THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
William C. McMaster, III, Circuit Court Judge

Appellate Case No. 2025-002264
Case No. 2025-CP-23-01757
Case No. 2025-CP-23-01759

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,……. Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC,…… Appellants.

RECORD ON APPEAL

VOLUME IV OF IV

[COUNSEL OF RECORD LISTED ON FOLLOWING PAGE]

Ashley S. Heslop, S.C. Bar No. 71148
Caroline K. Buchanan, S.C. Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
(843) 720-3460
aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com
Attorneys for Appellants Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC

J. Bennett Crites, III, S.C. Bar No. 71695
Daniel S. McQueeney, Jr., SC Bar No. 6802
Nicholas C.C. Stewart, SC Bar No. 102434
Cameron Tabrizian, SC Bar No. 106448
115 Fairchild Street, Suite 200
Charleston, SC 29492
(843) 972-6177
bcrites@burr.com
cmqueeney@burr.com
nstewart@burr.com
ctabrizian@burr.com
Attorneys for Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

Matthew W. Christian, S.C. Bar No. 70516
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363
mchristian@cclawfirm.com
Attorney for Respondent

Jordan C. Calloway, S.C. Bar No. 78728
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com
Attorney for Respondent

INDEX OF RECORD ON APPEAL

VOLUME I

ORDERS

PLEADINGS

TRANSCRIPTS

---

[1] The South Carolina Court of Appeals consolidated notices of appeal originating from two separately filed civil actions involving the same parties and same underlying facts. The first is the Plaintiff/Respondent's civil action alleging a survival cause of action, which is indexed in the Greenville County Court of Common Pleas as C/A No. 2025-CP-23-01757 (hereinafter "Survival Action" or "SA").

[2] The second civil action is the Plaintiff/Respondent's civil action alleging a wrongful death cause of action, which is indexed in the Greenville County Court of Common Pleas as C/A No. 2025-CP-23-01759 (hereinafter "Wrongful Death" or "WD").

[3] "Carlyle Defendants" or "Carlyle Appellants" refers to the following above-named Appellants: (1) Carlyle Senior Care of Fountain Inn, LLC; (2) Carlyle Senior Care Management Company, Inc.; (3) New Day Health Ventures, LLC; and (4) LARK of Fountain Inn, LLC.

OTHER MATERIALS[4]

[4] Many of the Parties' filings were identical for the WD and SD Actions as they relate to arbitration. The only substantive difference between any and all contemporaneously filed motions, memoranda, or attached exhibits of a Party is the electronic filing stamp of the Greenville County Clerk of Court, which notates the civil case number unique to the SA action or separately filed WD action.

[5] "Fountain Inn Defendants" or "Fountain Inn Appellants" refers to the following above-named Appellants: (1) Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; (2) Providence Group, Inc.; (3) Providence Administrative Consulting Services, Inc.; (4) PACS Group, Inc.; (5) PACS Holdings, LLC; and (6) 501 Gulliver Property, LLC.

VOLUME II

VOLUME III

VOLUME IV

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBERS: 2025-CP-23-01757 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, STAY LITIGATION AND DISCOVERY, AND COMPEL ARBITRATION**

Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through their undersigned counsel, submit this memorandum of law in support of their Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration, pursuant to Rule 12(b)(6) SCRCP; the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*; and a binding Arbitration Agreement executed by the Plaintiff and Defendant, which covers all the allegations raised in this wrongful death and survival action filed by Plaintiff.

FACTS

On May 8, 2018, Zeigler executed a General Durable Power of Attorney ("POA") wherein he appointed his daughter, Kimberly Haag ("Plaintiff"), as his true and lawful attorney- in-fact

with authority to act on his behalf attached hereto as **Exhibit A**. The POA expressly grants Plaintiff the authority "arbitrate" disputes on behalf of Zeigler:

> **Section 3.10 Legal Actions**
>
> My Attorney-in-Fact may institute, supervise, prosecute, defend, intervene in, abandon, compromise, adjust, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way. This authority includes, but is not limited to, claims by or against me arising out of property damage or personal injury suffered by or caused by me or under circumstances such that the resulting loss may be imposed on me. My Attorney-in-Fact may otherwise engage in litigation involving me, my property, or my legal interests, including any property, interest, or person for which or whom I have or may have any responsibility.

(Ex, A at ¶ 3.10 p. 7):

On December 22, 2022, Plaintiff, on behalf of Zeigler, and in her capacity as Legal Representative and Power of Attorney, entered into an Admission Agreement with Defendant Carlyle Senior Care of Fountain Inn, LLC, for Zeigler's residency, and executed a Mediation and Binding Arbitration Agreement ("Arbitration Agreement") included within the Admission Agreement. True and accurate copy of the Arbitration Agreement is attached hereto as **Exhibit B**. The facility where Zeigler was admitted was located at 501 Gulliver Street, Fountain Inn, SC 29644 (hereinafter "Facility").

Plaintiff's Complaint primarily focuses on a fall that occurred on February 3, 2023 while Defendant Carlyle Senior Care of Fountain Inn, LLC controlled the operations of the Facility.

On or about March 14, 2023, Defendant Fountain Inn Healthcare, LLC entered into a Management Operation Transfer Agreement with Defendant Carlyle Senior Care of Fountain Inn, LLC to assume the operations of the Facility where Zeigler was residing. **Exhibit C**.

The Management Operations Transfer Agreement expressly states "all resident agreements" are assumed pursuant to the agreement. (Ex. C at § 15 and Exhibit 15(a)). The

Arbitration Agreement is a resident agreement under the Management and Operations Transfer Agreement, and Defendants are entitled to the rights afforded by the Arbitration Agreement.

LAW AND ANALYSIS

The Federal Arbitration Act ("FAA") provides that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

The FAA applies in state or federal court to any arbitration agreement involving interstate commerce, unless the parties contract otherwise. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). Additionally, "[a] party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement and (2) the claims fall within the scope of the agreement." *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019).

I. The Arbitration Agreement Involves Interstate Commerce

Here, the Arbitration Agreement, as part of the Admission Agreement, involves interstate commerce. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

The Arbitration Agreement was executed for the admission of Zeigler at the Facility. The Facility is a skilled nursing facility, which involves interstate commerce. Additionally, Plaintiff expressly agreed in executing the Arbitration Agreement that interstate commerce is implicated:

> (3) **Involvement of Interstate Commerce:** The Facility expressly represents and provides notice to the Resident that the Facility must and will engage in interstate commerce in the course of its relationship with Resident. The Resident is aware of this fact, acknowledges this fact, and explicitly expects that interstate commerce will be involved in the course of the relationship between the Parties. The Resident agrees that (s)he could specifically seek residency at a different facility if Resident expected and/or desired to reside in a facility that did not and would not engage in interstate commerce in the course of the relationship between the Parties, which includes, but is not limited to, the provision of care to the Resident. Therefore, it is the express intent and expectation of the Parties that the care provided by the Facility to the Resident will and does involve, implicate, and affect interstate commerce.

Ex. B, Arbitration Agreement at p. 2 § II(a)(3).

Lastly, the operation of the Facility involves billing health insurance companies, engaging out of state vendors for services, purchasing supplies and many other activities that implicate interstate commerce. Therefore, the FAA applies to the Arbitration Agreement, which mandates compelling the above-captioned action to arbitration.

II. The Arbitration Agreement is Valid and Enforceable

"The FAA presumes parties intend that the 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." *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). "The parties may, of course, delegate these gateway issues to an arbitrator as long as there is 'clear and unmistakable' evidence of such delegation." *Id.* If such a delegation occurs, the court retains the right and duty to determine if the delegation is valid and enforceable "as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause[.]" *Id.*

A. A Valid Agreement to Delegate Exists

"An arbitration agreement, of course, is a contract." *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025). A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing three elements. *Id.* In South Carolina, [t]he necessary elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

A valid offer and valid consideration exist. An "offer" is the manifestation by one party of their willingness to enter a bargain, made so as to justify another person in understanding that his assent to that bargain is invited. Restatement (Second) of Contracts § 24. The offer identifies its subject, i.e. the bargained-for-exchange, and also creates a power of acceptance in the offeree. Restatement (Second) of Contracts § 29. Finally, "valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. A forbearance to exercise a legal right is valuable consideration." *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (internal citations omitted).

Here, a valid offer exists. Plaintiff's signature on the Admission Agreement, as well as the Arbitration Agreement, manifest its willingness to bind itself to the terms it sets forth. Next, consideration exists. In return for payment from Zeigler, the Facility agreed to provide covered skilled nursing services. Additionally, the mutual agreement to arbitrate is valid consideration. *Lampo*, 445 S.C. at 313, 914 S.E.2d at 144. Therefore, a valid offer and valid consideration exist.

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Id.* As a result, a valid and enforceable arbitration agreement exists under South Carolina so the Court must now determine if Plaintiff had authority to sign and the scope of the Arbitration Agreement.

B. Plaintiff executed the Arbitration Agreement with express authority to arbitrate based on her authority granted from the POA.

On May 8, 2018, Zeigler executed a General Durable Power of Attorney ("POA") wherein he appointed his daughter, Plaintiff Kimberly Haag, as his true and lawful attorney- in-fact with authority to act on his behalf. Exhibit A. The POA expressly grants Plaintiff the authority to "arbitrate" disputes on behalf of Zeigler (Ex, A at p.7, ¶ 3.10). As a result, Plaintiff's signature on the Arbitration Agreement binds Zeigler and her estate.

i. Plaintiff's alleged failure to read or understand the Arbitration Agreement is not a defense under black letter South Carolina law.

Plaintiff has submitted an affidavit alleging that she did not read or understand the Arbitration Agreement. This affidavit is unpersuasive and contrary to South Carolina that presumes signatories have read an agreement they have signed. "[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms." *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019). "A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it." *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003). "A person signing a document is responsible for reading the document and making sure of its contents." *Id*. "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." *Id*. "One who signs a written instrument has the duty to exercise reasonable care to protect himself." *Id*. at 665, 582 S.E.2d at 440. "The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Id*.

Plaintiff's affidavit that she did not understand or did not read the document she signed is not a legal defense in South Carolina. Plaintiff has not alleged she was prohibited from reading the

agreement or she suffered some infirmity that affected her ability to ascertain the meaning of the documents. Plaintiff is simply resting on her willful ignorance, which is no defense.

Second, Plaintiff's affidavit is contrary to her prior warranty that she "reviewed and understand the Agreement."

> (g) **Warranty of Capacity and Comprehension.** Resident and, if present, Resident's Responsible Party hereby affirm that (s)he possesses the mental capacity to execute this Agreement and that (s)he has not been diagnosed as incapacitated by a physician or adjudicated as incapacitated by a Court. Both Resident and the Resident's Responsible Party agree and affirm that they have reviewed and understand this Agreement.
>
> Resident _____ Resident's Responsible Party _____

Ex. B, Arbitration Agreement at p. 4 § II(g).

In fact, Plaintiff signed right below the sentence warranting she reviewed and understood the agreement. Now, Plaintiff seeks to play foolish games with this Court that are not rooted in the law or the facts. Such conduct should not be rewarded by this Court and the Court should consider Plaintiff's brazen disregard of her prior acts when considering the credibility of her affidavit. Regardless of Plaintiff's credibility and the facts asserted in her affidavit, South Carolina law binds her to the Arbitration Agreement.

ii. Plaintiff could have revoked the Arbitration Agreement within thirty (30) days.

Pursuant to the Arbitration Agreement, Plaintiff could have rescinded her consent to the agreement within 30-days of the execution of the agreement:

> (j) **Limited Right to Rescind this Agreement.** Resident or, in the event of Resident's incapacity, Resident's Legally Designated Representative, has the right to rescind this Agreement by notifying the Facility in writing within thirty (30) days of the date set forth above. This right to rescind is fully set forth in the attached Notice of Right to Rescind ("Notice"). This Notice must be properly executed by either the Resident or the Resident's Legally Designated Representative and sent via certified mail to the attention of the Facility's Administrator at the address set forth above. The Notice must be post-marked within thirty (30) days of the execution of this Agreement. The Notice may also be hand-delivered to the Administrator and the acknowledgement of the Notice's receipt must be executed and dated within the same thirty (30) day period. The filing of a Claim in a court of law within the thirty (30) days provided for above will automatically rescind this Agreement without any further action by Resident or Resident's Legally Designated Representative.

If Plaintiff's affidavit is true, then she could have read the Arbitration Agreement after execution and met with an attorney or conducted her own research into its terms and then rescinded the agreement. Again, her affidavit does not address that she ever read the agreement prior to signing. Plaintiff did so at her own peril and such conduct is not rewarded by South Carolina law. Plaintiff's affidavit does not address why she never rescinded the agreement despite it being her right. As a result, Plaintiff slept on her rights in failing to read the terms of the Arbitration Agreement before signing, failing to seek legal counsel within thirty (30) days of signing to inquire as to her rights and failing to rescind the agreement within thirty (30) days and therefore the Arbitration Agreement should be enforced.

II. The assignment of the Arbitration Agreement is a valid and enforceable assignment.

"[C]ourts must respect and enforce a contractual provision to arbitrate as they respect and enforce all contractual provisions. *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 382, 892 S.E.2d 112, 114 (2023), *reh'g denied* (Sept. 27, 2023). An assignee stands in the shoes of the assignor; thus, an innocent assignee receives all the rights of his assignor. *BAC Home Loan Servicing, L.P. v. Kinder*, 731 S.E.2d 547 (S.C. 2012).

Here, pursuant to the Management Operations Transfer Agreement, Defendant Carlyle Senior Care of Fountain Inn, LLC contractually assigned "all resident agreements" and Defendant Fountain Inn, LLC agreed to assume "all resident agreements." For the Court to ignore that assignment flies in the face of the intent of the parties. South Carolina recognizes contractual assignments and Plaintiff has not presented a reported South Carolina case invalidating the assignment of an arbitration agreement.

ii. The validity of the assignment is a question for the arbitrator.

"[A]rbitrator must decide the gateway question of whether Petitioners retained the right to compel arbitration after assignment." *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 392, 892 S.E.2d 112, 120 (2023), *reh'g denied* (Sept. 27, 2023). The Arbitration Agreement expressly delegates all "gateway questions" to the arbitrator stating "all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement" (Ex. B at p. 2 § II(a)).

In the *Sanders* case the Court explicitly dealt with the issue of assignment of an arbitration provision and its impact on "gateway questions." The South Carolina Supreme Court in that case states that when gateway questions have been delegated to the arbitrator "the doctrine requires us to hold that the arbitrator must decide the gateway question of whether Petitioners retained the right to compel arbitration after assignment." *Id.* at 119-120. Based on the relevant case law and plain reading of the Arbitration Agreement, it is clear that the gateway questions have been assigned to the arbitrator.

A. The Arbitration Agreement includes "affiliated entities" thus the Arbitration Agreement applies to all Parties.

Plaintiff has sued a multitude of defendants that did not participate in the case of Zeigler and did not owe any duties to Zeigler in attempt to manufacture her theories of recovery. Generally, many of the entities that have been sued provide back office consulting services or real estate related services that have nothing to do with the care of Zeigler. The Arbitration Agreement expressly includes "parent and affiliated companies." Defendants Providence Group, Inc., PACS Holdings, LLC, PACS Group, Inc., Providence Administrative Consulting Services, Inc. and 501 Gulliver Property, LLC's are affiliated companies of Defendant Fountain Inn, LLC.

Defendant Providence Group, Inc. is a subsidiary of Defendant PACS Holdings, LLC. Defendant Providence Administrative Consulting Services, Inc. provides back office administrative support for Defendant Fountain Inn, LLC for things like payroll, HR, etc. Defendant PACS Holdings, LLC is a subsidiary of Defendant PACS Group. Defendant 501 Gulliver Property, LLC is a real estate entity organized for the purpose of the transfer of the Facility's real estate.[1]

These entities have nothing to do with the care of Zeigler and do not control or operate the Facility. These entities are affiliates of Defendant Fountain Inn, LLC and are covered by the scope of the Arbitration Agreement.

III. The Arbitration Agreement applies to Plaintiff's wrongful death claims.

Under South Carolina law, a wrongful death claimant stands in the legal shoes of his decedent. The claimant is bound by acts of the decedent. If the decedent or the decedent's POA entered an agreement to arbitrate disputes, that agreement is binding on the wrongful death claimants. It is binding because the right to bring a wrongful death claim is derivative of the rights held by decedent during life. Put another way, if the decedent could not bring the claim in court were they alive, the wrongful death claimant cannot bring that claim in court after death.

In South Carolina, a wrongful death action does not exist independently of the decedent's rights; rather, it is derivative of the decedent's own cause of action. *See Farmer v. Monsanto Corp.*, 353 S.C. 553, 558, 579 S.E.2d 325, 328 (2003) (holding "[i]n a wrongful death action, the

[1] If the Court requires, Defendants can provide an affidavit that Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC are affiliated companies.

representative plaintiff's capacity is derived from the decedent's"). Directly stated, if the decent could not bring the action in circuit court, neither can her wrongful death beneficiaries.

A. Plaintiff's wrongful death claim is a derivative claim of the Estate of Zeigler and is not personal to Plaintiff.

A wrongful death claim is derivative in the sense that it exists only when the decedent had a right to maintain the action had she lived. The wrongful death statute, S.C. Code Ann. § 15-51-10, creates a cause of action for certain beneficiaries *only if and to the extent that the decedent could have maintained an action for the injuries had he or she lived*. The statute provides that a defendant "who would have been liable, if death had not ensued, shall be liable" in damages for the death, but only if the defendant's wrongful act or neglect was such that it "would, if death had not ensued, have entitled the party injured to maintain an action and recover damages…" *Id*.

South Carolina courts have consistently interpreted this language to mean that the right of a decedent's statutory beneficiaries to recover in wrongful death is entirely contingent upon and equivalent to the decedent's right to recover for the same wrongful act. *See 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) (holding that a wrongful death action lies only in "those cases in which the party injured would have been entitled to recover if death had not ensued"). This Court recently described the principle: "[a]lthough 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." *Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 667, 869 S.E.2d 819, 851 (Ct. App. 2021), *aff'd sub nom. Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 905 S.E.2d 380 (2024) (emphasis added).

Long before the current wrongful death statute was adopted, the South Carolina Supreme Court's exposition of the derivative principle yielded similar results. *See Price v. Richmond & D. R. Co.*, 33 S.C. 556, 560, 12 S.E. 413, 414 (1890) (holding that if the decedent would have been

"debarred" from maintaining an action due to some defense, then "it follows necessarily that his administrator is likewise barred"). In short, "if the deceased never had a cause of action, none accrues under the wrongful death statute." *Scott v. Greenville Pharmacy*, 212 S.C. 485, 489, 48 S.E.2d 324, 326 (1948). *See also Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988).

Applying the principle, South Carolina courts have held that any legal defense that would defeat or bar the decedent's claim equally defeats or bars the wrongful death claim. For example, if the decedent's claim was time-barred before death, the wrongful death claim is likewise time-barred. *See Estate of Stokes*, 389 S.C. at 349, 699 S.E.2d at 145. If the decedent's own negligence would have barred her recovery, a wrongful death action by her beneficiaries is also barred. *Price v. Richmond*, 33 S.C. at 560. If the decedent contractually waived or limited her right to bring a lawsuit for injuries by signing a release, wrongful death claimants are bound by the same contractual limitations. *See Rish v. Seaboard Air Line Ry.*, 106 S.C. 143, 90 S.E. 704 (1916) (interpreting the operation of a prior release under the wrongful death statute to conclude that "[i]n this case the deceased could not have recovered, because he had released the defendant. Therefore the beneficiaries under the statute cannot recover.").

South Carolina law has long recognized that a decedent's pre-death contract can "limit or bar" a subsequent wrongful death action because the beneficiaries stand in the decedent's figurative legal shoes. *See, e.g. Price*, 33 S.C. at 560 (holding that the administrator of an estate may not maintain action if the decedent, "by any … cause," was barred from suing) and *Rish*, 106 S.C. at 143, 90 S.E. at 705. Thus, if Decedent in this case had, during her lifetime, entered a release, her estate and wrongful death beneficiaries would be precluded from making out a claim for wrongful death. Wrongful death claimants have no greater rights than their decedent.

B. Applying the derivative principle to the present case.

The derivative principle logically requires reversal of the Circuit Court here. Application of this reasoning led our Supreme Court in *Stokes* to apply the derivative principle to the then-novel issue of whether a statute of limitations which bound the decedent could also bind beneficiaries in a wrongful death action: "Although our precedent has not spoken directly to the statute of limitations issue, our law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued." *Estate of Stokes*, 389 S.C. at 347, 699 S.E.2d at 145.

An agreement to arbitrate claims is just as binding on the decedent, and those individuals standing in the shoes of the decedent, as is any other contract. By signing the arbitration agreement, Plaintiff, as Zeigler's power of attorney, did not forfeit her future claim, but she did agree to bring that claim in a specific forum.

Plaintiff, as Zeigler's power of attorney, agreed that any covered claim would be resolved in the arbitral forum rather than in a civil suit. Because Plaintiff, as Zeigler's legal agent, promised to arbitrate his claims and could not, were he alive, maintain a civil action for his injuries, then, under South Carolina's wrongful death statute and the law interpreting the same, his personal representative cannot bring the same action. *See* S.C. Code Ann. § 15-51-10; *see also Rish* and *Stokes*, 389 S.C. at 348, 699 S.E.2d at 146 (holding "[t]he right to bring a wrongful death claim is thus conditioned upon the decedent's right to maintain a claim or action.").

Here, the condition precedent to a wrongful death suit, i.e. that the Decedent "could have maintained an action for the injury had [she] survived," is absent because Decedent previously agreed to bring these claims in arbitration. Stated differently, Decedent's agreement to arbitrate

gives rise to a defense for Defendants because the action filed by Plaintiff is not one that "the deceased…could have maintained." *Id.* at 347 (citing *Price*, 33 S.C. at 560).

Moreover and doubling down on the derivative principle, South Carolina law is clear that wrongful death claims belong to the personal representative of the estate, not the beneficiaries individually. *See* S.C. Code Ann. § 15-51-20 and *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 240, 811 S.E.2d 739, 742 (2018) (concluding that only a personal representative has standing to sue for wrongful death). Plaintiff brought suit individually and as personal representative of the estate of her father, Zeigler. (*See Pl. Compl.*). In bringing that wrongful death claim, she acts on behalf of potential wrongful death beneficiaries, but she still brought the action "as Personal Representative of the Estate." (Pl. Complaint). As such, she is bound by the prior acts of Zeigler and her acts as Zeigler's agent. The Personal Representative, standing in Zeigler's shoes, cannot selectively avoid the Arbitration Agreement entered by her as Zeigler's legal agent when that Agreement bound Zeigler herself. Because the only person entitled to bring an action for wrongful death under South Carolina law is the personal representative of the decedent's estate, they are bound by Zeigler's legal agent's prior agreements just like the decedent would be, were they alive. *See* S.C. Code Ann. § 15-51-20 and *Fisher*, 422 S.C. at 240, 811 S.E.2d at 742.

A. Wrongful death and survival claims are distinct, but both derive from the rights of the decedent.

While wrongful death and survival are indeed distinct causes of action, they both *derive* from the rights of the decedent. Figure 1, below, depicts the relationship among Decedent's rights and the derivate Survival and Wrongful Death Claims:

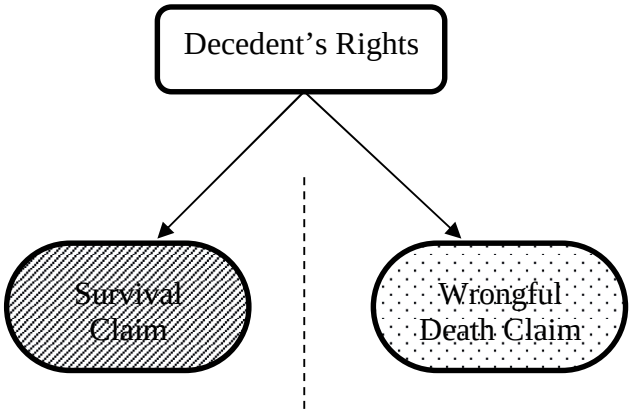


Fig. 1. *Diagram showing the relationship among Decedent's rights, survival claims, and wrongful death claims.*

As depicted above, the wrongful death claim remains firmly tethered to the decedent's rights. Respondent's contention that, because wrongful death and survival claims are separate, both cannot derive from the rights of the decedent, is akin to suggesting that because two siblings are separate individuals, both cannot share the same mother.

Further, the beneficiaries' status as nonsignatories to the arbitration contract does not, in itself, answer the question of arbitrability—many types of nonsignatories are bound by arbitration agreements under traditional principles of contract and agency law. The South Carolina Supreme Court recognizes that the issue of whether an arbitration clause can be enforced against nonsignatories is a matter of substantive arbitration law, reviewed *de novo* by the courts. *Wilson*, 426 S.C. at 335.

Here, a statutory beneficiary and power of attorney for Zeigler signed the Agreement making the wrongful death claim stands in the shoes of the Decedent. The proper question was not simply "Are the beneficiaries nonsignatories?" but rather, "whose claim is this?" As established above, the personal representative makes a wrongful death claim for the potential beneficiaries. The beneficiaries do not bring the claim individually. Because the claim is made by the personal

representative, enforcing Zeigler's legal agent's prior agreement falls in line with ordinary principles of contract enforcement.

South Carolina courts routinely enforce arbitration agreements signed by powers of attorney in wrongful death claims. In fact, the South Carolina Supreme Court has held 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). Similarly, in *Gray v. Pruitt*, the Court reversed the trial court's denial of the defendant's motion to dismiss and compel arbitration in a wrongful death suit. Op. No. 2024-UP-292 (S.C. Ct. App. Filed August 7, 2024). It should do the same here.

2. The Federal Arbitration Act (FAA) preempts any state-law rule that would exclude wrongful death claims from arbitration agreements.

A. The FAA governs the Arbitration Agreement.

Even if this Court were to entertain the notion that South Carolina law could treat arbitration agreements differently than other contracts executed by decedents during their lifetimes (*e.g.*, releases of liability), any such state-law limitation would be preempted by the Federal Arbitration Act (FAA), 9 U.S.C.A. § 1 *et seq*. As the Circuit Court noted below, the Supreme Court of South Carolina's decision in *Dean*, 408 S.C. 371 requires that the FAA "applies to nursing home arbitration agreements and governs the interpretation and enforcement of the agreement at issue in this matter." (Order Granting Motion to Compel Arbitration as to Survival, p. 2).. The FAA therefore governs and mandates that the Agreement be "valid, irrevocable, and enforceable" save only for general contract defenses not at issue here. 9 U.S.C.A. § 2.

B. State law may not discriminate against arbitration agreements.

The U.S. Supreme Court has made clear that state courts may not adopt special rules that discriminate against arbitration or refuse to enforce arbitration agreements based on the subject

matter of the claim. In *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 132 S. Ct. 1201, 182 L. Ed. 2d 42 (2012) (per curiam), the U.S. Supreme Court unanimously struck down a West Virginia rule that had declared pre-dispute arbitration agreements unenforceable in wrongful death and personal injury cases against nursing homes. As the court noted, "[t]he FAA provides that a 'written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.' 9 U.S.C. § 2." *Id.* at 532. Nonetheless, the West Virginia Supreme Court had held such arbitration clauses void as against public policy in cases of patient injury or death. *Id.* at 532. The U.S. Supreme Court vacated that decision, holding that the state's policy was preempted by the FAA. The Supreme Court reaffirmed that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *Id.* at 533 (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)).

As clarified in *Marmet*, any rule, whether statutory or judicial, that exempts wrongful death suits from arbitration agreements is invalid under the Supremacy Clause. Our own Supreme Court has applied this reasoning in several cases. "An arbitration clause may be invalidated under a state law only if that law governs the enforceability of all contracts generally." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) "State law [is] therefore preempted to the extent it [would] invalidate[] the arbitration agreement." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315 (2012) (emphasis and internal quotations omitted). In *Dean*, the court noted that *Marmet* had "invalidat[ed] West Virginia's policy refusing to refer wrongful death claims against a nursing home to arbitration." 408 S.C. at 378.

Thus, the Circuit Court's ruling singling out arbitration agreements for disparate treatment compared to other contracts cannot stand in the face of the FAA. The FAA requires courts to "place arbitration agreements on equal footing with other contracts, ... and enforce them according to their terms[.]" *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 9, 791 S.E.2d 128, 132 (2016) (quoting *AT&T Mobility LLC*, 563 U.S. at 339) (alterations in original; internal citations omitted). *See also Kindred Nursing Centers Ltd. P'ship v. Clark*, 581 U.S. 246, 251, 137 S. Ct. 1421, 197 L. Ed. 2d 806 (2017) (holding that Kentucky's clear-statement rule, requiring an explicit statement in a power of attorney that the attorney-in-fact has authority to waive the principal's state constitutional rights to access the courts and to a jury trial, disfavors arbitration agreements and therefore is preempted by the FAA). Similarly, the South Carolina Supreme Court and Court of Appeals have insisted that "the FAA requires that courts treat arbitration agreements the same as all other contracts—no more, no less." *Lampo v. Amedisys Holding, LLC*, Op. No. 28265 (S.C. Sup. Ct. filed March 5, 2025) (Howard Adv. Sh. No. 10 at 29) (citing the Court of Appeals opinion in the same case).

If this Court agrees with Plaintiff it effectively creates a class-based exception: wrongful death claimants are bound by a decedent's contracts *except* for arbitration agreements. This is precisely the result that *Marmet* and *Kindred Nursing* forbid. Moreover, the FAA's mandate applies with full force in state courts, including South Carolina's. *Dean*, 408 S.C. at 379 ("[T]he basic purpose of the [FAA] is to overcome courts' refusals to enforce agreements to arbitrate, and ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.") (alterations in original; internal quotations omitted).

Finally, it is noteworthy that enforcing arbitration for the wrongful death claim will serve the FAA's goals of efficient, streamlined dispute resolution. Currently, the survival claim and

wrongful death claim are bifurcated. This is not efficient and risks inconsistent determinations on the same facts. There is a strong interest in resolving all claims arising from Decedent's care in the single forum on which the parties agreed. The FAA's purpose is furthered by a ruling that the wrongful death claim join the survival claim in arbitration, whereas no countervailing interest (legal or equitable) justifies keeping it in court. The potential wrongful death beneficiaries will not be prejudiced by arbitration. They are represented by the same counsel and arbitration would provide a forum to be heard sooner than waiting for a jury trial. Indeed, *Marmet* and *Dean* make clear that arbitration is not an inferior forum even for significant claims like wrongful death; it is simply a different forum. Respecting that choice is a matter of both federal law and fundamental contract law.

In sum, the FAA requires the conclusion that the wrongful death claim here must be arbitrated. Any state rule that might have been interpreted to exclude wrongful death actions from arbitration would in any event be preempted by controlling federal law. This Court should therefore apply the FAA and hold the Arbitration Agreement enforceable as to all claims within its scope, including the wrongful death cause of action.

IV. Defendants did not violate federal law in the execution of the Arbitration Agreement.

Plaintiff has alleged that the Arbitration violates federal law because Plaintiff was not explained the Arbitration Agreement and did not comply with a statute regulating the surveys conducted of skilled nursing facilities. Obviously, Plaintiff's affidavit testimony is in direct contraction with Arbitration Agreement where Plaintiff warranted that she "reviewed and understand the Agreement." (Ex. B p. 4 § II(g)). Further, the regulation Plaintiff has cited is not a federal law but it's scope is defined as a regulation that "serve as the basis for *survey activities* for

the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid. " 42 C.F.R. § 483.1(b). **Based on the defined scope of the regulation, it is intended for the use in conducting surveys by CMS to determine Medicare and Medicaid eligibility**. (emphasis added). This argument is intended to confuse the Court and apply standards used by surveyors for Medicare and Medicaid eligibility to supersede the interpretation of South Carolina contract law.

Further, since the regulation cited by Plaintiff alleging the agreement is "illegal" is a regulation governing CMS surveys, the Court can look to the results of the surveys during Zeigler's admission to see if CMS ever took issue with the Facility's arbitration agreement practices.

This Arbitration Agreement was signed on December 22, 2022. The most recent survey of the Facility when it was controlled by Defendant Carlyle Senior Care of Fountain Inn was on September 25, 2024 attached hereto as **Exhibit D**. This survey does not tag the Facility for issues with its arbitration process. Additionally, the information on Medicare.Gov indicates the Facility had not been cited in the three (3) years prior. **Exhibit E**. This information also indicates the Facility is out performing the national average in the most recent survey performed.

Lastly, if Plaintiff was able to find a CMS or South Carolina Department of Public Safety survey that was critical of Defendants' arbitration practices, Plaintiff would have certainly presented it to this Court along with the eight (8) unpublished court orders that also have no precedential value on this court. Ultimately, Defendants' were never accused or cited for "illegal" arbitration practices. This is simply another lame argument put for by Plaintiff to continue to avoid the legal document she signed. As a result of the Arbitration Agreement, and its execution, are not illegal and the governing bodies that utilize the regulation cited by Plaintiff have never cited Defendants' for violating that regulation.

IV. Plaintiff's circuit court orders from other cases lack precedential value.

"Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR. The court orders presented by counsel for Plaintiff do not involve these parties. Our Court of Appeals has considered such orders when it was an "unusual situation in that some of the same parties were making the same arguments in a case with similar facts." *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 555, 813 S.E.2d 292, 298 (Ct. App. 2018). In that case, the unpublished opinions "involved involves the same defendant, represented by the same lawyer, making the same argument that they are making before this [c]ourt today, and thus falls close to the rule's." *Id*. at 555. The court admitted that it was an "unusual situation." There is no such unusual situation here.

Undersigned counsel and Defendants were not involved in any of the cases attached to Plaintiff's Memorandum. The orders attached have nothing to do with the parties or their respective counsel. As a result, they should not be considered by this Court and such consideration would be prejudicial to the substantial rights of Defendants.

CONCLUSION

Based on the above stated arguments, Defendants respectfully request this Court dismiss the above captioned case, stay litigation and discovery, and compel arbitration.

SIGNATURE BLOCK ON FOLLOWING PAGE

BURR & FORMAN LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Charleston, SC 29492
bcrites@burr.com
nstewart@burr.com

Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

September 18, 2025
Charleston, South Carolina

2018034627
26 Pgs
P/ATTY Book: DE 2538 Page: 0304 - 0329
May 10, 2018 12:10:58 PM
Rec: $37.00
FILED IN GREENVILLE COUNTY, SC

General Durable Power of Attorney

of

Raymond Zeigler

(May 8, 2018)

LAW OFFICES
UPSTATE ELDER LAW, P.A.
[redacted]
SIMPSONVILLE, SOUTH CAROLINA 29681
[redacted]

General Durable Power of Attorney of Raymond Zeigler

I, Raymond Zeigler of 400 A Fowler Road, Simpsonville, SC 29681, am creating a durable power of attorney intended to comply with South Carolina law. I hereby revoke all powers of attorney previously granted by me as Principal and terminate all Agency relationships created by me except:

(i) powers granted by me under any Health Care Power of Attorney;

(ii) powers granted by me on forms provided by financial institutions granting the right to write checks on, deposit funds to, and withdraw funds from accounts to which I am a signatory; and

(iii) powers granting access to a safe deposit box.

Article One
Appointment of Attorney-in-Fact

Section 1.01 Initial Attorney-in-Fact

I appoint Kimberly Dawn Haag to serve as my Attorney-in-Fact.

Section 1.02 Successor Attorney-in-Fact

If Kimberly Dawn Haag resigns, dies, becomes incapacitated, is not qualified to serve, or declines or otherwise fails to serve, I appoint Andrew Haag to serve as my successor Attorney-in-Fact.

Section 1.03 Spouse as Attorney-in-Fact

My spouse may not serve as my Attorney-in-Fact if we are legally separated. If a named Attorney-in-Fact was my spouse at the time of execution of this General Durable Power of Attorney and an action is filed for the dissolution or annulment of my marriage to the Attorney-in-Fact or for our legal separation, then that named Attorney-in-Fact may not serve (however, if I named a former spouse at the time of execution, my former spouse may serve as my Attorney-in-Fact).

Section 1.04 Self-Dealing by Spouse or Descendant

This Section only applies if my spouse or a descendant of mine is serving as my Attorney-in-Fact.

My agent may engage in acts of self-dealing, even if state law restricts acts of self-dealing. Unless expressly prohibited by another provision of this General Durable Power of Attorney, my Attorney-in-Fact may enter into transactions on my behalf in which my

Attorney-in-Fact is personally interested, so long as the terms of such transaction are fair to me. For example, my Attorney-in-Fact may purchase property from me at its fair market value without court approval.

Section 1.05 No Person Under 21 Years of Age May Serve as Attorney-in-Fact

No person named as my Attorney-in-Fact or successor Attorney-in-Fact may serve until that person has attained the age of 21 years.

Section 1.06 Prior or Joint Attorney-in-Fact Unable to Act

A successor Attorney-in-Fact, or an Attorney-in-Fact serving jointly with another Attorney-in-Fact, may establish that the acting Attorney-in-Fact or joint Attorney-in-Fact is no longer able to serve as Attorney-in-Fact by signing an affidavit that states that the Attorney-in-Fact is not available or is incapable of acting. The affidavit may (but need not) be supported by a death certificate of the Attorney-in-Fact, a certificate showing that a guardian or conservator has been appointed for the Attorney-in-Fact, a letter from a physician stating that the Attorney-in-Fact is incapable of managing his or her own affairs, or a letter from the Attorney-in-Fact stating his or her unwillingness to act or delegating his or her power to the successor Attorney-in-Fact.

Article Two
Effectiveness of Appointment - Durability Provision

Section 2.01 Effectiveness

The authority granted to my Attorney-in-Fact under this General Durable Power of Attorney shall be effective immediately upon signing.

Section 2.02 Durability

The authority granted to my Attorney-in-Fact under this General Durable Power of Attorney shall not be affected by my subsequent disability, incompetency, incapacity, or lapse of time.

Section 2.03 Termination of General Durable Power of Attorney

This General Durable Power of Attorney shall expire at the earlier of:

(i) my death (except for post-death matters allowed under state law); or

(ii) my revocation of this General Durable Power of Attorney.

Article Three
General Powers

I grant my Attorney-in-Fact the powers described in this Article so that my Attorney-in-Fact may act on my behalf. In addition, my Attorney-in-Fact may do everything necessary to exercise the powers listed below.

My Attorney-in-Fact may exercise any power described in this General Durable Power of Attorney on my behalf with respect to any real property I now own or may acquire in the future.

Section 3.01 Real and Personal Property Sales and Purchases

Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) sell, exchange, and convey any interest I own in any kind of property, real or personal, including homestead property under South Carolina law or the laws of any other state, and determine the terms of sale and grant options with regard to sales;

(ii) dispose of sales proceeds on my behalf as my Attorney-in-Fact determines is appropriate;

(iii) buy any kind of property, real or personal, including homestead property under South Carolina law or the laws of any other state, and determine the terms for buying property and may obtain options to buy property;

(iv) arrange to insure purchased property, and otherwise arrange for its safekeeping;

(v) borrow money for the purposes described in this Section and to secure the loan in any manner my Attorney-in-Fact determines is appropriate, and repay the loan from my funds;

(vi) pay for any purchases made; and

(vii) repay any cash advanced from my credit cards.

Section 3.02 Real Property Management

My Attorney-in-Fact may manage any real property I now own or may acquire in the future, including my personal residence and homestead property under South Carolina law or the laws of any other state. Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) declare, create, or execute a homestead on my personal residence under South Carolina law or the laws of any other state; and terminate, abandon, release, or give a waiver on any interest I have in a homestead;

(ii) lease and sublease property for any period, and grant options to lease or subdivide property, even if the term of the lease, sublease, or option extends beyond the term of this General Durable Power of Attorney;

(iii) eject and remove tenants or other persons from property, and recover the property by all lawful means;

(iv) collect and sue for rents;

(v) execute occupancy agreements on my behalf;

(vi) pay, compromise, or contest tax assessments and apply for tax assessment refunds;

(vii) subdivide, partition, develop, dedicate property to public use without consideration, and grant or release easements over my real property;

(viii) maintain, protect, repair, preserve, insure, build upon, improve, demolish, abandon, and alter all or any part of my real property;

(ix) employ laborers;

(x) obtain or vacate plats and adjust boundaries;

(xi) adjust differences in the property's value on exchange or partition by giving or receiving consideration;

(xii) release or partially release real property from a lien;

(xiii) enter into any contracts, covenants, and warranty agreements regarding my real property that my Attorney-in-Fact considers appropriate; and

(xiv) encumber property, including homestead property under South Carolina law or the laws of any other state, by mortgage or deed of trust.

Section 3.03 Tangible Personal Property Management

My Attorney-in-Fact may manage any tangible personal property I now own or may acquire in the future. Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) lease and sublease property for any period, and grant options to lease or subdivide property, even if the term of the lease, sublease, or option extends beyond the term of this General Durable Power of Attorney;

(ii) recover my property by all lawful means;

(iii) collect and sue for rents;

(iv) take possession of and use my property in order to exercise any authority granted in this Power of Attorney;

(v) pay, compromise, or contest tax assessments and apply for tax assessment refunds;

(vi) maintain, protect, repair, preserve, insure, improve, destroy, and abandon all or any part of my property; and

(vii) grant security interests in my property.

My Attorney-in-Fact may accept tangible personal property as a gift or as security for a loan.

Section 3.04 Residence and Tangible Personal Property

Without limiting any other authority granted in this General Durable Power of Attorney, if my Attorney-in-Fact determines that I will never be able to return to my residence from a hospital, hospice, nursing home, convalescent home, or similar facility, my Attorney-in-Fact may sell, lease, sublease, or assign my interest in my residence on terms and conditions that my Attorney-in-Fact considers appropriate.

