscionable and invalid.

In sum, the Arbitration Agreement was an adhesion contract offered to a vulnerable woman in desperate need of nursing home services under circumstances that deprived her of any meaningful choice. Moreover, the Agreement imposes severe discovery restrictions that tilt the arbitration process and outcome dramatically in Defendants favor. Thus, the Court correctly determined the Agreement is substantively unconscionable.

3. The Court correctly refused to sever the Agreement's unconscionable arbitration and damage provisions because they cover ever part of the proposed arbitration process.

Once an illegal contract provision is identified, severing it from the contract's remaining terms is not always feasible or proper. Simpson, 373 S.C. at 34, 673 S.E.2d at 673. The parties' intent is the primary factor in determining whether the offending provision is severable. Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 867 (Ct. App. 2002). If the offending provision "pervades the arbitration agreement such that only a disintegrated fragment would remain after hacking away the unenforceable parts," then severance looks more like rewriting the contract than effectuating the parties' intent. Simpson, 373 S.C. at 34, 673 S.E.2d at 673 (quoting Booker v. Robert Half Int'l Inc., 413 F.3d 77, 84-85 (D.C. Cir. 2005)); see also Alexander v. Anthony Intern., LP, 341 F.3d 256, 271 (3d Cir. 2003) (concluding court "cannot give effect to an agreement to arbitrate afflicted by so much fundamental and pervasive unfairness”). The Simpson court refused to sever an arbitration agreement’s offending provisions and instead invalidated the entire agreement because it contained multiple unconscionable provisions that denied statutory rights and violated established public policy. 373 S.C. at 35, 644 S.E.2d at 674 n. 9.

The previous sections of this memo discuss several items within the Agreement’s arbitration and limitation of liability provisions that are unconscionable and inconsistent with South Carolina public policy. The Agreement contains a severability provision, but Simpson shows severability clauses are ineffective if unconscionable provisions permeate the overall arbitration provision. This case is similar to Simpson, and the court correctly refused to enforce the entire arbitration provision rather than attempting to excise the multiple unconscionable items within the provision. Like Simpson, the arbitration provision contains multiple unconscionable items including the discovery restriction and damages cap. Therefore, the Agreement’s arbitration and liability limitation provisions were correctly invalidated in full.

CONCLUSION

Based on the arguments above and those in her earlier briefing, Plaintiff respectfully requests the Court deny Defendants’ motion to reconsider, alter, or amend.

Respectfully submitted,

s/Gary W. Poliakoff

Gary W. Poliakoff
Raymond P. Mullman, Jr.
Poliakoff & Associates, P.A.
215 Magnolia Street
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472

October 17, 2025
Spartanburg, SC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries,

Plaintiffs,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC; Oakview Park Developer, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-23-06777

DEFENDANTS' REPLY TO PLAINTIFF'S MEMORADUM IN OPPOSITION TO DEFENDANTS' RULE 59(e) MOTION

Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC (collectively, "Defendants") reply to Plaintiff's Memorandum in Opposition to Defendants' Rule 59(e) Motion as follows.

I. The burden of proving unconscionability lies with the party asserting it.

In Plaintiff's Memorandum in Opposition to Defendants' Rule 59(e) Motion, Plaintiff does not dispute that the Court's September 24, 2025 order(s) [1] incorrectly state that Defendants have the burden of *disproving* unconscionability. The burden of proving unconscionability lies with the party asserting it – which here is Plaintiff.

[1] The Court appears to have signed and filed two identical Orders on September 24, 2025.

See Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) ("The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration."); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 38 n.3, 524 S.E.2d 839, 844 n.3 (Ct. App. 1999) (finding that the party resisting arbitration bears the burden of showing that "the prevailing law would release him from a contractual obligation to arbitrate."); *Youmans ex rel. Elmore v. S.C. Dep't of Transp.*, 380 S.C. 263, 281-82, 670 S.E.2d 1, 10 (Ct. App. 2008) ("The [party] asserting an affirmative defense bears the burden of its proof.").

II. The Court cannot consider affidavits that were submitted to the Court for the first time in a Rule 59(e) Motion.

Without offering any explanation or argument as to the propriety of doing so, Plaintiff attached two affidavits to her Memorandum in Opposition to Defendants' Rule 59(e) Motion.