As it relates to items of tangible personal property remaining in my residence, my Attorney-in-Fact may:

(i) store and safeguard any items, and pay all storage costs;

(ii) sell any items that my Attorney-in-Fact believes I will never need again on terms and conditions that my Attorney-in-Fact considers appropriate; or

(iii) transfer custody and possession of any item to the person named in my estate planning documents as the person to receive that item upon my death.

Section 3.05 Bank Accounts and Banking Transactions

My Attorney-in-Fact may establish bank accounts of any type in one or more bank institutions that my Attorney-in-Fact may choose. My Attorney-in-Fact may modify, terminate, make deposits to, write checks on, make withdrawals from (including by electronic funds transfer), and grant security interests in any account in my name or to which I am an authorized signatory, except accounts held by me in a fiduciary capacity. In exercising this authority, it does not matter whether or not the account was established by me or for me by my Attorney-in-Fact. My Attorney-in-Fact is authorized to negotiate, endorse, or transfer any check or other instrument with respect to any account, to contract for any services rendered by any bank or financial institution, and to execute, on my behalf as principal, any agency or power of attorney forms furnished by a bank with respect to accounts with the bank that appoints the bank or any person as my agent.

My Attorney-in-Fact is authorized to access, establish, cancel, or continue online bank accounts (through the Internet or other similar method) and conduct online banking transactions of any kind as authorized in this Section.

Section 3.06 Investments and Investment Transactions

My Attorney-in-Fact may invest and reinvest all or any part of my property in any other property of whatever type, real or personal, tangible or intangible, and whether located inside or outside the geographic borders of the United States and its possession or territories. Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) invest in securities of all kinds, limited partnership interests, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts including investment trusts;

(ii) participate in common, collective, or pooled trust funds or annuity contracts;

(iii) sell or otherwise terminate any investment made by me or on my behalf, and establish and terminate savings and money market accounts at banks and other financial institutions;

(iv) establish and terminate accounts with securities brokers and use brokerage accounts to make short sales and to buy on margin, and pledge any securities held or purchased in brokerage accounts as security for loans and advances made to the account;

(v) access, establish, cancel, or continue online investment accounts (through the Internet or other similar method) and conduct online investment transactions of any kind as authorized in this Section;

(vi) establish and terminate agency accounts with corporate fiduciaries; and

(vii) employ and fire financial and investment advisors.

Section 3.07 Securities

My Attorney-in-Fact may exercise all rights regarding securities that I own now or in the future. Specifically, my Attorney-in-Fact may:

(i) buy, sell, and exchange all types of securities and financial instruments, including, but not limited to, stocks, bonds, mutual funds, commodity futures contracts, and call and put options on stocks and stock indexes;

(ii) receive certificates and other evidences of ownership with regard to securities;

(iii) hold securities in bearer or uncertified form and use a central depository, clearing agency, or book-entry system such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York;

(iv) execute stock powers or similar documents on my behalf and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities into or out of my name or nominee's name;

(v) place all or any part of my securities in the custody of a bank or trust company or in the name of its nominee;

(vi) employ a broker-dealer as custodian for my securities and register the securities in the name of the broker-dealer or its nominee;

(vii) exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote;

(viii) participate in any reorganization, recapitalization, merger, or similar transaction; and

(ix) exercise any subscription rights, option rights (whether or not qualified under the Internal Revenue Code) or other rights to which I am entitled now or in the future, or to sell and dispose of these rights, and, if required, to sign my name to rights, warrants, or other similar instruments.

Section 3.08 Obligations

My Attorney-in-Fact may collect all rights and benefits to which I am entitled now or in the future, including, but not limited to rights to, cash payments, property, debts, accounts, legacies, bequests, devises, dividends, and annuities. In collecting my obligations, unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may demand, sue for, arbitrate, settle, compromise, receive, deposit, expend for my benefit, reinvest, or otherwise dispose of these matters as my Attorney-in-Fact determines appropriate.

Section 3.09 Bankruptcy

My Attorney-in-Fact may act for me with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning me or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest I have in any property or other thing of value.

Specifically, and without limiting the preceding, my Attorney-in-Fact may act for me with respect to filing for bankruptcy, and in support of such filing may—

(i) employ counsel to represent me;

(ii) select any exemptions available to me;

(iii) determine which debts to reaffirm;

(iv) make any decisions regarding repayment and reorganization plans;

(v) discuss my affairs with credit-counseling and debtor-education services;

(vi) discuss my affairs with and employ debt-restructuring services; and

(vii) take any other actions to further my interests.

Section 3.10 Legal Actions

My Attorney-in-Fact may institute, supervise, prosecute, defend, intervene in, abandon, compromise, adjust, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way. This authority includes, but is not limited to, claims by or against me arising out of property damage or personal injury suffered by or caused by me or under circumstances such that the resulting loss may be imposed on me. My Attorney-in-Fact may otherwise engage in litigation involving me, my property, or my legal interests, including any property, interest, or person for which or whom I have or may have any responsibility.

Section 3.11 Fiduciary Positions

My Attorney-in-Fact may resign or renounce for me any fiduciary position I hold now or in the future including personal representative, trustee, guardian, attorney-in-fact, and officer or director of a corporation and any governmental or political office or position. In so doing, my Attorney-in-Fact may file an accounting with the appropriate court of competent jurisdiction or settle on the basis of a receipt, release, or other appropriate method.

Section 3.12 My Spouse

My Attorney-in-Fact (including my spouse acting as my Attorney-in-Fact) may deal with my spouse on my behalf. In dealing with my spouse, my Attorney-in-Fact may transfer, transmute, partition, or exchange any of my property interests, whether separate or community property, between my spouse and me. My Attorney-in-Fact may enter into and execute on my behalf marital property agreements, partition or exchange agreements, transmutation agreements, or community property agreements, and may enforce, amend, or revoke any such agreements between my spouse and me, but only with respect to rights and obligations in property owned by my spouse, by me, or by both of us, and with respect to reclassification of ownership, management, and control of such property.

Section 3.13 My Support

My Attorney-in-Fact may do anything reasonably necessary to maintain my customary standard of living, including:

(i) maintain my residence by paying all operating costs, including, but not limited to, interest on mortgages or deeds of trust, amortization payments, repairs, and taxes, or by purchasing, leasing, or making other arrangement for a different residence;

(ii) provide normal domestic help;

(iii) provide clothing, transportation, medicine, food, and incidentals; and

(iv) make all necessary arrangements, contractual or otherwise, for my care at any hospital, hospice, nursing home, convalescent home or similar establishment, or in my own residence should I desire it, and assure that all of my essential needs are met wherever I may be.

Section 3.14 Support of Dependents

My Attorney-in-Fact may make payments as my Attorney-in-Fact deems necessary for the health, education, maintenance, or support of my spouse and those my Attorney-in-Fact determines to be dependent on me for support.

Section 3.15 Recreation and Travel

My Attorney-in-Fact may, at my expense, allow me to engage in recreational and sports activities as my health permits, including travel.

Section 3.16 Advance Funeral Arrangements

My Attorney-in-Fact may make advance arrangements for my funeral and burial, including a burial plot, marker, and any other related arrangements that my Attorney-in-Fact considers appropriate.

Section 3.17 Memberships

My Attorney-in-Fact may establish, cancel, continue, or initiate my membership in organizations and associations of all kinds.

Article Four
Additional Powers

In addition to the powers specified in Article Three, my Attorney-in-Fact has the powers specified in this Article. If a power specified in this Article conflicts with a power specified in Article Three, the power specified in this Article controls.

Section 4.01 Fixtures and Personalty

My Attorney-in-Fact may engage in real estate transactions or transactions which involve any proprietary lease or stock evidencing my ownership of a cooperative apartment, including all fixtures and articles of personal property used in connection with the real property (my Attorney-in-Fact may include such property in the deeds, mortgages, agreements, and any other instruments to be executed and delivered in connection with real estate transactions and which may be described in said instruments with more particularity).

Section 4.02 Insurance Transactions

My Attorney-in-Fact may engage in insurance transactions, including applying for, maintaining, canceling, paying premiums on, increasing or decreasing coverage, collecting, borrowing from, transferring ownership, surrendering and/or purchasing insurance policies.

Section 4.03 Estate Transactions

My Attorney-in-Fact may engage in estate transactions, including Receipt, Release, and Refunding Agreements and Waivers and Consents.

Section 4.04 Disclaimers and Statutory Elections

My Attorney-in-Fact may make statutory elections and renounce or disclaim any interest in property by testate or intestate succession or by inter vivos transfer consistent with South Carolina law.

Section 4.05 Powers of Appointment

My Attorney-in-Fact may exercise in whole or in part, or decline to exercise, or disclaim my rights under any special or general power of appointment or any rights retained by me in any trust or otherwise, whether or not any such trust or other instrument was created by me or others.

Section 4.06 Trusts

My Attorney-in-Fact may create and fund inter vivos trusts of any type, whether revocable or irrevocable, and whether or not I am a beneficiary. With respect to any trust created by me or on my behalf, my Attorney-in-Fact may amend, modify, revoke, or terminate the trust. Further, my Attorney-in-Fact may add property to an existing or subsequently created trust, and accept transfers or distributions from any trustee of any trust, including

any trust over which I have a right of receipt or withdrawal, whether as grantor, beneficiary, or otherwise.

Also, and without limiting the authority granted to my Attorney-in-Fact in this Section, my Attorney-in-Fact may:

(i) create and fund a sole-benefit trust in accordance with United States Code, Title 42, Section 1396p(c)(2)(B);

(ii) create and fund a self-settled special needs trust in accordance with United States Code, Title 42, Section 1396p(d)(4)(A);

(iii) create and fund a qualified income trust in accordance with United States Code, Title 42, Section 1396p(d)(4)(B) if such a trust should be deemed necessary to qualify me for Medicaid benefits, and make arrangements for the diversion of my income to such a trust as necessary to comply with applicable Medicaid rules and regulations; and

(iv) sign all necessary documents to allow me to join any trust qualifying under United States Code, Title 42, Section 1396p(d)(4)(C) and transfer any portion of my assets to such trust.

Section 4.07 Safe-Deposit Boxes

My Attorney-in-Fact may enter any safe-deposit box or other place of safekeeping standing in my name alone or jointly with another and to remove the contents and to make additions.

Section 4.08 Loans and Notes

My Attorney-in-Fact may engage in all dealings with respect to loans and forgiveness of debts. My Attorney-in-Fact may borrow money on such terms as my Attorney-in-Fact may decide in his or her sole discretion, on a secured or unsecured basis, and to execute all notes, mortgages, and other instruments relating to such, provided any such loan carries a fair market interest rate.

Section 4.09 Annuities

My Attorney-in-Fact may waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan. My Attorney-in-Fact may withdraw from, transfer ownership, surrender, or purchase any commercial annuity, private annuity, or grantor retained annuity trust.

Section 4.10 Government Agencies and Benefits

My Attorney-in-Fact has the unrestricted power to deal with and obtain maximum entitlements and benefits relating to the Social Security Administration, Veterans Administration, Social Services Departments, Social Security Disability Insurance, Supplemental Security Income, Medicaid, Medicare, Worker's Compensation and all other government benefits or entitlement programs, including claims, planning for eligibility, and submission of applications and appeals. In this regard, my Attorney-in-Fact is authorized to execute and deliver any power of attorney or authorization-to-act form

requested or required by a governmental agency. This power shall impose no affirmative duty on my Attorney-in-Fact to provide information and/or documentation to any government agency.

Section 4.11 Deal with Tax Authorities

My Attorney-in-Fact is authorized to:

(i) deal with tax authorities, to execute and sign on my behalf any and all Federal, state, local, and foreign income and gift tax returns (as authorized under Section 1.6012-1(a)(5) of Title 26 of the Code of Federal Regulations or under any state, local, or foreign authority), including estimated returns and interest, dividends, gains, and transfers, and to pay any taxes, penalties, and interest due thereon;

(ii) represent me or to sign an Internal Revenue Service Form 2848 (Power of Attorney or Declaration of Representative) or Form 8821 (Tax Information Authorization), or comparable authorization, appointing a qualified lawyer, certified public accountant, or enrolled agent (including my Attorney-in-Fact, if so qualified) to represent me before any office of the Internal Revenue Service, state, local, or foreign taxing authority with respect to the types of taxes and years referred to above, and to specify on said authorization said types of taxes and years;

(iii) receive from or inspect confidential information in any office of the Internal Revenue Service, state, local, or foreign tax authority;

(iv) receive and deposit, in any one of my bank accounts, or those of any revocable trust of mine, checks in payment of any refund of Federal, state, local, or foreign taxes, penalties, and interest;

(v) execute waivers (and offers of waivers) of restrictions on assessment or collection of deficiencies in taxes and waivers of notice of disallowance of a claim for credit or refund;

(vi) execute consents extending the statutory period for assessment or collection of such taxes; to execute Offers in Compromise and Closing Agreements under Section 7121 or comparable provisions of the Internal Revenue Code, as amended, or any federal, state, local, or foreign tax statutes or regulations; and

(vii) delegate authority to, or substitute another representative for any one of those previously appointed by me or my Attorney-in-Fact, and to receive copies of all notices and other written communications involving my federal, state, local, or foreign taxes at such address as my Attorney-in-Fact designates.

Section 4.12 Employment of Professionals

My Attorney-in-Fact may retain, discharge, and pay for, in the sole discretion of my Attorney-in-Fact, the services of professionals, including, but not limited to, information technology experts, attorneys, accountants, financial planners, geriatric care managers, social workers, and any other health care professionals. My Attorney-in-Fact is not obligated to retain or pay for any health care professional on my behalf.

Section 4.13 Gifting Powers

Notwithstanding any other provision of this General Durable Power of Attorney, my Attorney-in-Fact may make gifts of any interest I have in real or personal property ("my property") in any amount and in excess of the annual exclusion amount under Internal Revenue Code Section 2503(b), as amended, including gifts of real and personal property, outright or in trust, to or for the benefit of those persons or charitable entities, including my Attorney-in-Fact, to whom, whether by right of survivorship, direction in my last will and testament, trust, or otherwise, such property would pass were I then deceased (such persons being hereinafter referred to as "Donees"). All gifts of my property shall be made keeping in mind: (1) the resources, both public and private, available for my care after the making of such gifts; and (2) the objective of preserving the largest possible amount of my estate for my Donees in the event I die, become incapacitated, or require long term care services. Accordingly, I authorize and encourage my Attorney-in-Fact to engage in estate planning, financial planning, Medicaid planning, long term care planning and/or asset preservation planning, to such extent and in such manner, as my Attorney-in-Fact shall deem necessary or advisable in order to serve my wishes. Gifts made pursuant to the authority granted herein shall, for all purposes, be deemed to have been "in my best interest" if: (1) made in accordance with the provisions of this section; and (2) made in the context of estate planning, financial planning, Medicaid planning, long term care planning and/or asset preservation planning pursuant to the recommendations of an attorney-at-law experienced in such matters.

Unless otherwise specified above, the value of any gift made pursuant to this Section may exceed the annual dollar limits of the federal gift tax exclusion under Section 2503(b) of the Internal Revenue Code. Further, any gift made pursuant to this Section must be made in accordance with, and to the extent my Attorney-in-Fact has actual knowledge of, the following:

(i) my pattern of prior giving; or

(ii) the provisions contained in my estate planning or any other documents for beneficiaries to receive assets upon my death (for example, a trust, will, annuity or life insurance contract, or deed naming beneficiaries).

Section 4.14 Gift-Splitting

My Attorney-in-Fact may make, join, and consent to gifts by my spouse pursuant to Section 2513 of the Internal Revenue Code, even if such gifts exceed my aggregate annual gift tax exclusion amount under Section 2503(b) of the Internal Revenue Code.

Section 4.15 Intent to Return Home

It is my intention to return home if I should be in a hospital, rehabilitation center, or nursing home, and my Attorney-in-Fact shall take all steps, including, but not limited to, executing any document, affidavit, or Declaration of Intent to Return Home on my behalf, to effectuate the same.

Section 4.16 Domicile

My Attorney-in-Fact may change or maintain my domicile and/or residency for any and all purposes and take any and all actions to effectuate the foregoing.

Section 4.17 Nomination of Conservator

I intend hereby to render unnecessary any future proceeding for a court-appointed Conservator in the event I become temporarily or permanently incapacitated or incompetent. Accordingly, I request, in the strongest possible terms, that any court that may receive or act upon a petition for the appointment of a Conservator should deny such petition so long as my Attorney-in-Fact is acting under this power of attorney.

If a Conservator is ever appointed for me in spite of this request, I direct that the person serving, or named to serve, as my Attorney-in-Fact under this power of attorney be named as my Conservator.

Section 4.18 Marital Agreements and Designation of Spouse as Attorney-in-Fact

My Attorney-in-Fact may enter into, modify, or amend any pre-nuptial or post-nuptial agreement to which I am or hereafter become a party. If a named Attorney-in-Fact is my spouse, then this power of attorney as to that named Attorney-in-Fact is automatically revoked, and that Attorney-in-Fact is deemed to have resigned as Attorney-in-Fact upon the filing of any separation or dissolution action between us.

Section 4.19 Caregiver Agreements

My Attorney-in-Fact may enter into, execute, modify, alter, or amend any contract or agreement (for example, a Caregiver Agreement or Personal Services Contract) pertaining to my medical, personal, or general care that I may require at my residence, assisted living facility, nursing facility, or in another's residence on my behalf. I expressly authorize my Attorney-in-Fact to also serve as a caregiver under any such agreement and to be paid in accordance with the terms and conditions of such agreement, provided, however, that such services are compensated at fair market value.

Section 4.20 Qualified Plans

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may deal in all respects with any Qualified Plan or Individual Retirement Account that I may own and to make any and all available elections or beneficiary designations on my behalf. If my spouse is a participant in a Qualified Plan or Individual Retirement Account, I authorize my Attorney-in-Fact to effect any waiver of my rights to any portion of said Plan or to any payout arrangement which may require my consent or approval by law, under any such Plan, or otherwise.

Section 4.21 Enforcement Proceedings

My Attorney-in-Fact may commence enforcement proceedings, at my expense, against any bank, savings and loan association, credit union, financial institution, brokerage firm, stock

transfer agent, insurance company, title insurance company, or other person or entity that fails or refuses to honor this durable power of attorney.

Section 4.22 Credit Cards

My Attorney-in-Fact may use any credit card in my name; to make purchases on my behalf; to open a new credit card account and to close any existing credit card account.

Section 4.23 Online Accounts, Digital Assets, and Digital Devices

Without limiting any other provision of this General Durable Power of Attorney, and subject to the limitations of any other provision of this General Durable Power of Attorney, my Attorney-in-Fact has the powers described in this Section.

My Attorney-in-Fact has full authority to deal with Online Accounts, Digital Assets, and Digital Devices of all kinds, wherever located. This authority includes, but is not limited to, the power to acquire, create, establish, access, control, modify, cancel, delete, continue, transfer, and take possession of such accounts, assets, and devices.

However, if I have used an online tool to direct the custodian of an Online Account, Digital Asset, or Digital Device to not disclose certain information, and if the online tool allows for the modification or deletion of that direction at all times, then such direction overrides the authority granted in this Section.

Further, even though state law might not require a custodian to disclose a deleted digital asset, my Attorney-in-Fact is authorized to access them, and the custodian will be held harmless for doing so.

My Attorney-in-Fact may request and change my access credentials to any Online Account, Digital Asset, and Digital Device (such as username, password, and secret question), and any third-party dealing with my Attorney-in-Fact in good faith will be held harmless for releasing such access credentials.

For purposes of this General Durable Power of Attorney, the following definitions apply:

(a) Online Accounts

The term "Online Accounts" means accounts that are accessible through the Internet or other similar method, including, but not limited to: bank accounts; investment accounts; other financial accounts; accounts with health care providers; social media accounts (like LinkedIn, Facebook, and Twitter); gambling and poker accounts; accounts with publishers; accounts for access to employee benefits; email accounts; accounts with Internet service providers; accounts to manage websites and website domain names; accounts with retail vendors; tax-preparation service accounts; affiliate marketing accounts; accounts with utility companies; user access accounts on third-party Digital Devices; and any other online account.

(b) Digital Assets

The term "Digital Assets" means intangible personal property related to digital technology (whether located on a Digital Device or an Online

Account), including, but not limited to: emails sent or received; text messages sent or received; other digital communications sent or received; digital music; digital photographs; digital videos; software licenses; social network accounts; file sharing accounts; online access to financial accounts; domain registrations; DNS service accounts; website hosting accounts; personal and commercial websites; tax preparation service accounts; online store accounts; affiliate marketing accounts; and other types of online accounts and digital items that currently exist or may exist as technology develops.

(c) Digital Devices

The term "Digital Devices" means tangible personal property related to digital technology capable of storing Digital Assets or accessing Online Accounts, and includes, but is not limited to: desktop computers; laptop computers; tablet computing devices (tablets); other mobile computing devices; peripheral devices; hard disk drives; solid state drives; flash memory devices; other storage devices; mobile telephones; smartphones; and any other type of digital device that currently exists or may exist as technology develops.

Section 4.24 Domestic Pets

My Attorney-in-Fact may make reasonable expenditures for the care, maintenance, support, and general welfare of my domestic pets, if any. Specifically, and without limitation, my Attorney-in-Fact may consent to and make reasonable expenditures for medical treatment, boarding, and kennel care of any of my domestic pets. I authorize any and all payments from my funds for pet care provided by any person or entity, including my Attorney-in-Fact.

In addition, my Attorney-in-Fact may acquire a domestic service pet if, in my Attorney-in-Fact's sole discretion, such service pet will benefit me.

Section 4.25 Estate and Long Term Care Planning

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may engage in estate and long term care planning in furtherance of achieving asset preservation. Property transfers made pursuant to the authority granted herein may be made without restriction as to the value of the transfer, and shall, for all purposes, be deemed to have been "in my best interest" if: (1) made in accordance with the provisions of this section; and (2) made in the context of estate planning, financial planning, Medicaid planning, long term care planning, or asset preservation planning pursuant to the recommendations of an attorney-at-law experienced in such matters. My Attorney-in-Fact may engage in such planning based on all relevant factors, including:

(i) the value and nature of my property;

(ii) my foreseeable obligations and need for maintenance;

(iii) minimization of taxes, including income, estate, inheritance, generation skipping transfer, and gift taxes; and

(iv) eligibility for a benefit, a program, or assistance under a statute or government regulation.

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may take any action necessary to effectuate the foregoing, including to qualify me for Social Security Benefits, Supplemental Security Income, Veterans Benefits, Medicaid or any other government benefit program. Such actions may include but shall not be limited to the following:

(i) convert non-exempt resources into exempt resources;

(ii) divest me of assets, without restriction as to the value of the divestment;

(iii) if my Attorney-in-Fact is my spouse, my spouse may protect our assets, whether owned by me alone, my spouse alone, or by us together as husband and wife, so that my spouse's impoverishment because of my health care costs can be avoided, by whatever lawful methods that might be available;

(iv) sign a Spousal Refusal (even if my Attorney-in-Fact is my spouse);

(v) sign an Assignment of Support (even if my Attorney-in-Fact is my spouse);

(vi) divide community property assets equally or unequally between my spouse and me, without restriction as to the difference of the value of our shares, if any;

(vii) sign an application for Medical Assistance or any other government benefit program;

(viii) serve as representative payee;

(ix) transfer the family residence to a spouse who does not need long-term health or nursing care, without restriction as to the value of the transfer;

(x) make home improvements and additions to my family residence;

(xi) pay off, partly or in full, any encumbrance on my family residence;

(xii) purchase a family residence, if I do not own a family residence;

(xiii) purchase a more expensive family residence; and

(xiv) attend and represent me at Fair Hearings.

Section 4.26 Ownership and Rights of Survivorship

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may select, create, or change the rights of survivorship on any and all of my property, whether real or personal, including bank and investment accounts, insurance policies, annuities, qualified or nonqualified retirement plans, and real property interests, and may do so by any means, including by changing ownership, such as adding a joint owner. My Attorney-in-Fact may designate survivorship rights among one or more remaindermen and may designate the form of title among multiple remaindermen, including, but not limited to, as tenants in common, joint tenants, community property, or tenants by the entirety.

In particular, my Attorney-in-Fact may execute any deed designating beneficiaries, including an enhanced life estate deed (also known as a "ladybird" deed), including with respect to my homestead property, if any, and may conduct any and all transactions with full power and authority in my Attorney-in-Fact to sell, convey, mortgage, lease, and otherwise dispose of the property in accordance with the terms of the deed.

Section 4.27 Beneficiary Designations

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may select, create, or change beneficiary designations on any and all of my property, whether real or personal, including bank and investment accounts, insurance policies, annuities, qualified or nonqualified retirement plans, and real property interests.

Section 4.28 Spiritual and Religious Needs

My Attorney-in-Fact may arrange for the involvement of religious clergy or spiritual leaders in my care, provide said persons access to me at all times, arrange or maintain my membership in religious or spiritual organizations, and create opportunities for me to derive comfort and spiritual satisfaction from such activities, including the purchase of religious books, tapes, and other materials.

Section 4.29 Companionship

My Attorney-in-Fact may provide for such companionship for me, in the sole discretion of my Attorney-in-Fact, as will meet my needs and preferences at a time when I am disabled or otherwise unable to arrange for such companionship myself.

Section 4.30 U.S. Mail

My Attorney-in-Fact may open, read, respond to, and redirect my mail, and represent me before the U.S. Postal Service in all matters relating to mail service.

Article Five
Incidental Powers

My Attorney-in-Fact may perform those acts and execute and deliver those legal documents necessary or appropriate to the exercise of the powers set forth in this General Durable Power of Attorney, including, but not limited to, the following incidental powers.

Section 5.01 Court Proceedings

My Attorney-in-Fact may commence any court proceedings necessary to protect my legal rights and interests under this General Durable Power of Attorney including, but not limited to:

(i) actions for declaratory judgments from any court of competent jurisdiction interpreting the validity of this General Durable Power of Attorney and any of the

acts sanctioned by this General Durable Power of Attorney; provided, however, that my Attorney-in-Fact need not seek a declaratory judgment to perform any act sanctioned by this General Durable Power of Attorney;

(ii) actions for mandatory injunctions requiring any person or entity to comply with my Attorney-in-Fact's directions as authorized by this General Durable Power of Attorney; and

(iii) actions for actual and punitive damages and the recoverable costs and expenses, including reasonable attorney's fees, of such litigation against any person or entity who negligently or willfully fails or refuses to follow my Attorney-in-Fact's directions as authorized by this General Durable Power of Attorney.

Section 5.02 Document Execution

My Attorney-in-Fact may sign, execute, endorse, seal, acknowledge, deliver, and file or record all appropriate legal documents necessary to exercise the powers granted under this General Durable Power of Attorney.

Section 5.03 Custody of Documents

My Attorney-in-Fact may take, give, or deny custody of my important documents, including my Will and any codicils, trust agreements, deeds, leases, life insurance policies, contracts, or securities. My Attorney-in-Fact may disclose or not disclose the whereabouts or contents of those documents as my Attorney-in-Fact believes appropriate.

Article Six
Limitation on Powers

All powers granted to my Attorney-in-Fact under this General Durable Power of Attorney are subject to the limitations set forth in this Article.

Section 6.01 My Attorney-in-Fact to Avoid Disrupting My Estate Plan

If it becomes necessary for my Attorney-in-Fact to liquidate or reinvest any of my assets to provide support for me, I direct that my Attorney-in-Fact, to the extent that it is reasonably possible, avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.

If it is necessary to disrupt the dispositive provisions of my estate plan, my Attorney-in-Fact will use his or her best efforts to restore my plan as soon as possible. My Attorney-in-Fact will make reasonable efforts to obtain and review my estate plan. I authorize any person with knowledge of my estate plan or possession of my estate planning documents to disclose information to my Attorney-in-Fact and to provide copies of documents to my Attorney-in-Fact.

Section 6.02 Tax Sensitive Powers

No individual serving as my Attorney-in-Fact may exercise any fiduciary power or discretion if the exercise of that power or discretion would:

(i) cause any income generated by my property to be attributed to my Attorney-in-Fact for federal income tax purposes;

(ii) cause the value of any property subject to this General Durable Power of Attorney to be included in my Attorney-in-Fact's gross estate for federal estate tax purposes;

(iii) cause any distribution made or allowed to be made by my Attorney-in-Fact to be treated as a gift from my Attorney-in-Fact; or

(iv) discharge a legal obligation of my Attorney-in-Fact.

If the exercise of a power by my Attorney-in-Fact under this General Durable Power of Attorney would cause any of the foregoing results, a Special Attorney-in-Fact appointed under the provisions of Section 7.03 may exercise the power or discretion.

The Special Attorney-in-Fact appointed for this purpose must be an individual who is not related or subordinate to my Attorney-in-Fact within the meaning of Section 672(c) of the Internal Revenue Code.

Article Seven
Administrative Powers and Provisions

This Article contains certain administrative powers and provisions that facilitate the use of the General Durable Power of Attorney and that protect my Attorney-in-Fact and those who rely upon my Attorney-in-Fact.

Section 7.01 Compensation and Reimbursement to Attorney-in-Fact

If my Attorney-in-Fact is a professional (such as an attorney; accountant; geriatric care manager; professional guardian, conservator, or other fiduciary; or other professional, including entities that provide similar services), my Attorney-in-Fact is entitled to compensation for services rendered pursuant to this General Durable Power of Attorney at such professional's then stated rates. If my Attorney-in-Fact is not a professional, my Attorney-in-Fact is not entitled to compensation.

Whether or not my Attorney-in-Fact is a professional, my Attorney-in-Fact is entitled to reimbursement for costs reasonably incurred while acting as my Attorney-in-Fact, including, but not limited to: phone bills; postage; and travel expenses, if necessary, to supervise my care.

Section 7.02 Release of Information

My Attorney-in-Fact may release and obtain, as the case may be, any and all information regarding my financial investments, taxes, and estate planning, including any information or documents regarding stocks, bonds, certificates of deposit, bank accounts, tax returns,

retirement accounts, pension plans, wills, trusts, powers of attorney, advance directives, and any other documents or information regarding my financial affairs, taxes, or estate planning from my attorneys-at-law, financial advisors, insurance professionals, accountants, stockbrokers, stock transfer agents, and any other persons having such information.

I release these persons or entities from any liability for releasing the above-referenced information to my Attorney-in-Fact in reliance on this Section.

If my Attorney-in-Fact is an attorney-at-law or other accounting or financial professional, the professional regulations of my Attorney-in-Fact's profession and federal law may prohibit my Attorney-in-Fact from releasing information about my financial affairs to others if I am a client of my Attorney-in-Fact. This instrument, therefore, is a limited waiver of any privilege (such as the attorney-client privilege) that I have established with any Attorney-in-Fact as a client. The privilege is waived for the limited purpose of permitting my Attorney-in-Fact to perform his or her duties under this General Durable Power of Attorney.

Section 7.03 Appointment of a Special or Ancillary Attorney-in-Fact

My Attorney-in-Fact may appoint, in writing, a corporate fiduciary or an individual to serve as Special Attorney-in-Fact to exercise any power under this General Durable Power of Attorney. My Attorney-in-Fact may revoke any such appointment at will.

If my Attorney-in-Fact determines that it is necessary or desirable to appoint an Ancillary Attorney-in-Fact to act under this General Durable Power of Attorney in a jurisdiction other than this one, my Attorney-in-Fact may do so. In making an appointment, my Attorney-in-Fact may sign, execute, deliver, acknowledge, and make declarations in any documents that may be necessary, desirable, convenient, or proper in order to carry out the appointment.

A Special or Ancillary Attorney-in-Fact may exercise all powers granted by this General Durable Power of Attorney unless expressly limited elsewhere in this General Durable Power of Attorney or by the instrument appointing the Special or Ancillary Attorney-in-Fact. A Special or Ancillary Attorney-in-Fact may resign at any time by delivering written notice of resignation to my Attorney-in-Fact. Notice of resignation shall be effective in accordance with the terms of the notice.

Section 7.04 Attorney-in-Fact Authorized to Employ My Attorney

My Attorney-in-Fact may employ the attorney who prepared this General Durable Power of Attorney or any other attorney employed by me in connection with my estate plan or business matters and I specifically:

(i) waive any and all conflicts of interest that might arise through such employment;

(ii) authorize the attorney to make full disclosure of my estate plan and business to the Attorney-in-Fact; and

(iii) authorize the attorney to accept the engagement.

Section 7.05 Fiduciary Eligibility of Attorney-in-Fact

My Attorney-in-Fact is eligible to serve in any other fiduciary capacity for me or for my benefit, including trustee, guardian, conservator, committee, executor, administrator, or personal representative.

Section 7.06 Amendment and Revocation

I may amend or revoke this General Durable Power of Attorney at any time. Amendments to this document must be made in writing by me personally (not by my Attorney-in-Fact) and must be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

The written notice of amendment or revocation to my Attorney-in-Fact must be:

(i) personally delivered and receipt of delivery received;

(ii) mailed postage prepaid by certified mail, return receipt requested, to the last known address of my Attorney-in-Fact; or

(iii) sent by express mail or commercial expedited delivery providing a receipt for such delivery.

If this General Durable Power of Attorney is amended or revoked, no person will incur any liability to me or my estate as a result of permitting my Attorney-in-Fact to exercise any power authorized by this General Durable Power of Attorney prior to that person's receipt of notice that it was amended or revoked.

Section 7.07 Resignation

My Attorney-in-Fact may resign by the execution of a written resignation delivered to me (or my guardian if I am incapacitated and one has been appointed for me) and to any Attorney-in-Fact serving together with the resigning Attorney-in-Fact, or if none, to the next successor Attorney-in-Fact. If I am incapacitated, notice may be delivered to any person with whom I am residing or who has my care and custody.

Section 7.08 Signature of Attorney-in-Fact

My Attorney-in-Fact shall use substantially the following form when signing documents on my behalf pursuant to this power:

[Attorney-in-Fact's name], as Attorney-in-Fact for Raymond Zeigler.

Section 7.09 Interpretation

This General Durable Power of Attorney is a general power of attorney and should be interpreted as granting my Attorney-in-Fact all general powers permitted under South Carolina law. The description of specific powers is not intended to, nor does it, limit or restrict any of the general powers granted to my Attorney-in-Fact.

Section 7.10 Use of "Attorney-in-Fact" Nomenclature

The word "Attorney-in-Fact" and any modifying or equivalent word or substituted pronoun includes the singular and the plural, as well as the masculine, feminine, and neuter genders.

Section 7.11 Third-Party Reliance

No person who relies in good faith on the authority of my Attorney-in-Fact under this General Durable Power of Attorney will incur any liability to me, my estate, or my heirs, successors, and assigns.

Any party dealing with my Attorney-in-Fact may conclusively rely upon an affidavit or certificate of my Attorney-in-Fact stating that:

(i) the authority granted to my Attorney-in-Fact under this General Durable Power of Attorney is in effect;

(ii) my Attorney-in-Fact's actions are within the scope of my Attorney-in-Fact's authority under this General Durable Power of Attorney;

(iii) I was competent when I executed this General Durable Power of Attorney;

(iv) I have not revoked this General Durable Power of Attorney; and

(v) my Attorney-in-Fact is currently serving as my Attorney-in-Fact.

Section 7.12 Effect of Duplicate Originals or Copies

If this General Durable Power of Attorney has been executed in multiple counterparts, each counterpart original will have equal force and effect. My Attorney-in-Fact may make copies of this General Durable Power of Attorney and each copy will have the same force and effect as the original. A copy means an electronic, digital, facsimile, photocopy, or other reproduction of this General Durable Power of Attorney.

Section 7.13 Governing Law

This General Durable Power of Attorney's validity and interpretation will be governed by South Carolina law. To the extent permitted by law, this General Durable Power of Attorney is applicable to all of my property (whether real or personal, tangible or intangible, or legal or equitable), wherever located, and whether or not the property is owned by me now or in the future.

Section 7.14 Severability

If any provision of this General Durable Power of Attorney is declared invalid for any reason, the remaining provisions will remain in full force and effect.

Article Eight
Duties and Liabilities of My Attorney-in-Fact

Section 8.01 Duty to Account

My Attorney-in-Fact shall render statements of account of receipts, disbursements, principal on hand, and transactions conducted on my behalf if:

(i) ordered by a court;

(ii) requested by me, a guardian, conservator, trustee, or other fiduciary acting on my behalf; or

(iii) upon my death, requested by the Personal Representative of my estate.

If so requested, my Attorney-in-Fact shall comply with the request within 30 days or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Section 8.02 Limitation of Liability of My Attorney-in-Fact

I release and discharge any Attorney-in-Fact acting in good faith from any and all civil liability and from all claims or demands of all kinds whatsoever by me, my estate, and my heirs, successors, and assigns arising out of the acts or omissions of my Attorney-in-Fact, except for duties committed dishonestly, with improper motive, or with reckless indifference to the purposes of this General Durable Power of Attorney or my best interests, including willful misconduct or gross negligence. This protection extends to the estate, heirs, successors, and assigns of my Attorney-in-Fact.

In particular, any Attorney-in-Fact who acts in good faith is not liable to any beneficiary of my estate plan for failure to preserve the plan, and absent a breach of duty to me, my Attorney-in-Fact is not liable if the value of my property declines.

Article Nine
Acceptance of Appointment as Attorney-in-Fact

Any manifestation of acceptance of appointment as Attorney-in-Fact, whether in writing or by conduct, is an acceptance of all aspects of this General Durable Power of Attorney, and may not be limited to only certain aspects. Appointment as Attorney-in-Fact is accepted by:

(i) signing any document manifesting acceptance;

(ii) exercising any authority or performing any duties as Attorney-in-Fact under this General Durable Power of Attorney; or

(iii) any other assertion or conduct indicating acceptance.

Article Ten
Declarations of the Principal

I understand that this General Durable Power of Attorney is an important legal document. Before executing this General Durable Power of Attorney, my attorney explained to me the following:

(i) that this General Durable Power of Attorney provides my Attorney-in-Fact with broad powers to dispose of, sell, convey, and encumber my real and personal property;

(ii) that the powers will exist for an indefinite period of time unless I revoke this General Durable Power of Attorney or I have limited their duration by specific provisions herein;

(iii) that this General Durable Power of Attorney remains in full force and effect during my subsequent disability or incapacity; and

(iv) that I may revoke or terminate this General Durable Power of Attorney at any time.

Dated: May 8, 2018

Raymond Zeigler

Raymond Zeigler, Principal

(Signed by Corrie Ford at the direction of Raymond Zeigler and in his presence, due to his inability to sign)

Corrie Ford

Signature

We, ANNA E. FORSYTHE and CHADWICKE L. GROOVER, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the principal signs and executes this instrument as his durable power of attorney and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the principal, hereby signs this durable power of attorney as witness to the principal's signing, and that to the best of our knowledge the principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

ANNA E. FORSYTHE
[redacted]
Simpsonville, SC 29681

CHADWICKE L. GROOVER
[redacted]
Simpsonville, South Carolina 29615

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF GREENVILLE)

Subscribed, sworn to and acknowledged before me by RAYMOND ZEIGLER, the principal, and subscribed and sworn to before me by ANNA E. FORSYTHE and CHADWICKE L. GROOVER, witnesses, on this the 8th day of May, 2018.

Notary Public, State of South Carolina
My commission expires: January 26, 2019

CHADWICKE L. GROOVER NOTARY PUBLIC SOUTH CAROLINA

MEDIATION AND BINDING ARBITRATION AGREEMENT

made pursuant to the

FEDERAL ARBITRATION ACT (9 U.S.C. § 1 *et seq.*)

and pursuant to the

SOUTH CAROLINA UNIFORM ARBITRATION ACT

(S.C. CODE ANN. §§ 15-48-10 *et seq.*)

This MEDIATION AND BINDING ARBITRATION AGREEMENT is entered into on December 22, 2022, by and between Carlyle Senior Care (hereinafter "Facility") and Raymond Zeigler ("Resident") and/or Kimberly Haag, the Resident's Legally Designated Representative, if any.

THIS IS A BINDING AGREEMENT TO ARBITRATE ALL CLAIMS ARISING OUT OF THE RELATIONSHIP BETWEEN RESIDENT AND FACILITY. THE EXPRESS INTENT OF THE PARTIES IS TO SUBMIT ALL CLAIMS TO BINDING ARBITRATION EXCEPT AS EXPRESSLY SET FORTH HEREIN. ANY AMBIGUITY OR DOUBT AS TO THE INTENDED SCOPE OF THIS AGREEMENT SHALL BE RESOLVED IN FAVOR OF SUBMITTING ALL CLAIMS TO BINDING ARBITRATION.

In this MEDIATION AND BINDING ARBITRATION AGREEMENT (hereinafter "Agreement"), the following definitions apply:

"Resident" "you" and "your" refers to the Resident identified above who is being admitted to the Facility. Resident also includes Resident's Legally Designated Representative(s), Resident's Responsible Party, Resident's family, and anyone situated in such a manner so as to assert a Claim against the Facility.

"Resident's Legally Designated Representative" refers to the person who possesses actual legal authority to conduct affairs and make decisions on behalf of the Resident. This person includes, but is not limited to, the person who has been appointed as Guardian for the resident, and/or the person who possesses a Power of Attorney executed by the Resident.

"Resident's Responsible Party" refers to _____, who is the person identified as the Resident's Responsible Party in the Admission materials executed by Resident and/or the Resident's Legally Designated Representative, and who has agreed to serve as the primary point of contact for communications between the Facility and the Resident's family.

"Facility" refers to the Facility identified above, and includes the Facility's employees, agents, subcontractors, and parent and affiliated companies (including, but not limited to, Cooke Management Company, Inc.) and their employees and agents.

"Parties" and **"party"** refers to persons and entities defined within the scope of "Resident" and "Facility."

"Claim(s)" include any and all claims, disputes or controversies of any and every variety between the Parties relating in any respect to the relationship and interactions of the Parties. The Parties' express intent is for this Agreement to apply to Claims that presently exist, as well as any Claims as may arise or come to exist in the future. Except as expressly set forth herein or as excluded in Section II(c) of the Agreement, it is the intent of the Parties that all Claims be resolved between the Parties via binding arbitration.