However, it is well-settled that a party cannot submit new evidence in a Rule 59(e) motion. *See Spreeuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding the court could not consider a document that was submitted to the family court "only as an attachment to [the father's] Rule 59(e) motion"); *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008) ("As for the new evidence, motions under Rule 59(e) cannot be used to present evidence that could have been presented before judgment was entered."); *Green v. Johnson*, No. 2020-001254, 2024 WL 180690, at 4 (S.C. Ct. App. Jan. 17, 2024), aff'd in part, rev'd in part, 446 S.C. 326, 919 S.E.2d 894 (2025) ("[W]e hold the master erred in considering the evidence presented for the first time at the Rule 59(e) hearing . . ."); *Hickman v. Hickman*, 301

S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.").

A court cannot "reconsider" what it never had occasion to consider in the first instance. Because the two affidavits that were attached to Plaintiff's Memorandum in Opposition to Defendants' Rule 59(e) Motion were not properly before the Court at the hearing on August 28, 2025 and were not considered by the Court in reaching its Form 4 Order of September 5, 2025, or more formal order(s) of September 24, 2025, the Court cannot consider these affidavits when evaluating Defendants' Rule 59(e) Motion.

III. Plaintiff has not met her burden of proving procedural unconscionability.

Procedural unconscionability must be present for a contract to be unconscionable. As the *Gladden* Court explained: "Courts should not refuse to enforce a contract on 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) (emphasis added).

Even if the Court feels that the terms of the arbitration provision here are "grossly unreasonable" it cannot deem the arbitration provision unconscionable if there is no procedural unconscionability present, which the *Gladden* Court defined as 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**." *Id.* (emphasis added).

There is no evidence here of an "extreme inequality of bargaining power." Nor is there any evidence that Defendants intended to "obscure" the arbitration provision, or that Sandra Parsons White lacked the "basic reading ability" to understand and consent to the arbitration provision.

There is no evidence of any medical emergency or any other exigency that would have made it impossible, or even difficult, for Sandra Parsons White to consider placing her mother at a different assisted living facility. There is no evidence that assisted living residency agreements without arbitration provisions are unavailable in the market. That is significant because the *Gladden* court held that the market availability of home inspection contracts without exculpatory clauses defeated Plaintiff's contention that she lacked a meaningful choice in accepting the exculpatory clause of the contract. *See id.* at 146, 739 S.E.2d at 885 ("Moreover, we have no record on which to find that home inspection contracts without exculpatory clauses are unavailable in the market . . . . Thus, the record does not support a conclusion that the Gladdens lacked a meaningful choice whether to accept the terms of the contract.").

There is no evidence that Sandra Parsons White ever objected to, attempted to negotiate, or attempted to make pen-changes to the Residency Agreement or the arbitration provision therein. There is no evidence to support a finding that Sandra Parsons White lacked a meaningful choice in agreeing to the arbitration provision or that there was an "extreme inequality of bargaining power."

The *Gladden* court found that because Ms. Gladden was a licensed real estate agent, she was a sophisticated party capable of understanding the contract she signed and capable of protecting her own interests. *Id.* Likewise, here, it is undisputed that Sandra Parsons White was a licensed real estate agent who had received formal instruction on, and demonstrated her understanding of, South Carolina contract law and agency law. Real estate agents are licensed professionals whose job it is to negotiate the terms of contracts on behalf of their clients.

The language of the arbitration provision was just as conspicuous as every other provision of the Agreement. To require an arbitration provision to be more conspicuous than any other contract provision is a violation of the FAA. *See Hill v. Gateway 2000, Inc.*, 105 F.3d 1147, 1148 (7th Cir. 1997) ("[T]he Federal Arbitration Act is inconsistent with any requirement that an arbitration clause be prominent."); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (holding that under the FAA, "courts must place arbitration agreements on **an equal footing** with other contracts and enforce them according to their terms." (emphasis added) (internal citations omitted)).

Plaintiff appears to imply in her Memorandum in Opposition to Defendants' Rule 59(e) Motion that the Agreement was procedurally unconscionable merely because it was an adhesion contract. However, adhesion contracts are not procedurally unconscionable in and of themselves. *See Luna v. Household Fin. Corp. III*, 236 F. Supp. 2d 1166, 1175 (W.D. Wash. 2002) (finding "[t]hat an agreement constitutes a contract of adhesion is insufficient alone to support a finding that the agreement is procedurally unconscionable"); *Bekele v. Lyft, Inc*., 199 F. Supp. 3d 284, 302 (D. Mass. 2016), aff'd, 918 F.3d 181 (1st Cir. 2019) ("Finally, to the extent that Bekele contends that contracts of adhesion in employment contexts are always procedurally unconscionable, that argument is without merit.").

Indeed, as the United States Supreme Court has noted, "the times in which consumer contracts were anything other than adhesive are long past." *AT&T Mobility LLC*, 563 U.S. at 346-47. Given that many Americans can now live their entire lives without ever encountering or signing anything other than adhesion contracts, if it were true that all adhesion contracts were *per se* procedurally unconscionable, the practical effect would be to require the Judiciary to review, approve of, and endorse each and every term of each and every contract (via a substantive unconscionability analysis) before any contract could be enforced. Such an approach would upend centuries of foundational Anglo-American contract law principles.

"People should be entitled to contract on their own terms without the indulgence of paternalism by courts in the alleviation of one side or another from the effects of a bad bargain." *Carlson v. Hamilton*, 8 Utah 2d 272, 274-75, 332 P.2d 989, 990-91 (1958).

The requirement that procedural unconscionability must be present, regardless of how foolhardy or "grossly unreasonable" a court feels the substantive terms may be, exists to preserve the bedrock freedom of contract principles that have undergirded Anglo-American contract law for hundreds of years. Without the requirement of procedural unconscionability, the exception of unconscionability would swallow the rule of freedom of contract.

The *Gladden* court understood this when it held that "Courts should not refuse to enforce a contract on 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*, 402 S.C. at 145, 739 S.E.2d at 884-85.

Plaintiff has not met her burden of demonstrating procedural unconscionability. Adhesion contracts are not *per se* procedurally unconscionable. Sandra Parsons White was a sophisticated party. The arbitration provision was not hidden or concealed in any way. Defendants did not engage in any fraud, duress, misrepresentation or other "bargaining naughtiness." *See* 17A Am. Jur. 2d Contracts § 272 ("Procedural unconscionability involves 'bargaining naughtiness' in contract formation."). There is no evidence that Sandra Parsons White lacked meaningful choice in assenting to the arbitration provision.

Because the requirement of procedural unconscionability has not been met, the arbitration provision cannot be unconscionable, regardless of how "grossly unreasonable" the Court may feel the substantive terms to be.

IV. Plaintiff has not met her burden of demonstrating substantive unconscionability.

Substantive unconscionability has been defined as terms that 1) are so oppressive that no reasonable person would make them, and 2) are so oppressive that no fair and honest person would accept them. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007).

South Carolina courts have expressly held that terms similar to many of the provisions present here are *enforceable*. There is no South Carolina caselaw indicating that any of the terms of the Agreement here are unenforceable. Regarding the terms for which South Carolina caselaw is silent as to their enforceability, should the Court determine that they are unenforceable, the Court should sever them in accordance with the Agreement's severance clauses.

a. The limitation on liability provisions.

The limitation of liability provisions bar punitive damages and cap recoverable damages at $400,000. In *Maybank*, the Court held that punitive damages waivers are neither unconscionable nor violative of public policy. *Maybank v. BB&T Corp.*, 416 S.C. 541, 576, 787 S.E.2d 498, 516 (2016). Similarly, in *Gladden*, the Court held that a contract provision that limited damages only to the amount paid for a home inspection (which would have likely been less than $1,000) was neither unconscionable nor violative or public policy. *Gladden*, 402 S.C. 140, 739 S.E.2d 882. Given *Gladden* and *Maybank*, it is difficult to conclude that no reasonable person would offer or accept the limitation of liability provisions present here.

In her Memorandum in Opposition to Defendants' Rule 59(e) Motion, Plaintiff notes that the limitation of liability provisions also limit recoverable medical expenses to those amounts actually incurred by Plaintiff. Undersigned counsel is not aware of any South Carolina caselaw that addresses the enforceability of such a provision, and Plaintiff cites to none. Accordingly, if the Court should find this provision unenforceable, Defendants ask that the Court sever this provision in accordance with the Agreement's severance provisions.