The Parties agree that any ambiguity with regard to whether or not the Claim(s) fall within the scope of this Agreement should be construed in favor of submitting the Claim(s) to binding arbitration pursuant to the terms of this Agreement.

All Claims must be asserted by the Parties within the time allowed by the applicable statute(s) of limitation.

I. **Voluntary Mediation:** This Agreement provides for voluntary mediation whereby the Parties may, upon mutual agreement, engage in mediation before resorting to binding arbitration. Mediation is a form of alternative dispute resolution whereby an impartial third party is selected by the Parties to preside over a meeting of the Parties and/or their representatives so to facilitate communication between the Parties, with a goal of bringing the Parties together and negotiating the terms for a mutually agreeable Settlement Agreement. Depending upon the location of the litigation and the nature of the Claims, South Carolina courts presently requires that litigants engage in pre-suit mediation. This Agreement will make such mediation voluntary. The goal of mediation is to resolve the dispute promptly, amicably, and without requiring either Party to engage in the significant time and expense required in the litigation process. The advantage of mediation is that it allows the Parties the opportunity to establish mutually agreeable terms to resolve any Claims. If the Parties do not mutually agree to mediate any Claims between them, then they may proceed directly to arbitration.

(a) **Selection of the Mediation Site and Mediator:** If the Parties mutually agree to mediate any Claims that may arise between them, then the mediation will be conducted at a location either within the County in which the Facility is situated, or at a location mutually agreeable to the Parties. The Parties shall mutually select a certified mediator. The costs of the mediation shall be borne equally by each Party, and each Party shall be responsible for their own legal fees. If the Parties cannot agree upon a location or a mediator for the mediation, or if the Parties are unable to resolve their Claims through mediation, then the Claims shall be resolved by binding arbitration as set forth in this Agreement.

(b) **Settlement at Mediation:** Although the mediation process is voluntary and non-binding, should the Parties reach a settlement in the course of the Mediation that is memorialized into a Settlement Agreement executed by the Parties, this Settlement Agreement's terms and conditions shall be binding upon the Parties.

II. **Binding Arbitration:** Arbitration is a specific method of resolving Claim(s) between the Parties outside of the traditional state or federal court system. Instead of a judge and/or jury resolving the Claim(s), a neutral third party ("Arbitrator") renders the decision, which is binding on both Parties. Generally, an Arbitrator's decision is final and not open to appeal. The Arbitrator will hear both sides present their Claim(s) and their responses to the other Party, and then render a decision based on fairness, law, common sense and the rules established by the arbitration association selected by the Parties in Section II(b) of this Agreement. Because this arbitration is binding, it is the only legal process available to the Parties. Binding Arbitration has been mutually selected by the Parties with the goal of reducing the time, formalities and cost of utilizing the court system.

(a) **Intent of the Parties.** The Parties expressly intend that all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement as well as resolving all Claims, existing presently or in the future, between the parties without regard for whether such Claims are presently known or unknown.

(1) **Scope of Agreement:** Unless the Claims are resolved by mediation, or are expressly excluded in Section II(c), or are excluded from the scope of this Agreement by mutual written consent of the Parties, the Parties expressly intend that the binding arbitration provisions of this Agreement apply to any and all Claims arising out of the relationship between the Parties, without regard for the nature of the Claim(s), the facts alleged to support or refute the Claim(s), or circumstances from which the alleged Claim(s) arose. This means that neither the Facility nor the Resident will be able to file a lawsuit in court to resolve any Claim(s) against the other. It also means that both the Facility and the Resident are relinquishing their right to a trial by judge and/or jury to resolve any Claim(s) against the other. The Parties freely choose arbitration, and the Parties understand that the arbitrator's decision is final and binding.

(2) **Implementation of Arbitration:** The Parties expressly intend to arbitrate all Claims; therefore, should the determination be made that a Claim is not subject to arbitration pursuant to the Federal Arbitration Act, then the Parties intend that such Claim shall be arbitrated in accordance with the South Carolina Uniform Arbitration Act. Similarly, should the determination be made that any Claim is not subject to arbitration pursuant to the South Carolina Uniform Arbitration Act, then the Parties intend that such Claim shall be arbitrated in accordance with the Federal Arbitration Act. In the event that the determination is made that any Claim is not subject to arbitration pursuant to either the Federal Arbitration Act or the South Carolina Uniform Arbitration Act, then the Parties hereby stipulate and agree to conduct voluntary binding arbitration in accordance with Section II(b). The Parties agree that this specific provision of this Agreement is enforceable by specific performance by either Party. In the event that despite the Parties' express intent that all Claims be resolve by binding arbitration, it is determined that only certain claims may be arbitrated, then the Parties agree that binding arbitration of those claims shall proceed. This binding arbitration shall proceed during the pendency of any appeal or any other litigation in civil court, unless both Parties mutually agree that this arbitration be stayed.

(3) **Involvement of Interstate Commerce:** The Facility expressly represents and provides notice to the Resident that the Facility must and will engage in interstate commerce in the course of its relationship with Resident. The Resident is aware of this fact, acknowledges this fact, and explicitly expects that interstate commerce will be involved in the course of the relationship between the Parties. The Resident agrees that (s)he could specifically seek residency at a different facility if Resident expected and/or desired to reside in a facility that did not and would not engage in interstate commerce in the course of the relationship between the Parties, which includes, but is not limited to, the provision of care to the Resident. Therefore, it is the express intent and expectation of the Parties that the care provided by the Facility to the Resident will and does involve, implicate, and affect interstate commerce.

The Parties expressly acknowledge and agree that the relationship between the Parties, which includes, but is not limited to, the provision of care, products, and services to the Resident by and through the Facility, necessarily will, and in fact does, necessitate transaction(s) involving and affecting interstate commerce by needing and in fact utilizing people, information and tangible materials that originate out of state and that must be and in fact are transported across state lines to the Facility. The extent of this involvement and affect on interstate commerce includes, but is not limited to: (1) the equipment utilized by the Facility in the course of both general operations and the provision of specific care to the Resident; (2) the medicines prescribed to the Resident; (3) the supplies sought by, prescribed to, and/or provided to the Resident; (4) the staffing of personnel, specialists, and independent contractors at the Facility in the course of the care and treatment of Resident; (5) the information used in the course of the care and treatment of the Resident; and (6) the food and other products offered by the Facility to Resident. Additionally, the Facility is required to comply with state and federal statutes and regulations. Further, the Facility accepts payments from federal programs as well as from out of state providers and out of state income sources.

In the course of providing care, products and services, the Facility cannot and does not limit itself to utilizing only items and services that originate in South Carolina. Therefore, the relationship between the Parties specifically contemplates and requires the purchase, acquisition, and/or utilization of materials, services, and items from outside the state of South Carolina that must be transported across state lines to the Facility, thereby involving, implicating and substantially affecting interstate commerce. The Parties acknowledge and agree that the Facility would be unable to fulfill its obligations to Resident without involving, implicating and substantially affecting interstate commerce within the scope and meaning of Congress' Commerce Clause.

(b) **Procedure for Arbitration**. The Arbitration shall be administered by one of the entities identified below and mutually agreed upon and designated by the Parties:

Option 1: Carolina Dispute Settlement Services); or

Option 2: National Arbitration. Forum

If the options identified above are not mutually agreeable to the Parties, an alternate arbitration forum and/or qualified arbitrator may be mutually agreed upon and identified below:

Option 3: _____

We selection Option _____ (choose options 1, 2 or 3 and initial below)

Initials: _____ _____ KH _____ _____

Resident	Resident's Legally Designated Representative	Resident's Responsible Party	Facility

Any Request for Arbitration of Claim(s) ("Request") must be submitted in writing to the Arbitrator at the address set forth below in accordance with the procedural rules established by that Arbitrator existing at the time the Request is made. A copy of the Request must also be sent to the Facility at the address set forth below. In the event the Arbitrator is unable or unwilling to serve, then the Resident must provide written Notice to the Facility within thirty (30) days of the Resident's receipt of notice of the Arbitrator's unwillingness or inability to serve. Within thirty (30) days of receipt of this Notice from the Resident, the Facility shall select another neutral arbitration service, either from the list below or from another source, and this alternate arbitration service's procedural rules shall apply to the arbitration proceeding. The Resident's failure to submit a Request within the period set by the applicable state of limitations for the Claim(s) to which the Request applies shall operate as a bar to such Claim(s). A copy of the applicable Rules and Procedures for Arbitration may be acquired from the selected Arbitrator, either online or directly. Judgment on any award rendered by the Arbitrator may be entered in any court having appropriate jurisdiction.

Carolina Dispute Settlement Services:
234 Fayetteville Street Mall, Suite 200
Raleigh, N.C. 27601
Telephone: 1-919-755-4646
Fax: 1-919-155-4644
www.notrials.com

National Arbitration Forum
P.O. Box 50191
Minneapolis, MN 55405-0191
Telephone: 1-800-474-2371
Fax: 952-345-1160
www.adrforum.com

Facility:

_____

Option 3 Alternate Arbitrator:

_____

(c) **Exclusion from Arbitration.** The Parties expressly agree to exclude the following Claim(s) from binding arbitration: (1) guardianship proceedings resulting from the alleged incapacity of the Resident; (2) Claim(s) involving less than Five Thousand Dollars ($5,000.00); (3) Claim(s) brought after the expiration of the applicable statute(s) of limitation; and (4) any Claim that the Parties mutually agree to resolve in a manner not entailing binding arbitration, either as set forth at the time the Parties execute this Agreement, or as later mutually agreed upon in writing by both Parties. In situations involving Claim(s) excluded from binding arbitration, neither the Resident nor the Facility is required to use the arbitration process, but the Parties may mutually agree to do so should they so choose. Any legal actions related to excluded Claim(s) may be filed and litigated in any court possessing jurisdiction. Additionally, this Agreement shall not impair the rights of the Resident to appeal any transfer and/or discharge action initiated by the Facility to the appropriate administrative agency if such transfer or appeal is governed by State or Federal law prescribing the instances in which a resident may be transferred or discharged, and after the exhaustion of such administrative appeals, to appeal to the court exercising appellate jurisdiction over that administrative agency.

(d) **Right to Legal Counsel.** Both Parties have the right to be represented by legal counsel in any binding arbitration proceedings initiated under this Agreement. Because this Agreement addresses important legal rights, the Facility encourages and recommends that the Resident obtain the advice and assistance of legal counsel to review the legal significance of this binding arbitration provision either prior to signing this Agreement, or subsequent to signing but within the rescission period. Should any Party fail to obtain legal counsel at any point, they do so willingly and voluntarily.

(e) **Location of Arbitration.** The arbitration will he conducted in the County in which the Facility is located, or in accordance with the Arbitrator's applicable rules of procedure (for instance, certain Arbitrators may require that the arbitration take place at their offices), or at another site that is mutually agreeable to the Parties. In the event that the Parties cannot mutually agree upon a location for the arbitration, the Parties shall be bound by the Arbitrator's decision of the location in which the arbitration is to occur.

(f) **Applicable Law.** The Parties agree that the Arbitrator shall apply South Carolina law in order to resolve any state law Claims related to their relationship. The Parties agree that the arbitrator shall apply federal law as set forth by the United State Supreme Court, the Fourth Circuit Court of Appeals and the District Court of South Carolina to any Claims premised upon federal statutes. The Parties agree that the application of South Carolina law in this choice of law provision shall not be construed to prevent the Parties from arbitrating all Claims arising from their relationship. For instance, if a Claim is deemed not able to be arbitrated under the South Carolina Uniform Arbitration Act, then this choice of law provision shall not be construed to prevent application of the Federal Arbitration Act to resolve the Claim via binding arbitration. Further, the Parties agree that the legal maxim that ambiguities should be construed against the party that drafted the document shall not apply; rather the Parties agree that ambiguities, if any, are to be construed in favor of submitting all Claims to binding arbitration.

(g) **Warranty of Capacity and Comprehension.** Resident and, if present, Resident's Responsible Party hereby affirm that (s)he possesses the mental capacity to execute this Agreement and that (s)he has not been diagnosed as incapacitated by a physician or adjudicated as incapacitated by a Court. Both Resident and the Resident's Responsible Party agree and affirm that they have reviewed and understand this Agreement.

_____ _____

Resident Resident's Responsible Party

In the event that either Resident or Resident's Responsible Party have any concerns or reservations regarding the Resident's capacity, please identify them on space below:

_____

_____

_____

In the event that the Resident is incapacitated, the Resident's Legally Designated Representative hereby affirms and warrants that (s)he possesses actual legal authority to act and make decisions on behalf of the Resident, and that (s)he has entered into this Agreement voluntarily after reviewing and understanding its terms, and (s)he believes that this Agreement is in the best interests of the Resident.

_____
Resident Legally Designated Representative

(h) **Allocation of Costs and Fees for Arbitration.** The costs of the arbitration shall be shared equally by each party, and each party shall be responsible for their own legal fees, costs, and expenses.

(i) **Severability.** In the event any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the offending provision shall be severed from the Agreement, and the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby. This provision reflects the Parties intent to arbitrate all Claims.

(j) **Limited Right to Rescind this Agreement.** Resident or, in the event of Resident's incapacity, Resident's Legally Designated Representative, has the right to rescind this Agreement by notifying the Facility in writing within thirty (30) days of the date set forth above. This right to rescind is fully set forth in the attached Notice of Right to Rescind ("Notice"). This Notice must be properly executed by either the Resident or the Resident's Legally Designated Representative and sent via certified mail to the attention of the Facility's Administrator at the address set forth above. The Notice must be post-marked within thirty (30) days of the execution of this Agreement. The Notice may also be hand-delivered to the Administrator and the acknowledgement of the Notice's receipt must be executed and dated within the same thirty (30) day period. The filing of a Claim in a court of law within the thirty (30) days provided for above will automatically rescind this Agreement without any further action by Resident or Resident's Legally Designated Representative.

(k) **Entire Agreement.** The Parties agree that, with respect to the subject matter hereof, this Agreement constitutes the full and complete understanding and agreement of the Parties. The Parties also agree that there is absolutely no agreement or reservation not clearly expressed herein, and that the execution hereof is with the full knowledge that this Agreement covers all possible Claims between the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors, purchasers and assigns.

_____
Resident

_____
Responsible Person

_____
Resident Legally Designated Representative

_____ Title Admissions
Duly Designated Facility Representative

MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT

This MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT (this "***Agreement***") is made and entered into as of this 14th day of March, 2023 ("***Execution Date***"), by and between Carlyle Senior Care of Fountain Inn, LLC, a South Carolina limited liability company ("***Existing Operator***" or "***Licensee***") and Fountain Inn Healthcare, LLC a South Carolina limited liability company ("***New Operator***").

RECITALS

A. Existing Operator is the licensed operator of that certain facility commonly known as Carlyle Senior Care of Fountain Inn, and located at 501 Gulliver Street, Fountain Inn, SC South Carolina 29644 (the "***Facility***").

B. Effective upon the Operations Transfer Date, New Operator will occupy the Facility as a manager for Licensee pursuant to the terms hereof and during the Management Period (as defined below).

C. In order to facilitate a transition of operational and financial responsibilities from Licensee to New Operator in a manner which will ensure the continued operation of the Facility after the Operations Transfer Date in compliance with applicable law and in a manner which does not jeopardize the health and welfare of the residents of the Facility, Licensee and New Operator desire to document the terms and conditions on which New Operator will manage the Facility for Licensee as of the Operations Transfer Date and certain other terms and conditions relevant to the transition of operational and financial responsibilities from Licensee to New Operator.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of the parties set forth herein, it is hereby agreed as follows:

1. Definitions

1.1 "***Evidence of Licensure***" means, in the event the issuance or transfer of a License cannot occur on or prior to the Transition Date, New Operator shall provide Existing Operator with a letter or other form of written assurance, the sufficiency of which shall be determined in Existing Operator's and New Operator's good faith discretion (which shall not be unreasonably withheld, delayed, or conditioned), from the applicable Governmental Authority indicating that, all pre-Transition Date conditions for the issuance of the Licenses have been satisfied, and the New Operator may continue to operate the Facility lawfully without an interruption in service or licensure.

1.2 "***Governmental Authority(ies)***" means any state or federal governmental agency or authority with jurisdiction over the Licenses (as defined herein) and Facility.

1.3 "***Knowledge***" means, when used with respect to Licensee, the actual knowledge of Rick Cranford and the current licensed administrator of the Facility ("***Licensee's Knowledge Individuals***"), and not to any other persons, and shall not apply to or to be construed to apply to information or material which may be in the possession of Licensee generally or incidentally, but which is not actually known to Licensee's Knowledge Individuals. In no event

shall Licensee's Knowledge Individual be personally liable for the breach of any representation or warranty contained in this Agreement.

1.4 "***Licenses***" means a facility license, certificate of need and/or any other license or permit for the Facility required by any federal or Governmental Authorities with jurisdiction over the Facility, so that, on the Transition Date, New Operator shall have all legal authority to operate the Facility as a licensed skilled nursing facility, as defined by the laws of South Carolina.

1.5 For purposes hereof, the "***Operations Transfer Date"*** shall be April 1, 2023.

1.6 For purposes hereof, "***Third Party Payor Programs***" means Medicare, Medicaid, CHAMPUS, TRICARE, managed care plans, and any other private health care insurance programs and employee assistance programs as well as any future similar programs.

1.7 For purposes hereof, the "***Transition Date***" shall be the date upon which New Operator shall have received the Licenses or Evidence of Licensure from the South Carolina Department of Health and Environmental Control deemed sufficient by Existing Operator and New Operator with advice of their respective counsel.

2. **Conditions Precedent**. For purposes hereof, the "***Conditions Precedent***" to the transfer of operations shall be: (a) the execution and delivery by Licensee of the Assignment and Assumption of Admission Agreements in the form attached hereto as "**EXHIBIT A**", (b) the execution and delivery by Licensee of the Assignment and Assumption of Agreements in the form attached hereto as "**EXHIBIT B**" relating to the Assumed Contracts (as defined in Section 17(a) hereof), (c) the execution and delivery by Licensee of the Bill of Sale in the form attached here as "**EXHIBIT C**", and (d) the execution of the Purchase and Sale Agreement by and among LARK of Fountain Inn, LLC, a South Carolina limited liability company, and 501 Gulliver Property, LLC, a South Carolina limited liability company dated as of March 10, 2023 ("***Purchase and Sale Agreement***").

3. **Management of the Facility**. Commencing on the Operations Transfer Date and ending on the Transition Date (this period being known as the "***Management Period***"), Licensee hereby appoints New Operator as its sole and exclusive manager of the Facility. Any management agreement existing before the Operations Transfer Date, shall be terminated as of the Operations Transfer Date. The performance of all activities by New Operator hereunder shall be on behalf of Existing Operator. Existing Operator retains ultimate authority and legal responsibility for the operation and control of the Facility, subject to Existing Operator possessing a right of indemnity against New Operator for all liabilities, costs, and expenses, including reasonable attorneys' fees, arising from the acts or omissions of the New Operator. By entering into this Agreement, Existing Operator does not delegate to New Operator any powers, duties or responsibilities that Existing Operator is not authorized by law to delegate. Licensee shall exercise commercially reasonable efforts to cooperate with New Operator in all respects to make the transition in management of the Facility to New Operator as smooth as reasonably possible. Unless sooner terminated by either party, this Agreement shall terminate by its terms as of January 1, 2024 ("***Outside Termination Date***"), if the Conditions Precedent have not been satisfied or waived. The Outside Termination Date may be extended by Existing Operator in its sole discretion for unlimited additional thirty

(30) day periods, so long as New Operator is diligently pursuing satisfaction of the Conditions Precedent.

3.1 In connection with New Operator's assumption of operational and financial responsibility for the Facility, New Operator shall be permitted to bill under the Licensee's Medicare Agreement and Medicaid Agreement, utilizing Licensee's Submitter ID and NPI numbers and/or Medicaid provider number ("***Provider Numbers***"), as applicable, during the Billing Period (as defined below). In no event shall New Operator bill under the Medicare Agreement or Medicaid Agreement following expiration of the Billing Period. In addition to making Licensee a named insured under its insurance, New Operator shall indemnify and hold Existing Operator harmless from and against any and all liabilities while New Operator is using Licensee's Medicare Agreement and/or Medicaid Agreement following the Operations Transfer Date. Licensee shall cooperate with New Operator in granting New Operator with credentials to manage Licensee's Provider Numbers, whether online or otherwise. Notwithstanding the foregoing, Licensee shall remain ultimately responsible for the daily operational decisions and the care delivered to the residents at the Facility during the Management Period and accordingly, Licensee shall have the right to confer and consult with New Operator on any administrative, business, or management matters concerning the operation of the Facility during the Management Period and shall maintain read-only access to all software, billing and accounting systems, and bank accounts; provided, however, such ultimate responsibility shall not relieve New Operator from its obligations specified in this Section 3, all of which shall apply during the Management Period.

3.1.1. For purposes hereof, the "***Billing Period***" shall mean the period from the Operations Transfer Date to the earlier to occur of (A) in the case of Medicare, the date on which CMS issues a tie-in notice and the fiscal intermediary has terminated Licensee's right to submit claims under the Medicare provider number, and (B) in the case of Medicaid, the Transition Date, and (C) the date which is nine (9) months following the Operations Transfer Date. If, notwithstanding New Operator's continuing best efforts, the Medicare tie-in notice shall not have been issued or a new Medicaid provider agreement shall not have been issued to New Operator within such nine (9) month period, as applicable, Licensee, upon New Operator's written request, shall agree to unlimited 30 day extensions of the Transition Period, as may be necessary for New Operator to complete the applicable certification process. For all such 30 day extension periods, New Operator shall pay Licensee the sum of One Hundred Fifty and No/100 Dollars ($150.00) per hour actually spent by Existing Operator and/or Carlyle Senior Care Management Company, Inc.'s employees to address the delayed transition. Licensee shall supply New Operator with documentation of time spent, including a narrative of the activity or work.

3.2 New Operator shall arrange (utilizing Facility personnel as appropriate), and pay at its sole cost and expense, for the provision of the bookkeeping, accounting, and administrative functions, including, but not limited to, the following, as reasonably necessary for the efficient and proper operation of the Facility:

3.2.1. Preparation and maintenance of business records and financial and other reports;

3.2.2. Establishment and administration of accounting procedures and controls;

3.2.3. Financial and business planning;

3.2.4. Payment of accounts payable;

3.2.5. Preparation and completion of any reports and forms that may be required by governmental agencies;

3.2.6. Billing, processing and collection of accounts receivable, including the billing and completion of any reports and forms that may be required by insurance companies, governmental agencies, or other third-party payors; and

3.2.7. Providing and processing of all employee record keeping, payroll accounting (including social security and other payroll tax reporting), and benefits for all employees of the Facility.

3.3 New Operator shall arrange for the maintenance, repair, trash removal, and janitorial services which may be necessary to maintain the Facility and equipment in a clean and safe condition, in compliance with applicable law, and in good repair in accordance with standards established by the Lease.

3.4 New Operator shall arrange for the utilities reasonably required for operation of the Facility, including, but not limited to, telephone, electricity, gas, water and refuse disposal.

3.5 New Operator shall arrange for the provision and replenishment, as New Operator deems necessary and as necessary to meet any minimum requirements established under applicable law, of all supplies and Inventory (as defined in Section 15(d) hereof) used in the Facility. Licensee's only obligation with respect thereto shall be to ensure that the levels of supplies and inventory at the Facility, including, without limitation, perishable food, non-perishable food, central supplies, linen, housekeeping and other supplies, on the Operations Transfer Date is of a condition, quantity and quality sufficient to meet the regular operating needs of the Facility for a seven-day period following the Operations Transfer Date.

3.6 Subject to and consistent with Section 15 hereof, New Operator shall hire all employees whom New Operator determines to be necessary to effectively and efficiently operate the Facility as employees-at-will.

3.7 New Operator, on behalf of the Facility, shall arrange for maintenance of the payroll records of all employees, for the issuance of paychecks to employees, and for the payment and withholding from such paychecks of appropriate amounts for income tax, social security, unemployment insurance, and for all benefits, including vacation, holidays, sick leave, and other benefits in accord with the approved policies.

3.8 New Operator shall have the right, in its sole discretion, to revise the fee schedules for the services rendered by the Facility, provided that New Operator shall consult with Licensee before doing so.

3.9 Following the Operations Transfer Date, New Operator shall operate the Facility during the Management Period under a different d/b/a, and shall indemnify, defend and hold Licensee harmless to any trademark or service mark violations or other legal actions arising therefrom.

3.10 In conformity with applicable law, Licensee and New Operator shall not discriminate against Medicare and Medicaid residents who request services at the Facility.

3.11 New Operator shall comply with any and all codes, ordinances, rules, regulations, and requirements of all federal, state, and municipal authorities now in force, or which may hereafter come to be in force, pertaining to the Facility and its operations, including by managing the Facility in accordance with quality assessment performance improvement programs and a compliance plan formally adopted and maintained by New Operator to ensure that the operation of the Facility, and the delivery of services to residents and the billing and collection of reimbursement is accomplished in accordance with any and all codes, ordinances, rules, regulations, and requirements of all federal, state, and municipal authorities now in force, or which may hereafter come to be in force.

3.12 New Operator shall procure and maintain during the Management Period all insurance necessary and appropriate to the operation and maintenance of the Facility, which insurance shall be primary. The Licensee and Carlyle Senior Care Management Company, Inc., shall be named as an additional named insured/loss payee, as applicable, during the Management Period. New Operator shall keep such coverage in effect and provide updated certificates for the applicable statute of limitations period in which any claims may be brought against Licensee or Licensee's parents, affiliates, shareholders, members, affiliates, directors, officers, representatives or advisers. Any liability, costs, deductibles, or expenses of any sort, including attorneys' fees, shall be recoverable from New Operator pursuant to Licensee's right to indemnification from New Operator.

3.13 New Operator shall reasonably cooperate, participate in and be responsible for any survey, inspection or site investigation conducted by a Governmental Authority or regulatory, certifying or accrediting entity with authority or jurisdiction over the Facility to the extent the survey, inspection, or site investigation is related to operations after the Operations Transfer Date. If the survey, inspection, or site investigation is related to operations prior to the Operations Transfer Date, New Operator shall reasonably cooperate and participate in such events, but Licensee shall remain responsible for the survey, inspection, or site investigation. New Operator shall provide notice to Licensee of any reportable events, adverse events, inspections, or surveys by any state or federal entity during the Management Period. New Operator shall provide Licensee with copies of any responsive documents, including reports, plans of correction, and audits.

3.14 To the extent Licensee has received CMS Accelerated and Advance Payments ("AAPs") during 2020 or 2021 that have not yet been utilized, at the option of Licensee,

Licensee shall either (i) repay such unused AAPs in full to CMS on or before the Operations Transfer Date; or (ii) shall transfer or credit the entirety of any such remaining AAPs to New Operator. With regard to any AAPs received by Licensee during 2020 or 2021 that have been utilized as of the Operations Transfer Date, the total amount of any such AAPs utilized as of such date shall, at the option of Licensee, either be (i) repaid to CMS in full on or before the Operations Transfer Date, or (ii) deposited into an escrow account (pursuant to a mutually agreed upon escrow agreement) and utilized to offset any recoupments of such AAPs by CMS against any management fees due and owing to New Operator on a monthly basis. In the event CMS forgives the recoupment of AAPs and Existing Operator has elected to transfer the amount of AAPs into an escrow account, the Parties agree that such amount shall be released to Existing Operator within five (5) days of such CMS determination.

3.15 To the extent Licensee has received any monies from the CARES Act Provider Relief Fund ("PRF") in either 2020 or 2021 which have not been utilized by Licensee as of the Transfer Date, such monies will be refunded to the United States Department of Health and Human Services ("DHHS") and shall not transfer to New Operator. In the event that the PRFs received in 2020 or 2021 have been fully utilized as of the Transfer Date, Licensee will provide written documentation of such utilization to New Operator, as well as a representation that such monies were used in compliance with the CARES Act and guidance issued thereunder. With regard to all PRF monies received prior to the Transfer Date, Licensee shall remain solely liable for the representations made in any application and required attestation to the DHHS. Licensee shall be solely liable for all costs, fees (including but not limited to attorneys' fees), fines, penalties, or damages arising from any audit by any Governmental Authority related to the utilization of PRF monies received prior to the Transfer Date. In the event that New Operator is named in any audit, in any civil, criminal, or administrative charge under the False Claims Act (31 USC Section 3729 *et al.),* or any other local, state, or federal law related to the application, attestation, or utilization of PRF monies received prior to the Transfer Date, Licensee agrees that it shall indemnify, defend, protect and hold New Operator harmless from the same. For the purpose of clarification, any PRF monies applied for and received by New Operator after the Transfer Date shall be the sole responsibility of the New Operator. In the event that the Existing Operator is named in any audit, in any civil, criminal, or administrative charge under the False Claims Act (31 USC Section 3729 *et al.),* or any other local, state, or federal law related to the application, attestation, or utilization of PRF monies received by New Operator after the Transfer Date, New Operator agrees that it shall indemnify, defend, protect and hold Existing Operator harmless from the same.

3.16 To the extent that: (a) Licensee has made or makes any applications for any PRF, grants, or other monies (of any kind whatsoever), governmental or non-governmental, to address any impact, financial or otherwise, related to the COVID-19 pandemic which are approved and monies issued during the Management Period; or (2) Licensee receives any monies or funds for the Facility and/or its operations from any source, governmental or non-governmental, whether the result of Licensee's application or not, during the Management Period (other than envisioned in this Agreement) ("Interim Monies"), then the Parties will work cooperatively to ensure such Interim Monies are deployed in accordance with any applicable requirements. New Operator shall be solely liable for all costs, fees (including but not limited to attorneys' fees), fines, penalties, or damages related to the utilization of PRF, grants, or other monies (of any kind whatsoever) received on or after the Transfer Date. In the event that the Existing Operator is named in any audit, in any civil, criminal, or administrative charge under the False Claims Act (31 USC Section 3729 *et al.),*

or any other local, state, or federal law related to the application, attestation, or utilization of any applications or receipt of any Interim Monies, New Operator agrees that it shall indemnify, defend, protect and hold Existing Operator harmless from the same.

3.17 In the event that the New Operator's acts and/or omissions result in the Existing Operator and/or its management company, Carlyle Senior Care Management Company, Inc.'s active involvement (beyond review of the reports related to same), and such involvement is required so to preserve the viability of the Existing Operator's licensing and/or Provider Agreement, then New Operator shall reimburse Existing Operator and/or Carlyle Senior Care Management Company, Inc., for its reasonable costs and time. Time shall be reimbursed at the rate of One Hundred Fifty and No/100 Dollars ($150.00) per hour actually spent by Existing Operator and/or Carlyle Senior Care Management Company, Inc.'s employees facilitating retention of the licensing and Provider Agreement. Existing Operator and/or Carlyle Senior Care Management Company, Inc., shall supply New Operator with documentation of time spent, including a narrative of the activity or work.

4. Billings, Collections and Accounts Receivable

4.1 New Operator shall, on behalf of Licensee, bill residents and payors and use its commercially reasonable efforts to collect all cash revenue resulting from Facility operations during the Billing Period. Licensee agrees to exercise commercially reasonable efforts to cooperate with New Operator to make available such billing and accounting information and to provide such financial records for review as shall be necessary to accomplish the billing and collection of patient charges for services provided for in this Section 4.1 and to cooperate with New Operator in the completion of reports and claim forms as necessary to procure payments and reimbursement from governmental agencies, insurance carriers or other third party payors. During the Billing Period, Licensee authorizes New Operator to do the following:

4.1.1. To bill residents in Licensee's name, on Licensee's behalf, and under Licensee's Provider Numbers, specifically including, without limitation, services provided to Medicare and Medicaid residents during the Billing Period, and the resulting revenue will be treated as revenue of Licensee (subject to New Operator's right to direct the use of such funds as herein provided and subject to New Operator's right to the Management Fee pursuant to Section 5 hereof).

4.1.2. To collect accounts receivable resulting from such billing in Licensee's name and on Licensee's behalf;

4.1.3. To receive payments from insurance companies, prepayments from health care plans, and payments from all other third-party payors;

4.1.4. To take possession of and endorse in the name of Licensee any notices, checks, money orders, insurance payments, and other instruments received in payment of the accounts receivable resulting from such billing and deposit them directly in New Operator's account; and

4.1.5. To initiate legal proceedings in Licensee's name in accordance with policies reasonably approved by Licensee to collect any accounts or monies owed to the Facility or Licensee related to the Facility during the Management Period.

4.2 In compliance with applicable law, Licensee shall maintain sole control and have sole signature authority with respect to its deposit accounts where Licensee receives payments from Medicare, Medicaid, and any other state or federal health care program (the "***Government Healthcare Receivables Account***").

4.3 New Operator shall have the right to open one or more bank accounts for the Facility in the name of Licensee (the "***Management Account***"), the authorized signatories of which shall consist solely of persons designated by New Operator. Licensee agrees that it will not take any actions that interfere with the transfer of funds for services rendered by New Operator after the Operations Transfer Date into the Management Account, nor will Licensee remove, withdraw or authorize the removal or withdrawal of any such funds from the Management Account. Amounts deposited into Licensee's bank account for any reason and relating to operations of the Facility after the Operations Transfer Date shall be transferred, within five (5) business days, by Licensee into the Management Account. Licensee expressly authorizes New Operator to endorse checks made payable to Licensee and to deposit the same in the Management Account, unless such checks are required to be paid into Licensee's bank account under this Agreement (e.g., for amounts paid to Licensee for services rendered prior to the Operations Transfer Date) or applicable law. New Operator shall indemnify Licensee for all liabilities, costs, and expenses, including attorneys' fees, arising from it opening and operating accounts in Licensee's name.

4.4 All cash revenue received during the Management Period related to operating revenues for services rendered by New Operator on and after the Operations Transfer Date shall be the sole property of New Operator, rather than Licensee. All funds received before, during or after the Management Period related to the operating revenues for services rendered by Licensee prior to the Operations Transfer Date shall be the sole property of Licensee.

4.4.1. If Licensee directly or indirectly receives any such cash revenue during the Management Period which relates to the Management Period, Licensee shall immediately forward any such receipts to New Operator, together with the applicable remittance advices, within five (5) business days, for deposit in the Management Account. If New Operator directly or indirectly receives any cash revenue during the Management Period which relates to the period prior to the Management Period, New Operator shall within five (5) business days forward any such receipts to Licensee, together with applicable remittance advices.

4.4.2. New Operator shall use the cash revenues which relate to the operation of the Facility during the Management Period, or, if necessary, make available additional cash, to pay for expenses incurred during the Management Period, including both expenses paid during such period and expenses which are due after the Management Period but which were incurred during the Management Period.

4.5 In furtherance and not in limitation of the allocation of revenues provided for in Sections 4.3 and 4.4.1 of this Agreement, New Operator and Licensee agree as follows:

Initials:
Licensee:_____/ New Operator:_____

4.5.1. If such payments either specifically indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period prior to the Operations Transfer Date, they shall be retained by or forwarded to Licensee, along with the applicable remittance advice in accordance with the provisions of Section 4.4 above.

4.5.2. If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period from and after the Operations Transfer Date, they shall be forwarded to or retained by New Operator, along with the applicable remittance advice, in accordance with the provisions of Sections 4.3 and 4.4.1.

4.5.3. If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to periods for which both parties are entitled to reimbursement under the terms hereof, the portion thereof which relates to the period prior to the Operations Transfer Date shall be disbursed in accordance with the provisions of Section 4.4 and the balance shall be retained by or remitted to New Operator in accordance with the provisions of Sections 4.3 and 4.4.1.

4.5.4. Any payments received by New Operator from and after the Operations Transfer Date from or on behalf of private pay residents with outstanding balances as of the Operations Transfer Date which fail to designate the period to which they relate (an "***Undesignated Payment***"), will, for the first ninety (90) day period after the Operations Transfer Date, first be applied by New Operator to reduce the residents' pre-Operations Transfer Date balances, with any excess applied to reduce any balances due for services rendered by New Operator from and after the Operations Transfer Date; after said ninety (90) day period such Undesignated Payment may be retained by New Operator to reduce the patient's post-Operations Transfer Date balances, with any excess remitted to Existing Operator.

4.5.5. All amounts owing to Licensee or New Operator under this Section 4.5 shall be settled within five (5) business days after the payment was received.

4.5.6. In the event the parties mutually determine that any third party payors or private pay residents are entitled to a refund of payments, the portion thereof that relates to the period from and after the Operations Transfer Date shall be paid by New Operator and the portion thereof that relates to the period prior to the Operations Transfer Date shall be paid by Licensee to such third party payor or private pay resident.

4.5.7. In the event the parties mutually determine that any payment hereunder was misapplied by the parties, the party which erroneously received said payment shall remit the same to the other within five (5) business days after said determination is made.

4.5.8. Until the earlier of (i) the date that Licensee receives, payment of all accounts receivable attributed to the operation of the Facility prior to the Operations Transfer Date, and (ii) one hundred twenty (120) days after the Operations Transfer Date, New Operator shall provide Licensee and Landlord with an accounting before the end of each month setting forth all amounts received by New Operator during the preceding month with respect to the accounts receivable of Licensee which are set forth in the schedule provided by Licensee to New Operator within no more than thirty (30) days after the Operations Transfer Date.

Initials:
Licensee:_____/ New Operator:_____

4.5.9. Upon ten (10) days after written request, and for a one hundred twenty (120) days after the Operations Transfer Date, Licensee shall provide New Operator with an accounting setting forth any amounts received by Licensee during the preceding month with respect to payments from the residents of the Facility which are due and owing to New Operator in accordance with the terms of this Section 4.5, which accounting shall be accompanied by applicable remittance advices.

4.5.10. Licensee and New Operator shall have the right to inspect, no more frequently than once per month, all cash receipts of the other party during weekday business hours on reasonable prior notice in order to confirm such party's compliance with the obligations imposed on it under this Section 4.5.

4.6 Licensee shall be responsible for the collection of the Licensee's accounts receivable which accrued prior the Operations Transfer Date.

5. Management Fee

5.1 For its services under Sections 3 and 4, New Operator shall be entitled to a fee (the "***Management Fee***") equal to the Facility's operating revenues less all operating expenses resulting from operation of the Facility during the Management Period (which rent and related expenses are not required to be paid by Existing Operator during the Management Period), calculated in accordance with New Operator's standard bookkeeping practices.

5.2 If the Facility incurs losses during the Management Period, New Operator shall be solely responsible for such losses and shall indemnify, protect, defend and hold Licensee harmless from all claims, demands, liability, and losses related thereto, including attorneys' fees.

5.3 The Management Fee is based upon revenues earned and expenses incurred during the Management Period, as determined in accordance with New Operator's standard bookkeeping practices. New Operator has no responsibility to pay for expenses during the Management Period which were incurred or accrued prior to the Operations Transfer Date, it being understood and agreed that revenues and expenses will be prorated in the manner set forth in Section 10.

6. Change of Ownership.

Effective on the Transition Date and only if requested by New Operator, Licensee shall assign to New Operator its Medicare and, if requested by New Operator and if permitted by applicable Law, Medicaid provider agreements consistent with Section 13(e).

7. Admission Agreements.

On the Operations Transfer Date, Licensee and New Operator will enter into an Assignment and Assumption of Admissions Agreements in the form attached hereto as "**EXHIBIT A**" pursuant to which Licensee will assign to New Operator and New Operator will assume all of Licensee's right, title and interest in and to and obligations accruing on and after the Operations Transfer Date under the admission agreements with the persons who are residing at the Facility on the Operations Transfer Date (the "***Assigned Admission Agreements***"); provided, however, that

the Assignment and Assumption Agreement shall specifically provide that nothing therein shall be construed as imposing any liability on New Operator for the acts or omissions of Licensee under the Assigned Admission Agreements prior to the Operations Transfer Date.

8. Transfer of Resident Funds.

8.1 On the Operations Transfer Date, Licensee shall deliver to New Operator all funds held for and on behalf of residents at the Facility (collectively the "***Resident Funds***").

8.2 On the Operations Transfer Date, Licensee hereby agrees to transfer to New Operator the Resident Funds and New Operator hereby agrees that it will accept such Resident Funds in trust for the residents/responsible parties and be solely accountable to the residents/responsible parties for such Resident Funds in accordance with the terms of this Agreement and applicable statutory and regulatory requirements.

8.3 Licensee presently holds a Resident Trust Fund Surety Bond as required by the applicable statutes and regulations. Licensee shall cancel its bond on the Operations Transfer Date, and New Operator shall have its own Resident Trust Fund Surety Bond in full force and effect by the Operations Transfer Date, and shall provide Licensee with a copy of same.

8.4 Within fifteen (15) days after the Operations Transfer Date, Licensee shall prepare a final reconciliation comparing the actual Resident Fund balance on the Operations Transfer Date to the amount of the Resident Funds to be transferred to New Operator on the Operations Transfer Date, and, to the extent the former exceeds the latter, Licensee shall remit such excess to New Operator or to the extent the latter exceeds the former, New Operator shall remit such excess to Licensee.

8.5 New Operator shall have no responsibility as to the applicable resident/responsible party and regulatory authorities for any shortfall in the event the Resident Funds delivered by Licensee to New Operator pursuant to Section 8.2 are demonstrated to be less than the full amount of the Resident Funds for such resident as of the Operations Transfer Date or for claims which arise from actions or omissions of Licensee with respect to the Resident Funds prior to the Operations Transfer Date but all of the foregoing shall be and remain the responsibility of Licensee and Licensee shall indemnify, defend, protect and hold New Operator harmless from the same.