However, given the significant and learned differences of opinion that have existed, and continue to exist, as to the prudence of allowing plaintiffs to recover for medical bills they never actually incurred (sometimes called "phantom charges"), it is difficult to conclude that a contract provision limiting recovery only to medical bills actually incurred is so absurd or oppressive that no reasonable person would offer or accept it. Several judiciaries and state legislatures, outside of South Carolina, have limited the amount of medical bills a plaintiff may recover in a lawsuit to the amounts actually incurred by the plaintiff. Indeed, in *Haselden*, our own Supreme Court of South Carolina discussed the issue of "phantom charges" in the world of healthcare, and, in a dissenting opinion, Justice Burnett and Justice Pleicones wrote that:

> The majority of courts to consider this issue predicate their holdings on the central tenet of compensatory damages: awards are intended to

> make an injured person whole by placing him in the position enjoyed prior to the injury and no more. Allowing a plaintiff to recover for the amount billed to Medicaid does injury to this principle of law.
>
> The Medicaid program provides individuals with medical treatment by doctors who agree to accept such patients in exchange for payment at a predetermined rate schedule. The patient not only receives medical care, but also incurs no liability for the cost of the care once the doctor accepts payment. The difference between the amount billed and the amount paid, the amount in issue in this case, is "phantom" money in that no one has paid the amount and no one will incur a debt for the amount.
>
> . . . .
>
> Because the plaintiff has never paid nor will ever be liable for the written-off difference between the billed and paid amount, it is unconscionable to permit the taxpayers to bear the expense of providing free medical care to a person and then allow that person to recover damages for medical services from a tort-feasor and pocket the windfall.
>
> . . . .
>
> The amount Medicaid pays is a collateral source to benefit a plaintiff who has a right to recover that amount. The excess between the amount billed to and the amount paid by Medicaid, for which a plaintiff is no longer liable, is not protected by the [collateral source] rule. It is not reasonable, under principles of compensatory damage law, to allow Plaintiff to receive a windfall in damages of amounts for which no entity is liable.

Haselden v. Davis, 353 S.C. 481, 486-88, 579 S.E.2d 293, 296-97 (2003).

If Justice Burnett and Justice Pleicones can reasonably disagree about the propriety of applying the collateral source rule in such contexts, I would not wish to argue that a contract provision that limits recoverable medical bills to the amounts Plaintiff actually incurred is so oppressive that no reasonable person would ever propose or agree to such a thing.

b. Alleged lack of mutuality.

Next, in her Memorandum in Opposition to Defendants' Rule 59(e) Motion, Plaintiff alleges that the Agreement lacks mutuality because the "Agreement expressly carves out 'any action for eviction,' thereby reserving access to the courts for Defendants while denying it to residents."

However, a similar argument was disposed of by the Court in *Munoz*. In *Munoz*, Plaintiff contended that "the arbitration clause lacks mutuality and is therefore invalid because it allows Creditor to seek foreclosure on the mortgage given by the Munozes and denies the Munozes the right to litigate any counterclaim in the foreclosure action." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541-42, 542 S.E.2d 360, 365 (2001).

The *Munoz* court held that "[w]e find the doctrine of mutuality of remedy does not apply here. An agreement providing for arbitration does not determine the remedy for a breach of contract but only the *forum* in which the remedy for the breach is determined." *Id.* at 542, 542 S.E.2d at 365 (emphasis in original). "The Munozes have not been deprived of a remedy—they simply must seek their remedy through arbitration rather than through the judicial system. Moreover, under state law, a lack of mutuality of remedy does not invalidate a contract." *Id.*

c. The discovery provisions.

In her Memorandum in Opposition to Defendants' Rule 59(e) Motion, Plaintiff also takes issue with the Agreement's barring of non-expert witness depositions.

The benefit of arbitration has always been understood to be its potential for faster and more efficient dispute resolution. Realizing this benefit is not possible if the extent of discovery in arbitration must be identical to that afforded to civil litigants in the judicial system.

"Plaintiff next contends that the limited scope of discovery in arbitration proceedings inhibits her ability to pursue her claims. In this respect, Plaintiff attacks the very foundations of arbitration as a method for dispute resolution, and both the Supreme Court and the Eleventh Circuit reject this species of argument." *Hopkins v. World Acceptance Corp*., 798 F. Supp. 2d 1339, 1349 (N.D. Ga. 2011). "Discovery limitations promote the goals of the FAA, and such limitations are rarely grounds for avoiding an arbitration agreement." *Id.* at 1350.

Plaintiff has not met her burden of demonstrating that she will be unable to adequately pursue her claims in arbitration. Under the Agreement, all parties must, via written interrogatory responses, disclose the identities of all individuals who may be witnesses or have knowledge relevant to the claims, and provide a summary of what each witness knows, well in advance of the arbitration proceeding. The parties can then subpoena the witnesses they wish to call at the arbitration proceeding. Under the Agreement, the parties are also entitled to serve requests for the production of relevant documents, pursuant to the South Carolina Rules of Civil Procedure, and can file motions to compel discovery responses with the arbitrator.

Criminal defendants who have their very life and liberty at stake are afforded no greater discovery apparatus than that present in the Agreement. It cannot be the case that for an arbitration proceeding to be "conscionable" it must give civil litigants access to greater discovery tools than are afforded even to criminal prosecutors and criminal defendants. Nor can it be the case that for an arbitration proceeding to be "conscionable" it must have the same extent of discovery as would be available to civil litigants in the judicial system, as such a requirement would defeat the very purpose of arbitration.

"The cry of 'unconscionable!' just repackages the tired assertion that arbitration should be disparaged as second-class adjudication. It is precisely to still such cries that the Federal Arbitration Act equates arbitration with other contractual terms." *Carbajal v. H & R Block Tax Servs., Inc.*, 372 F.3d 903, 906 (7th Cir. 2004).

d. Costs of arbitration.

Plaintiff continues to contend that it will incur prohibitively expensive costs should this case be referred to arbitration. This is despite the fact that the arbitration provision itself provides that if Plaintiff is indigent (as Plaintiff appears to allege), Plaintiff will not incur *any* arbitration costs.

Given the plain language of the arbitration provision itself, Plaintiff has not met her burden of showing that she is likely to incur prohibitively expensive costs should this case be referred to arbitration. *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 81 (2000) ("[A] party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs.").

IV. The Court should sever any provisions it deems unenforceable.

If any "illegality" is present here at all, it certainly does not "pervade" the Agreement "such that only a disintegrated fragment would remain after hacking away the unenforceable parts." *Simpson,* 373 S.C. at 34, 644 S.E.2d at 673 (quoting *Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77, 84-85 (D.C. Cir. 2005).

In *Booker*, the Court found that severing an unenforceable provision was appropriate, rather than invalidating the entire agreement, because there was no caselaw at the time the contract was executed indicating that the offending provision was unenforceable. *Booker,* 413 F.3d at 85.

The same is true here. There is no South Carolina caselaw indicating that any of the provisions of the Agreement are unenforceable, and, to the contrary, there is caselaw indicating that terms similar to many of the provisions present here are *enforceable*. Regarding the terms for which South Carolina caselaw is silent as to their enforceability, should the Court determine that they are unenforceable, the Court should sever them in accordance with the Agreement's severance clauses.

Defendants here have not engaged in "an integrated scheme to contravene public policy" for which they ought to be punished. *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 617, 879 S.E.2d 746, 758 (2022).

The *Damico* court cited with approval to 17A Am. Jur. 2d Contracts § 314, which provides that:

> To determine whether an entire contract should be invalidated or whether only a particular term or set of terms should be severed, a court considers whether—

— the illegality is central or collateral to the purpose of the contract.

— the illegal provision involves moral turpitude.

— the agreement is an integrated scheme to contravene public policy.

— the party seeking enforcement has engaged in serious misconduct.

— the provision can be eliminated without frustrating the basic purpose of the contract.

— the contract would have been entered into independently of the invalid portion.

— the considerations from both sides are sufficient for performance absent the invalid provision.

— the invalid provision does not constitute the main or essential purpose of the agreement.

— the allegedly unenforceable clause can easily be severed from the remainder of the contract without reforming the substance of the contract.

17A Am. Jur. 2d Contracts § 314.

All of these factors weigh in favor of severing any term(s) that the Court deems unenforceable here, rather than invalidating the entire arbitration provision. The essential purpose of the arbitration provision was to memorialize the parties' agreement to settle disputes via arbitration. This is not an illegal purpose; in fact, this is a purpose and an endeavor that Congress sought to encourage and protect by enacting the FAA. The arbitration provision does not involve any moral turpitude. Defendants have not engaged in any serious misconduct or perpetrated an integrated scheme to contravene public policy. Any terms regarding how the arbitration is to be conducted or what damages are recoverable therein can easily be severed without frustrating the essential purpose of the arbitration provision.