8.6 Licensee shall have no responsibility as to the applicable resident/responsible party and regulatory authorities for any shortfall in the event the Resident Funds administered by New Operator are demonstrated to be less than the full amount of the Resident Funds for such resident following the Operations Transfer Date, and/or for claims which arise from actions or omissions of New Operator with respect to the Resident Funds following the Operations Transfer Date, but all of the foregoing shall be and remain the responsibility of New Operator, which shall indemnify, defend, protect and hold Licensee harmless from the same.

8.7 Except as specifically set forth herein, Licensee shall have no responsibility to the applicable resident/responsible party and regulatory authorities with respect to any Resident Funds delivered to New Operator.

Initials:
Licensee:_____/ New Operator:_____

9. Costs and Prorations.

9.1 As between New Operator and Licensee, Facility revenues (including, without limitation, any amount paid to Licensee prior to the Operations Transfer Date for services to be rendered on and after the Operations Transfer Date from social security payments, private pay residents' security deposits and prepayments, applied income payments, resident trust prepayments, etc.), Facility operating expenses (other than the Retained Liabilities (defined in Section 17.1 below), bed taxes, utility charges for the billing period in which the Operations Transfer Date occurs, real and personal property taxes (except as otherwise provided herein) and prepaid expenses, the premiums for any flood insurance coverage which may be in effect with respect to the Facility and provide coverage for the benefit of New Operator with respect to a period which extends beyond the Operations Transfer Date and other related items of revenue or expense attributable to the Facility shall be prorated between Licensee and New Operator as of the Operations Transfer Date. In general, such prorations shall be made so that as between New Operator and Licensee, Licensee shall be reimbursed for prepaid expense items to the extent that the same are applied to expenses attributable to periods on and after the Operations Transfer Date and Licensee shall be charged for unpaid expenses to the extent that the same are attributable to periods prior to the Operations Transfer Date; provided, however, prepaid license or permit fees shall not be a proratable expense. This provision shall be implemented by New Operator remitting to Licensee any invoices (or the applicable portion thereof in the case of invoices which cover periods both prior to and after the Operations Transfer Date) which describe goods or services provided to the Facility before the Operations Transfer Date and by New Operator assuming responsibility for the payment of any invoices (or portions thereof) which describe goods or services provided to the Facility on and after the Operations Transfer Date; provided, however, that notwithstanding any provision of this Agreement to the contrary, any and all deposits paid by Licensee with respect to the Facility, including without limitation, any and all lease, security and/or utility deposits paid to, and/or cash or other collateral held by, any landlord, utility, insurance company or surety shall remain the sole and exclusive property of Licensee, and New Operator shall have no right or interest therein or thereto, and to the extent that Licensee does not receive a return of any such deposit on the Operations Transfer Date and such security deposit has been assumed by New Operator, New Operator shall reimburse the Licensee on the Operations Transfer Date the full amount of any such security deposit assumed by New Operator.

9.2 All such prorations shall be made on the basis of actual days elapsed in the relevant accounting or revenue period and shall be based on the most recent information available to Licensee. Utility charges which are not metered and read on the Operations Transfer Date shall be estimated based on prior charges for the same relevant time period, and shall be re-prorated upon receipt of statements therefor as of the Operations Transfer Date. Any state mandated licensing fees shall not be prorated. New Operator shall obtain its own insurance coverage covering all periods commencing on and after the Operations Transfer Date and for the duration of the Management Period, and shall name Licensee as an "Additional Insured" to said insurance coverage policies.

9.3 All amounts which are subject to proration under the terms of this Agreement and which require adjustment after the Operations Transfer Date shall be settled within ten (10) days after the Operations Transfer Date or, in the event the information necessary for such

adjustment is not available within said ten (10) day period, then within seven (7) business days of receipt of information by either party necessary to settle the amounts subject to proration.

9.4 On the Operations Transfer Date, Licensee may remove from the Facility any petty cash and any other funds maintained at or for the Facility immediately prior to the Operations Transfer Date, other than Resident Funds, which shall be handled in the manner set forth in Section 8.

9.5 In addition to any costs for which New Operator is responsible under Section 6 hereof, New Operator shall be solely responsible for all costs, fees and expenses incurred by it in connection with the transfer of operations of the Facility as contemplated hereunder, including but not limited to the cost of any training of the Facility's employees which it may elect to undertake with the approval of Licensee, which approval shall not be unreasonably withheld, conditioned or delayed, provided such training is conducted in a manner which does not disrupt the operation of the Facility prior to the Operations Transfer Date, and the cost of any due diligence that it undertakes in furtherance of such transfer of operations, including but not limited to, the costs of any examination or copying by New Operator or its agents of any books, records, patient files or other operational or fiscal information and data of any kind of Licensee or the Facility. In furtherance and not in limitation of the foregoing, in the event that in the process of any such employee training Licensee shall incur any out of pocket costs or expenses related to the use of its employees, equipment and/or the provision of any such information, New Operator shall, within seven (7) days after a written demand therefor accompanied by reasonably detailed supporting documentation, reimburse Licensee for all of such out of pocket costs and expenses.

10. Access to Records.

10.1 On the Operations Transfer Date, Licensee shall provide access and make available to New Operator all records reasonably necessary for the efficient, continued operation of the Facility. Licensee and New Operator shall coordinate together to identify which documents New Operator intends to retain original copies, and which may be removed by Licensee. Licensee shall remove from the Facility (a) the originals of the financial records which relate to its operations at the Facility, including all accounts payable and accounts receivable records; *provided, however*, Licensee shall leave copies of such records at the Facility in order to facilitate the provisions of this Agreement, (b) the originals of any proprietary materials related to its overall corporate operations, (c) the originals of all performance improvement data, *provided, however*, Licensee shall leave copies of such records at the Facility in order to facilitate the provisions of this Agreement and provide quality care to residents, (d) originals of employee records for all former employees not employed by New Operator, (e) copies of Retained Employee records, (f) copies of resident records for all former residents no longer residing at the Facility, and (g) legacy records stored either on-site or off-site. With regard to original records described in 10.1(a) through (g) above, Licensee agrees to maintain such records for any applicable statutory or regulatory retention period. New Operator shall not have any liability or responsibility for maintaining the original records described in 12.1(a) through (d), and (g) above. Notwithstanding anything to the contrary in this Agreement, Licensee and New Operator agree that all information, records and data collected or maintained regarding Facility residents shall be confidential. Licensee, New Operator, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable South Carolina and federal laws, including

HIPAA, the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) ("***HIPAA***") the Health Information Technology for Economic and Clinical Health Act Public Law 111-005 ("***HITECH***") and the regulations issued in connection therewith. No employee or agent of Licensee or New Operator shall discuss, transmit or narrate in any manner any Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility operations, or otherwise fulfilling its obligations under this Agreement or under law. The obligations under this Section 10.1 shall survive the termination of this Agreement, whether by rescission or otherwise as amended and the regulations issued in connection therewith.

10.2 From and after the Operations Transfer Date, New Operator shall allow Licensee and its agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, the books and records and supporting material of the Facility relating to the period prior to and including the Operations Transfer Date, to the extent reasonably necessary to enable Licensee to among other things investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns, to complete/revise, as needed, any patient assessments which may be required for Licensee to seek reimbursement for services rendered prior to the Operations Transfer Date, to verify accounts receivable collections due Licensee and to file exceptions to the Medicare routine cost limits for the cost reporting periods prior to and including the Operations Transfer Date.

10.3 Licensee shall have the right, at Licensee's sole cost and expense, five (5) days after the delivery of a reasonable request therefore to New Operator to enter the Facility and remove originals or copies of any such records delivered to New Operator; *provided*, *however*, that if directed by Licensee in its request to New Operator, New Operator shall within such five (5) day period, forward such records to Licensee, at Licensee's sole cost and expense, to the address designated by Licensee; and provided, further, that if, for purposes of litigation involving a patient or employee to whom such record relates, an officer of or counsel for Licensee certifies that an original of such record must be produced in order to comply with applicable law or the order of a court of competent jurisdiction in connection with such litigation then the records so delivered or removed shall be an original. Licensee's request to New Operator to enter the Facility shall be made in writing and state the date upon which the entry to the Facility is required. Any record so removed shall promptly be returned to New Operator following its use, and nothing herein shall be interpreted to prohibit New Operator from retaining copies of any such documents. Nothing hereinabove shall limit, reduce or restrict the Licensee's access to the Facility during the term of the Management Period in connection with any of the Licensee's rights, duties or obligations under this Agreement or that are required statutorily as the Licensee of the Facility.

10.4 New Operator agrees to maintain such books, records and other materials comprising records of the Facility's operations, including, but not limited to, patient records and records of patient funds, to the extent required by law, which relate to the period preceding the Operations Transfer Date and which have been delivered to New Operator by Licensee in conjunction herewith. If upon the expiration of any legislatively mandated retention period for such books and records, New Operator decides to dispose of or destroy such books and records, New Operator shall, upon receipt of a written request from Licensee, allow Licensee a reasonable opportunity to remove such books and records, at Licensee's sole cost and expense, from the Facility.

Initials:
Licensee:_____/ New Operator:_____

10.5 New Operator acknowledges and agrees that the books, records and other material described in this Section 10 are unique, that in the event of a breach by New Operator of its obligations under this Section 10, Licensee would suffer injury for which it would not be fully compensated with purely monetary damages and accordingly that in the event of a breach by New Operator of its obligations under this Section 10.5, Licensee shall be entitled to seek specific performance of the obligations of New Operator hereunder. Additionally, Existing Operator shall be entitled to indemnification from New Operator for any and all liability, costs, and/or expenses, including attorneys' fees, arising from New Operator's breach of this Section 10.

11. Delivery of Assets.

(a) Transferred Assets. On the Operations Transfer Date, Licensee shall enter into the Bill of Sale attached as **Exhibit C** to deliver, convey, abandon, assign, and transfer to New Operator, and New Operator shall accept and assume, the following assets (the "***Transferred Assets***"), to the maximum extent permitted by applicable law, free and clear of all claims (including without limitation, successor liability claims), taxes, liabilities, debts, obligations, or encumbrances of any kind or character in any way whatsoever relating to or arising from the Transferred Assets or the Licensee's operation of the Facility or use of the Facility prior to the Operations Transfer Date except as prohibited by applicable law or (the "***Encumbrances***"); however, the Parties understand and agree that, to the extent that New Operator assumes a contract as set forth in Section 11(a)(i), then New Operator does so subject to the obligations and requirements set forth in such contract:

(i) all Assumed Contracts (as such term is defined in Section 15(a) of this Agreement);

(ii) in accordance with Section 10 of this Agreement, subject to applicable law, including, without limitation, HIPAA (as such term is defined in Section 10.1 of this Agreement), all documents, charts, personnel records, property manuals, each policy and procedure manual utilized by Licensee in connection with the operation of the Facility at any time during the one (1) year prior to the Operations Transfer Date in order for the New Operator to comply with applicable law (and not for ongoing operations purposes and which may not be duplicated or disseminated by New Operator), current resident lists and records maintained at the Facility, and lists of the books, files, and other business records attributable to the business or operations of the Facility;

(iii) to the extent permitted by applicable law and only if requested by New Operator, any and all rights, to the extent assigned by Licensee and assumed by New Operator, relating to the Medicare Provider Numbers (as defined herein) and Medicaid Provider Numbers (as defined herein);

(iv) all Resident Funds (as such term is defined in Section 8 of this Agreement);

(v) all Inventory as defined in Section 15(d) of the Agreement;

(vi) all telephone and facsimile numbers used by the Facility, presuming that such numbers are transferable, and if there are costs associated with such transfer, such costs shall be borne by New Operator;

(vii) all Computer Equipment and Software (subject to and as such term is defined in Section 15(f) of this Agreement) used by the Facility;

(viii) all goodwill; and

(ix) all other assets, other than the Excluded Assets (as such term is defined in Section 13(b) of this Agreement), used in or relating to the operation of the Facility or use of the Facility.

(b) Excluded Assets. Schedule 11(b) hereto sets out all assets and rights of Licensee that shall not be transferred to New Operator pursuant to this Agreement (the "***Excluded Assets***"). Furthermore, New Operator expressly acknowledges that certain assets located in the Facility are not owned by Licensee but are leased or rented from third parties. No such assets will be transferred to New Operator hereunder unless the related lease or rental agreements are assigned to and assumed by New Operator in accordance with the provisions of Section 17(a) of this Agreement.

Liabilities. Except for:

(i) all obligations and liabilities under the Assumed Contracts set forth in Schedule 15(a);

(ii) any taxes with respect to the operation of the Facility;

(iii) all obligations and liabilities relating to accrued and paid time off, personal leave, and vacation benefits for Existing Operator Employees (as defined below) who transition to New Operator employment;

(iv) all obligations and liabilities (in each case, whether or not accrued, whether fixed, contingent or otherwise, and whether known or unknown) pertaining to the operation of the Facility, but in the case of each of clauses (i) through (iv), only to the extent such liabilities relate to the period after the Operations Transfer Date;

(v) liabilities otherwise provided in this Agreement; and

(vi) any assumption of liability by New Operator required by applicable law (but subject at all times to the obligations of Licensee to indemnify New Operator as set forth in this Agreement) (collectively, "*Assumed Liabilities*"),

New Operator shall not assume any claims, lawsuits, liabilities, obligations or debts (collectively, "***Claims***") of Licensee or any other person relating to, occurring or arising out of, the ownership of Transferred Assets and the operation of the Facility that exist prior to the Operations Transfer Date (collectively, the "***Excluded Liabilities***"). For purposes of this definition, an obligation shall be deemed to "exist" prior to the Operations Transfer

Date if it relates to events, omissions or conditions that occurred or arose prior to the Operations Transfer Date, even if it is not asserted until after the Operations Transfer Date. The term Excluded Liabilities shall include, but not be limited to:

(i) liabilities or obligations of Licensee relating to employee benefits or compensation arrangements of any nature prior to the Operations Transfer Date (other than liabilities and obligations assumed by New Operator pursuant to Section 3 or 15(b)(v));

(ii) any liability or obligation of Licensee for breach of contract, personal injury or property damage (whether based on negligence, breach of warranty, strict liability or any other theory) caused by, arising out of or resulting from, directly or indirectly, any alleged or actual acts or omissions, including, but not limited to, malpractice or other tort claims to the extent based on acts or omissions of Licensee occurring before the Operations Transfer Date, or claims for breach of contract to the extent based on acts or omissions of Licensee occurring before the Operations Transfer Date,;

(iii) any liability or obligation of Licensee for money borrowed,

(iv) any amounts due, claimed or becoming due to any health care reimbursement or payment intermediary, including, but not limited to, any recapture, adjustment, overpayment, penalty assessment or any other financial obligation or charge whatsoever with respect to any period prior to the Operations Transfer Date,

(v) any liabilities under any contracts not expressly assumed by New Operator pursuant to this Agreement,

(vi) any accounts payable, taxes, or other obligation or liability of Licensee to pay money incurred by Licensee prior to the Operations Transfer Date, and

(vii) any and all other liabilities and obligations of every kind of Licensee incurred in connection with, or arising by reason of, their ownership or operation of the Facility prior to the Operations Transfer Date and events, occurrences or transactions with respect to the Facility occurring before the Operations Transfer Date, including, without limitation, Claims arising out of alleged or actual overpayments or false claims submitted or originating before the Operations Transfer Date and investigations and audits related thereto.

(c) No Sale for Tax Purposes. The parties understand and acknowledge that the assets transferred under this Agreement by Licensee shall be for the use of New Operator in furtherance of and in connection with the ongoing operations of the skilled nursing facility. The assets transferred hereunder to New Operator shall not be treated as a sale of all such assets by Licensee to New Operator for federal, state, and local tax purposes and the parties shall prepare

and file all required federal, state, and local tax returns and reports in a manner that is consistent therewith and consistent with the parties' understanding that the amount constituting Inventory as defined in this Agreement is negligible or de minimis. Notwithstanding the foregoing, in the event any taxing authority assesses a transfer tax on the transaction contemplated herein, and such assessment is final (following the completion of all appeals or the expiration of the time for appeal), New Operator shall be responsible for any and all such taxes, and any penalties and interest associated therewith.

(d) Nursing Home Licenses and Provider Agreements.

(i) On the Operations Transfer Date, New Operator shall use commercially reasonable efforts to transfer from Licensee to New Operator, or if not transferable, otherwise obtain or acquire, the Licenses, so that, on the Transition Date, New Operator shall have all legal authority to operate the Facility as a licensed nursing facility as defined by the laws of South Carolina. New Operator shall be fully responsible for and shall pay all costs and fees required to be paid in connection with the transfer or issuance of any and all Licenses with respect to the operation of the Facility, and shall pay all transfer and license application fees in connection therewith, as well as applying for and obtaining any and all new Licenses and/or approvals necessary or appropriate in connection with the operation of the Facility. New Operator shall use commercially reasonable efforts to pursue their applications in accordance with the rules and procedures set forth under applicable law.

(ii) New Operator shall use commercially reasonable efforts to execute and file any and all forms, notices, consents, and applications with Governmental Authorities, including the CMS, as may be necessary to timely obtain any Medicaid provider number and assume, if required by New Operator, any provider agreement utilized by Licensee in connection with the operation of the Facility and designated for transfer by the New Operator in (the "***Medicaid Provider Numbers***") and shall use commercially reasonable efforts to seek approval for transfer thereof from Licensee to New Operator. New Operator shall be fully responsible for and shall pay all costs and fees required to be paid in connection with obtaining the Medicaid Provider Numbers.

(iii) New Operator agrees to accept automatic assignment of the Existing Operator's Medicare provider agreements and shall use commercially reasonable efforts to execute and file any and all forms, notices, consents, and applications with Governmental Authorities and CMS as may be necessary to timely obtain any Medicare provider number and assume any provider certification and agreement utilized by Licensee in connection with the operation of the Facility (the "***Medicare Provider Numbers***"), and New Operator shall use commercially reasonable efforts to seek approval for the transfer thereof from Existing Operator to New Operator. New Operator shall be fully responsible for and shall pay all costs and fees required to be paid in connection with obtaining the Medicare Provider Numbers.

(iv) Licensee shall reasonably cooperate with reasonable requests of New Operator to furnish all necessary documentation and to execute all documents and consents reasonably necessary for New Operator to obtain any required Licenses,

agreements, certificates, and consents, necessary to operate the Facility not already in possession of New Operator, from third parties and Governmental Authorities, but New Operator shall bear the costs of obtaining all such Licenses, agreements, certificates, and consents.

(v) Promptly upon receipt of a request therefor from Licensee, New Operator will provide Licensee with copies of its licensure applications and any further documents submitted by New Operator to the South Carolina Department of Health and Environmental Control ("***DHEC***") in response to any requests from such governmental authority and with copies of Licenses, as applicable.

(vi) Licensee shall cooperate with New Operator, to the extent reasonably necessary, in order to facilitate the issuance of the new Licenses. Licensee shall not voluntarily surrender any permits or other approvals required in connection with the operation of the Facility and/or its Medicare Provider Agreement, and shall not pledge or permit a lien to attach to its account receivables relating to the Facility, unless such lien arises as a result of New Operator's request, direction, activity or omission, in which case Licensee shall be indemnified by New Operator against any and all liabilities, costs, and expenses, including attorneys' fees, arising from same.

(vii) Except as otherwise provided in this Agreement, on the Operations Transfer Date, New Operator shall assume all obligations and liabilities (in each case, whether or not accrued, whether fixed, contingent or otherwise, and whether known or unknown) pertaining to the operation the Facility, but only to the extent such liabilities relate to the period after the Operations Transfer Date.

(e) **"AS IS, WHERE IS". BY EXECUTING THIS AGREEMENT, NEW OPERATOR ACKNOWLEDGES AND AGREES THAT IT HAS CONDUCTED SUCH INSPECTIONS AS IT HAS DEEMED NECESSARY AND APPROPRIATE AND IS SATISFIED WITH THE RESULTS THEREOF INCLUDING, WITHOUT LIMITATION, AS TO THE PHYSICAL CONDITION, LOCATION, USABILITY, AND ALL OTHER MATTERS PERTAINING OR RELATING TO THE FACILITY AND THE TRANSFERRED ASSETS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSEE HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE FACILITY AND THE TRANSFERRED ASSETS OR ANY OTHER MATTER REGARDING OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSEE HEREBY DISCLAIMS, AND NEW OPERATOR FOREVER WAIVES AND RELEASES, ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND AS TO TITLE OR TO THE CONDITION OF SUCH TRANSFERRED ASSETS, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE TRANSFERRED ASSETS OR ANY OTHER MATTER REGARDING OR RELATING TO THE TRANSACTION CONTEMPLATED HEREBY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES AGAINST DEFECTS OR WARRANTIES OF FITNESS FOR INTENDED USE OR PARTICULAR PURPOSE UNDER APPLICABLE LAW. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, LICENSEE ACKNOWLEDGES AND AGREES THAT, IN ENTERING INTO THIS AGREEMENT**

Initials:
Licensee:_____/ New Operator:_____

AND IN CONSUMMATING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, NEW OPERATOR IS ENTITLED TO RELY UPON, AND IS IN FACT RELYING UPON, THE EXPRESS REPRESENTATIONS AND WARRANTIES OF LICENSEE AS SET FORTH IN SECTION 21 OF THIS AGREEMENT.

(f) New Operator will provide notice to Licensee that licensure applications and any further documents have been submitted to DHEC, the South Carolina Department of Health and Human Services, Palmetto GBA, and CMS, and will provide Licensee with copies of all such documentation.

(g) New Operator will keep Licensee apprised of the status of the obtaining of the Licenses and will provide Licensee with periodic updates as to the status of the obtaining of the Licenses and will notify Licensee once it receives the licenses for the Facility in the name of New Operator.

12. Cost Reports; Bad Debt.

(a) Existing Operator shall prepare and file any cost report or other report with respect to their operation of the Facility due for any period prior to the Transition Date, including any final Medicare or Medicaid cost reports not later than the date each such report is due, including any applicable extension period(s) (such cost reports, the "***Terminating Cost Reports***"). New Operator shall promptly provide to Existing Operator all data and information relating to the Management Period that is reasonably necessary for Existing Operator to produce Terminating Cost Reports. Existing Operator shall thereafter timely provide (or cause their accountants or other financial advisors to provide) any additional information which may be requested by the state agencies or CMS with respect to such Terminating Cost Reports or any prior cost report. Existing Operator shall provide (or cause its accountants or other financial or legal advisors to provide) New Operator with a copy of all such Terminating Cost Reports (and back up financial data, including fixed asset listings as of the Operations Transfer Date) and any additional information submitted to applicable state agencies and CMS in conjunction with such Terminating Cost Reports. All proceeds from Existing Operator's cost reports (including without limitation any appeals, settlements, and retroactive Medicaid rate increases, including payments or settlements for insurance deductibles) shall remain the property of Existing Operator, and New Operator shall timely forward any such proceeds (and to the extent such proceeds are held by New Operator, they shall be held in trust for the benefit of Existing Operator) and any related reports or correspondence to Existing Operator. Existing Operator and New Operator further agree to cooperate and coordinate with any audit of cost reports filed during Existing Operator's period of operation. Such audit may be conducted by CMS, the state, or any agency engaged to conduct cost report audits.

(b) Since New Operator will utilize Existing Operator's Medicare Provider Numbers and may, if applicable, utilize Existing Operator's Medicaid Provider Numbers, New Operator shall, in connection with the preparation and filing of their cost reports following the Transition Date, include in all such cost reports an amount equal to the amount of bad debt carried on the books of Existing Operator arising from Existing Operator's services provided to Medicare beneficiaries or Medicaid beneficiaries, if applicable, subject to receipt of reasonable supporting documentation. Reasonable supporting documentation includes, but is not limited to, bad debt logs, Medicare or Medicaid remittance advices (as applicable) and/or, as applicable, proof of

collection efforts in compliance with CMS regulations governing Medicare or Medicaid coinsurance bad debt. Upon settlement of such amounts under the Medicare or Medicaid program, New Operator shall timely forward all such amounts to Existing Operator within fifteen (15) business days of receipt. New Operator shall continue to include such bad debt amounts on their cost reports until reimbursement is finally made or denied.

13. Employees.

(a) Schedule 13 hereto is a schedule which reflects, in all material respects, the position, rate of pay and compensation, and original hire or engagement dates of each of the employees at each of the Facility. Existing Operator shall notify New Operator of any material changes in Schedule 13 as of the Operations Transfer Date. All existing employee recruitment bonuses, signing bonuses, and education reimbursement (collectively "Existing Incentive Program") that are due in advance of the Operations Transfer Date should be paid by Existing Operator before closing or may be paid from closing proceeds. Further, the Existing Incentive Program allows certain program costs to be paid to employees over time so to serve as retention incentives, all of which are listed on Schedule 13(a)-1. The New Operator shall be responsible for those Existing Incentive Program costs listed on Schedule 13(a)-1 which are payable after the Operations Transfer Date. Existing Operator agrees not to change the qualification requirements, bonus or education reimbursement amounts, or any other aspects of the Existing Incentive Program between the Execution Date and the Operations Transfer Date.

(b) New Operator shall offer employment to employees of Existing Operator in accordance with this Section 13 and, in connection therewith, Existing Operator represent and warrant that no employee is a party to an employment agreement with Existing Operator or entitled to any benefits pursuant to any severance or similar plan or arrangement:

(i) Existing Operator shall cease to be deemed the employer of all employees of the Existing Operator at the Facility, including, without limitation, persons temporarily absent from active employment by reason of disability, illness, injury, workers' compensation, approved leave of absence or layoff ("***Existing Operator Employees***"), as of 11:59 p.m. on the day before the Operations Transfer Date ("***Termination Date***"). Existing Operator shall timely pay to all applicable Governmental Authorities all employment-related taxes due with respect to Existing Operator Employees for periods ending at or prior to the Termination Date.

(ii) New Operator shall offer immediate employment (so that no period of unemployment shall occur between employment with Existing Operator and employment with New Operator) to such number of Existing Operator Employees at wages and benefits necessary to avoid the applicability of the Workers Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 ("***WARN Act***"), pursuant to employment terms acceptable to New Operator with such employment to commence at 12:01 a.m. on the Operations Transfer Date (collectively, the "***Transferred Employees***"). Should New Operator fail to hire or offer to rehire such Existing Operator Employees in a sufficient number and/or at sufficient wages and benefits such that there is WARN Act liability, New Operator shall fully indemnify and hold harmless Existing Operator with regard to such liability.

(iii) Anything to the contrary notwithstanding, this Agreement shall not be deemed to create or grant to any Existing Operator Employee or Transferred Employee any entitlement to employment or any third party beneficiary rights or claims or any cause of action of any kind or nature.

(iv) At New Operator's sole cost and expense, any offer of employment to the Transferred Employees by New Operator shall be to perform comparable services, in such position as is comparable to the position such Transferred Employee held with Existing Operator as of the Operations Transfer Date; provided, that New Operator may offer compensation to such Transferred Employees at levels commensurate with compensation levels paid to other employees of New Operator or its affiliates holding comparable positions, and, provided further, that any change in compensation levels does not result in any constructive discharge of any such Transferred Employee.

(v) Existing Operator shall be solely responsible for the payment of or liability associated with any and all severance pay or paid time off owed to Existing Operator Employees pursuant to Existing Operator's established plans, programs, practices, labor union contracts, and arrangements which were accrued but unpaid as of the Operations Transfer Date and any and all liability or claims associated therewith.

(vi) Except to the extent otherwise required by applicable law, New Operator shall be responsible for any obligations under Section 4980B(f) of the Code and Part 6 of Title I of ERISA or any similar Law (COBRA) in respect of Existing Operator Employees and Transferred Employees arising with respect to qualifying events that occur on or after the Operations Transfer Date.

(c) Raises and Bonuses. During the time period commencing on the date this Agreement is executed by the Parties and expiring on the Operations Transfer Date, Existing Operator shall not offer, announce, or implement any general wage or salary increase or award any bonus for any employees at the Facility, excepting customary cost of living increases incident to employees' periodic annual performance reviews, and continuation of other bonus programs, such as for recruitment and referrals of new hires, subject to coordination with and consent of New Operator.

14. Utilities. Schedule 14 hereto shall set out for each utility deposit made by Licensee for any utility service for the Facility, identification of the utility provider, a brief description of the utility and the amount of deposit held by such utility for services at the Facility. Licensee shall deliver a final statement with respect to all utilities serving the Facility prior to the Operations Transfer Date and shall pay all costs identified thereon, less any prepaid expenses and/or deposits held by utility providers in the name of Licensee. New Operator shall make all required utility deposits and arrange for all such utilities to be billed in their name commencing on and after the Operations Transfer Date, and shall pay all fees due therefore with respect to periods commencing on or after the Operations Transfer Date.

15. Assignment and Assumption of Contracts and Leases.

(a) Assignment. In connection with the transfer of the operations of the Facility to New Operator by Licensee, on the Operations Transfer Date, New Operator shall accept, assume, and discharge all contracts and leases set forth on Schedule 15(a) hereto (collectively, the "***Assumed Contracts***"), which shall include, but not be limited to, equipment leases disclosed to the New Operator prior to the Operations Transfer Date.The Parties shall cooperate to obtain any consent of any third parties necessary to permit the assignment of the Assumed Contracts. Licensee and New Operator acknowledge that certain of the Assumed Contracts may not, by their terms, be assignable; and, accordingly, none of such non-assignable Assumed Contracts shall be deemed assigned to or assumed by New Operator unless and until the same shall become so assignable or consent to assignment is obtained. If and when any necessary consent shall be obtained or any such Assumed Contract shall otherwise become assignable, Licensee shall undertake reasonable efforts to assign all of their rights and obligations thereunder to New Operator and New Operator shall, without the payment of any further consideration therefor, assume such rights and obligations.

(b) Assumed Contracts. After the Operations Transfer Date, until such time as the non-assignable Assumed Contracts are assumed by New Operator, New Operator shall perform and discharge fully all of the post Operations Transfer Date obligations of Licensee under any of such non-assignable Assumed Contracts to the extent the same would have constituted assumed liabilities if such non-assignable Assumed Contracts had been assumed by New Operator as of the Operations Transfer Date, and New Operator shall indemnify, hold harmless, protect, and defend Licensee, and their officers, employees, managers, members, and affiliates, from and against any and all damages, demands, costs, expenses, and liabilities arising out of New Operator's failure to make payments or perform any other obligations occurring under such non-assignable Assumed Contracts following the Operations Transfer Date.

(c) Facility Supplies. Subject to the terms and conditions of this Agreement, New Operator will pay Licensee within seven (7) business days following the Operations Transfer Date an amount representing Licensee's actual costs for all Inventory (defined hereinafter), with such costs to be mutually determined by Licensee and New Operator within five (5) business days following the Operations Transfer Date. Licensee shall transfer to New Operator and New Operator shall accept and assume from Licensee all of Licensee's rights, title, and interests in and to all owned supplies, consumables, medicines, and foodstuffs present in the Facility as of the Operations Transfer Date, excluding any Excluded Asset (collectively, the "***Inventory***"). Licensee shall ensure the Inventory at the Facility as of the Operations Transfer Date will be greater than or equal to the amount typically required by Existing Operator to operate the Facility for no less than seven (7) business days.

(d) Bulk Sales Laws; Free and Clear Transfer. The parties hereby waive compliance by Licensee with the requirements and provisions of any "bulk-transfer" laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Transferred Assets to New Operator. Except as otherwise specifically provided herein, the Facility, the Assets, and all operations pertaining thereto and transferred hereby shall be free and clear of the Encumbrances.

Initials:
Licensee:_____/ New Operator:_____

(e) Computer Equipment and Software. Subject to the terms and conditions of this Agreement, at the Operations Transfer Date, New Operator will pay Licensee within seven (7) business days following the Operations Transfer Date an amount representing the value of the Computer Equipment and Software listed in Schedule 15(f) (collectively, the "*Computer Equipment and Software*") that is owned by the Existing Operator and present in the Facility, with Licensee and New Operator to mutually determine the type and quantity of Computer Equipment and Software present in the Facility no later than fifteen (15) days before the Operations Transfer Date. Licensee shall transfer to New Operator and New Operator shall accept and assume from Licensee all of Licensee's rights, title, and interests in and to all Computer Equipment and Software that is present in the Facility, except the Existing Operator's corporate servers, back up batteries, cooling systems, and related equipment that facilitate corporate operations beyond the scope of existing operations at the subject premises. Notwithstanding anything in this Agreement to the contrary, for at least ten (10) days following the Operations Transfer Date, Licensee shall make its user-defined assessments and forms that are currently used by Licensee in Point Click Care (PCC) available for use by New Operator during such 10-day period in order to assist with the transition to New Operator's forms and New Operator will not retain any copies of such assessments and forms after such ten (10) day period.

16. Proprietary Information and Materials. New Operator acknowledges and agrees that any and all proprietary and confidential materials and information located at and used in connection with the operation of the Facility, which are not being transferred to New Operator pursuant to this Agreement, shall be and remain the property of Licensee, and accordingly, that Licensee shall remove all of such materials and information from the Facility on or immediately before the Operations Transfer Date. To the extent that New Operator will require use of Licensee's Proprietary Information and Materials in the furtherance of its operations, then it shall keep such documents and information confidential and shall return same to Licensee when no longer required.

17. Indemnification.

17.1 Licensee hereby agrees to indemnify, protect, defend, and hold harmless New Operator and its members, managers, directors, officers, employees, agents, successors and assigns from and against any and all demands, claims, causes of action, fines, penalties, damages (but specifically excluding lost profits and consequential damages), losses, liabilities (including strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' and other professionals' fees and court costs) (each, a "***Loss***," and collectively, "***Losses***") incurred in connection with or arising from the following (collectively, the "***Retained Liabilities***"): (a) a material breach by Licensee of its obligations under this Agreement which is not cured within thirty (30) days after receipt of written notice from New Operator setting forth, in reasonable detail, the nature of such breach, (b) the acts or omissions of Licensee under any Assumed Contract that occurred prior to the Operations Transfer Date, (c) the leasing, occupancy or operation of the Facility by Licensee prior to the Operations Transfer Date, including any liability arising from a breach of any applicable health care laws (including overpayments, recoupments or false claims under Medicare or Medicaid), (d) any acts or omissions, elder abuse or negligence of Licensee, or the contractors, agents, employees, invitees or visitors of Licensee with respect to the Facility and its residents prior to the Operations Transfer Date, and (e) any failure by Licensee to pay any

liabilities in connection with the Facility attributable to periods prior to the Operations Transfer Date, including but not limited to quality assurance fees or bed taxes.

17.2 New Operator hereby agrees to indemnify, protect, defend, and hold harmless Licensee and its directors, officers, employees, agents, successors and assigns from and against any and all "Loss" or "Losses" (as referenced and defined in Section 19.1) incurred in connection with or arising from: (a) a breach by New Operator of its obligations under this Agreement which is not cured within thirty (30) days after receipt of written notice from Licensee setting forth in reasonable detail the nature of such breach; (b) the occupancy or operation of the Facility by New Operator from and after the Operations Transfer Date, (c) any acts, omissions, elder abuse or negligence of New Operator, or the contractors, agents, employees, invitees or visitors of New Operator with respect to the Facility and its residents from and after the Operations Transfer Date, (d) the Assumed Contracts accruing on or after the Operations Transfer Date, (e) any employment claims made against Licensee for employment issues occurring or accruing on or after the Operations Transfer Date, or (f) any failure by New Operator to pay any liabilities in connection with the Facility attributable to period from and after the Operations Transfer Date (including, without limitation, reasonable attorneys' and other professionals' fees and court costs).

THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL SURVIVE THE OPERATIONS TRANSFER DATE FOR A PERIOD OF EIGHTEEN (18) MONTHS. ALL MATTERS ARISING FROM AN INDEMNIFIED PARTY'S NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ARE EXCLUDED FROM THE SCOPE OF THE INDEMNIFICATION OWING TO SUCH PARTY SET FORTH IN SECTIONS 19.1 AND 19.2 AND FROM THE SURVIVAL PERIOD IN THE PRECEDING SENTENCE.

17.3 Indemnification Limitations. Any Losses for which a party would be entitled to indemnification under Sections 17.1 and 17.2 shall be reduced by the amount of insurance proceeds actually received or recovered under any insurance policies for the benefit of a party and any cash payments, setoffs or recoupment of any payments actually recovered by such indemnified party in respect of such Losses. The parties shall use commercially reasonable efforts to mitigate Losses for which each is subject to indemnification under Sections 17.1 and 17.2. If, after a party has made an indemnification payment to the other with respect to Losses in satisfaction of its obligations under Sections 17.1 or 17.2, the indemnified party actually recovers from any third parties amounts in respect of such Losses, the indemnified party shall as promptly as practicable forward to the other such amounts, but not in excess of the indemnification payment received. In no event shall the indemnified parties receive duplicative Losses under this Agreement and the Purchase and Sale Agreement. The Indemnification Cap, as defined in the Purchase and Sale Agreement, shall be the maximum liability for indemnification claims with respect to any Loss hereunder.

17.4 Assumption of Defense. A party seeking indemnification shall promptly give notice ("***Notice of Indemnification***") to each party from whom indemnification is sought after obtaining knowledge of any matter giving rise to the indemnification provisions of this Agreement. If such indemnity shall arise from the claim of a third party, and indemnifying party provides written notice to indemnified party stating that indemnifying party is responsible for the entire claim, within fifteen (15) business days after indemnifying party's receipt of the applicable Notice of Indemnification, the indemnified party shall permit such indemnifying party to assume

the defense of any such claim or any proceeding resulting from such claim. Failure to give any such Notice of Indemnification promptly shall not affect the indemnification provided under this Section 17, except and only to the extent such indemnifying party shall have been actually materially prejudiced as a result of such failure. If an indemnifying party assumes the defense of such third party claim, shall have full and complete control over the conduct of such proceeding on behalf of indemnified party and shall, subject to the provisions of this Section 17.4, have the right to decide all matters of procedure, strategy, and substance; however, the indemnified party shall participate in any decision related to the settlement of the claims relating to such proceeding should there be any payment of any nature expected from the indemnified party. Any counsel chosen by the indemnifying party to conduct the defense shall be reasonably satisfactory to the indemnified party. The indemnifying party shall not, without the written consent of indemnified party, consent to the entry of any judgment or enter into any settlement with respect to the matter which does not include a provision whereby the plaintiff or the claimant in the matter releases the indemnified party from all liability with respect thereto. The indemnified party may participate in such proceeding and retain separate co-counsel at its sole cost and expense (and, for the avoidance of doubt, such cost and expense shall not constitute a Loss for purposes of the indemnification obligations hereunder).

17.5 Non-Assumption of Defense. If the indemnifying party elects not to assume the defense of any such claim by a third party or proceeding resulting therefrom, the party seeking indemnification shall diligently defend against such claim or litigation in such manner as it may deem appropriate and, in such event, the indemnifying party or parties shall, subject to Section 17.3, reimburse indemnified party for all reasonable and actually incurred out-of-pocket costs and expenses, legal or otherwise, incurred by the indemnified party and its affiliates in connection with the defense against such claim or proceeding, within thirty (30) days after the receipt of detailed invoices, unless there is a legal objection to the alleged scope of the indemnification sought, in which case the party refusing to provide indemnification must seek resolution of the matter via declaratory judgment action brought in the state or federal courts serving the County of Greenville, South Carolina.

17.6 Indemnified Party's Cooperation as to Proceedings. An indemnified party will cooperate in all reasonable respects with any indemnifying party in the conduct of any proceeding as to which such indemnifying party assumes the defense, except to the extent indemnified party could reasonably be expected to be prejudiced thereby. Subject to Sections 17.3 and 17.4, an indemnifying party shall promptly reimburse an indemnified party for all reasonable out-of-pocket costs and expenses, legal or otherwise, incurred by indemnified party or its affiliates in connection therewith, within thirty (30) days after the receipt of detailed invoices therefor.

17.7 Indemnification for Resident Trust Property.

17.7.1. Licensee will indemnify, protect, defend and hold New Operator harmless for, from and against all liabilities, claims and demands, including reasonable attorneys' fees and costs, in the event the corpus of the Resident Trust Funds transferred to New Operator does not represent the correct balance of Resident Trust Funds delivered to Licensee as custodian, and for claims which arise from actions or omissions of Licensee with respect to the Resident Trust Funds held or handled by Licensee at any time.

Initials:
Licensee:_____/ New Operator:_____

17.7.2. New Operator will indemnify, protect, defend and hold Licensee harmless for, from and against all liabilities, claims and demands, including reasonable attorneys' fees and costs, in the event a claim is made against Licensee by a resident or his or her family for his/her Resident Trust Funds where: (i) such Resident's funds or other property were properly and wholly transferred to New Operator pursuant to the terms hereof; or (ii) the allegations pertaining to the Resident Funds regard actions or omissions occurring after the Operations Transfer Date.

18. **Further Assurances**. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder.

19. **Notices**. All notices to be given by either party to this Agreement to the other party hereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by national overnight courier service with confirmed receipt, each addressed as follows:

If to New Operator: Fountain Inn Healthcare, LLC
c/o Providence Group, Inc.
262 N. University Avenue
Farmington, Utah 84025
Attn: John Mitchell, Vice President, General Counsel
Email: john.mitchell@pacshc.com

With a copy to (which shall not constitute notice)

Shumaker, Loop & Kendrick, LLP
176 Croghan Spur Road, Suite 400
Charleston, SC 29407
Attn: Laura J. Evans, Esquire
Email: levans@shumaker.com

If to Licensee: Carlyle Senior Care of Fountain Inn, LLC
1402 South Meadors Farm Rd., Suite D
Florence, SC 29505
Attn: Rick Cranford and/or Braxton Barnette
Email: rcranford@carlyleseniorcare.com

With a copy to (which shall not constitute notice):

J. Drayton Hastie III
The Carolina Law Firm, LLC
thecarolinalawfirm@gmail.com

Any such notice shall be deemed delivered when actually received or when delivery is first refused regardless of the method of delivery used. In the event that the delivery is alleged to be refused, then the other party shall ensure that it is emailed to the addresses set forth above for both

Initials:
Licensee:_____/ New Operator:_____

the party and its counsel. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications thereunder by giving notice in the manner prescribed herein to all other parties hereto. Although either party shall have the right to change its address for notice purposes from time to time, any notice delivered pursuant to this Section 19 to the address set forth in this Section 19, or to such other address as may be hereafter specified in writing in accordance with this Section 19 shall be effective even if actual delivery cannot be made as a result of a change in the address of the recipient of such notice and the party delivering the notice has not received actual written notice in accordance with the provisions of this Section 19 of the current address to which notices are to be sent.

20. Payment of Expenses. Each party hereto shall bear its own legal, accounting and other expenses incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transaction contemplated hereby, whether or not the transaction is consummated.

21. Representations and Warranties.

21.1 To the best of Licensee's knowledge, Licensee hereby represents and warrants to New Operator, as of the Operations Transfer Date, that:

21.1.1. All Medicare and Medicaid Provider Agreements, certificates of need, if applicable, and all material certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by any applicable health care authorities for the legal use, occupancy and operation of the Facility have been obtained by the Licensee and remain in full force and effect.

21.1.2. The Facility is duly licensed as a 60 bed skilled nursing facility licensed under the applicable laws of the State of South Carolina and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility.

21.1.3. Licensee has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination, and the Facility has not been designated as a Special Focus Facility (as such term is defined by the CMS Special Focus Facility Program).

21.1.4. The Facility is in substantial compliance with applicable Federal and State laws governing or regulating the operation of skilled nursing Facility in South Carolina.

21.1.5. Except as disclosed in the attached Schedule 21.1.5, there are no pending actions, complaints, administrative or judicial proceedings pending against the Facility or Licensee relating to the Facility.

21.1.6. Regulatory Compliance.

(i) Existing Operator has duly and timely filed all reports and other items required to be filed under the Third Party Payor Programs (collectively, the "***Reports***") and have timely paid all amounts shown to be due thereon. At the time of filing,

to the best of Existing Operator's actual knowledge, each Report was true, accurate and complete. All rights and obligations of Existing Operator under such Reports are accurately reflected or provided for in the financial statements of Existing Operator.

(ii) Except as set forth in Schedule 21.1.6 attached hereto, (A) Existing Operator is not delinquent in the payment of any amount due under any of the Reports, (B) there are no written or, to Existing Operator's actual knowledge, threatened proposals by any Third Party Payor Program for collection of amounts for which Existing Operator could be liable, other than pre and post-payment reviews and reconciliations occurring in the ordinary course of business, consistent with past practice, (C) Existing Operator has received no notices of any current or pending claims, assessments, notices, proposals to assess or audits of Existing Operator or the Facility with respect to any of the Reports, and no such claims, assessments, notices, or proposals to assess or audit have been threatened, and (D) Existing Operator has not executed any presently effective waiver or extension of the statute of limitations for the collection or assessment of any amount due under or in connection with any of the Reports.

(iii) Existing Operator has not received any notice of failure to comply in any material respect with all applicable laws, settlement agreements, and other agreements with any Governmental Authority relating to or regarding the Facility. Existing Operator has and maintains all material licenses, registrations, approvals, and consents of Governmental Authorities, accreditations, certificates of need and Medicare, Medicaid certifications necessary for its activities and business including the operation of the Facility as currently conducted ("***Current Operator Licenses***"). The Current Operator Licenses are in full force and effect without any waivers of any kind (except as disclosed in Schedule 21.1.6) and have not been amended or otherwise modified, rescinded or revoked or assigned nor, to Existing Operator's actual knowledge, is there any threatened termination, modification, recession, revocation or assignment thereof, and to the best of Existing Operator's actual knowledge, no condition exists nor has any event occurred which, in itself or with the giving of notice, lapse of time or both would result in the suspension, revocation, termination, impairment, forfeiture, or non-renewal of any Current Operator License. No claim has been filed to the effect that any such governmental consent, participation or contract is not in full force and effect.

(iv) To Existing Operator's actual knowledge, as of the Operations Transfer Date, all material information in their possession regarding licensure and life safety code matters involving the Facility has been delivered to New Operator.

(v) Existing Operator has delivered to New Operator complete and accurate copies of the survey or inspection reports made by any Governmental Authority with respect to the Facility during the calendar years 2019, 2020, 2021, and year-to-date 2022. Except as shown on Schedule 21.1.6, all exceptions, deficiencies, violations, plans of correction, or other indications of lack of compliance in such reports have been fully corrected and there are no bans or limitations in effect, pending, or threatened with respect to admissions to the Facility nor are there any licensure curtailments in effect, pending, or threatened with respect to the Facility.

21.1.7. Enforcement Actions. As of the date hereof, and except as set forth in Schedule 21.1.7, there is no action pending or, to the actual knowledge of Licensee, recommended or threatened by any state or federal agency having jurisdiction over the Facility to revoke, withdraw or suspend any License to operate the Facility, or certification of the Facility, or, except as set forth in Schedule 21.1.7, any material action of any other type with regard to licensure or certification. Licensee hereby acknowledges and agrees the Facility are operating and functioning as a skilled nursing facility, without any waivers affecting the Facility except as set forth in Schedule 21.1.7, and is fully licensed as a skilled nursing facility by the State of South Carolina. Schedule 21.1.7 attached hereto contains a complete and accurate list of all life safety code waivers or other waivers affecting the Facility.

21.1.8. Assets. To Licensee's actual knowledge, the Transferred Assets are the material assets that are located at the Facility or that are held in connection with the operation of the Facility which may be transferred by Licensee to New Operator pursuant to this Agreement.

21.1.9. Union Matters. To Licensee's actual knowledge, none of the Existing Operator Employees are represented by a labor union and there are no union organizing activities at the Facility.

21.1.10. Financial Records. Licensee have kept all financial records and supporting documents required to prepare (i) accurate and complete Medicare and Medicaid cost reports and statements relating to accounts receivable for billing and reimbursement purposes and (ii) tax returns relating to the business to be conducted by New Operator at the Facility, in each case in accordance in all material respects with the rules and regulations of all Governmental Authorities and all applicable laws.

21.1.11. The execution and delivery of this Agreement by Licensee does not violate any provision of any agreement or judicial order to which Licensee is a party or to which Licensee is subject.

21.1.12. The execution, delivery and performance of this Agreement has been duly authorized by Licensee, and this Agreement constitutes the valid and binding obligation of Licensee, fully enforceable in accordance with its terms.

21.1.13. At any time, and from time to time on or prior to the Closing Date, Licensee may supplement or amend the schedules, which revisions or amendment are subject to acceptance by New Operator.

21.2 To the best of New Operator's knowledge, New Operator hereby represents and warrants to Licensee as of the Operations Transfer Date, that:

21.2.1. The execution and delivery of this Agreement by New Operator does not violate any provision of any agreement or judicial order to which New Operator is a party or to which New Operator is subject.

21.2.2. The execution, delivery and performance of this Agreement has been duly authorized by New Operator, and this Agreement constitutes the valid and binding obligation of New Operator, fully enforceable in accordance with its terms.

Initials:
Licensee:_____/ New Operator:_____

21.3 The representations and warranties set forth in Sections 21.1 and 21.2 shall survive the Transition Date for a period of six (6) months.

22. Entire Agreement; Amendment; No Reliance; Waiver. This Agreement, together with the other agreements referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. The parties expressly disclaim any reliance upon any facts, promises, undertakings, or representations made by any other party, or its agents, prior to the execution of this Agreement except as otherwise set for in this Agreement. This Agreement may not be modified or amended except in writing signed by the parties hereto. No waiver of any term, provision or condition of this Agreement in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

23. Assignment. Neither this Agreement, nor any rights, interests or obligations hereunder, may be assigned or transferred, in whole or in part, by operation of law or otherwise by Licensee or New Operator without the prior written consent of the other party which shall not be unreasonably withheld, conditioned or delayed, and any such assignment that is not consented to shall be null and void.

24. No Joint Venture; Third Party Beneficiaries. Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof. The parties hereto do not intend that any third party shall have any rights under this Agreement.

25. Captions. The section headings contained herein are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

26. Counterparts. This Agreement may be executed and delivered via facsimile and in one or more counterparts and all such counterparts taken together shall constitute a single original

27. Covenants.

(a) Cooperation on Tax Matters. The parties shall cooperate with each other and shall make available to the other, as reasonably requested and at the expense of the requesting party, and to any taxing authority, all information, records, or documents relating to tax liabilities or potential tax liabilities of such parties for all periods prior to the Operations Transfer Date, and shall preserve all such information, records, and documents at least until the expiration of any applicable statute of limitations or extensions thereof and will not destroy such records without prior notice to the other parties.

(b) Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of South Carolina. With respect to any action between the parties arising out of or relating to this Agreement, or any of the transactions contemplated by this Agreement, (i) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of

either the state or federal courts located in the State of South Carolina, and (ii) each of the parties irrevocably consents to service of process by first-class certified mail, return receipt requested, postage prepaid. Each of the parties hereby irrevocably waives any and all right to trial by jury of any claim or cause of action in any legal proceeding arising out of or related to this Agreement or the transactions or events contemplated hereby or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. The parties each agree that any and all such claims and causes of action shall be tried by the court without a jury. Each of the parties hereto further waives any right to seek to consolidate any such legal proceeding in which a jury trial has been waived with any other legal proceeding in which a jury trial cannot or has not been waived.

28. **Costs and Attorneys' Fees**. In the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof, the prevailing party shall be entitled to collect from the other its reasonable costs and attorneys' fees, including its costs and fees on appeal.

29. **Construction**. Both parties acknowledge and agree that they have participated in the drafting and negotiation of this Agreement. Accordingly, in the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof no provision shall be construed so as to favor or disfavor either party hereto. All references to "applicable law" herein shall refer to laws, statutes, rules, regulations and judicial or administrative interpretations thereof.

30. **Opening Mail**. From and after the Operations Transfer Date, New Operator shall be authorized to open mail addressed to Licensee received at the Facility. All mail received at the Facility relating to Licensee's operation of the Facility prior to the Operations Transfer Date shall be promptly delivered to Licensee by New Operator at the address set forth in Section 19, with all such mail to be deposited in the United States mail, certified or registered, postage prepaid, return receipt requested within five (5) days of receipt.

31. **Protected Health Information**. The parties acknowledge that in performing its obligations under this Agreement, New Operator should be deemed to be a business associate of Licensee, as that term is defined in 45 CFR § 160.103 and for the exclusive purpose of ensuring proper protection and treatment of Protected Health Information. Accordingly, the parties adopt and incorporate by reference the provisions of the Business Associate Addendum attached to this Agreement as "**EXHIBIT D**."

32. **Successors**. Subject to the express provisions of this Agreements, the covenants and agreements contained in this Agreement bind and inure to the benefit of Licensee, New Operator, and their respective successors and assigns.

33. **Severability**. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

Initials:
Licensee:_____/ New Operator:_____

34. Right to Cure. If either Seller or Purchaser fails to comply with any provision of this Agreement, the other party will deliver written notice of breach to the non-complying party, specifying with particularity the alleged breach. The non-complying party has the right to cure the breach prior to the Operations Transfer Date.

35. Fraud. None of the provisions set forth in this Agreement shall be deemed a waiver by any party to this Agreement of any right or remedy which such party may have at law or equity based upon any other party's (and/or the party's owners' or principals') acts or omissions which constitute fraud under applicable law, nor shall any such provisions limit, or be deemed to limit (i) the amounts of recovery sought or awarded in any such claim for fraud, (ii) the time period during which a claim for fraud may be brought, or (iii) the recourse which any such party may seek against another party with respect to a claim for fraud.

36. Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the Operations Transfer Date day and year first set forth above.

LICENSEE:
Carlyle Senior Care of Fountain Inn, LLC

DocuSigned by:
By: Rick Cranford
F656EDDBAD37406...
Name _____
Title: _____

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the Operations Transfer Date day and year first set forth above.

NEW OPERATOR:
Fountain Inn Healthcare, LLC

DocuSigned by:
By: _____
C8B5B88A666F4C2...
Name _____
Title: _____

Initials:
Licensee:_____/ New Operator:_____

Schedule 15(a) – Assumed Contracts

All resident agreements

All payor agreements

Equipment leases utilized in the ongoing operations of the Facility

Others as mutually agreed in writing by the parties

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0677 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Provide care and assistance to perform activities of daily living for any resident who is unable. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 42424 Based on observation, interview, and facility policy the facility failed to offer/provide Activities of Daily Living (ADL) care to Resident (R)12 and R27. 2 of 3 reviewed for ADL care. Findings include: Review of facility policy titled, ADLs Supporting revealed Residents will be provided with care, treatment and services as appropriate to maintain or improve their ability to carry out ADLs. Residents who are unable to carry out ADLs independently will receive necessary services to maintain good nutrition, grooming, personal, and oral hygiene. Policy interpretation and implementation include residents will be provided with care, treatment, and services to ensure that ADL do not diminish unless the circumstances of their clinical condition (s) demonstrate that diminishing ADLs are unavoidable. Appropriate care and services will be provided for residents who are unable to carry out ADLs independently, with the consent of the resident and in accordance with the plan of care, including appropriate support and assistance with: hygiene (bathing, dressing, grooming, and oral care). If residents with cognitive impairment or dementia resist care, staff will attempt to identify the underlying cause of the problem and not just assume the resident is refusing or declining care. Approaching the resident in a different way or at a different time or having another staff member speak with the resident may be appropriate. R12 was admitted to the facility on [DATE] with diagnoses including but not limited to Alzheimer's disease, legal blindness, mental disorder, and major depressive disorder. Review of a Quarterly Minimum Data Set (MDS) with an Assessment Reference Date (ARD) of 08/20/24, revealed R12 has a Brief Interview of Mental Status (BIMS) score of 03 out of 15, which indicates that she is not cognitively intact. Further review of the Quarterly MDS revealed R12 is dependent on staff for shower/bathing and personal hygiene. An observation on 09/24/24 at 9:30 AM revealed R12 in bed in her night wear, in need of facial care, oral care, and dry hair with dandruff build-up. A second observation on 09/25/24 at 8:02 AM revealed R12 in bed in her night wear, with dry hair and dandruff build-up. (continued on next page)

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE	TITLE	(X6) DATE

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0677 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	An observation and interview on 09/25/24 at 8:06 AM with Licensed Practical Nurse (LPN)5 revealed that the resident is legally blind, but if staff introduce themselves appropriately prior to giving her care that the resident is more agreeable to ADL care. LPN5 further stated that the resident has an order for Anti-Dandruff External Shampoo 1 % (Selenium Sulfide) that is to be applied by the Certified Nursing Assistants (CNA) on the resident's shower days. LPN5 observed R12's hair and agreed the resident has dandruff in her hair. Record review on 09/25/24 at 8:30 AM of R12's Physician Orders for September 2024 revealed that R12 has an order for Anti-Dandruff External Shampoo 1 % (Selenium Sulfide) to be applied on shower days (Tuesday, Thursday, Saturday). Record review on 09/25/24 at 8:33 AM of the Paper CNA Shower Sheet for the 300 Unit for the period 08/24/24-09/24/24 revealed no CNA Shower Sheet documentation for R12. Record review on 09/25/24 at 8:34 AM of the Electronic Medical Record (EMR) Bathing ADL Documentation for the period 08/27/24 - 09/24/24 revealed 1 shower for R12 on 09/19/24 and was completed at 10:11 PM. Further review of R12's ADL documentation revealed that R12 received bed baths on 08/30/24, 08/31/24, 09/3/24, 09/11/24, 09/13/24, 09/14/24, and 09/17/24. Record review on 09/25/24 at 8:37 AM of R12's Nurses Notes revealed no documentation of refusal of ADL care during the period of 08/27/24 - 09/24/24. Record review on 09/25/24 at 8:40 AM of R12's Care Plan, last revised 07/07/24, revealed Resident needs assistance with ADLs related to legal blindness, debility, and protein calorie malnutrition. Interventions include assist with AM and PM care as needed, bed mobility assist with one person, dressing with one assist. An interview with the Director of Nursing (DON) on 09/25/24 at 12:34 PM revealed that she expects residents to be offered/provided a shower at least twice a week and be offered/provided a bed bath every day other than shower days. The DON further stated that she expects for staff to document when residents refuse ADL care. R27 was admitted to the facility on [DATE] with diagnoses including but not limited to; vascular dementia without behaviors, congestive heart failure, and major depressive disorder. Review of the Annual MDS with an ARD date of 08/06/24 revealed R27 has a BIMS score of 14 out of 15, which indicates that he is cognitively intact. Further review of the annual MDS revealed R27 requires set up or clean up assistance with personal hygiene and partial/moderate assistance with shower and bathing. An observation and interview on 09/22/24 at 1:27 PM revealed R27 in bed without a shirt and with body odor. R27 stated that he prefers to stay in bed without a shirt most days. An observation on 09/24/24 at 8:20 AM revealed R27 in bed without a shirt on, eating snacks with a body odor still present. Record review on 09/24/24 at 09:10 AM of R27's ADL Documentation for the last 30 days (08/26/24 - 09/24/24) revealed Type of Bath and R27 received bed baths on the following dates - 08/31/24, 09/04/24, 09/14/24, and 09/24/24). There was no documentation of the resident receiving a shower during this period. (continued on next page)

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0677 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Record review on 09/24/24 at 09:23 AM of R27's ADL Documentation for the last 30 day (08/26/24 - 09/24/24) Comments revealed on 09/24/24 at 02:23 AM and 02:25 PM, R27 He needs a good shower asap. An interview on 09/24/24 at 9:30 AM with CNA1 revealed that the resident receives showers on Wednesday's and Saturday's but often refuses. On the days in between the resident's shower days, he receives bed baths when he allows staff to provide care. CNA1 further stated that when residents refuse, they will offer 3 times and inform the nursing staff. ADL refusals are to be documented in the Electronic Medical Record (EMR) by both CNAs and Nursing Staff. A phone interview on 09/24/24 with CNA2 revealed they wrote in the ADL Documentation that R27 needs a good shower due to his body odor. CNA2 stated that showers are provided during the day shift, but they provided R27 a bed bath last night (09/23/24) after he had a bowel movement. CNA2 stated that R27 can be resistive to care, but they are able to redirect the resident after a few attempts, and eventually he is agreeable to ADL care. An interview with the Director of Nursing (DON) on 09/24/24 at 5:05 PM revealed the 300 Unit Shower Documentation Sheets and that staff are required to document on the shower sheets and in the medical record when showers/bed baths are completed. Review of the shower documentation sheets revealed one shower/bed bath during the period 08/24/24 - 09/24/24 dated 09/04/24, resident received a bed bath on that date. An observation and interview on 09/25/24 at 8:06 AM with LPN5 revealed that the resident can be resistive to ADL care and specifically receiving showers at times. LPN5 further stated that the CNAs are responsible for ensuring residents receive ADL care and if a resident refuses they should inform the nurse of the situation so they can document the refusal in the resident's EMR. During an observation, this surveyor and LPN5 spoke with resident, and exited room. LPN5 stated that R27 did have body odor and would follow up with his CNA for the day related to his ADL care and shower schedule. Record review of R27's Care Plan, last revised 08/11/24, revealed R27 requires assistance with ADLs related to congestive heart failure, vascular dementia, and major depressive disorder. Interventions include assist resident with bathing with one assist, resident has history of refusal of baths, incontinent care, and getting out of bed. Record review of R27's Nurses Notes for September 2024 revealed no documentation of refusal of ADL care.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0759 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Ensure medication error rates are not 5 percent or greater. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 48835 Based on review of the facility policy, observation, record review and interview, the facility failed to ensure the medication error rate was 5% or less. The medication error rate was 7.69%. Findings include: Review of the facility policy, dated 2001 and titled, Administering Medications records under the policy, Medications are administered in accordance with prescriber orders, including any required time frame. An observation was conducted on 09/23/24 at 9:17 AM of Licensed Practical Nurse (LPN)1 during medication administration for Resident (R)4. During medication administration LPN1 stated, There are 2 medications that I do not have available to give him right now. I will make the Unit Manager (UM) and Nurse Practitioner (NP) aware. The medications that were not available included Floraster oral capsules and Donepezil 10 milligrams (mg). Record review for R4 revealed he was admitted to the facility on [DATE] with diagnoses to include the following; acute respiratory failure with hypoxia, Type 2 diabetes, morbid obesity, sick sinus syndrome, atrial fibrillation, chronic kidney disease and hypertension. Record review of R4's physician orders revealed Floraster Oral Capsule- give 1 capsule by mouth two times a day, order date 08/18/24 and Donepezil Tablet 10 mg- 1 tablet by mouth one time a day, order date 08/19/24. Record review of R4's medication administration record (MAR) revealed on 09/23/24, LPN1 signed the Florastor at 0900 and Donepezil 0900 medication with a code of 9, which indicated other, see nurses notes. On 09/24/24 at 10:27 AM, during an interview with LPN1, she stated, I called the pharmacy yesterday to have the 2 medications delivered for R4. I also told my UM and the NP. There was not an order to hold the medication for 1 day or until the medication arrived from pharmacy, I looked for it. I didn't document it in the nurses notes. On 09/25/24 at 11:54 AM, during an interview with the Director of Nurses (DON), she stated, For medications not available, contact the physician (MD) or NP, tell them, usually they will order for the medications to be placed on hold. Then notify the residents representative and resident that the medication is not available. Once it comes in, then notify MD to release the hold. The DON confirmed LPN1 did not follow these steps.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0761 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Some	Ensure drugs and biologicals used in the facility are labeled in accordance with currently accepted professional principles; and all drugs and biologicals must be stored in locked compartments, separately locked, compartments for controlled drugs. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 48835 Based on review of the facility policy, observation and interview, the facility failed to ensure medications were free of expiration and properly labled for 2 of 3 medication carts and 1 of 1 treatment carts. Findings include: Review of the facility policy dated 2001, titled, Medication Labeling and Storage, revealed under the policy, If the facility has discontinued , outdated or deteriorated medications or biologicals, the dispending pharmacy is contacted for instructions regarding returning or destroying these items. Labeling of medications and biolagicals dispensed by the pharmacy is consistant with applicable federal and state requirements and currently accepted pharmceutical practices. The medication label includes, at a minimum: medication name, prescribed dose, strength, expiration date, when applicable, residents name, route of administration and appropriate instructions and precautions. An observation of the treatment cart on [DATE] at 9:41 AM revealed the following: Nystation cream for Resident (R) 47 with a label for 7 days, dated [DATE]. There was no lot number. Mupirocin 2% with a label for R27 to apply to left lower leg; one time day for skin infection until [DATE]- Lot #291044. Greers [NAME] with an open date of [DATE], and expiration date of [DATE], Lot number 1988939.02. Minerin Cre'me- discard date of [DATE], Lot # 62647981. On [DATE] at 10:03 AM, an interview with Licensed Practical Nurse (LPN)3 revealed, The medications were expired and should have been discarded. LPN3 then stated, I usually go through the carts once a week, and the nurses also go through them. An observation of Medication 300 Cart, on [DATE] at 3:41 PM with LPN2 revealed the following; A bottle of Oyster Shell Calcium 500 milligram (mg) stock with expiration date of ,d+[DATE]. Lot # none. EV0822BA number was on the label. Levemir Flex Pen, Lot # 4F9602A Date open [DATE], discard after 28 days. LPN2 confirmed today was day 30. Even Care G3 Test Strips Glucose Control, not dated with open date. Lot# ,d+[DATE]. Refresh Tears opened, not dated. room [ROOM NUMBER] B. (continued on next page)

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0761 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Some	Geri Care Iron Supplement, with date rubbed off. LPN2 could not identify the date, this writer cannot identify the date and the lot number was also rubbed off. An observation of medication cart 200 with LPN1 on [DATE] at 4:05 PM revealed the following; Tresiba Flex Touch Pen Insulin Degludec- no open date or expiration date. Discard after 28 days. LPN1 said she will look it up to see when it was ordered. Insulin Lispro kwik Pen open date [DATE]. Date expired [DATE]. Discard after 28 days. Lot#D707988A Novolin Lot # PZFAG68, opened, discard date after 28 days. There was no open date or expiration date. Liquid Protein 30 fluid Ounces, Lot# X1050124 . About ,d+[DATE] remains in the bottle. There was no open date. LPN1 confirmed the medications were either not dated or expired. On [DATE] at 1:11 PM, an interview with the Director of Nurses (DON) revealed, The unit managers (UM) are supposed to complete weekly audits on the medication carts. The nurses are ultimately responsible for their cart, checking dates and discarding expired items or discontinued medications. The UM are to keep the treatment carts clean, discard if out of date, or if anyone has been discharged or passed.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0851 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Electronically submit to CMS complete and accurate direct care staffing information, based on payroll and other verifiable and auditable data. 42424 Based on interview, record review, and review of the facility policy, the facility failed to accurately submit the Payroll Based Journal (PBJ) for Quarter Three (April 1st - June 1st), 2024 to reflect Registered Nurse (RN) hours. 15 of 19 days reviewed for RN coverage. Findings include: Review of facility policy titled, Reporting Direct Care Staffing Information (PBJ) last revised August 2022, revealed Direct care staffing is reported electronically to CMS through the PBJ System. Policy Interpretation and Implementation include complete and accurate direct care staffing information is reported electronically to CMS through the PBJ system in a uniform format specified by CMS. Direct care staff are those who, through interpersonal contact with residents or resident care management provide care and services to allow residents to attain or maintain their highest practicable physical, mental, and psychosocial well being. Record review prior to the entrance of the survey of the PBJ Staffing Data Report for Quarter 3 (April 2024 - June 2024) revealed the following dates with missing RN Coverage: 05/02/24; 05/15/24; 05/20/24; 05/22/24; 05/23/24; 05/29/24; 06/03/24; 06/05/24; 06/10/24; 06/12/24; 06/17/24; 06/19/24; 06/24/24; 06/26/24; 06/27/24. A phone interview on 09/22/24 at 2:13 PM with the Administrator revealed that the previous staff member that was responsible for submitting the PBJ Staffing submitted the data incorrectly by failing to include RN hours in the staffing report. Record review on 09/25/24 at 12:01 PM for May 2024, June 2024, July 2024, August 2024, and September 2024 revealed the facility did have adequate RN coverage. The facility is a 60 bed facility and utilized the Director of Nursing (DON) as their RN coverage most week days. A follow up phone interview with the Administrator on 09/25/24 at 12:45 PM revealed that the facility had an error with submitting the PBJ data related to the unit managers and the DON being salary employees. The previous person that was submitting the PBJ did not include their hours, which made the facility reflect not having RN hours.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0868 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Have the Quality Assessment and Assurance group have the required members and meet at least quarterly 42424 Based on interview, facility policy, and federal regulation the facility failed to provide documentation that the Medical Director (MD) attended the quarterly Quality Assurance and Performance Improvement (QAPI) Program. 1 of 2 Quarters reviewed. Findings include: Review of facility policy titled, QAPI Program revealed This facility shall develop, implement and maintain an ongoing, facility wide, data driven QAPI Program that is focused on indicators of the outcomes of care and quality of life for our residents. Policy interpretation and implementation include the Administrator is responsible for assuring that this facility's QAPI Program complies with federal, state and local regulatory agency requirements. A phone interview on 09/25/24 at 12:45 PM with the Administrator revealed that have recently been hired at the facility, during interview the Administrator revealed he was unable to find sign in sheets to verify that the previous Medical Director (MD) attended the quarterly QAPI meetings. An interview on 09/25/24 at 1:39 PM with the current MD for the facility revealed that they attended QAPI meeting in July, but a sign in sheet was not available.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0880 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Provide and implement an infection prevention and control program. 48835 Based on review of the facility policy, observation, and interviews, the facility failed to follow proper infection control practices to clean the glucometer for 1 of 1 resident (R) reviewed for glucometer cleaning. Findings include: Review of the facility's policy dated 05/25/2019, and titled, Glucometer Cleaning revealed The purpose of this procedure are to provide guidelines for cleaning a glucometer used for blood sugars and to prevent the introduction of bacteria. If residents use individual glcometers, clean prior to use or when visibly soiled. On 09/24/2024 at 8:19 AM, an observation of Registered Nurse (RN)1 performing an accu check revealed the following: RN1 stated, All the glucometers are individual. She then removed the glucometer from the medication cart. She was asked if she cleaned the glucometer, RN1 said, No, it should be clean since it was in the container for the resident. She placed a barrier on an overbed table and placed the glucometer on the barrier. RN1 donned gloves, cleaned the finger with an alcohol prep pad, and pricked it with a lancet. After obtaining the blood glucose reading, RN1 exited the room without handwashing or sanitizing, placed the accu check machine back into the container, without cleaning it, and placed into the medication cart. She then went back to the room to wash her hands. On 09/24/2024 at 8:40 AM, an interview with RN1 revealed, The blood glucometer should still be cleaned after each use. I'll go back and clean it. On 09/24/2024 at 2:00 PM, an interview with the Director of Nurses (DON) revealed, If residents use individual glucometers, clean prior to use or when visibly soiled. On 09/24/2024 at 2:50 PM, a second interview with the DON revealed, I was incorrect, we clean the glucometers after use, not before.

Carlyle Senior Care of Fountain Inn

Health inspections

State inspectors conduct yearly health and safety inspections of nursing homes for compliance with Medicare and Medicaid regulations. A nursing home may also be inspected based on a complaint submitted by a resident (or other individual), or based on a facility's self-reported incident. Nursing homes are also inspected for compliance with infection control and prevention standards.

Learn more about health inspections

Health inspections rating

★★★☆☆

Average

The health inspection star rating is based on each nursing home's current health inspection and 2 prior inspections, as well as findings from the most recent 3 years of complaint inspections and 3 years of infection control inspections.

Most recent health inspection

Date of most recent inspection

09/25/2024

Read the full report (PDF)

Total number of health citations

Lower is better

6

Average number of health citations in the U.S.: 9.5

Average number of health citations in South Carolina: 4.1

Complaint inspections

Date(s) of complaint inspection(s) between 7/1/2024 - 6/30/2025

No complaint inspections

Number of complaints in the past 3 years that resulted in a citation

Lower is better

0

Number of times in the past 3 years a facility-reported issue resulted in a citation

Lower is better

0

Infection control inspections

Date(s) of infection control inspection(s) between 7/1/2024 - 6/30/2025

No infection control inspections

Number of citations from infection control inspections in the past 3 years

Lower is better

This provider has had no infection control inspections in the past 3 years

View all health inspection, infection control inspection, complaint, and facility-reported issue details

Note: Some inspection reports may include explicit language that some people may find offensive. We include this language to accurately document verbal communications related to inspection findings.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBERS: 2025-CP-23-01757 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS, STAY LITIGATION AND DISCOVERY, AND COMPEL ARBITRATION**

Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through their undersigned counsel, submit this memorandum of law in support of their Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration, pursuant to Rule 12(b)(6) SCRCP; the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*; and a binding Arbitration Agreement executed by the Plaintiff and Defendant, which covers all the allegations raised in this wrongful death and survival action filed by Plaintiff.

FACTS

On May 8, 2018, Zeigler executed a General Durable Power of Attorney ("POA") wherein he appointed his daughter, Kimberly Haag ("Plaintiff"), as his true and lawful attorney- in-fact

with authority to act on his behalf attached hereto as **Exhibit A**. The POA expressly grants Plaintiff the authority "arbitrate" disputes on behalf of Zeigler:

> **Section 3.10 Legal Actions**
>
> My Attorney-in-Fact may institute, supervise, prosecute, defend, intervene in, abandon, compromise, adjust, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way. This authority includes, but is not limited to, claims by or against me arising out of property damage or personal injury suffered by or caused by me or under circumstances such that the resulting loss may be imposed on me. My Attorney-in-Fact may otherwise engage in litigation involving me, my property, or my legal interests, including any property, interest, or person for which or whom I have or may have any responsibility.

(Ex, A at ¶ 3.10 p. 7):

On December 22, 2022, Plaintiff, on behalf of Zeigler, and in her capacity as Legal Representative and Power of Attorney, entered into an Admission Agreement with Defendant Carlyle Senior Care of Fountain Inn, LLC, for Zeigler's residency, and executed a Mediation and Binding Arbitration Agreement ("Arbitration Agreement") included within the Admission Agreement. True and accurate copy of the Arbitration Agreement is attached hereto as **Exhibit B**. The facility where Zeigler was admitted was located at 501 Gulliver Street, Fountain Inn, SC 29644 (hereinafter "Facility").

Plaintiff's Complaint primarily focuses on a fall that occurred on February 3, 2023 while Defendant Carlyle Senior Care of Fountain Inn, LLC controlled the operations of the Facility.

On or about March 14, 2023, Defendant Fountain Inn Healthcare, LLC entered into a Management Operation Transfer Agreement with Defendant Carlyle Senior Care of Fountain Inn, LLC to assume the operations of the Facility where Zeigler was residing. **Exhibit C**.

The Management Operations Transfer Agreement expressly states "all resident agreements" are assumed pursuant to the agreement. (Ex. C at § 15 and Exhibit 15(a)). The

Arbitration Agreement is a resident agreement under the Management and Operations Transfer Agreement, and Defendants are entitled to the rights afforded by the Arbitration Agreement.

LAW AND ANALYSIS

The Federal Arbitration Act ("FAA") provides that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

The FAA applies in state or federal court to any arbitration agreement involving interstate commerce, unless the parties contract otherwise. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). Additionally, "[a] party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement and (2) the claims fall within the scope of the agreement." *Wilson v. Willis*, 426 S.C. 326, 336, 827 S.E.2d 167, 173 (2019).

I. The Arbitration Agreement Involves Interstate Commerce

Here, the Arbitration Agreement, as part of the Admission Agreement, involves interstate commerce. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA).

The Arbitration Agreement was executed for the admission of Zeigler at the Facility. The Facility is a skilled nursing facility, which involves interstate commerce. Additionally, Plaintiff expressly agreed in executing the Arbitration Agreement that interstate commerce is implicated:

> (3) **Involvement of Interstate Commerce:** The Facility expressly represents and provides notice to the Resident that the Facility must and will engage in interstate commerce in the course of its relationship with Resident. The Resident is aware of this fact, acknowledges this fact, and explicitly expects that interstate commerce will be involved in the course of the relationship between the Parties. The Resident agrees that (s)he could specifically seek residency at a different facility if Resident expected and/or desired to reside in a facility that did not and would not engage in interstate commerce in the course of the relationship between the Parties, which includes, but is not limited to, the provision of care to the Resident. Therefore, it is the express intent and expectation of the Parties that the care provided by the Facility to the Resident will and does involve, implicate, and affect interstate commerce.

Ex. B, Arbitration Agreement at p. 2 § II(a)(3).

Lastly, the operation of the Facility involves billing health insurance companies, engaging out of state vendors for services, purchasing supplies and many other activities that implicate interstate commerce. Therefore, the FAA applies to the Arbitration Agreement, which mandates compelling the above-captioned action to arbitration.

II. The Arbitration Agreement is Valid and Enforceable

"The FAA presumes parties intend that the 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." *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020). "The parties may, of course, delegate these gateway issues to an arbitrator as long as there is 'clear and unmistakable' evidence of such delegation." *Id.* If such a delegation occurs, the court retains the right and duty to determine if the delegation is valid and enforceable "as long as the party resisting arbitration has made a direct and discrete challenge to the validity and enforceability of the delegation clause[.]" *Id.*

A. A Valid Agreement to Delegate Exists

"An arbitration agreement, of course, is a contract." *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914 S.E.2d 139, 142 (2025). A party seeking to compel arbitration must demonstrate the existence of a valid contract to arbitrate by establishing three elements. *Id.* In South Carolina, [t]he necessary elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003).

A valid offer and valid consideration exist. An "offer" is the manifestation by one party of their willingness to enter a bargain, made so as to justify another person in understanding that his assent to that bargain is invited. Restatement (Second) of Contracts § 24. The offer identifies its subject, i.e. the bargained-for-exchange, and also creates a power of acceptance in the offeree. Restatement (Second) of Contracts § 29. Finally, "valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. A forbearance to exercise a legal right is valuable consideration." *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (internal citations omitted).

Here, a valid offer exists. Plaintiff's signature on the Admission Agreement, as well as the Arbitration Agreement, manifest its willingness to bind itself to the terms it sets forth. Next, consideration exists. In return for payment from Zeigler, the Facility agreed to provide covered skilled nursing services. Additionally, the mutual agreement to arbitrate is valid consideration. *Lampo*, 445 S.C. at 313, 914 S.E.2d at 144. Therefore, a valid offer and valid consideration exist.

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Id.* As a result, a valid and enforceable arbitration agreement exists under South Carolina so the Court must now determine if Plaintiff had authority to sign and the scope of the Arbitration Agreement.

B. Plaintiff executed the Arbitration Agreement with express authority to arbitrate based on her authority granted from the POA.

On May 8, 2018, Zeigler executed a General Durable Power of Attorney ("POA") wherein he appointed his daughter, Plaintiff Kimberly Haag, as his true and lawful attorney- in-fact with authority to act on his behalf. Exhibit A. The POA expressly grants Plaintiff the authority to "arbitrate" disputes on behalf of Zeigler (Ex, A at p.7, ¶ 3.10). As a result, Plaintiff's signature on the Arbitration Agreement binds Zeigler and her estate.

i. Plaintiff's alleged failure to read or understand the Arbitration Agreement is not a defense under black letter South Carolina law.

Plaintiff has submitted an affidavit alleging that she did not read or understand the Arbitration Agreement. This affidavit is unpersuasive and contrary to South Carolina that presumes signatories have read an agreement they have signed. "[O]ne who has signed a contract is presumed to have read, understood, and assented to its terms." *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019). "A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it." *Regions Bank v. Schmauch*, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003). "A person signing a document is responsible for reading the document and making sure of its contents." *Id*. "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." *Id*. "One who signs a written instrument has the duty to exercise reasonable care to protect himself." *Id*. at 665, 582 S.E.2d at 440. "The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document." *Id*.

Plaintiff's affidavit that she did not understand or did not read the document she signed is not a legal defense in South Carolina. Plaintiff has not alleged she was prohibited from reading the

agreement or she suffered some infirmity that affected her ability to ascertain the meaning of the documents. Plaintiff is simply resting on her willful ignorance, which is no defense.

Second, Plaintiff's affidavit is contrary to her prior warranty that she "reviewed and understand the Agreement."

> (g) **Warranty of Capacity and Comprehension.** Resident and, if present, Resident's Responsible Party hereby affirm that (s)he possesses the mental capacity to execute this Agreement and that (s)he has not been diagnosed as incapacitated by a physician or adjudicated as incapacitated by a Court. Both Resident and the Resident's Responsible Party agree and affirm that they have reviewed and understand this Agreement.
>
> Resident _____ Resident's Responsible Party _____

Ex. B, Arbitration Agreement at p. 4 § II(g).

In fact, Plaintiff signed right below the sentence warranting she reviewed and understood the agreement. Now, Plaintiff seeks to play foolish games with this Court that are not rooted in the law or the facts. Such conduct should not be rewarded by this Court and the Court should consider Plaintiff's brazen disregard of her prior acts when considering the credibility of her affidavit. Regardless of Plaintiff's credibility and the facts asserted in her affidavit, South Carolina law binds her to the Arbitration Agreement.

ii. Plaintiff could have revoked the Arbitration Agreement within thirty (30) days.

Pursuant to the Arbitration Agreement, Plaintiff could have rescinded her consent to the agreement within 30-days of the execution of the agreement:

> (j) **Limited Right to Rescind this Agreement.** Resident or, in the event of Resident's incapacity, Resident's Legally Designated Representative, has the right to rescind this Agreement by notifying the Facility in writing within thirty (30) days of the date set forth above. This right to rescind is fully set forth in the attached Notice of Right to Rescind ("Notice"). This Notice must be properly executed by either the Resident or the Resident's Legally Designated Representative and sent via certified mail to the attention of the Facility's Administrator at the address set forth above. The Notice must be post-marked within thirty (30) days of the execution of this Agreement. The Notice may also be hand-delivered to the Administrator and the acknowledgement of the Notice's receipt must be executed and dated within the same thirty (30) day period. The filing of a Claim in a court of law within the thirty (30) days provided for above will automatically rescind this Agreement without any further action by Resident or Resident's Legally Designated Representative.

If Plaintiff's affidavit is true, then she could have read the Arbitration Agreement after execution and met with an attorney or conducted her own research into its terms and then rescinded the agreement. Again, her affidavit does not address that she ever read the agreement prior to signing. Plaintiff did so at her own peril and such conduct is not rewarded by South Carolina law. Plaintiff's affidavit does not address why she never rescinded the agreement despite it being her right. As a result, Plaintiff slept on her rights in failing to read the terms of the Arbitration Agreement before signing, failing to seek legal counsel within thirty (30) days of signing to inquire as to her rights and failing to rescind the agreement within thirty (30) days and therefore the Arbitration Agreement should be enforced.

II. The assignment of the Arbitration Agreement is a valid and enforceable assignment.

"[C]ourts must respect and enforce a contractual provision to arbitrate as they respect and enforce all contractual provisions. *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 382, 892 S.E.2d 112, 114 (2023), *reh'g denied* (Sept. 27, 2023). An assignee stands in the shoes of the assignor; thus, an innocent assignee receives all the rights of his assignor. *BAC Home Loan Servicing, L.P. v. Kinder*, 731 S.E.2d 547 (S.C. 2012).

Here, pursuant to the Management Operations Transfer Agreement, Defendant Carlyle Senior Care of Fountain Inn, LLC contractually assigned "all resident agreements" and Defendant Fountain Inn, LLC agreed to assume "all resident agreements." For the Court to ignore that assignment flies in the face of the intent of the parties. South Carolina recognizes contractual assignments and Plaintiff has not presented a reported South Carolina case invalidating the assignment of an arbitration agreement.

ii. The validity of the assignment is a question for the arbitrator.