Finally, the language of the arbitration provision evinces the parties' intent to sever any provisions that a Court may deem unenforceable. (See the severance clauses contained in **Exhibit 1** to Defendants' Memorandum in Support of Defendants' Motion to Compel Arbitration). The intent of the parties should be enforced. *See Columbia Architectural Grp., Inc. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980) (holding that "[t]he entirety or severability of a contract depends primarily upon the intent of the parties.").

Conclusion

For the foregoing reasons, as well as those previously raised in oral argument and in previous memorandums of law, Defendants respectfully request that this Honorable Court reconsider, alter, and amend its Order(s) of September 24, 2025 and grant Defendants' Motion to Compel Arbitration.

[signature on next page]

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/ Timothy Maio
Brown Parkinson (S.C. Bar # 4437)
Timothy Maio (S.C. Bar # 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5322
ebparkinson@holcombebomar.com
tmaio@holcomebomar.com

Attorneys for Atlas Senior Living, LLC, Atlas Senior Living II, LLC, AFF 18 Oakview Park ALF, LLC d/b/a Oakview Park Assisted Living, AFF 18 Oakview Park PropCo, LLC, and AFF 18 Greenville Borrower, LLC

October 31, 2025
Spartanburg, South Carolina

RECEIVED
Dec 08 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick Cleburne Fant, III, Circuit Court Judge

Circuit Court Case No. 2024-CP-23-06777

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, ... Respondent,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC, ... Appellants.

NOTICE OF APPEAL

The Appellants hereby appeal the following orders of the Honorable Patrick Cleburne Fant, III, Circuit Court Judge:

- **Form 4 Order dated September 5, 2025**, denying Appellants' Motion to Compel Arbitration and Stay Proceedings;
- **Formal Orders dated September 24, 2025**, denying Appellants' Motion to Compel Arbitration and Stay Proceedings;
- **Formal Order dated November 10, 2025**, denying Appellants' Rule 59(e) Motion.

Copies of these orders are attached herewith. Appellants received written notice of entry of the Order denying their Rule 59(e) Motion on November 10, 2025.

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/Timothy Maio
Timothy Maio (S.C. Bar No. 105171)
Brown Parkinson (S.C. Bar No. 4437)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5300
tmaio@holcomebomar.com
ebparkinson@holcombebomar.com

Counsel for Appellants

December 8, 2025

Other Counsel of Record:

Gary W. Poliakoff (S.C. Bar No. 4488)
Raymond P. Mullman, Jr. (S.C. Bar No. 8662)
Poliakoff & Associates, P.A.
215 Magnolia Street
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
atty@gpoliakoff.com
rmullmanjr@gmail.com

Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick Cleburne Fant, III, Circuit Court Judge

Circuit Court Case No. 2024-CP-23-06777

Estate of Virginia Parsons, by and through her Personal Representative, Sandra P. White, Individually and on behalf of statutory beneficiaries, ... Respondent,

v.

Atlas Senior Living, LLC; Atlas Senior Living II, LLC; AFF18 Oakview Park ALF, LLC; AFF18 Oakview Park PropCo, LLC; AFF18 Greenville Borrower, LLC, ... Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all attorneys of record, by sending it by email on December 8, 2025, to the following:

Gary W. Poliakoff (S.C. Bar No. 4488)
Raymond P. Mullman, Jr. (S.C. Bar No. 8662)
Poliakoff & Associates, P.A.
215 Magnolia Street
P.O. Box 1571
Spartanburg, SC 29304
atty@gpoliakoff.com
rmullmanjr@gmail.com
Counsel for Respondent

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/Timothy Maio
Timothy Maio (S.C. Bar No. 105171)
Brown Parkinson (S.C. Bar No. 4437)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5300
tmaio@holcomebomar.com
ebparkinson@holcombebomar.com

Counsel for Appellants

December 8, 2025
Spartanburg, South Carolina

RECEIVED
Jul 01 2026
SC Court of Appeals

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included by all parties, as modified by the Court's order granting Appellant's Motion to Strike, and not any other material.

Respectfully Submitted,

HOLCOMBE BOMAR, PA

s/Timothy Maio
Timothy Maio (S.C. Bar No. 105171)
PO Box 1897
Spartanburg, SC 29304
(864) 594-5300
tmaio@holcomebomar.com

Counsel for Appellants

July 1, 2026
Spartanburg, South Carolina