"[A]rbitrator must decide the gateway question of whether Petitioners retained the right to compel arbitration after assignment." *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 392, 892 S.E.2d 112, 120 (2023), *reh'g denied* (Sept. 27, 2023). The Arbitration Agreement expressly delegates all "gateway questions" to the arbitrator stating "all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement" (Ex. B at p. 2 § II(a)).

In the *Sanders* case the Court explicitly dealt with the issue of assignment of an arbitration provision and its impact on "gateway questions." The South Carolina Supreme Court in that case states that when gateway questions have been delegated to the arbitrator "the doctrine requires us to hold that the arbitrator must decide the gateway question of whether Petitioners retained the right to compel arbitration after assignment." *Id.* at 119-120. Based on the relevant case law and plain reading of the Arbitration Agreement, it is clear that the gateway questions have been assigned to the arbitrator.

A. The Arbitration Agreement includes "affiliated entities" thus the Arbitration Agreement applies to all Parties.

Plaintiff has sued a multitude of defendants that did not participate in the case of Zeigler and did not owe any duties to Zeigler in attempt to manufacture her theories of recovery. Generally, many of the entities that have been sued provide back office consulting services or real estate related services that have nothing to do with the care of Zeigler. The Arbitration Agreement expressly includes "parent and affiliated companies." Defendants Providence Group, Inc., PACS Holdings, LLC, PACS Group, Inc., Providence Administrative Consulting Services, Inc. and 501 Gulliver Property, LLC's are affiliated companies of Defendant Fountain Inn, LLC.

Defendant Providence Group, Inc. is a subsidiary of Defendant PACS Holdings, LLC. Defendant Providence Administrative Consulting Services, Inc. provides back office administrative support for Defendant Fountain Inn, LLC for things like payroll, HR, etc. Defendant PACS Holdings, LLC is a subsidiary of Defendant PACS Group. Defendant 501 Gulliver Property, LLC is a real estate entity organized for the purpose of the transfer of the Facility's real estate.[1]

These entities have nothing to do with the care of Zeigler and do not control or operate the Facility. These entities are affiliates of Defendant Fountain Inn, LLC and are covered by the scope of the Arbitration Agreement.

III. The Arbitration Agreement applies to Plaintiff's wrongful death claims.

Under South Carolina law, a wrongful death claimant stands in the legal shoes of his decedent. The claimant is bound by acts of the decedent. If the decedent or the decedent's POA entered an agreement to arbitrate disputes, that agreement is binding on the wrongful death claimants. It is binding because the right to bring a wrongful death claim is derivative of the rights held by decedent during life. Put another way, if the decedent could not bring the claim in court were they alive, the wrongful death claimant cannot bring that claim in court after death.

In South Carolina, a wrongful death action does not exist independently of the decedent's rights; rather, it is derivative of the decedent's own cause of action. *See Farmer v. Monsanto Corp.*, 353 S.C. 553, 558, 579 S.E.2d 325, 328 (2003) (holding "[i]n a wrongful death action, the

[1] If the Court requires, Defendants can provide an affidavit that Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC are affiliated companies.

representative plaintiff's capacity is derived from the decedent's"). Directly stated, if the decent could not bring the action in circuit court, neither can her wrongful death beneficiaries.

A. Plaintiff's wrongful death claim is a derivative claim of the Estate of Zeigler and is not personal to Plaintiff.

A wrongful death claim is derivative in the sense that it exists only when the decedent had a right to maintain the action had she lived. The wrongful death statute, S.C. Code Ann. § 15-51-10, creates a cause of action for certain beneficiaries *only if and to the extent that the decedent could have maintained an action for the injuries had he or she lived*. The statute provides that a defendant "who would have been liable, if death had not ensued, shall be liable" in damages for the death, but only if the defendant's wrongful act or neglect was such that it "would, if death had not ensued, have entitled the party injured to maintain an action and recover damages…" *Id*.

South Carolina courts have consistently interpreted this language to mean that the right of a decedent's statutory beneficiaries to recover in wrongful death is entirely contingent upon and equivalent to the decedent's right to recover for the same wrongful act. *See 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) (holding that a wrongful death action lies only in "those cases in which the party injured would have been entitled to recover if death had not ensued"). This Court recently described the principle: "[a]lthough 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." *Jolly v. Gen. Elec. Co.*, 435 S.C. 607, 667, 869 S.E.2d 819, 851 (Ct. App. 2021), *aff'd sub nom. Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 905 S.E.2d 380 (2024) (emphasis added).

Long before the current wrongful death statute was adopted, the South Carolina Supreme Court's exposition of the derivative principle yielded similar results. *See Price v. Richmond & D. R. Co.*, 33 S.C. 556, 560, 12 S.E. 413, 414 (1890) (holding that if the decedent would have been

"debarred" from maintaining an action due to some defense, then "it follows necessarily that his administrator is likewise barred"). In short, "if the deceased never had a cause of action, none accrues under the wrongful death statute." *Scott v. Greenville Pharmacy*, 212 S.C. 485, 489, 48 S.E.2d 324, 326 (1948). *See also Quattlebaum v. Carey Canada, Inc.*, 685 F. Supp. 939, 942 (D.S.C. 1988).

Applying the principle, South Carolina courts have held that any legal defense that would defeat or bar the decedent's claim equally defeats or bars the wrongful death claim. For example, if the decedent's claim was time-barred before death, the wrongful death claim is likewise time-barred. *See Estate of Stokes*, 389 S.C. at 349, 699 S.E.2d at 145. If the decedent's own negligence would have barred her recovery, a wrongful death action by her beneficiaries is also barred. *Price v. Richmond*, 33 S.C. at 560. If the decedent contractually waived or limited her right to bring a lawsuit for injuries by signing a release, wrongful death claimants are bound by the same contractual limitations. *See Rish v. Seaboard Air Line Ry.*, 106 S.C. 143, 90 S.E. 704 (1916) (interpreting the operation of a prior release under the wrongful death statute to conclude that "[i]n this case the deceased could not have recovered, because he had released the defendant. Therefore the beneficiaries under the statute cannot recover.").

South Carolina law has long recognized that a decedent's pre-death contract can "limit or bar" a subsequent wrongful death action because the beneficiaries stand in the decedent's figurative legal shoes. *See, e.g. Price*, 33 S.C. at 560 (holding that the administrator of an estate may not maintain action if the decedent, "by any … cause," was barred from suing) and *Rish*, 106 S.C. at 143, 90 S.E. at 705. Thus, if Decedent in this case had, during her lifetime, entered a release, her estate and wrongful death beneficiaries would be precluded from making out a claim for wrongful death. Wrongful death claimants have no greater rights than their decedent.

B. Applying the derivative principle to the present case.

The derivative principle logically requires reversal of the Circuit Court here. Application of this reasoning led our Supreme Court in *Stokes* to apply the derivative principle to the then-novel issue of whether a statute of limitations which bound the decedent could also bind beneficiaries in a wrongful death action: "Although our precedent has not spoken directly to the statute of limitations issue, our law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued." *Estate of Stokes*, 389 S.C. at 347, 699 S.E.2d at 145.

An agreement to arbitrate claims is just as binding on the decedent, and those individuals standing in the shoes of the decedent, as is any other contract. By signing the arbitration agreement, Plaintiff, as Zeigler's power of attorney, did not forfeit her future claim, but she did agree to bring that claim in a specific forum.

Plaintiff, as Zeigler's power of attorney, agreed that any covered claim would be resolved in the arbitral forum rather than in a civil suit. Because Plaintiff, as Zeigler's legal agent, promised to arbitrate his claims and could not, were he alive, maintain a civil action for his injuries, then, under South Carolina's wrongful death statute and the law interpreting the same, his personal representative cannot bring the same action. *See* S.C. Code Ann. § 15-51-10; *see also Rish* and *Stokes*, 389 S.C. at 348, 699 S.E.2d at 146 (holding "[t]he right to bring a wrongful death claim is thus conditioned upon the decedent's right to maintain a claim or action.").

Here, the condition precedent to a wrongful death suit, i.e. that the Decedent "could have maintained an action for the injury had [she] survived," is absent because Decedent previously agreed to bring these claims in arbitration. Stated differently, Decedent's agreement to arbitrate

gives rise to a defense for Defendants because the action filed by Plaintiff is not one that "the deceased…could have maintained." *Id.* at 347 (citing *Price*, 33 S.C. at 560).

Moreover and doubling down on the derivative principle, South Carolina law is clear that wrongful death claims belong to the personal representative of the estate, not the beneficiaries individually. *See* S.C. Code Ann. § 15-51-20 and *Fisher on behalf of estate of Shaw-Baker v. Huckabee*, 422 S.C. 234, 240, 811 S.E.2d 739, 742 (2018) (concluding that only a personal representative has standing to sue for wrongful death). Plaintiff brought suit individually and as personal representative of the estate of her father, Zeigler. (*See Pl. Compl.*). In bringing that wrongful death claim, she acts on behalf of potential wrongful death beneficiaries, but she still brought the action "as Personal Representative of the Estate." (Pl. Complaint). As such, she is bound by the prior acts of Zeigler and her acts as Zeigler's agent. The Personal Representative, standing in Zeigler's shoes, cannot selectively avoid the Arbitration Agreement entered by her as Zeigler's legal agent when that Agreement bound Zeigler herself. Because the only person entitled to bring an action for wrongful death under South Carolina law is the personal representative of the decedent's estate, they are bound by Zeigler's legal agent's prior agreements just like the decedent would be, were they alive. *See* S.C. Code Ann. § 15-51-20 and *Fisher*, 422 S.C. at 240, 811 S.E.2d at 742.

A. Wrongful death and survival claims are distinct, but both derive from the rights of the decedent.

While wrongful death and survival are indeed distinct causes of action, they both *derive* from the rights of the decedent. Figure 1, below, depicts the relationship among Decedent's rights and the derivate Survival and Wrongful Death Claims:

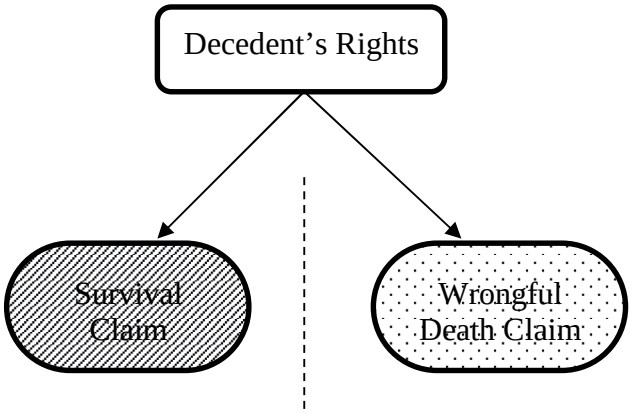


Fig. 1. *Diagram showing the relationship among Decedent's rights, survival claims, and wrongful death claims.*

As depicted above, the wrongful death claim remains firmly tethered to the decedent's rights. Respondent's contention that, because wrongful death and survival claims are separate, both cannot derive from the rights of the decedent, is akin to suggesting that because two siblings are separate individuals, both cannot share the same mother.

Further, the beneficiaries' status as nonsignatories to the arbitration contract does not, in itself, answer the question of arbitrability—many types of nonsignatories are bound by arbitration agreements under traditional principles of contract and agency law. The South Carolina Supreme Court recognizes that the issue of whether an arbitration clause can be enforced against nonsignatories is a matter of substantive arbitration law, reviewed *de novo* by the courts. *Wilson*, 426 S.C. at 335.

Here, a statutory beneficiary and power of attorney for Zeigler signed the Agreement making the wrongful death claim stands in the shoes of the Decedent. The proper question was not simply "Are the beneficiaries nonsignatories?" but rather, "whose claim is this?" As established above, the personal representative makes a wrongful death claim for the potential beneficiaries. The beneficiaries do not bring the claim individually. Because the claim is made by the personal

representative, enforcing Zeigler's legal agent's prior agreement falls in line with ordinary principles of contract enforcement.

South Carolina courts routinely enforce arbitration agreements signed by powers of attorney in wrongful death claims. In fact, the South Carolina Supreme Court has held 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). Similarly, in *Gray v. Pruitt*, the Court reversed the trial court's denial of the defendant's motion to dismiss and compel arbitration in a wrongful death suit. Op. No. 2024-UP-292 (S.C. Ct. App. Filed August 7, 2024). It should do the same here.

2. The Federal Arbitration Act (FAA) preempts any state-law rule that would exclude wrongful death claims from arbitration agreements.

A. The FAA governs the Arbitration Agreement.

Even if this Court were to entertain the notion that South Carolina law could treat arbitration agreements differently than other contracts executed by decedents during their lifetimes (*e.g.*, releases of liability), any such state-law limitation would be preempted by the Federal Arbitration Act (FAA), 9 U.S.C.A. § 1 *et seq*. As the Circuit Court noted below, the Supreme Court of South Carolina's decision in *Dean*, 408 S.C. 371 requires that the FAA "applies to nursing home arbitration agreements and governs the interpretation and enforcement of the agreement at issue in this matter." (Order Granting Motion to Compel Arbitration as to Survival, p. 2).. The FAA therefore governs and mandates that the Agreement be "valid, irrevocable, and enforceable" save only for general contract defenses not at issue here. 9 U.S.C.A. § 2.

B. State law may not discriminate against arbitration agreements.

The U.S. Supreme Court has made clear that state courts may not adopt special rules that discriminate against arbitration or refuse to enforce arbitration agreements based on the subject

matter of the claim. In *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 132 S. Ct. 1201, 182 L. Ed. 2d 42 (2012) (per curiam), the U.S. Supreme Court unanimously struck down a West Virginia rule that had declared pre-dispute arbitration agreements unenforceable in wrongful death and personal injury cases against nursing homes. As the court noted, "[t]he FAA provides that a 'written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.' 9 U.S.C. § 2." *Id.* at 532. Nonetheless, the West Virginia Supreme Court had held such arbitration clauses void as against public policy in cases of patient injury or death. *Id.* at 532. The U.S. Supreme Court vacated that decision, holding that the state's policy was preempted by the FAA. The Supreme Court reaffirmed that "[w]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." *Id.* at 533 (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)).

As clarified in *Marmet*, any rule, whether statutory or judicial, that exempts wrongful death suits from arbitration agreements is invalid under the Supremacy Clause. Our own Supreme Court has applied this reasoning in several cases. "An arbitration clause may be invalidated under a state law only if that law governs the enforceability of all contracts generally." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) "State law [is] therefore preempted to the extent it [would] invalidate[] the arbitration agreement." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315 (2012) (emphasis and internal quotations omitted). In *Dean*, the court noted that *Marmet* had "invalidat[ed] West Virginia's policy refusing to refer wrongful death claims against a nursing home to arbitration." 408 S.C. at 378.

Thus, the Circuit Court's ruling singling out arbitration agreements for disparate treatment compared to other contracts cannot stand in the face of the FAA. The FAA requires courts to "place arbitration agreements on equal footing with other contracts, ... and enforce them according to their terms[.]" *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 9, 791 S.E.2d 128, 132 (2016) (quoting *AT&T Mobility LLC*, 563 U.S. at 339) (alterations in original; internal citations omitted). *See also Kindred Nursing Centers Ltd. P'ship v. Clark*, 581 U.S. 246, 251, 137 S. Ct. 1421, 197 L. Ed. 2d 806 (2017) (holding that Kentucky's clear-statement rule, requiring an explicit statement in a power of attorney that the attorney-in-fact has authority to waive the principal's state constitutional rights to access the courts and to a jury trial, disfavors arbitration agreements and therefore is preempted by the FAA). Similarly, the South Carolina Supreme Court and Court of Appeals have insisted that "the FAA requires that courts treat arbitration agreements the same as all other contracts—no more, no less." *Lampo v. Amedisys Holding, LLC*, Op. No. 28265 (S.C. Sup. Ct. filed March 5, 2025) (Howard Adv. Sh. No. 10 at 29) (citing the Court of Appeals opinion in the same case).

If this Court agrees with Plaintiff it effectively creates a class-based exception: wrongful death claimants are bound by a decedent's contracts *except* for arbitration agreements. This is precisely the result that *Marmet* and *Kindred Nursing* forbid. Moreover, the FAA's mandate applies with full force in state courts, including South Carolina's. *Dean*, 408 S.C. at 379 ("[T]he basic purpose of the [FAA] is to overcome courts' refusals to enforce agreements to arbitrate, and ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.") (alterations in original; internal quotations omitted).

Finally, it is noteworthy that enforcing arbitration for the wrongful death claim will serve the FAA's goals of efficient, streamlined dispute resolution. Currently, the survival claim and

wrongful death claim are bifurcated. This is not efficient and risks inconsistent determinations on the same facts. There is a strong interest in resolving all claims arising from Decedent's care in the single forum on which the parties agreed. The FAA's purpose is furthered by a ruling that the wrongful death claim join the survival claim in arbitration, whereas no countervailing interest (legal or equitable) justifies keeping it in court. The potential wrongful death beneficiaries will not be prejudiced by arbitration. They are represented by the same counsel and arbitration would provide a forum to be heard sooner than waiting for a jury trial. Indeed, *Marmet* and *Dean* make clear that arbitration is not an inferior forum even for significant claims like wrongful death; it is simply a different forum. Respecting that choice is a matter of both federal law and fundamental contract law.

In sum, the FAA requires the conclusion that the wrongful death claim here must be arbitrated. Any state rule that might have been interpreted to exclude wrongful death actions from arbitration would in any event be preempted by controlling federal law. This Court should therefore apply the FAA and hold the Arbitration Agreement enforceable as to all claims within its scope, including the wrongful death cause of action.

IV. Defendants did not violate federal law in the execution of the Arbitration Agreement.

Plaintiff has alleged that the Arbitration violates federal law because Plaintiff was not explained the Arbitration Agreement and did not comply with a statute regulating the surveys conducted of skilled nursing facilities. Obviously, Plaintiff's affidavit testimony is in direct contraction with Arbitration Agreement where Plaintiff warranted that she "reviewed and understand the Agreement." (Ex. B p. 4 § II(g)). Further, the regulation Plaintiff has cited is not a federal law but it's scope is defined as a regulation that "serve as the basis for *survey activities* for

the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid. " 42 C.F.R. § 483.1(b). **Based on the defined scope of the regulation, it is intended for the use in conducting surveys by CMS to determine Medicare and Medicaid eligibility**. (emphasis added). This argument is intended to confuse the Court and apply standards used by surveyors for Medicare and Medicaid eligibility to supersede the interpretation of South Carolina contract law.

Further, since the regulation cited by Plaintiff alleging the agreement is "illegal" is a regulation governing CMS surveys, the Court can look to the results of the surveys during Zeigler's admission to see if CMS ever took issue with the Facility's arbitration agreement practices.

This Arbitration Agreement was signed on December 22, 2022. The most recent survey of the Facility when it was controlled by Defendant Carlyle Senior Care of Fountain Inn was on September 25, 2024 attached hereto as **Exhibit D**. This survey does not tag the Facility for issues with its arbitration process. Additionally, the information on Medicare.Gov indicates the Facility had not been cited in the three (3) years prior. **Exhibit E**. This information also indicates the Facility is out performing the national average in the most recent survey performed.

Lastly, if Plaintiff was able to find a CMS or South Carolina Department of Public Safety survey that was critical of Defendants' arbitration practices, Plaintiff would have certainly presented it to this Court along with the eight (8) unpublished court orders that also have no precedential value on this court. Ultimately, Defendants' were never accused or cited for "illegal" arbitration practices. This is simply another lame argument put for by Plaintiff to continue to avoid the legal document she signed. As a result of the Arbitration Agreement, and its execution, are not illegal and the governing bodies that utilize the regulation cited by Plaintiff have never cited Defendants' for violating that regulation.

IV. Plaintiff's circuit court orders from other cases lack precedential value.

"Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR. The court orders presented by counsel for Plaintiff do not involve these parties. Our Court of Appeals has considered such orders when it was an "unusual situation in that some of the same parties were making the same arguments in a case with similar facts." *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 555, 813 S.E.2d 292, 298 (Ct. App. 2018). In that case, the unpublished opinions "involved involves the same defendant, represented by the same lawyer, making the same argument that they are making before this [c]ourt today, and thus falls close to the rule's." *Id*. at 555. The court admitted that it was an "unusual situation." There is no such unusual situation here.

Undersigned counsel and Defendants were not involved in any of the cases attached to Plaintiff's Memorandum. The orders attached have nothing to do with the parties or their respective counsel. As a result, they should not be considered by this Court and such consideration would be prejudicial to the substantial rights of Defendants.

CONCLUSION

Based on the above stated arguments, Defendants respectfully request this Court dismiss the above captioned case, stay litigation and discovery, and compel arbitration.

SIGNATURE BLOCK ON FOLLOWING PAGE

BURR & FORMAN LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Charleston, SC 29492
bcrites@burr.com
nstewart@burr.com

Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

September 18, 2025
Charleston, South Carolina

General Durable Power of Attorney

of

Raymond Zeigler

(May 8, 2018)

LAW OFFICES
UPSTATE ELDER LAW, P.A.
[redacted]
SIMPSONVILLE, SOUTH CAROLINA 29681
[redacted]

General Durable Power of Attorney of Raymond Zeigler

I, Raymond Zeigler of 400 A Fowler Road, Simpsonville, SC 29681, am creating a durable power of attorney intended to comply with South Carolina law. I hereby revoke all powers of attorney previously granted by me as Principal and terminate all Agency relationships created by me except:

(i) powers granted by me under any Health Care Power of Attorney;

(ii) powers granted by me on forms provided by financial institutions granting the right to write checks on, deposit funds to, and withdraw funds from accounts to which I am a signatory; and

(iii) powers granting access to a safe deposit box.

Article One
Appointment of Attorney-in-Fact

Section 1.01 Initial Attorney-in-Fact

I appoint Kimberly Dawn Haag to serve as my Attorney-in-Fact.

Section 1.02 Successor Attorney-in-Fact

If Kimberly Dawn Haag resigns, dies, becomes incapacitated, is not qualified to serve, or declines or otherwise fails to serve, I appoint Andrew Haag to serve as my successor Attorney-in-Fact.

Section 1.03 Spouse as Attorney-in-Fact

My spouse may not serve as my Attorney-in-Fact if we are legally separated. If a named Attorney-in-Fact was my spouse at the time of execution of this General Durable Power of Attorney and an action is filed for the dissolution or annulment of my marriage to the Attorney-in-Fact or for our legal separation, then that named Attorney-in-Fact may not serve (however, if I named a former spouse at the time of execution, my former spouse may serve as my Attorney-in-Fact).

Section 1.04 Self-Dealing by Spouse or Descendant

This Section only applies if my spouse or a descendant of mine is serving as my Attorney-in-Fact.

My agent may engage in acts of self-dealing, even if state law restricts acts of self-dealing. Unless expressly prohibited by another provision of this General Durable Power of Attorney, my Attorney-in-Fact may enter into transactions on my behalf in which my

Attorney-in-Fact is personally interested, so long as the terms of such transaction are fair to me. For example, my Attorney-in-Fact may purchase property from me at its fair market value without court approval.

Section 1.05 No Person Under 21 Years of Age May Serve as Attorney-in-Fact

No person named as my Attorney-in-Fact or successor Attorney-in-Fact may serve until that person has attained the age of 21 years.

Section 1.06 Prior or Joint Attorney-in-Fact Unable to Act

A successor Attorney-in-Fact, or an Attorney-in-Fact serving jointly with another Attorney-in-Fact, may establish that the acting Attorney-in-Fact or joint Attorney-in-Fact is no longer able to serve as Attorney-in-Fact by signing an affidavit that states that the Attorney-in-Fact is not available or is incapable of acting. The affidavit may (but need not) be supported by a death certificate of the Attorney-in-Fact, a certificate showing that a guardian or conservator has been appointed for the Attorney-in-Fact, a letter from a physician stating that the Attorney-in-Fact is incapable of managing his or her own affairs, or a letter from the Attorney-in-Fact stating his or her unwillingness to act or delegating his or her power to the successor Attorney-in-Fact.

Article Two
Effectiveness of Appointment - Durability Provision

Section 2.01 Effectiveness

The authority granted to my Attorney-in-Fact under this General Durable Power of Attorney shall be effective immediately upon signing.

Section 2.02 Durability

The authority granted to my Attorney-in-Fact under this General Durable Power of Attorney shall not be affected by my subsequent disability, incompetency, incapacity, or lapse of time.

Section 2.03 Termination of General Durable Power of Attorney

This General Durable Power of Attorney shall expire at the earlier of:

(i) my death (except for post-death matters allowed under state law); or

(ii) my revocation of this General Durable Power of Attorney.

Article Three
General Powers

I grant my Attorney-in-Fact the powers described in this Article so that my Attorney-in-Fact may act on my behalf. In addition, my Attorney-in-Fact may do everything necessary to exercise the powers listed below.

My Attorney-in-Fact may exercise any power described in this General Durable Power of Attorney on my behalf with respect to any real property I now own or may acquire in the future.

Section 3.01 Real and Personal Property Sales and Purchases

Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) sell, exchange, and convey any interest I own in any kind of property, real or personal, including homestead property under South Carolina law or the laws of any other state, and determine the terms of sale and grant options with regard to sales;

(ii) dispose of sales proceeds on my behalf as my Attorney-in-Fact determines is appropriate;

(iii) buy any kind of property, real or personal, including homestead property under South Carolina law or the laws of any other state, and determine the terms for buying property and may obtain options to buy property;

(iv) arrange to insure purchased property, and otherwise arrange for its safekeeping;

(v) borrow money for the purposes described in this Section and to secure the loan in any manner my Attorney-in-Fact determines is appropriate, and repay the loan from my funds;

(vi) pay for any purchases made; and

(vii) repay any cash advanced from my credit cards.

Section 3.02 Real Property Management

My Attorney-in-Fact may manage any real property I now own or may acquire in the future, including my personal residence and homestead property under South Carolina law or the laws of any other state. Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) declare, create, or execute a homestead on my personal residence under South Carolina law or the laws of any other state; and terminate, abandon, release, or give a waiver on any interest I have in a homestead;

(ii) lease and sublease property for any period, and grant options to lease or subdivide property, even if the term of the lease, sublease, or option extends beyond the term of this General Durable Power of Attorney;

(iii) eject and remove tenants or other persons from property, and recover the property by all lawful means;

(iv) collect and sue for rents;

(v) execute occupancy agreements on my behalf;

(vi) pay, compromise, or contest tax assessments and apply for tax assessment refunds;

(vii) subdivide, partition, develop, dedicate property to public use without consideration, and grant or release easements over my real property;

(viii) maintain, protect, repair, preserve, insure, build upon, improve, demolish, abandon, and alter all or any part of my real property;

(ix) employ laborers;

(x) obtain or vacate plats and adjust boundaries;

(xi) adjust differences in the property's value on exchange or partition by giving or receiving consideration;

(xii) release or partially release real property from a lien;

(xiii) enter into any contracts, covenants, and warranty agreements regarding my real property that my Attorney-in-Fact considers appropriate; and

(xiv) encumber property, including homestead property under South Carolina law or the laws of any other state, by mortgage or deed of trust.

Section 3.03 Tangible Personal Property Management

My Attorney-in-Fact may manage any tangible personal property I now own or may acquire in the future. Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) lease and sublease property for any period, and grant options to lease or subdivide property, even if the term of the lease, sublease, or option extends beyond the term of this General Durable Power of Attorney;

(ii) recover my property by all lawful means;

(iii) collect and sue for rents;

(iv) take possession of and use my property in order to exercise any authority granted in this Power of Attorney;

(v) pay, compromise, or contest tax assessments and apply for tax assessment refunds;

(vi) maintain, protect, repair, preserve, insure, improve, destroy, and abandon all or any part of my property; and

(vii) grant security interests in my property.

My Attorney-in-Fact may accept tangible personal property as a gift or as security for a loan.

Section 3.04 Residence and Tangible Personal Property

Without limiting any other authority granted in this General Durable Power of Attorney, if my Attorney-in-Fact determines that I will never be able to return to my residence from a hospital, hospice, nursing home, convalescent home, or similar facility, my Attorney-in-Fact may sell, lease, sublease, or assign my interest in my residence on terms and conditions that my Attorney-in-Fact considers appropriate.

As it relates to items of tangible personal property remaining in my residence, my Attorney-in-Fact may:

(i) store and safeguard any items, and pay all storage costs;

(ii) sell any items that my Attorney-in-Fact believes I will never need again on terms and conditions that my Attorney-in-Fact considers appropriate; or

(iii) transfer custody and possession of any item to the person named in my estate planning documents as the person to receive that item upon my death.

Section 3.05 Bank Accounts and Banking Transactions

My Attorney-in-Fact may establish bank accounts of any type in one or more bank institutions that my Attorney-in-Fact may choose. My Attorney-in-Fact may modify, terminate, make deposits to, write checks on, make withdrawals from (including by electronic funds transfer), and grant security interests in any account in my name or to which I am an authorized signatory, except accounts held by me in a fiduciary capacity. In exercising this authority, it does not matter whether or not the account was established by me or for me by my Attorney-in-Fact. My Attorney-in-Fact is authorized to negotiate, endorse, or transfer any check or other instrument with respect to any account, to contract for any services rendered by any bank or financial institution, and to execute, on my behalf as principal, any agency or power of attorney forms furnished by a bank with respect to accounts with the bank that appoints the bank or any person as my agent.

My Attorney-in-Fact is authorized to access, establish, cancel, or continue online bank accounts (through the Internet or other similar method) and conduct online banking transactions of any kind as authorized in this Section.

Section 3.06 Investments and Investment Transactions

My Attorney-in-Fact may invest and reinvest all or any part of my property in any other property of whatever type, real or personal, tangible or intangible, and whether located inside or outside the geographic borders of the United States and its possession or territories. Unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may:

(i) invest in securities of all kinds, limited partnership interests, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts including investment trusts;

(ii) participate in common, collective, or pooled trust funds or annuity contracts;

(iii) sell or otherwise terminate any investment made by me or on my behalf, and establish and terminate savings and money market accounts at banks and other financial institutions;

(iv) establish and terminate accounts with securities brokers and use brokerage accounts to make short sales and to buy on margin, and pledge any securities held or purchased in brokerage accounts as security for loans and advances made to the account;

(v) access, establish, cancel, or continue online investment accounts (through the Internet or other similar method) and conduct online investment transactions of any kind as authorized in this Section;

(vi) establish and terminate agency accounts with corporate fiduciaries; and

(vii) employ and fire financial and investment advisors.

Section 3.07 Securities

My Attorney-in-Fact may exercise all rights regarding securities that I own now or in the future. Specifically, my Attorney-in-Fact may:

(i) buy, sell, and exchange all types of securities and financial instruments, including, but not limited to, stocks, bonds, mutual funds, commodity futures contracts, and call and put options on stocks and stock indexes;

(ii) receive certificates and other evidences of ownership with regard to securities;

(iii) hold securities in bearer or uncertified form and use a central depository, clearing agency, or book-entry system such as The Depository Trust Company, Euroclear, or the Federal Reserve Bank of New York;

(iv) execute stock powers or similar documents on my behalf and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities into or out of my name or nominee's name;

(v) place all or any part of my securities in the custody of a bank or trust company or in the name of its nominee;

(vi) employ a broker-dealer as custodian for my securities and register the securities in the name of the broker-dealer or its nominee;

(vii) exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote;

(viii) participate in any reorganization, recapitalization, merger, or similar transaction; and

(ix) exercise any subscription rights, option rights (whether or not qualified under the Internal Revenue Code) or other rights to which I am entitled now or in the future, or to sell and dispose of these rights, and, if required, to sign my name to rights, warrants, or other similar instruments.

Section 3.08 Obligations

My Attorney-in-Fact may collect all rights and benefits to which I am entitled now or in the future, including, but not limited to rights to, cash payments, property, debts, accounts, legacies, bequests, devises, dividends, and annuities. In collecting my obligations, unless specifically limited by the other provisions of this General Durable Power of Attorney, my Attorney-in-Fact may demand, sue for, arbitrate, settle, compromise, receive, deposit, expend for my benefit, reinvest, or otherwise dispose of these matters as my Attorney-in-Fact determines appropriate.

Section 3.09 Bankruptcy

My Attorney-in-Fact may act for me with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning me or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest I have in any property or other thing of value.

Specifically, and without limiting the preceding, my Attorney-in-Fact may act for me with respect to filing for bankruptcy, and in support of such filing may—

(i) employ counsel to represent me;

(ii) select any exemptions available to me;

(iii) determine which debts to reaffirm;

(iv) make any decisions regarding repayment and reorganization plans;

(v) discuss my affairs with credit-counseling and debtor-education services;

(vi) discuss my affairs with and employ debt-restructuring services; and

(vii) take any other actions to further my interests.

Section 3.10 Legal Actions

My Attorney-in-Fact may institute, supervise, prosecute, defend, intervene in, abandon, compromise, adjust, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way. This authority includes, but is not limited to, claims by or against me arising out of property damage or personal injury suffered by or caused by me or under circumstances such that the resulting loss may be imposed on me. My Attorney-in-Fact may otherwise engage in litigation involving me, my property, or my legal interests, including any property, interest, or person for which or whom I have or may have any responsibility.

Section 3.11 Fiduciary Positions

My Attorney-in-Fact may resign or renounce for me any fiduciary position I hold now or in the future including personal representative, trustee, guardian, attorney-in-fact, and officer or director of a corporation and any governmental or political office or position. In so doing, my Attorney-in-Fact may file an accounting with the appropriate court of competent jurisdiction or settle on the basis of a receipt, release, or other appropriate method.

Section 3.12 My Spouse

My Attorney-in-Fact (including my spouse acting as my Attorney-in-Fact) may deal with my spouse on my behalf. In dealing with my spouse, my Attorney-in-Fact may transfer, transmute, partition, or exchange any of my property interests, whether separate or community property, between my spouse and me. My Attorney-in-Fact may enter into and execute on my behalf marital property agreements, partition or exchange agreements, transmutation agreements, or community property agreements, and may enforce, amend, or revoke any such agreements between my spouse and me, but only with respect to rights and obligations in property owned by my spouse, by me, or by both of us, and with respect to reclassification of ownership, management, and control of such property.

Section 3.13 My Support

My Attorney-in-Fact may do anything reasonably necessary to maintain my customary standard of living, including:

(i) maintain my residence by paying all operating costs, including, but not limited to, interest on mortgages or deeds of trust, amortization payments, repairs, and taxes, or by purchasing, leasing, or making other arrangement for a different residence;

(ii) provide normal domestic help;

(iii) provide clothing, transportation, medicine, food, and incidentals; and

(iv) make all necessary arrangements, contractual or otherwise, for my care at any hospital, hospice, nursing home, convalescent home or similar establishment, or in my own residence should I desire it, and assure that all of my essential needs are met wherever I may be.

Section 3.14 Support of Dependents

My Attorney-in-Fact may make payments as my Attorney-in-Fact deems necessary for the health, education, maintenance, or support of my spouse and those my Attorney-in-Fact determines to be dependent on me for support.

Section 3.15 Recreation and Travel

My Attorney-in-Fact may, at my expense, allow me to engage in recreational and sports activities as my health permits, including travel.

Section 3.16 Advance Funeral Arrangements

My Attorney-in-Fact may make advance arrangements for my funeral and burial, including a burial plot, marker, and any other related arrangements that my Attorney-in-Fact considers appropriate.

Section 3.17 Memberships

My Attorney-in-Fact may establish, cancel, continue, or initiate my membership in organizations and associations of all kinds.

Article Four
Additional Powers

In addition to the powers specified in Article Three, my Attorney-in-Fact has the powers specified in this Article. If a power specified in this Article conflicts with a power specified in Article Three, the power specified in this Article controls.

Section 4.01 Fixtures and Personalty

My Attorney-in-Fact may engage in real estate transactions or transactions which involve any proprietary lease or stock evidencing my ownership of a cooperative apartment, including all fixtures and articles of personal property used in connection with the real property (my Attorney-in-Fact may include such property in the deeds, mortgages, agreements, and any other instruments to be executed and delivered in connection with real estate transactions and which may be described in said instruments with more particularity).

Section 4.02 Insurance Transactions

My Attorney-in-Fact may engage in insurance transactions, including applying for, maintaining, canceling, paying premiums on, increasing or decreasing coverage, collecting, borrowing from, transferring ownership, surrendering and/or purchasing insurance policies.

Section 4.03 Estate Transactions

My Attorney-in-Fact may engage in estate transactions, including Receipt, Release, and Refunding Agreements and Waivers and Consents.

Section 4.04 Disclaimers and Statutory Elections

My Attorney-in-Fact may make statutory elections and renounce or disclaim any interest in property by testate or intestate succession or by inter vivos transfer consistent with South Carolina law.

Section 4.05 Powers of Appointment

My Attorney-in-Fact may exercise in whole or in part, or decline to exercise, or disclaim my rights under any special or general power of appointment or any rights retained by me in any trust or otherwise, whether or not any such trust or other instrument was created by me or others.

Section 4.06 Trusts

My Attorney-in-Fact may create and fund inter vivos trusts of any type, whether revocable or irrevocable, and whether or not I am a beneficiary. With respect to any trust created by me or on my behalf, my Attorney-in-Fact may amend, modify, revoke, or terminate the trust. Further, my Attorney-in-Fact may add property to an existing or subsequently created trust, and accept transfers or distributions from any trustee of any trust, including

any trust over which I have a right of receipt or withdrawal, whether as grantor, beneficiary, or otherwise.

Also, and without limiting the authority granted to my Attorney-in-Fact in this Section, my Attorney-in-Fact may:

(i) create and fund a sole-benefit trust in accordance with United States Code, Title 42, Section 1396p(c)(2)(B);

(ii) create and fund a self-settled special needs trust in accordance with United States Code, Title 42, Section 1396p(d)(4)(A);

(iii) create and fund a qualified income trust in accordance with United States Code, Title 42, Section 1396p(d)(4)(B) if such a trust should be deemed necessary to qualify me for Medicaid benefits, and make arrangements for the diversion of my income to such a trust as necessary to comply with applicable Medicaid rules and regulations; and

(iv) sign all necessary documents to allow me to join any trust qualifying under United States Code, Title 42, Section 1396p(d)(4)(C) and transfer any portion of my assets to such trust.

Section 4.07 Safe-Deposit Boxes

My Attorney-in-Fact may enter any safe-deposit box or other place of safekeeping standing in my name alone or jointly with another and to remove the contents and to make additions.

Section 4.08 Loans and Notes

My Attorney-in-Fact may engage in all dealings with respect to loans and forgiveness of debts. My Attorney-in-Fact may borrow money on such terms as my Attorney-in-Fact may decide in his or her sole discretion, on a secured or unsecured basis, and to execute all notes, mortgages, and other instruments relating to such, provided any such loan carries a fair market interest rate.

Section 4.09 Annuities

My Attorney-in-Fact may waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan. My Attorney-in-Fact may withdraw from, transfer ownership, surrender, or purchase any commercial annuity, private annuity, or grantor retained annuity trust.

Section 4.10 Government Agencies and Benefits

My Attorney-in-Fact has the unrestricted power to deal with and obtain maximum entitlements and benefits relating to the Social Security Administration, Veterans Administration, Social Services Departments, Social Security Disability Insurance, Supplemental Security Income, Medicaid, Medicare, Worker's Compensation and all other government benefits or entitlement programs, including claims, planning for eligibility, and submission of applications and appeals. In this regard, my Attorney-in-Fact is authorized to execute and deliver any power of attorney or authorization-to-act form

requested or required by a governmental agency. This power shall impose no affirmative duty on my Attorney-in-Fact to provide information and/or documentation to any government agency.

Section 4.11 Deal with Tax Authorities

My Attorney-in-Fact is authorized to:

(i) deal with tax authorities, to execute and sign on my behalf any and all Federal, state, local, and foreign income and gift tax returns (as authorized under Section 1.6012-1(a)(5) of Title 26 of the Code of Federal Regulations or under any state, local, or foreign authority), including estimated returns and interest, dividends, gains, and transfers, and to pay any taxes, penalties, and interest due thereon;

(ii) represent me or to sign an Internal Revenue Service Form 2848 (Power of Attorney or Declaration of Representative) or Form 8821 (Tax Information Authorization), or comparable authorization, appointing a qualified lawyer, certified public accountant, or enrolled agent (including my Attorney-in-Fact, if so qualified) to represent me before any office of the Internal Revenue Service, state, local, or foreign taxing authority with respect to the types of taxes and years referred to above, and to specify on said authorization said types of taxes and years;

(iii) receive from or inspect confidential information in any office of the Internal Revenue Service, state, local, or foreign tax authority;

(iv) receive and deposit, in any one of my bank accounts, or those of any revocable trust of mine, checks in payment of any refund of Federal, state, local, or foreign taxes, penalties, and interest;

(v) execute waivers (and offers of waivers) of restrictions on assessment or collection of deficiencies in taxes and waivers of notice of disallowance of a claim for credit or refund;

(vi) execute consents extending the statutory period for assessment or collection of such taxes; to execute Offers in Compromise and Closing Agreements under Section 7121 or comparable provisions of the Internal Revenue Code, as amended, or any federal, state, local, or foreign tax statutes or regulations; and

(vii) delegate authority to, or substitute another representative for any one of those previously appointed by me or my Attorney-in-Fact, and to receive copies of all notices and other written communications involving my federal, state, local, or foreign taxes at such address as my Attorney-in-Fact designates.

Section 4.12 Employment of Professionals

My Attorney-in-Fact may retain, discharge, and pay for, in the sole discretion of my Attorney-in-Fact, the services of professionals, including, but not limited to, information technology experts, attorneys, accountants, financial planners, geriatric care managers, social workers, and any other health care professionals. My Attorney-in-Fact is not obligated to retain or pay for any health care professional on my behalf.

Section 4.13 Gifting Powers

Notwithstanding any other provision of this General Durable Power of Attorney, my Attorney-in-Fact may make gifts of any interest I have in real or personal property ("my property") in any amount and in excess of the annual exclusion amount under Internal Revenue Code Section 2503(b), as amended, including gifts of real and personal property, outright or in trust, to or for the benefit of those persons or charitable entities, including my Attorney-in-Fact, to whom, whether by right of survivorship, direction in my last will and testament, trust, or otherwise, such property would pass were I then deceased (such persons being hereinafter referred to as "Donees"). All gifts of my property shall be made keeping in mind: (1) the resources, both public and private, available for my care after the making of such gifts; and (2) the objective of preserving the largest possible amount of my estate for my Donees in the event I die, become incapacitated, or require long term care services. Accordingly, I authorize and encourage my Attorney-in-Fact to engage in estate planning, financial planning, Medicaid planning, long term care planning and/or asset preservation planning, to such extent and in such manner, as my Attorney-in-Fact shall deem necessary or advisable in order to serve my wishes. Gifts made pursuant to the authority granted herein shall, for all purposes, be deemed to have been "in my best interest" if: (1) made in accordance with the provisions of this section; and (2) made in the context of estate planning, financial planning, Medicaid planning, long term care planning and/or asset preservation planning pursuant to the recommendations of an attorney-at-law experienced in such matters.

Unless otherwise specified above, the value of any gift made pursuant to this Section may exceed the annual dollar limits of the federal gift tax exclusion under Section 2503(b) of the Internal Revenue Code. Further, any gift made pursuant to this Section must be made in accordance with, and to the extent my Attorney-in-Fact has actual knowledge of, the following:

(i) my pattern of prior giving; or

(ii) the provisions contained in my estate planning or any other documents for beneficiaries to receive assets upon my death (for example, a trust, will, annuity or life insurance contract, or deed naming beneficiaries).

Section 4.14 Gift-Splitting

My Attorney-in-Fact may make, join, and consent to gifts by my spouse pursuant to Section 2513 of the Internal Revenue Code, even if such gifts exceed my aggregate annual gift tax exclusion amount under Section 2503(b) of the Internal Revenue Code.

Section 4.15 Intent to Return Home

It is my intention to return home if I should be in a hospital, rehabilitation center, or nursing home, and my Attorney-in-Fact shall take all steps, including, but not limited to, executing any document, affidavit, or Declaration of Intent to Return Home on my behalf, to effectuate the same.

Section 4.16 Domicile

My Attorney-in-Fact may change or maintain my domicile and/or residency for any and all purposes and take any and all actions to effectuate the foregoing.

Section 4.17 Nomination of Conservator

I intend hereby to render unnecessary any future proceeding for a court-appointed Conservator in the event I become temporarily or permanently incapacitated or incompetent. Accordingly, I request, in the strongest possible terms, that any court that may receive or act upon a petition for the appointment of a Conservator should deny such petition so long as my Attorney-in-Fact is acting under this power of attorney.

If a Conservator is ever appointed for me in spite of this request, I direct that the person serving, or named to serve, as my Attorney-in-Fact under this power of attorney be named as my Conservator.

Section 4.18 Marital Agreements and Designation of Spouse as Attorney-in-Fact

My Attorney-in-Fact may enter into, modify, or amend any pre-nuptial or post-nuptial agreement to which I am or hereafter become a party. If a named Attorney-in-Fact is my spouse, then this power of attorney as to that named Attorney-in-Fact is automatically revoked, and that Attorney-in-Fact is deemed to have resigned as Attorney-in-Fact upon the filing of any separation or dissolution action between us.

Section 4.19 Caregiver Agreements

My Attorney-in-Fact may enter into, execute, modify, alter, or amend any contract or agreement (for example, a Caregiver Agreement or Personal Services Contract) pertaining to my medical, personal, or general care that I may require at my residence, assisted living facility, nursing facility, or in another's residence on my behalf. I expressly authorize my Attorney-in-Fact to also serve as a caregiver under any such agreement and to be paid in accordance with the terms and conditions of such agreement, provided, however, that such services are compensated at fair market value.

Section 4.20 Qualified Plans

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may deal in all respects with any Qualified Plan or Individual Retirement Account that I may own and to make any and all available elections or beneficiary designations on my behalf. If my spouse is a participant in a Qualified Plan or Individual Retirement Account, I authorize my Attorney-in-Fact to effect any waiver of my rights to any portion of said Plan or to any payout arrangement which may require my consent or approval by law, under any such Plan, or otherwise.

Section 4.21 Enforcement Proceedings

My Attorney-in-Fact may commence enforcement proceedings, at my expense, against any bank, savings and loan association, credit union, financial institution, brokerage firm, stock

transfer agent, insurance company, title insurance company, or other person or entity that fails or refuses to honor this durable power of attorney.

Section 4.22 Credit Cards

My Attorney-in-Fact may use any credit card in my name; to make purchases on my behalf; to open a new credit card account and to close any existing credit card account.

Section 4.23 Online Accounts, Digital Assets, and Digital Devices

Without limiting any other provision of this General Durable Power of Attorney, and subject to the limitations of any other provision of this General Durable Power of Attorney, my Attorney-in-Fact has the powers described in this Section.

My Attorney-in-Fact has full authority to deal with Online Accounts, Digital Assets, and Digital Devices of all kinds, wherever located. This authority includes, but is not limited to, the power to acquire, create, establish, access, control, modify, cancel, delete, continue, transfer, and take possession of such accounts, assets, and devices.

However, if I have used an online tool to direct the custodian of an Online Account, Digital Asset, or Digital Device to not disclose certain information, and if the online tool allows for the modification or deletion of that direction at all times, then such direction overrides the authority granted in this Section.

Further, even though state law might not require a custodian to disclose a deleted digital asset, my Attorney-in-Fact is authorized to access them, and the custodian will be held harmless for doing so.

My Attorney-in-Fact may request and change my access credentials to any Online Account, Digital Asset, and Digital Device (such as username, password, and secret question), and any third-party dealing with my Attorney-in-Fact in good faith will be held harmless for releasing such access credentials.

For purposes of this General Durable Power of Attorney, the following definitions apply:

(a) Online Accounts

The term "Online Accounts" means accounts that are accessible through the Internet or other similar method, including, but not limited to: bank accounts; investment accounts; other financial accounts; accounts with health care providers; social media accounts (like LinkedIn, Facebook, and Twitter); gambling and poker accounts; accounts with publishers; accounts for access to employee benefits; email accounts; accounts with Internet service providers; accounts to manage websites and website domain names; accounts with retail vendors; tax-preparation service accounts; affiliate marketing accounts; accounts with utility companies; user access accounts on third-party Digital Devices; and any other online account.

(b) Digital Assets

The term "Digital Assets" means intangible personal property related to digital technology (whether located on a Digital Device or an Online

Account), including, but not limited to: emails sent or received; text messages sent or received; other digital communications sent or received; digital music; digital photographs; digital videos; software licenses; social network accounts; file sharing accounts; online access to financial accounts; domain registrations; DNS service accounts; website hosting accounts; personal and commercial websites; tax preparation service accounts; online store accounts; affiliate marketing accounts; and other types of online accounts and digital items that currently exist or may exist as technology develops.

(c) Digital Devices

The term "Digital Devices" means tangible personal property related to digital technology capable of storing Digital Assets or accessing Online Accounts, and includes, but is not limited to: desktop computers; laptop computers; tablet computing devices (tablets); other mobile computing devices; peripheral devices; hard disk drives; solid state drives; flash memory devices; other storage devices; mobile telephones; smartphones; and any other type of digital device that currently exists or may exist as technology develops.

Section 4.24 Domestic Pets

My Attorney-in-Fact may make reasonable expenditures for the care, maintenance, support, and general welfare of my domestic pets, if any. Specifically, and without limitation, my Attorney-in-Fact may consent to and make reasonable expenditures for medical treatment, boarding, and kennel care of any of my domestic pets. I authorize any and all payments from my funds for pet care provided by any person or entity, including my Attorney-in-Fact.

In addition, my Attorney-in-Fact may acquire a domestic service pet if, in my Attorney-in-Fact's sole discretion, such service pet will benefit me.

Section 4.25 Estate and Long Term Care Planning

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may engage in estate and long term care planning in furtherance of achieving asset preservation. Property transfers made pursuant to the authority granted herein may be made without restriction as to the value of the transfer, and shall, for all purposes, be deemed to have been "in my best interest" if: (1) made in accordance with the provisions of this section; and (2) made in the context of estate planning, financial planning, Medicaid planning, long term care planning, or asset preservation planning pursuant to the recommendations of an attorney-at-law experienced in such matters. My Attorney-in-Fact may engage in such planning based on all relevant factors, including:

(i) the value and nature of my property;

(ii) my foreseeable obligations and need for maintenance;

(iii) minimization of taxes, including income, estate, inheritance, generation skipping transfer, and gift taxes; and

(iv) eligibility for a benefit, a program, or assistance under a statute or government regulation.

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may take any action necessary to effectuate the foregoing, including to qualify me for Social Security Benefits, Supplemental Security Income, Veterans Benefits, Medicaid or any other government benefit program. Such actions may include but shall not be limited to the following:

(i) convert non-exempt resources into exempt resources;

(ii) divest me of assets, without restriction as to the value of the divestment;

(iii) if my Attorney-in-Fact is my spouse, my spouse may protect our assets, whether owned by me alone, my spouse alone, or by us together as husband and wife, so that my spouse's impoverishment because of my health care costs can be avoided, by whatever lawful methods that might be available;

(iv) sign a Spousal Refusal (even if my Attorney-in-Fact is my spouse);

(v) sign an Assignment of Support (even if my Attorney-in-Fact is my spouse);

(vi) divide community property assets equally or unequally between my spouse and me, without restriction as to the difference of the value of our shares, if any;

(vii) sign an application for Medical Assistance or any other government benefit program;

(viii) serve as representative payee;

(ix) transfer the family residence to a spouse who does not need long-term health or nursing care, without restriction as to the value of the transfer;

(x) make home improvements and additions to my family residence;

(xi) pay off, partly or in full, any encumbrance on my family residence;

(xii) purchase a family residence, if I do not own a family residence;

(xiii) purchase a more expensive family residence; and

(xiv) attend and represent me at Fair Hearings.

Section 4.26 Ownership and Rights of Survivorship

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may select, create, or change the rights of survivorship on any and all of my property, whether real or personal, including bank and investment accounts, insurance policies, annuities, qualified or nonqualified retirement plans, and real property interests, and may do so by any means, including by changing ownership, such as adding a joint owner. My Attorney-in-Fact may designate survivorship rights among one or more remaindermen and may designate the form of title among multiple remaindermen, including, but not limited to, as tenants in common, joint tenants, community property, or tenants by the entirety.

In particular, my Attorney-in-Fact may execute any deed designating beneficiaries, including an enhanced life estate deed (also known as a "ladybird" deed), including with respect to my homestead property, if any, and may conduct any and all transactions with full power and authority in my Attorney-in-Fact to sell, convey, mortgage, lease, and otherwise dispose of the property in accordance with the terms of the deed.

Section 4.27 Beneficiary Designations

Notwithstanding the provisions of Section 1.04 of this General Durable Power of Attorney, my Attorney-in-Fact may select, create, or change beneficiary designations on any and all of my property, whether real or personal, including bank and investment accounts, insurance policies, annuities, qualified or nonqualified retirement plans, and real property interests.

Section 4.28 Spiritual and Religious Needs

My Attorney-in-Fact may arrange for the involvement of religious clergy or spiritual leaders in my care, provide said persons access to me at all times, arrange or maintain my membership in religious or spiritual organizations, and create opportunities for me to derive comfort and spiritual satisfaction from such activities, including the purchase of religious books, tapes, and other materials.

Section 4.29 Companionship

My Attorney-in-Fact may provide for such companionship for me, in the sole discretion of my Attorney-in-Fact, as will meet my needs and preferences at a time when I am disabled or otherwise unable to arrange for such companionship myself.

Section 4.30 U.S. Mail

My Attorney-in-Fact may open, read, respond to, and redirect my mail, and represent me before the U.S. Postal Service in all matters relating to mail service.

Article Five
Incidental Powers

My Attorney-in-Fact may perform those acts and execute and deliver those legal documents necessary or appropriate to the exercise of the powers set forth in this General Durable Power of Attorney, including, but not limited to, the following incidental powers.

Section 5.01 Court Proceedings

My Attorney-in-Fact may commence any court proceedings necessary to protect my legal rights and interests under this General Durable Power of Attorney including, but not limited to:

(i) actions for declaratory judgments from any court of competent jurisdiction interpreting the validity of this General Durable Power of Attorney and any of the

acts sanctioned by this General Durable Power of Attorney; provided, however, that my Attorney-in-Fact need not seek a declaratory judgment to perform any act sanctioned by this General Durable Power of Attorney;

(ii) actions for mandatory injunctions requiring any person or entity to comply with my Attorney-in-Fact's directions as authorized by this General Durable Power of Attorney; and

(iii) actions for actual and punitive damages and the recoverable costs and expenses, including reasonable attorney's fees, of such litigation against any person or entity who negligently or willfully fails or refuses to follow my Attorney-in-Fact's directions as authorized by this General Durable Power of Attorney.

Section 5.02 Document Execution

My Attorney-in-Fact may sign, execute, endorse, seal, acknowledge, deliver, and file or record all appropriate legal documents necessary to exercise the powers granted under this General Durable Power of Attorney.

Section 5.03 Custody of Documents

My Attorney-in-Fact may take, give, or deny custody of my important documents, including my Will and any codicils, trust agreements, deeds, leases, life insurance policies, contracts, or securities. My Attorney-in-Fact may disclose or not disclose the whereabouts or contents of those documents as my Attorney-in-Fact believes appropriate.

Article Six
Limitation on Powers

All powers granted to my Attorney-in-Fact under this General Durable Power of Attorney are subject to the limitations set forth in this Article.

Section 6.01 My Attorney-in-Fact to Avoid Disrupting My Estate Plan

If it becomes necessary for my Attorney-in-Fact to liquidate or reinvest any of my assets to provide support for me, I direct that my Attorney-in-Fact, to the extent that it is reasonably possible, avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.

If it is necessary to disrupt the dispositive provisions of my estate plan, my Attorney-in-Fact will use his or her best efforts to restore my plan as soon as possible. My Attorney-in-Fact will make reasonable efforts to obtain and review my estate plan. I authorize any person with knowledge of my estate plan or possession of my estate planning documents to disclose information to my Attorney-in-Fact and to provide copies of documents to my Attorney-in-Fact.

Section 6.02 Tax Sensitive Powers

No individual serving as my Attorney-in-Fact may exercise any fiduciary power or discretion if the exercise of that power or discretion would:

(i) cause any income generated by my property to be attributed to my Attorney-in-Fact for federal income tax purposes;

(ii) cause the value of any property subject to this General Durable Power of Attorney to be included in my Attorney-in-Fact's gross estate for federal estate tax purposes;

(iii) cause any distribution made or allowed to be made by my Attorney-in-Fact to be treated as a gift from my Attorney-in-Fact; or

(iv) discharge a legal obligation of my Attorney-in-Fact.

If the exercise of a power by my Attorney-in-Fact under this General Durable Power of Attorney would cause any of the foregoing results, a Special Attorney-in-Fact appointed under the provisions of Section 7.03 may exercise the power or discretion.

The Special Attorney-in-Fact appointed for this purpose must be an individual who is not related or subordinate to my Attorney-in-Fact within the meaning of Section 672(c) of the Internal Revenue Code.

Article Seven
Administrative Powers and Provisions

This Article contains certain administrative powers and provisions that facilitate the use of the General Durable Power of Attorney and that protect my Attorney-in-Fact and those who rely upon my Attorney-in-Fact.

Section 7.01 Compensation and Reimbursement to Attorney-in-Fact

If my Attorney-in-Fact is a professional (such as an attorney; accountant; geriatric care manager; professional guardian, conservator, or other fiduciary; or other professional, including entities that provide similar services), my Attorney-in-Fact is entitled to compensation for services rendered pursuant to this General Durable Power of Attorney at such professional's then stated rates. If my Attorney-in-Fact is not a professional, my Attorney-in-Fact is not entitled to compensation.

Whether or not my Attorney-in-Fact is a professional, my Attorney-in-Fact is entitled to reimbursement for costs reasonably incurred while acting as my Attorney-in-Fact, including, but not limited to: phone bills; postage; and travel expenses, if necessary, to supervise my care.

Section 7.02 Release of Information

My Attorney-in-Fact may release and obtain, as the case may be, any and all information regarding my financial investments, taxes, and estate planning, including any information or documents regarding stocks, bonds, certificates of deposit, bank accounts, tax returns,

retirement accounts, pension plans, wills, trusts, powers of attorney, advance directives, and any other documents or information regarding my financial affairs, taxes, or estate planning from my attorneys-at-law, financial advisors, insurance professionals, accountants, stockbrokers, stock transfer agents, and any other persons having such information.

I release these persons or entities from any liability for releasing the above-referenced information to my Attorney-in-Fact in reliance on this Section.

If my Attorney-in-Fact is an attorney-at-law or other accounting or financial professional, the professional regulations of my Attorney-in-Fact's profession and federal law may prohibit my Attorney-in-Fact from releasing information about my financial affairs to others if I am a client of my Attorney-in-Fact. This instrument, therefore, is a limited waiver of any privilege (such as the attorney-client privilege) that I have established with any Attorney-in-Fact as a client. The privilege is waived for the limited purpose of permitting my Attorney-in-Fact to perform his or her duties under this General Durable Power of Attorney.

Section 7.03 Appointment of a Special or Ancillary Attorney-in-Fact

My Attorney-in-Fact may appoint, in writing, a corporate fiduciary or an individual to serve as Special Attorney-in-Fact to exercise any power under this General Durable Power of Attorney. My Attorney-in-Fact may revoke any such appointment at will.

If my Attorney-in-Fact determines that it is necessary or desirable to appoint an Ancillary Attorney-in-Fact to act under this General Durable Power of Attorney in a jurisdiction other than this one, my Attorney-in-Fact may do so. In making an appointment, my Attorney-in-Fact may sign, execute, deliver, acknowledge, and make declarations in any documents that may be necessary, desirable, convenient, or proper in order to carry out the appointment.

A Special or Ancillary Attorney-in-Fact may exercise all powers granted by this General Durable Power of Attorney unless expressly limited elsewhere in this General Durable Power of Attorney or by the instrument appointing the Special or Ancillary Attorney-in-Fact. A Special or Ancillary Attorney-in-Fact may resign at any time by delivering written notice of resignation to my Attorney-in-Fact. Notice of resignation shall be effective in accordance with the terms of the notice.

Section 7.04 Attorney-in-Fact Authorized to Employ My Attorney

My Attorney-in-Fact may employ the attorney who prepared this General Durable Power of Attorney or any other attorney employed by me in connection with my estate plan or business matters and I specifically:

(i) waive any and all conflicts of interest that might arise through such employment;

(ii) authorize the attorney to make full disclosure of my estate plan and business to the Attorney-in-Fact; and

(iii) authorize the attorney to accept the engagement.

Section 7.05 Fiduciary Eligibility of Attorney-in-Fact

My Attorney-in-Fact is eligible to serve in any other fiduciary capacity for me or for my benefit, including trustee, guardian, conservator, committee, executor, administrator, or personal representative.

Section 7.06 Amendment and Revocation

I may amend or revoke this General Durable Power of Attorney at any time. Amendments to this document must be made in writing by me personally (not by my Attorney-in-Fact) and must be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

The written notice of amendment or revocation to my Attorney-in-Fact must be:

(i) personally delivered and receipt of delivery received;

(ii) mailed postage prepaid by certified mail, return receipt requested, to the last known address of my Attorney-in-Fact; or

(iii) sent by express mail or commercial expedited delivery providing a receipt for such delivery.

If this General Durable Power of Attorney is amended or revoked, no person will incur any liability to me or my estate as a result of permitting my Attorney-in-Fact to exercise any power authorized by this General Durable Power of Attorney prior to that person's receipt of notice that it was amended or revoked.

Section 7.07 Resignation

My Attorney-in-Fact may resign by the execution of a written resignation delivered to me (or my guardian if I am incapacitated and one has been appointed for me) and to any Attorney-in-Fact serving together with the resigning Attorney-in-Fact, or if none, to the next successor Attorney-in-Fact. If I am incapacitated, notice may be delivered to any person with whom I am residing or who has my care and custody.

Section 7.08 Signature of Attorney-in-Fact

My Attorney-in-Fact shall use substantially the following form when signing documents on my behalf pursuant to this power:

[Attorney-in-Fact's name], as Attorney-in-Fact for Raymond Zeigler.

Section 7.09 Interpretation

This General Durable Power of Attorney is a general power of attorney and should be interpreted as granting my Attorney-in-Fact all general powers permitted under South Carolina law. The description of specific powers is not intended to, nor does it, limit or restrict any of the general powers granted to my Attorney-in-Fact.

2018034627 DE BK 2538 PG 0325

Section 7.10 Use of "Attorney-in-Fact" Nomenclature

The word "Attorney-in-Fact" and any modifying or equivalent word or substituted pronoun includes the singular and the plural, as well as the masculine, feminine, and neuter genders.

Section 7.11 Third-Party Reliance

No person who relies in good faith on the authority of my Attorney-in-Fact under this General Durable Power of Attorney will incur any liability to me, my estate, or my heirs, successors, and assigns.

Any party dealing with my Attorney-in-Fact may conclusively rely upon an affidavit or certificate of my Attorney-in-Fact stating that:

(i) the authority granted to my Attorney-in-Fact under this General Durable Power of Attorney is in effect;

(ii) my Attorney-in-Fact's actions are within the scope of my Attorney-in-Fact's authority under this General Durable Power of Attorney;

(iii) I was competent when I executed this General Durable Power of Attorney;

(iv) I have not revoked this General Durable Power of Attorney; and

(v) my Attorney-in-Fact is currently serving as my Attorney-in-Fact.

Section 7.12 Effect of Duplicate Originals or Copies

If this General Durable Power of Attorney has been executed in multiple counterparts, each counterpart original will have equal force and effect. My Attorney-in-Fact may make copies of this General Durable Power of Attorney and each copy will have the same force and effect as the original. A copy means an electronic, digital, facsimile, photocopy, or other reproduction of this General Durable Power of Attorney.

Section 7.13 Governing Law

This General Durable Power of Attorney's validity and interpretation will be governed by South Carolina law. To the extent permitted by law, this General Durable Power of Attorney is applicable to all of my property (whether real or personal, tangible or intangible, or legal or equitable), wherever located, and whether or not the property is owned by me now or in the future.

Section 7.14 Severability

If any provision of this General Durable Power of Attorney is declared invalid for any reason, the remaining provisions will remain in full force and effect.

Article Eight
Duties and Liabilities of My Attorney-in-Fact

Section 8.01 Duty to Account

My Attorney-in-Fact shall render statements of account of receipts, disbursements, principal on hand, and transactions conducted on my behalf if:

(i) ordered by a court;

(ii) requested by me, a guardian, conservator, trustee, or other fiduciary acting on my behalf; or

(iii) upon my death, requested by the Personal Representative of my estate.

If so requested, my Attorney-in-Fact shall comply with the request within 30 days or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

Section 8.02 Limitation of Liability of My Attorney-in-Fact

I release and discharge any Attorney-in-Fact acting in good faith from any and all civil liability and from all claims or demands of all kinds whatsoever by me, my estate, and my heirs, successors, and assigns arising out of the acts or omissions of my Attorney-in-Fact, except for duties committed dishonestly, with improper motive, or with reckless indifference to the purposes of this General Durable Power of Attorney or my best interests, including willful misconduct or gross negligence. This protection extends to the estate, heirs, successors, and assigns of my Attorney-in-Fact.

In particular, any Attorney-in-Fact who acts in good faith is not liable to any beneficiary of my estate plan for failure to preserve the plan, and absent a breach of duty to me, my Attorney-in-Fact is not liable if the value of my property declines.

Article Nine
Acceptance of Appointment as Attorney-in-Fact

Any manifestation of acceptance of appointment as Attorney-in-Fact, whether in writing or by conduct, is an acceptance of all aspects of this General Durable Power of Attorney, and may not be limited to only certain aspects. Appointment as Attorney-in-Fact is accepted by:

(i) signing any document manifesting acceptance;

(ii) exercising any authority or performing any duties as Attorney-in-Fact under this General Durable Power of Attorney; or

(iii) any other assertion or conduct indicating acceptance.

Article Ten
Declarations of the Principal

I understand that this General Durable Power of Attorney is an important legal document. Before executing this General Durable Power of Attorney, my attorney explained to me the following:

(i) that this General Durable Power of Attorney provides my Attorney-in-Fact with broad powers to dispose of, sell, convey, and encumber my real and personal property;

(ii) that the powers will exist for an indefinite period of time unless I revoke this General Durable Power of Attorney or I have limited their duration by specific provisions herein;

(iii) that this General Durable Power of Attorney remains in full force and effect during my subsequent disability or incapacity; and

(iv) that I may revoke or terminate this General Durable Power of Attorney at any time.

Dated: May 8, 2018

Raymond Zeigler

Raymond Zeigler, Principal

(Signed by Corrie Ford at the direction of Raymond Zeigler and in his presence, due to his inability to sign)

Corrie Ford

Signature

We, ANNA E. FORSYTHE and CHADWICKE L. GROOVER, the witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the principal signs and executes this instrument as his durable power of attorney and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the principal, hereby signs this durable power of attorney as witness to the principal's signing, and that to the best of our knowledge the principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

ANNA E. FORSYTHE
[redacted]
Simpsonville, SC 29681

CHADWICKE L. GROOVER
[redacted]
Simpsonville, South Carolina 29615

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF GREENVILLE)

Subscribed, sworn to and acknowledged before me by RAYMOND ZEIGLER, the principal, and subscribed and sworn to before me by ANNA E. FORSYTHE and CHADWICKE L. GROOVER, witnesses, on this the 8th day of May, 2018.

Notary Public, State of South Carolina
My commission expires: January 26, 2019

CHADWICKE L. GROOVER NOTARY PUBLIC SOUTH CAROLINA

MEDIATION AND BINDING ARBITRATION AGREEMENT

made pursuant to the

FEDERAL ARBITRATION ACT (9 U.S.C. § 1 *et seq.*)

and pursuant to the

SOUTH CAROLINA UNIFORM ARBITRATION ACT

(S.C. CODE ANN. §§ 15-48-10 *et seq.*)

This MEDIATION AND BINDING ARBITRATION AGREEMENT is entered into on December 22, 2022, by and between Carlyle Senior Care (hereinafter "Facility") and Raymond Zeigler ("Resident") and/or Kimberly Haag, the Resident's Legally Designated Representative, if any.

THIS IS A BINDING AGREEMENT TO ARBITRATE ALL CLAIMS ARISING OUT OF THE RELATIONSHIP BETWEEN RESIDENT AND FACILITY. THE EXPRESS INTENT OF THE PARTIES IS TO SUBMIT ALL CLAIMS TO BINDING ARBITRATION EXCEPT AS EXPRESSLY SET FORTH HEREIN. ANY AMBIGUITY OR DOUBT AS TO THE INTENDED SCOPE OF THIS AGREEMENT SHALL BE RESOLVED IN FAVOR OF SUBMITTING ALL CLAIMS TO BINDING ARBITRATION.

In this MEDIATION AND BINDING ARBITRATION AGREEMENT (hereinafter "Agreement"), the following definitions apply:

"Resident" "you" and "your" refers to the Resident identified above who is being admitted to the Facility. Resident also includes Resident's Legally Designated Representative(s), Resident's Responsible Party, Resident's family, and anyone situated in such a manner so as to assert a Claim against the Facility.

"Resident's Legally Designated Representative" refers to the person who possesses actual legal authority to conduct affairs and make decisions on behalf of the Resident. This person includes, but is not limited to, the person who has been appointed as Guardian for the resident, and/or the person who possesses a Power of Attorney executed by the Resident.

"Resident's Responsible Party" refers to _____, who is the person identified as the Resident's Responsible Party in the Admission materials executed by Resident and/or the Resident's Legally Designated Representative, and who has agreed to serve as the primary point of contact for communications between the Facility and the Resident's family.

"Facility" refers to the Facility identified above, and includes the Facility's employees, agents, subcontractors, and parent and affiliated companies (including, but not limited to, Cooke Management Company, Inc.) and their employees and agents.

"Parties" and **"party"** refers to persons and entities defined within the scope of "Resident" and "Facility."

"Claim(s)" include any and all claims, disputes or controversies of any and every variety between the Parties relating in any respect to the relationship and interactions of the Parties. The Parties' express intent is for this Agreement to apply to Claims that presently exist, as well as any Claims as may arise or come to exist in the future. Except as expressly set forth herein or as excluded in Section II(c) of the Agreement, it is the intent of the Parties that all Claims be resolved between the Parties via binding arbitration.

The Parties agree that any ambiguity with regard to whether or not the Claim(s) fall within the scope of this Agreement should be construed in favor of submitting the Claim(s) to binding arbitration pursuant to the terms of this Agreement.

All Claims must be asserted by the Parties within the time allowed by the applicable statute(s) of limitation.

I. **Voluntary Mediation:** This Agreement provides for voluntary mediation whereby the Parties may, upon mutual agreement, engage in mediation before resorting to binding arbitration. Mediation is a form of alternative dispute resolution whereby an impartial third party is selected by the Parties to preside over a meeting of the Parties and/or their representatives so to facilitate communication between the Parties, with a goal of bringing the Parties together and negotiating the terms for a mutually agreeable Settlement Agreement. Depending upon the location of the litigation and the nature of the Claims, South Carolina courts presently requires that litigants engage in pre-suit mediation. This Agreement will make such mediation voluntary. The goal of mediation is to resolve the dispute promptly, amicably, and without requiring either Party to engage in the significant time and expense required in the litigation process. The advantage of mediation is that it allows the Parties the opportunity to establish mutually agreeable terms to resolve any Claims. If the Parties do not mutually agree to mediate any Claims between them, then they may proceed directly to arbitration.

(a) **Selection of the Mediation Site and Mediator:** If the Parties mutually agree to mediate any Claims that may arise between them, then the mediation will be conducted at a location either within the County in which the Facility is situated, or at a location mutually agreeable to the Parties. The Parties shall mutually select a certified mediator. The costs of the mediation shall be borne equally by each Party, and each Party shall be responsible for their own legal fees. If the Parties cannot agree upon a location or a mediator for the mediation, or if the Parties are unable to resolve their Claims through mediation, then the Claims shall be resolved by binding arbitration as set forth in this Agreement.

(b) **Settlement at Mediation:** Although the mediation process is voluntary and non-binding, should the Parties reach a settlement in the course of the Mediation that is memorialized into a Settlement Agreement executed by the Parties, this Settlement Agreement's terms and conditions shall be binding upon the Parties.

II. **Binding Arbitration:** Arbitration is a specific method of resolving Claim(s) between the Parties outside of the traditional state or federal court system. Instead of a judge and/or jury resolving the Claim(s), a neutral third party ("Arbitrator") renders the decision, which is binding on both Parties. Generally, an Arbitrator's decision is final and not open to appeal. The Arbitrator will hear both sides present their Claim(s) and their responses to the other Party, and then render a decision based on fairness, law, common sense and the rules established by the arbitration association selected by the Parties in Section II(b) of this Agreement. Because this arbitration is binding, it is the only legal process available to the Parties. Binding Arbitration has been mutually selected by the Parties with the goal of reducing the time, formalities and cost of utilizing the court system.

(a) **Intent of the Parties.** The Parties expressly intend that all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement as well as resolving all Claims, existing presently or in the future, between the parties without regard for whether such Claims are presently known or unknown.

(1) **Scope of Agreement:** Unless the Claims are resolved by mediation, or are expressly excluded in Section II(c), or are excluded from the scope of this Agreement by mutual written consent of the Parties, the Parties expressly intend that the binding arbitration provisions of this Agreement apply to any and all Claims arising out of the relationship between the Parties, without regard for the nature of the Claim(s), the facts alleged to support or refute the Claim(s), or circumstances from which the alleged Claim(s) arose. This means that neither the Facility nor the Resident will be able to file a lawsuit in court to resolve any Claim(s) against the other. It also means that both the Facility and the Resident are relinquishing their right to a trial by judge and/or jury to resolve any Claim(s) against the other. The Parties freely choose arbitration, and the Parties understand that the arbitrator's decision is final and binding.

(2) **Implementation of Arbitration:** The Parties expressly intend to arbitrate all Claims; therefore, should the determination be made that a Claim is not subject to arbitration pursuant to the Federal Arbitration Act, then the Parties intend that such Claim shall be arbitrated in accordance with the South Carolina Uniform Arbitration Act. Similarly, should the determination be made that any Claim is not subject to arbitration pursuant to the South Carolina Uniform Arbitration Act, then the Parties intend that such Claim shall be arbitrated in accordance with the Federal Arbitration Act. In the event that the determination is made that any Claim is not subject to arbitration pursuant to either the Federal Arbitration Act or the South Carolina Uniform Arbitration Act, then the Parties hereby stipulate and agree to conduct voluntary binding arbitration in accordance with Section II(b). The Parties agree that this specific provision of this Agreement is enforceable by specific performance by either Party. In the event that despite the Parties' express intent that all Claims be resolve by binding arbitration, it is determined that only certain claims may be arbitrated, then the Parties agree that binding arbitration of those claims shall proceed. This binding arbitration shall proceed during the pendency of any appeal or any other litigation in civil court, unless both Parties mutually agree that this arbitration be stayed.

(3) **Involvement of Interstate Commerce:** The Facility expressly represents and provides notice to the Resident that the Facility must and will engage in interstate commerce in the course of its relationship with Resident. The Resident is aware of this fact, acknowledges this fact, and explicitly expects that interstate commerce will be involved in the course of the relationship between the Parties. The Resident agrees that (s)he could specifically seek residency at a different facility if Resident expected and/or desired to reside in a facility that did not and would not engage in interstate commerce in the course of the relationship between the Parties, which includes, but is not limited to, the provision of care to the Resident. Therefore, it is the express intent and expectation of the Parties that the care provided by the Facility to the Resident will and does involve, implicate, and affect interstate commerce.

The Parties expressly acknowledge and agree that the relationship between the Parties, which includes, but is not limited to, the provision of care, products, and services to the Resident by and through the Facility, necessarily will, and in fact does, necessitate transaction(s) involving and affecting interstate commerce by needing and in fact utilizing people, information and tangible materials that originate out of state and that must be and in fact are transported across state lines to the Facility. The extent of this involvement and affect on interstate commerce includes, but is not limited to: (1) the equipment utilized by the Facility in the course of both general operations and the provision of specific care to the Resident; (2) the medicines prescribed to the Resident; (3) the supplies sought by, prescribed to, and/or provided to the Resident; (4) the staffing of personnel, specialists, and independent contractors at the Facility in the course of the care and treatment of Resident; (5) the information used in the course of the care and treatment of the Resident; and (6) the food and other products offered by the Facility to Resident. Additionally, the Facility is required to comply with state and federal statutes and regulations. Further, the Facility accepts payments from federal programs as well as from out of state providers and out of state income sources.

In the course of providing care, products and services, the Facility cannot and does not limit itself to utilizing only items and services that originate in South Carolina. Therefore, the relationship between the Parties specifically contemplates and requires the purchase, acquisition, and/or utilization of materials, services, and items from outside the state of South Carolina that must be transported across state lines to the Facility, thereby involving, implicating and substantially affecting interstate commerce. The Parties acknowledge and agree that the Facility would be unable to fulfill its obligations to Resident without involving, implicating and substantially affecting interstate commerce within the scope and meaning of Congress' Commerce Clause.

(b) **Procedure for Arbitration**. The Arbitration shall be administered by one of the entities identified below and mutually agreed upon and designated by the Parties:

Option 1: Carolina Dispute Settlement Services); or

Option 2: National Arbitration. Forum

If the options identified above are not mutually agreeable to the Parties, an alternate arbitration forum and/or qualified arbitrator may be mutually agreed upon and identified below:

Option 3: _____

We selection Option _____ (choose options 1, 2 or 3 and initial below)

Initials: _____ _____ KH _____ _____

Resident	Resident's Legally Designated Representative	Resident's Responsible Party	Facility

Any Request for Arbitration of Claim(s) ("Request") must be submitted in writing to the Arbitrator at the address set forth below in accordance with the procedural rules established by that Arbitrator existing at the time the Request is made. A copy of the Request must also be sent to the Facility at the address set forth below. In the event the Arbitrator is unable or unwilling to serve, then the Resident must provide written Notice to the Facility within thirty (30) days of the Resident's receipt of notice of the Arbitrator's unwillingness or inability to serve. Within thirty (30) days of receipt of this Notice from the Resident, the Facility shall select another neutral arbitration service, either from the list below or from another source, and this alternate arbitration service's procedural rules shall apply to the arbitration proceeding. The Resident's failure to submit a Request within the period set by the applicable state of limitations for the Claim(s) to which the Request applies shall operate as a bar to such Claim(s). A copy of the applicable Rules and Procedures for Arbitration may be acquired from the selected Arbitrator, either online or directly. Judgment on any award rendered by the Arbitrator may be entered in any court having appropriate jurisdiction.

Carolina Dispute Settlement Services:
234 Fayetteville Street Mall, Suite 200
Raleigh, N.C. 27601
Telephone: 1-919-755-4646
Fax: 1-919-155-4644
www.notrials.com

National Arbitration Forum
P.O. Box 50191
Minneapolis, MN 55405-0191
Telephone: 1-800-474-2371
Fax: 952-345-1160
www.adrforum.com

Facility:

_____

Option 3 Alternate Arbitrator:

_____

(c) **Exclusion from Arbitration.** The Parties expressly agree to exclude the following Claim(s) from binding arbitration: (1) guardianship proceedings resulting from the alleged incapacity of the Resident; (2) Claim(s) involving less than Five Thousand Dollars ($5,000.00); (3) Claim(s) brought after the expiration of the applicable statute(s) of limitation; and (4) any Claim that the Parties mutually agree to resolve in a manner not entailing binding arbitration, either as set forth at the time the Parties execute this Agreement, or as later mutually agreed upon in writing by both Parties. In situations involving Claim(s) excluded from binding arbitration, neither the Resident nor the Facility is required to use the arbitration process, but the Parties may mutually agree to do so should they so choose. Any legal actions related to excluded Claim(s) may be filed and litigated in any court possessing jurisdiction. Additionally, this Agreement shall not impair the rights of the Resident to appeal any transfer and/or discharge action initiated by the Facility to the appropriate administrative agency if such transfer or appeal is governed by State or Federal law prescribing the instances in which a resident may be transferred or discharged, and after the exhaustion of such administrative appeals, to appeal to the court exercising appellate jurisdiction over that administrative agency.

(d) **Right to Legal Counsel.** Both Parties have the right to be represented by legal counsel in any binding arbitration proceedings initiated under this Agreement. Because this Agreement addresses important legal rights, the Facility encourages and recommends that the Resident obtain the advice and assistance of legal counsel to review the legal significance of this binding arbitration provision either prior to signing this Agreement, or subsequent to signing but within the rescission period. Should any Party fail to obtain legal counsel at any point, they do so willingly and voluntarily.

(e) **Location of Arbitration.** The arbitration will he conducted in the County in which the Facility is located, or in accordance with the Arbitrator's applicable rules of procedure (for instance, certain Arbitrators may require that the arbitration take place at their offices), or at another site that is mutually agreeable to the Parties. In the event that the Parties cannot mutually agree upon a location for the arbitration, the Parties shall be bound by the Arbitrator's decision of the location in which the arbitration is to occur.

(f) **Applicable Law.** The Parties agree that the Arbitrator shall apply South Carolina law in order to resolve any state law Claims related to their relationship. The Parties agree that the arbitrator shall apply federal law as set forth by the United State Supreme Court, the Fourth Circuit Court of Appeals and the District Court of South Carolina to any Claims premised upon federal statutes. The Parties agree that the application of South Carolina law in this choice of law provision shall not be construed to prevent the Parties from arbitrating all Claims arising from their relationship. For instance, if a Claim is deemed not able to be arbitrated under the South Carolina Uniform Arbitration Act, then this choice of law provision shall not be construed to prevent application of the Federal Arbitration Act to resolve the Claim via binding arbitration. Further, the Parties agree that the legal maxim that ambiguities should be construed against the party that drafted the document shall not apply; rather the Parties agree that ambiguities, if any, are to be construed in favor of submitting all Claims to binding arbitration.

(g) **Warranty of Capacity and Comprehension.** Resident and, if present, Resident's Responsible Party hereby affirm that (s)he possesses the mental capacity to execute this Agreement and that (s)he has not been diagnosed as incapacitated by a physician or adjudicated as incapacitated by a Court. Both Resident and the Resident's Responsible Party agree and affirm that they have reviewed and understand this Agreement.

_____ _____

Resident Resident's Responsible Party

In the event that either Resident or Resident's Responsible Party have any concerns or reservations regarding the Resident's capacity, please identify them on space below:

_____

_____

_____

In the event that the Resident is incapacitated, the Resident's Legally Designated Representative hereby affirms and warrants that (s)he possesses actual legal authority to act and make decisions on behalf of the Resident, and that (s)he has entered into this Agreement voluntarily after reviewing and understanding its terms, and (s)he believes that this Agreement is in the best interests of the Resident.

_____
Resident Legally Designated Representative

(h) **Allocation of Costs and Fees for Arbitration.** The costs of the arbitration shall be shared equally by each party, and each party shall be responsible for their own legal fees, costs, and expenses.

(i) **Severability.** In the event any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the offending provision shall be severed from the Agreement, and the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby. This provision reflects the Parties intent to arbitrate all Claims.

(j) **Limited Right to Rescind this Agreement.** Resident or, in the event of Resident's incapacity, Resident's Legally Designated Representative, has the right to rescind this Agreement by notifying the Facility in writing within thirty (30) days of the date set forth above. This right to rescind is fully set forth in the attached Notice of Right to Rescind ("Notice"). This Notice must be properly executed by either the Resident or the Resident's Legally Designated Representative and sent via certified mail to the attention of the Facility's Administrator at the address set forth above. The Notice must be post-marked within thirty (30) days of the execution of this Agreement. The Notice may also be hand-delivered to the Administrator and the acknowledgement of the Notice's receipt must be executed and dated within the same thirty (30) day period. The filing of a Claim in a court of law within the thirty (30) days provided for above will automatically rescind this Agreement without any further action by Resident or Resident's Legally Designated Representative.

(k) **Entire Agreement.** The Parties agree that, with respect to the subject matter hereof, this Agreement constitutes the full and complete understanding and agreement of the Parties. The Parties also agree that there is absolutely no agreement or reservation not clearly expressed herein, and that the execution hereof is with the full knowledge that this Agreement covers all possible Claims between the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors, purchasers and assigns.

_____
Resident

_____
Responsible Person

_____
Resident Legally Designated Representative

_____ Title Admissions
Duly Designated Facility Representative

MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT

This MANAGEMENT AND OPERATIONS TRANSFER AGREEMENT (this "***Agreement***") is made and entered into as of this 14th day of March, 2023 ("***Execution Date***"), by and between Carlyle Senior Care of Fountain Inn, LLC, a South Carolina limited liability company ("***Existing Operator***" or "***Licensee***") and Fountain Inn Healthcare, LLC a South Carolina limited liability company ("***New Operator***").

RECITALS

A. Existing Operator is the licensed operator of that certain facility commonly known as Carlyle Senior Care of Fountain Inn, and located at 501 Gulliver Street, Fountain Inn, SC South Carolina 29644 (the "***Facility***").

B. Effective upon the Operations Transfer Date, New Operator will occupy the Facility as a manager for Licensee pursuant to the terms hereof and during the Management Period (as defined below).

C. In order to facilitate a transition of operational and financial responsibilities from Licensee to New Operator in a manner which will ensure the continued operation of the Facility after the Operations Transfer Date in compliance with applicable law and in a manner which does not jeopardize the health and welfare of the residents of the Facility, Licensee and New Operator desire to document the terms and conditions on which New Operator will manage the Facility for Licensee as of the Operations Transfer Date and certain other terms and conditions relevant to the transition of operational and financial responsibilities from Licensee to New Operator.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of the parties set forth herein, it is hereby agreed as follows:

1. Definitions

1.1 "***Evidence of Licensure***" means, in the event the issuance or transfer of a License cannot occur on or prior to the Transition Date, New Operator shall provide Existing Operator with a letter or other form of written assurance, the sufficiency of which shall be determined in Existing Operator's and New Operator's good faith discretion (which shall not be unreasonably withheld, delayed, or conditioned), from the applicable Governmental Authority indicating that, all pre-Transition Date conditions for the issuance of the Licenses have been satisfied, and the New Operator may continue to operate the Facility lawfully without an interruption in service or licensure.

1.2 "***Governmental Authority(ies)***" means any state or federal governmental agency or authority with jurisdiction over the Licenses (as defined herein) and Facility.

1.3 "***Knowledge***" means, when used with respect to Licensee, the actual knowledge of Rick Cranford and the current licensed administrator of the Facility ("***Licensee's Knowledge Individuals***"), and not to any other persons, and shall not apply to or to be construed to apply to information or material which may be in the possession of Licensee generally or incidentally, but which is not actually known to Licensee's Knowledge Individuals. In no event

shall Licensee's Knowledge Individual be personally liable for the breach of any representation or warranty contained in this Agreement.

1.4 "***Licenses***" means a facility license, certificate of need and/or any other license or permit for the Facility required by any federal or Governmental Authorities with jurisdiction over the Facility, so that, on the Transition Date, New Operator shall have all legal authority to operate the Facility as a licensed skilled nursing facility, as defined by the laws of South Carolina.

1.5 For purposes hereof, the "***Operations Transfer Date"*** shall be April 1, 2023.

1.6 For purposes hereof, "***Third Party Payor Programs***" means Medicare, Medicaid, CHAMPUS, TRICARE, managed care plans, and any other private health care insurance programs and employee assistance programs as well as any future similar programs.

1.7 For purposes hereof, the "***Transition Date***" shall be the date upon which New Operator shall have received the Licenses or Evidence of Licensure from the South Carolina Department of Health and Environmental Control deemed sufficient by Existing Operator and New Operator with advice of their respective counsel.

2. **Conditions Precedent**. For purposes hereof, the "***Conditions Precedent***" to the transfer of operations shall be: (a) the execution and delivery by Licensee of the Assignment and Assumption of Admission Agreements in the form attached hereto as "**EXHIBIT A**", (b) the execution and delivery by Licensee of the Assignment and Assumption of Agreements in the form attached hereto as "**EXHIBIT B**" relating to the Assumed Contracts (as defined in Section 17(a) hereof), (c) the execution and delivery by Licensee of the Bill of Sale in the form attached here as "**EXHIBIT C**", and (d) the execution of the Purchase and Sale Agreement by and among LARK of Fountain Inn, LLC, a South Carolina limited liability company, and 501 Gulliver Property, LLC, a South Carolina limited liability company dated as of March 10, 2023 ("***Purchase and Sale Agreement***").

3. **Management of the Facility**. Commencing on the Operations Transfer Date and ending on the Transition Date (this period being known as the "***Management Period***"), Licensee hereby appoints New Operator as its sole and exclusive manager of the Facility. Any management agreement existing before the Operations Transfer Date, shall be terminated as of the Operations Transfer Date. The performance of all activities by New Operator hereunder shall be on behalf of Existing Operator. Existing Operator retains ultimate authority and legal responsibility for the operation and control of the Facility, subject to Existing Operator possessing a right of indemnity against New Operator for all liabilities, costs, and expenses, including reasonable attorneys' fees, arising from the acts or omissions of the New Operator. By entering into this Agreement, Existing Operator does not delegate to New Operator any powers, duties or responsibilities that Existing Operator is not authorized by law to delegate. Licensee shall exercise commercially reasonable efforts to cooperate with New Operator in all respects to make the transition in management of the Facility to New Operator as smooth as reasonably possible. Unless sooner terminated by either party, this Agreement shall terminate by its terms as of January 1, 2024 ("***Outside Termination Date***"), if the Conditions Precedent have not been satisfied or waived. The Outside Termination Date may be extended by Existing Operator in its sole discretion for unlimited additional thirty

(30) day periods, so long as New Operator is diligently pursuing satisfaction of the Conditions Precedent.

3.1 In connection with New Operator's assumption of operational and financial responsibility for the Facility, New Operator shall be permitted to bill under the Licensee's Medicare Agreement and Medicaid Agreement, utilizing Licensee's Submitter ID and NPI numbers and/or Medicaid provider number ("***Provider Numbers***"), as applicable, during the Billing Period (as defined below). In no event shall New Operator bill under the Medicare Agreement or Medicaid Agreement following expiration of the Billing Period. In addition to making Licensee a named insured under its insurance, New Operator shall indemnify and hold Existing Operator harmless from and against any and all liabilities while New Operator is using Licensee's Medicare Agreement and/or Medicaid Agreement following the Operations Transfer Date. Licensee shall cooperate with New Operator in granting New Operator with credentials to manage Licensee's Provider Numbers, whether online or otherwise. Notwithstanding the foregoing, Licensee shall remain ultimately responsible for the daily operational decisions and the care delivered to the residents at the Facility during the Management Period and accordingly, Licensee shall have the right to confer and consult with New Operator on any administrative, business, or management matters concerning the operation of the Facility during the Management Period and shall maintain read-only access to all software, billing and accounting systems, and bank accounts; provided, however, such ultimate responsibility shall not relieve New Operator from its obligations specified in this Section 3, all of which shall apply during the Management Period.

3.1.1. For purposes hereof, the "***Billing Period***" shall mean the period from the Operations Transfer Date to the earlier to occur of (A) in the case of Medicare, the date on which CMS issues a tie-in notice and the fiscal intermediary has terminated Licensee's right to submit claims under the Medicare provider number, and (B) in the case of Medicaid, the Transition Date, and (C) the date which is nine (9) months following the Operations Transfer Date. If, notwithstanding New Operator's continuing best efforts, the Medicare tie-in notice shall not have been issued or a new Medicaid provider agreement shall not have been issued to New Operator within such nine (9) month period, as applicable, Licensee, upon New Operator's written request, shall agree to unlimited 30 day extensions of the Transition Period, as may be necessary for New Operator to complete the applicable certification process. For all such 30 day extension periods, New Operator shall pay Licensee the sum of One Hundred Fifty and No/100 Dollars ($150.00) per hour actually spent by Existing Operator and/or Carlyle Senior Care Management Company, Inc.'s employees to address the delayed transition. Licensee shall supply New Operator with documentation of time spent, including a narrative of the activity or work.

3.2 New Operator shall arrange (utilizing Facility personnel as appropriate), and pay at its sole cost and expense, for the provision of the bookkeeping, accounting, and administrative functions, including, but not limited to, the following, as reasonably necessary for the efficient and proper operation of the Facility:

3.2.1. Preparation and maintenance of business records and financial and other reports;

3.2.2. Establishment and administration of accounting procedures and controls;

3.2.3. Financial and business planning;

3.2.4. Payment of accounts payable;

3.2.5. Preparation and completion of any reports and forms that may be required by governmental agencies;

3.2.6. Billing, processing and collection of accounts receivable, including the billing and completion of any reports and forms that may be required by insurance companies, governmental agencies, or other third-party payors; and

3.2.7. Providing and processing of all employee record keeping, payroll accounting (including social security and other payroll tax reporting), and benefits for all employees of the Facility.

3.3 New Operator shall arrange for the maintenance, repair, trash removal, and janitorial services which may be necessary to maintain the Facility and equipment in a clean and safe condition, in compliance with applicable law, and in good repair in accordance with standards established by the Lease.

3.4 New Operator shall arrange for the utilities reasonably required for operation of the Facility, including, but not limited to, telephone, electricity, gas, water and refuse disposal.

3.5 New Operator shall arrange for the provision and replenishment, as New Operator deems necessary and as necessary to meet any minimum requirements established under applicable law, of all supplies and Inventory (as defined in Section 15(d) hereof) used in the Facility. Licensee's only obligation with respect thereto shall be to ensure that the levels of supplies and inventory at the Facility, including, without limitation, perishable food, non-perishable food, central supplies, linen, housekeeping and other supplies, on the Operations Transfer Date is of a condition, quantity and quality sufficient to meet the regular operating needs of the Facility for a seven-day period following the Operations Transfer Date.

3.6 Subject to and consistent with Section 15 hereof, New Operator shall hire all employees whom New Operator determines to be necessary to effectively and efficiently operate the Facility as employees-at-will.

3.7 New Operator, on behalf of the Facility, shall arrange for maintenance of the payroll records of all employees, for the issuance of paychecks to employees, and for the payment and withholding from such paychecks of appropriate amounts for income tax, social security, unemployment insurance, and for all benefits, including vacation, holidays, sick leave, and other benefits in accord with the approved policies.

3.8 New Operator shall have the right, in its sole discretion, to revise the fee schedules for the services rendered by the Facility, provided that New Operator shall consult with Licensee before doing so.

3.9 Following the Operations Transfer Date, New Operator shall operate the Facility during the Management Period under a different d/b/a, and shall indemnify, defend and hold Licensee harmless to any trademark or service mark violations or other legal actions arising therefrom.

3.10 In conformity with applicable law, Licensee and New Operator shall not discriminate against Medicare and Medicaid residents who request services at the Facility.

3.11 New Operator shall comply with any and all codes, ordinances, rules, regulations, and requirements of all federal, state, and municipal authorities now in force, or which may hereafter come to be in force, pertaining to the Facility and its operations, including by managing the Facility in accordance with quality assessment performance improvement programs and a compliance plan formally adopted and maintained by New Operator to ensure that the operation of the Facility, and the delivery of services to residents and the billing and collection of reimbursement is accomplished in accordance with any and all codes, ordinances, rules, regulations, and requirements of all federal, state, and municipal authorities now in force, or which may hereafter come to be in force.

3.12 New Operator shall procure and maintain during the Management Period all insurance necessary and appropriate to the operation and maintenance of the Facility, which insurance shall be primary. The Licensee and Carlyle Senior Care Management Company, Inc., shall be named as an additional named insured/loss payee, as applicable, during the Management Period. New Operator shall keep such coverage in effect and provide updated certificates for the applicable statute of limitations period in which any claims may be brought against Licensee or Licensee's parents, affiliates, shareholders, members, affiliates, directors, officers, representatives or advisers. Any liability, costs, deductibles, or expenses of any sort, including attorneys' fees, shall be recoverable from New Operator pursuant to Licensee's right to indemnification from New Operator.

3.13 New Operator shall reasonably cooperate, participate in and be responsible for any survey, inspection or site investigation conducted by a Governmental Authority or regulatory, certifying or accrediting entity with authority or jurisdiction over the Facility to the extent the survey, inspection, or site investigation is related to operations after the Operations Transfer Date. If the survey, inspection, or site investigation is related to operations prior to the Operations Transfer Date, New Operator shall reasonably cooperate and participate in such events, but Licensee shall remain responsible for the survey, inspection, or site investigation. New Operator shall provide notice to Licensee of any reportable events, adverse events, inspections, or surveys by any state or federal entity during the Management Period. New Operator shall provide Licensee with copies of any responsive documents, including reports, plans of correction, and audits.

3.14 To the extent Licensee has received CMS Accelerated and Advance Payments ("AAPs") during 2020 or 2021 that have not yet been utilized, at the option of Licensee,

Licensee shall either (i) repay such unused AAPs in full to CMS on or before the Operations Transfer Date; or (ii) shall transfer or credit the entirety of any such remaining AAPs to New Operator. With regard to any AAPs received by Licensee during 2020 or 2021 that have been utilized as of the Operations Transfer Date, the total amount of any such AAPs utilized as of such date shall, at the option of Licensee, either be (i) repaid to CMS in full on or before the Operations Transfer Date, or (ii) deposited into an escrow account (pursuant to a mutually agreed upon escrow agreement) and utilized to offset any recoupments of such AAPs by CMS against any management fees due and owing to New Operator on a monthly basis. In the event CMS forgives the recoupment of AAPs and Existing Operator has elected to transfer the amount of AAPs into an escrow account, the Parties agree that such amount shall be released to Existing Operator within five (5) days of such CMS determination.

3.15 To the extent Licensee has received any monies from the CARES Act Provider Relief Fund ("PRF") in either 2020 or 2021 which have not been utilized by Licensee as of the Transfer Date, such monies will be refunded to the United States Department of Health and Human Services ("DHHS") and shall not transfer to New Operator. In the event that the PRFs received in 2020 or 2021 have been fully utilized as of the Transfer Date, Licensee will provide written documentation of such utilization to New Operator, as well as a representation that such monies were used in compliance with the CARES Act and guidance issued thereunder. With regard to all PRF monies received prior to the Transfer Date, Licensee shall remain solely liable for the representations made in any application and required attestation to the DHHS. Licensee shall be solely liable for all costs, fees (including but not limited to attorneys' fees), fines, penalties, or damages arising from any audit by any Governmental Authority related to the utilization of PRF monies received prior to the Transfer Date. In the event that New Operator is named in any audit, in any civil, criminal, or administrative charge under the False Claims Act (31 USC Section 3729 *et al.),* or any other local, state, or federal law related to the application, attestation, or utilization of PRF monies received prior to the Transfer Date, Licensee agrees that it shall indemnify, defend, protect and hold New Operator harmless from the same. For the purpose of clarification, any PRF monies applied for and received by New Operator after the Transfer Date shall be the sole responsibility of the New Operator. In the event that the Existing Operator is named in any audit, in any civil, criminal, or administrative charge under the False Claims Act (31 USC Section 3729 *et al.),* or any other local, state, or federal law related to the application, attestation, or utilization of PRF monies received by New Operator after the Transfer Date, New Operator agrees that it shall indemnify, defend, protect and hold Existing Operator harmless from the same.

3.16 To the extent that: (a) Licensee has made or makes any applications for any PRF, grants, or other monies (of any kind whatsoever), governmental or non-governmental, to address any impact, financial or otherwise, related to the COVID-19 pandemic which are approved and monies issued during the Management Period; or (2) Licensee receives any monies or funds for the Facility and/or its operations from any source, governmental or non-governmental, whether the result of Licensee's application or not, during the Management Period (other than envisioned in this Agreement) ("Interim Monies"), then the Parties will work cooperatively to ensure such Interim Monies are deployed in accordance with any applicable requirements. New Operator shall be solely liable for all costs, fees (including but not limited to attorneys' fees), fines, penalties, or damages related to the utilization of PRF, grants, or other monies (of any kind whatsoever) received on or after the Transfer Date. In the event that the Existing Operator is named in any audit, in any civil, criminal, or administrative charge under the False Claims Act (31 USC Section 3729 *et al.),*

or any other local, state, or federal law related to the application, attestation, or utilization of any applications or receipt of any Interim Monies, New Operator agrees that it shall indemnify, defend, protect and hold Existing Operator harmless from the same.

3.17 In the event that the New Operator's acts and/or omissions result in the Existing Operator and/or its management company, Carlyle Senior Care Management Company, Inc.'s active involvement (beyond review of the reports related to same), and such involvement is required so to preserve the viability of the Existing Operator's licensing and/or Provider Agreement, then New Operator shall reimburse Existing Operator and/or Carlyle Senior Care Management Company, Inc., for its reasonable costs and time. Time shall be reimbursed at the rate of One Hundred Fifty and No/100 Dollars ($150.00) per hour actually spent by Existing Operator and/or Carlyle Senior Care Management Company, Inc.'s employees facilitating retention of the licensing and Provider Agreement. Existing Operator and/or Carlyle Senior Care Management Company, Inc., shall supply New Operator with documentation of time spent, including a narrative of the activity or work.

4. Billings, Collections and Accounts Receivable

4.1 New Operator shall, on behalf of Licensee, bill residents and payors and use its commercially reasonable efforts to collect all cash revenue resulting from Facility operations during the Billing Period. Licensee agrees to exercise commercially reasonable efforts to cooperate with New Operator to make available such billing and accounting information and to provide such financial records for review as shall be necessary to accomplish the billing and collection of patient charges for services provided for in this Section 4.1 and to cooperate with New Operator in the completion of reports and claim forms as necessary to procure payments and reimbursement from governmental agencies, insurance carriers or other third party payors. During the Billing Period, Licensee authorizes New Operator to do the following:

4.1.1. To bill residents in Licensee's name, on Licensee's behalf, and under Licensee's Provider Numbers, specifically including, without limitation, services provided to Medicare and Medicaid residents during the Billing Period, and the resulting revenue will be treated as revenue of Licensee (subject to New Operator's right to direct the use of such funds as herein provided and subject to New Operator's right to the Management Fee pursuant to Section 5 hereof).

4.1.2. To collect accounts receivable resulting from such billing in Licensee's name and on Licensee's behalf;

4.1.3. To receive payments from insurance companies, prepayments from health care plans, and payments from all other third-party payors;

4.1.4. To take possession of and endorse in the name of Licensee any notices, checks, money orders, insurance payments, and other instruments received in payment of the accounts receivable resulting from such billing and deposit them directly in New Operator's account; and

4.1.5. To initiate legal proceedings in Licensee's name in accordance with policies reasonably approved by Licensee to collect any accounts or monies owed to the Facility or Licensee related to the Facility during the Management Period.

4.2 In compliance with applicable law, Licensee shall maintain sole control and have sole signature authority with respect to its deposit accounts where Licensee receives payments from Medicare, Medicaid, and any other state or federal health care program (the "***Government Healthcare Receivables Account***").

4.3 New Operator shall have the right to open one or more bank accounts for the Facility in the name of Licensee (the "***Management Account***"), the authorized signatories of which shall consist solely of persons designated by New Operator. Licensee agrees that it will not take any actions that interfere with the transfer of funds for services rendered by New Operator after the Operations Transfer Date into the Management Account, nor will Licensee remove, withdraw or authorize the removal or withdrawal of any such funds from the Management Account. Amounts deposited into Licensee's bank account for any reason and relating to operations of the Facility after the Operations Transfer Date shall be transferred, within five (5) business days, by Licensee into the Management Account. Licensee expressly authorizes New Operator to endorse checks made payable to Licensee and to deposit the same in the Management Account, unless such checks are required to be paid into Licensee's bank account under this Agreement (e.g., for amounts paid to Licensee for services rendered prior to the Operations Transfer Date) or applicable law. New Operator shall indemnify Licensee for all liabilities, costs, and expenses, including attorneys' fees, arising from it opening and operating accounts in Licensee's name.

4.4 All cash revenue received during the Management Period related to operating revenues for services rendered by New Operator on and after the Operations Transfer Date shall be the sole property of New Operator, rather than Licensee. All funds received before, during or after the Management Period related to the operating revenues for services rendered by Licensee prior to the Operations Transfer Date shall be the sole property of Licensee.

4.4.1. If Licensee directly or indirectly receives any such cash revenue during the Management Period which relates to the Management Period, Licensee shall immediately forward any such receipts to New Operator, together with the applicable remittance advices, within five (5) business days, for deposit in the Management Account. If New Operator directly or indirectly receives any cash revenue during the Management Period which relates to the period prior to the Management Period, New Operator shall within five (5) business days forward any such receipts to Licensee, together with applicable remittance advices.

4.4.2. New Operator shall use the cash revenues which relate to the operation of the Facility during the Management Period, or, if necessary, make available additional cash, to pay for expenses incurred during the Management Period, including both expenses paid during such period and expenses which are due after the Management Period but which were incurred during the Management Period.

4.5 In furtherance and not in limitation of the allocation of revenues provided for in Sections 4.3 and 4.4.1 of this Agreement, New Operator and Licensee agree as follows:

Initials:
Licensee:_____/ New Operator:_____

4.5.1. If such payments either specifically indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period prior to the Operations Transfer Date, they shall be retained by or forwarded to Licensee, along with the applicable remittance advice in accordance with the provisions of Section 4.4 above.

4.5.2. If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to the period from and after the Operations Transfer Date, they shall be forwarded to or retained by New Operator, along with the applicable remittance advice, in accordance with the provisions of Sections 4.3 and 4.4.1.

4.5.3. If such payments indicate on the accompanying remittance advice, or if the parties agree, that they relate to periods for which both parties are entitled to reimbursement under the terms hereof, the portion thereof which relates to the period prior to the Operations Transfer Date shall be disbursed in accordance with the provisions of Section 4.4 and the balance shall be retained by or remitted to New Operator in accordance with the provisions of Sections 4.3 and 4.4.1.

4.5.4. Any payments received by New Operator from and after the Operations Transfer Date from or on behalf of private pay residents with outstanding balances as of the Operations Transfer Date which fail to designate the period to which they relate (an "***Undesignated Payment***"), will, for the first ninety (90) day period after the Operations Transfer Date, first be applied by New Operator to reduce the residents' pre-Operations Transfer Date balances, with any excess applied to reduce any balances due for services rendered by New Operator from and after the Operations Transfer Date; after said ninety (90) day period such Undesignated Payment may be retained by New Operator to reduce the patient's post-Operations Transfer Date balances, with any excess remitted to Existing Operator.

4.5.5. All amounts owing to Licensee or New Operator under this Section 4.5 shall be settled within five (5) business days after the payment was received.

4.5.6. In the event the parties mutually determine that any third party payors or private pay residents are entitled to a refund of payments, the portion thereof that relates to the period from and after the Operations Transfer Date shall be paid by New Operator and the portion thereof that relates to the period prior to the Operations Transfer Date shall be paid by Licensee to such third party payor or private pay resident.

4.5.7. In the event the parties mutually determine that any payment hereunder was misapplied by the parties, the party which erroneously received said payment shall remit the same to the other within five (5) business days after said determination is made.

4.5.8. Until the earlier of (i) the date that Licensee receives, payment of all accounts receivable attributed to the operation of the Facility prior to the Operations Transfer Date, and (ii) one hundred twenty (120) days after the Operations Transfer Date, New Operator shall provide Licensee and Landlord with an accounting before the end of each month setting forth all amounts received by New Operator during the preceding month with respect to the accounts receivable of Licensee which are set forth in the schedule provided by Licensee to New Operator within no more than thirty (30) days after the Operations Transfer Date.

Initials:
Licensee:_____/ New Operator:_____

4.5.9. Upon ten (10) days after written request, and for a one hundred twenty (120) days after the Operations Transfer Date, Licensee shall provide New Operator with an accounting setting forth any amounts received by Licensee during the preceding month with respect to payments from the residents of the Facility which are due and owing to New Operator in accordance with the terms of this Section 4.5, which accounting shall be accompanied by applicable remittance advices.

4.5.10. Licensee and New Operator shall have the right to inspect, no more frequently than once per month, all cash receipts of the other party during weekday business hours on reasonable prior notice in order to confirm such party's compliance with the obligations imposed on it under this Section 4.5.

4.6 Licensee shall be responsible for the collection of the Licensee's accounts receivable which accrued prior the Operations Transfer Date.

5. Management Fee

5.1 For its services under Sections 3 and 4, New Operator shall be entitled to a fee (the "***Management Fee***") equal to the Facility's operating revenues less all operating expenses resulting from operation of the Facility during the Management Period (which rent and related expenses are not required to be paid by Existing Operator during the Management Period), calculated in accordance with New Operator's standard bookkeeping practices.

5.2 If the Facility incurs losses during the Management Period, New Operator shall be solely responsible for such losses and shall indemnify, protect, defend and hold Licensee harmless from all claims, demands, liability, and losses related thereto, including attorneys' fees.

5.3 The Management Fee is based upon revenues earned and expenses incurred during the Management Period, as determined in accordance with New Operator's standard bookkeeping practices. New Operator has no responsibility to pay for expenses during the Management Period which were incurred or accrued prior to the Operations Transfer Date, it being understood and agreed that revenues and expenses will be prorated in the manner set forth in Section 10.

6. Change of Ownership.

Effective on the Transition Date and only if requested by New Operator, Licensee shall assign to New Operator its Medicare and, if requested by New Operator and if permitted by applicable Law, Medicaid provider agreements consistent with Section 13(e).

7. Admission Agreements.

On the Operations Transfer Date, Licensee and New Operator will enter into an Assignment and Assumption of Admissions Agreements in the form attached hereto as "**EXHIBIT A**" pursuant to which Licensee will assign to New Operator and New Operator will assume all of Licensee's right, title and interest in and to and obligations accruing on and after the Operations Transfer Date under the admission agreements with the persons who are residing at the Facility on the Operations Transfer Date (the "***Assigned Admission Agreements***"); provided, however, that

the Assignment and Assumption Agreement shall specifically provide that nothing therein shall be construed as imposing any liability on New Operator for the acts or omissions of Licensee under the Assigned Admission Agreements prior to the Operations Transfer Date.

8. Transfer of Resident Funds.

8.1 On the Operations Transfer Date, Licensee shall deliver to New Operator all funds held for and on behalf of residents at the Facility (collectively the "***Resident Funds***").

8.2 On the Operations Transfer Date, Licensee hereby agrees to transfer to New Operator the Resident Funds and New Operator hereby agrees that it will accept such Resident Funds in trust for the residents/responsible parties and be solely accountable to the residents/responsible parties for such Resident Funds in accordance with the terms of this Agreement and applicable statutory and regulatory requirements.

8.3 Licensee presently holds a Resident Trust Fund Surety Bond as required by the applicable statutes and regulations. Licensee shall cancel its bond on the Operations Transfer Date, and New Operator shall have its own Resident Trust Fund Surety Bond in full force and effect by the Operations Transfer Date, and shall provide Licensee with a copy of same.

8.4 Within fifteen (15) days after the Operations Transfer Date, Licensee shall prepare a final reconciliation comparing the actual Resident Fund balance on the Operations Transfer Date to the amount of the Resident Funds to be transferred to New Operator on the Operations Transfer Date, and, to the extent the former exceeds the latter, Licensee shall remit such excess to New Operator or to the extent the latter exceeds the former, New Operator shall remit such excess to Licensee.

8.5 New Operator shall have no responsibility as to the applicable resident/responsible party and regulatory authorities for any shortfall in the event the Resident Funds delivered by Licensee to New Operator pursuant to Section 8.2 are demonstrated to be less than the full amount of the Resident Funds for such resident as of the Operations Transfer Date or for claims which arise from actions or omissions of Licensee with respect to the Resident Funds prior to the Operations Transfer Date but all of the foregoing shall be and remain the responsibility of Licensee and Licensee shall indemnify, defend, protect and hold New Operator harmless from the same.

8.6 Licensee shall have no responsibility as to the applicable resident/responsible party and regulatory authorities for any shortfall in the event the Resident Funds administered by New Operator are demonstrated to be less than the full amount of the Resident Funds for such resident following the Operations Transfer Date, and/or for claims which arise from actions or omissions of New Operator with respect to the Resident Funds following the Operations Transfer Date, but all of the foregoing shall be and remain the responsibility of New Operator, which shall indemnify, defend, protect and hold Licensee harmless from the same.

8.7 Except as specifically set forth herein, Licensee shall have no responsibility to the applicable resident/responsible party and regulatory authorities with respect to any Resident Funds delivered to New Operator.

Initials:
Licensee:_____/ New Operator:_____

9. Costs and Prorations.

9.1 As between New Operator and Licensee, Facility revenues (including, without limitation, any amount paid to Licensee prior to the Operations Transfer Date for services to be rendered on and after the Operations Transfer Date from social security payments, private pay residents' security deposits and prepayments, applied income payments, resident trust prepayments, etc.), Facility operating expenses (other than the Retained Liabilities (defined in Section 17.1 below), bed taxes, utility charges for the billing period in which the Operations Transfer Date occurs, real and personal property taxes (except as otherwise provided herein) and prepaid expenses, the premiums for any flood insurance coverage which may be in effect with respect to the Facility and provide coverage for the benefit of New Operator with respect to a period which extends beyond the Operations Transfer Date and other related items of revenue or expense attributable to the Facility shall be prorated between Licensee and New Operator as of the Operations Transfer Date. In general, such prorations shall be made so that as between New Operator and Licensee, Licensee shall be reimbursed for prepaid expense items to the extent that the same are applied to expenses attributable to periods on and after the Operations Transfer Date and Licensee shall be charged for unpaid expenses to the extent that the same are attributable to periods prior to the Operations Transfer Date; provided, however, prepaid license or permit fees shall not be a proratable expense. This provision shall be implemented by New Operator remitting to Licensee any invoices (or the applicable portion thereof in the case of invoices which cover periods both prior to and after the Operations Transfer Date) which describe goods or services provided to the Facility before the Operations Transfer Date and by New Operator assuming responsibility for the payment of any invoices (or portions thereof) which describe goods or services provided to the Facility on and after the Operations Transfer Date; provided, however, that notwithstanding any provision of this Agreement to the contrary, any and all deposits paid by Licensee with respect to the Facility, including without limitation, any and all lease, security and/or utility deposits paid to, and/or cash or other collateral held by, any landlord, utility, insurance company or surety shall remain the sole and exclusive property of Licensee, and New Operator shall have no right or interest therein or thereto, and to the extent that Licensee does not receive a return of any such deposit on the Operations Transfer Date and such security deposit has been assumed by New Operator, New Operator shall reimburse the Licensee on the Operations Transfer Date the full amount of any such security deposit assumed by New Operator.

9.2 All such prorations shall be made on the basis of actual days elapsed in the relevant accounting or revenue period and shall be based on the most recent information available to Licensee. Utility charges which are not metered and read on the Operations Transfer Date shall be estimated based on prior charges for the same relevant time period, and shall be re-prorated upon receipt of statements therefor as of the Operations Transfer Date. Any state mandated licensing fees shall not be prorated. New Operator shall obtain its own insurance coverage covering all periods commencing on and after the Operations Transfer Date and for the duration of the Management Period, and shall name Licensee as an "Additional Insured" to said insurance coverage policies.

9.3 All amounts which are subject to proration under the terms of this Agreement and which require adjustment after the Operations Transfer Date shall be settled within ten (10) days after the Operations Transfer Date or, in the event the information necessary for such

adjustment is not available within said ten (10) day period, then within seven (7) business days of receipt of information by either party necessary to settle the amounts subject to proration.

9.4 On the Operations Transfer Date, Licensee may remove from the Facility any petty cash and any other funds maintained at or for the Facility immediately prior to the Operations Transfer Date, other than Resident Funds, which shall be handled in the manner set forth in Section 8.

9.5 In addition to any costs for which New Operator is responsible under Section 6 hereof, New Operator shall be solely responsible for all costs, fees and expenses incurred by it in connection with the transfer of operations of the Facility as contemplated hereunder, including but not limited to the cost of any training of the Facility's employees which it may elect to undertake with the approval of Licensee, which approval shall not be unreasonably withheld, conditioned or delayed, provided such training is conducted in a manner which does not disrupt the operation of the Facility prior to the Operations Transfer Date, and the cost of any due diligence that it undertakes in furtherance of such transfer of operations, including but not limited to, the costs of any examination or copying by New Operator or its agents of any books, records, patient files or other operational or fiscal information and data of any kind of Licensee or the Facility. In furtherance and not in limitation of the foregoing, in the event that in the process of any such employee training Licensee shall incur any out of pocket costs or expenses related to the use of its employees, equipment and/or the provision of any such information, New Operator shall, within seven (7) days after a written demand therefor accompanied by reasonably detailed supporting documentation, reimburse Licensee for all of such out of pocket costs and expenses.

10. Access to Records.

10.1 On the Operations Transfer Date, Licensee shall provide access and make available to New Operator all records reasonably necessary for the efficient, continued operation of the Facility. Licensee and New Operator shall coordinate together to identify which documents New Operator intends to retain original copies, and which may be removed by Licensee. Licensee shall remove from the Facility (a) the originals of the financial records which relate to its operations at the Facility, including all accounts payable and accounts receivable records; *provided, however*, Licensee shall leave copies of such records at the Facility in order to facilitate the provisions of this Agreement, (b) the originals of any proprietary materials related to its overall corporate operations, (c) the originals of all performance improvement data, *provided, however*, Licensee shall leave copies of such records at the Facility in order to facilitate the provisions of this Agreement and provide quality care to residents, (d) originals of employee records for all former employees not employed by New Operator, (e) copies of Retained Employee records, (f) copies of resident records for all former residents no longer residing at the Facility, and (g) legacy records stored either on-site or off-site. With regard to original records described in 10.1(a) through (g) above, Licensee agrees to maintain such records for any applicable statutory or regulatory retention period. New Operator shall not have any liability or responsibility for maintaining the original records described in 12.1(a) through (d), and (g) above. Notwithstanding anything to the contrary in this Agreement, Licensee and New Operator agree that all information, records and data collected or maintained regarding Facility residents shall be confidential. Licensee, New Operator, and their respective employees and agents shall maintain the confidentiality of all Facility resident information received in accordance with applicable South Carolina and federal laws, including

HIPAA, the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-91) ("***HIPAA***") the Health Information Technology for Economic and Clinical Health Act Public Law 111-005 ("***HITECH***") and the regulations issued in connection therewith. No employee or agent of Licensee or New Operator shall discuss, transmit or narrate in any manner any Facility resident information of a personal, medical, or other nature except as a necessary part of providing services to the resident, effectuating a transfer of the Facility operations, or otherwise fulfilling its obligations under this Agreement or under law. The obligations under this Section 10.1 shall survive the termination of this Agreement, whether by rescission or otherwise as amended and the regulations issued in connection therewith.

10.2 From and after the Operations Transfer Date, New Operator shall allow Licensee and its agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, the books and records and supporting material of the Facility relating to the period prior to and including the Operations Transfer Date, to the extent reasonably necessary to enable Licensee to among other things investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns, to complete/revise, as needed, any patient assessments which may be required for Licensee to seek reimbursement for services rendered prior to the Operations Transfer Date, to verify accounts receivable collections due Licensee and to file exceptions to the Medicare routine cost limits for the cost reporting periods prior to and including the Operations Transfer Date.

10.3 Licensee shall have the right, at Licensee's sole cost and expense, five (5) days after the delivery of a reasonable request therefore to New Operator to enter the Facility and remove originals or copies of any such records delivered to New Operator; *provided*, *however*, that if directed by Licensee in its request to New Operator, New Operator shall within such five (5) day period, forward such records to Licensee, at Licensee's sole cost and expense, to the address designated by Licensee; and provided, further, that if, for purposes of litigation involving a patient or employee to whom such record relates, an officer of or counsel for Licensee certifies that an original of such record must be produced in order to comply with applicable law or the order of a court of competent jurisdiction in connection with such litigation then the records so delivered or removed shall be an original. Licensee's request to New Operator to enter the Facility shall be made in writing and state the date upon which the entry to the Facility is required. Any record so removed shall promptly be returned to New Operator following its use, and nothing herein shall be interpreted to prohibit New Operator from retaining copies of any such documents. Nothing hereinabove shall limit, reduce or restrict the Licensee's access to the Facility during the term of the Management Period in connection with any of the Licensee's rights, duties or obligations under this Agreement or that are required statutorily as the Licensee of the Facility.

10.4 New Operator agrees to maintain such books, records and other materials comprising records of the Facility's operations, including, but not limited to, patient records and records of patient funds, to the extent required by law, which relate to the period preceding the Operations Transfer Date and which have been delivered to New Operator by Licensee in conjunction herewith. If upon the expiration of any legislatively mandated retention period for such books and records, New Operator decides to dispose of or destroy such books and records, New Operator shall, upon receipt of a written request from Licensee, allow Licensee a reasonable opportunity to remove such books and records, at Licensee's sole cost and expense, from the Facility.

Initials:
Licensee:_____/ New Operator:_____

10.5 New Operator acknowledges and agrees that the books, records and other material described in this Section 10 are unique, that in the event of a breach by New Operator of its obligations under this Section 10, Licensee would suffer injury for which it would not be fully compensated with purely monetary damages and accordingly that in the event of a breach by New Operator of its obligations under this Section 10.5, Licensee shall be entitled to seek specific performance of the obligations of New Operator hereunder. Additionally, Existing Operator shall be entitled to indemnification from New Operator for any and all liability, costs, and/or expenses, including attorneys' fees, arising from New Operator's breach of this Section 10.

11. Delivery of Assets.

(a) Transferred Assets. On the Operations Transfer Date, Licensee shall enter into the Bill of Sale attached as **Exhibit C** to deliver, convey, abandon, assign, and transfer to New Operator, and New Operator shall accept and assume, the following assets (the "***Transferred Assets***"), to the maximum extent permitted by applicable law, free and clear of all claims (including without limitation, successor liability claims), taxes, liabilities, debts, obligations, or encumbrances of any kind or character in any way whatsoever relating to or arising from the Transferred Assets or the Licensee's operation of the Facility or use of the Facility prior to the Operations Transfer Date except as prohibited by applicable law or (the "***Encumbrances***"); however, the Parties understand and agree that, to the extent that New Operator assumes a contract as set forth in Section 11(a)(i), then New Operator does so subject to the obligations and requirements set forth in such contract:

(i) all Assumed Contracts (as such term is defined in Section 15(a) of this Agreement);

(ii) in accordance with Section 10 of this Agreement, subject to applicable law, including, without limitation, HIPAA (as such term is defined in Section 10.1 of this Agreement), all documents, charts, personnel records, property manuals, each policy and procedure manual utilized by Licensee in connection with the operation of the Facility at any time during the one (1) year prior to the Operations Transfer Date in order for the New Operator to comply with applicable law (and not for ongoing operations purposes and which may not be duplicated or disseminated by New Operator), current resident lists and records maintained at the Facility, and lists of the books, files, and other business records attributable to the business or operations of the Facility;

(iii) to the extent permitted by applicable law and only if requested by New Operator, any and all rights, to the extent assigned by Licensee and assumed by New Operator, relating to the Medicare Provider Numbers (as defined herein) and Medicaid Provider Numbers (as defined herein);

(iv) all Resident Funds (as such term is defined in Section 8 of this Agreement);

(v) all Inventory as defined in Section 15(d) of the Agreement;

(vi) all telephone and facsimile numbers used by the Facility, presuming that such numbers are transferable, and if there are costs associated with such transfer, such costs shall be borne by New Operator;

(vii) all Computer Equipment and Software (subject to and as such term is defined in Section 15(f) of this Agreement) used by the Facility;

(viii) all goodwill; and

(ix) all other assets, other than the Excluded Assets (as such term is defined in Section 13(b) of this Agreement), used in or relating to the operation of the Facility or use of the Facility.

(b) Excluded Assets. Schedule 11(b) hereto sets out all assets and rights of Licensee that shall not be transferred to New Operator pursuant to this Agreement (the "***Excluded Assets***"). Furthermore, New Operator expressly acknowledges that certain assets located in the Facility are not owned by Licensee but are leased or rented from third parties. No such assets will be transferred to New Operator hereunder unless the related lease or rental agreements are assigned to and assumed by New Operator in accordance with the provisions of Section 17(a) of this Agreement.

Liabilities. Except for:

(i) all obligations and liabilities under the Assumed Contracts set forth in Schedule 15(a);

(ii) any taxes with respect to the operation of the Facility;

(iii) all obligations and liabilities relating to accrued and paid time off, personal leave, and vacation benefits for Existing Operator Employees (as defined below) who transition to New Operator employment;

(iv) all obligations and liabilities (in each case, whether or not accrued, whether fixed, contingent or otherwise, and whether known or unknown) pertaining to the operation of the Facility, but in the case of each of clauses (i) through (iv), only to the extent such liabilities relate to the period after the Operations Transfer Date;

(v) liabilities otherwise provided in this Agreement; and

(vi) any assumption of liability by New Operator required by applicable law (but subject at all times to the obligations of Licensee to indemnify New Operator as set forth in this Agreement) (collectively, "*Assumed Liabilities*"),

New Operator shall not assume any claims, lawsuits, liabilities, obligations or debts (collectively, "***Claims***") of Licensee or any other person relating to, occurring or arising out of, the ownership of Transferred Assets and the operation of the Facility that exist prior to the Operations Transfer Date (collectively, the "***Excluded Liabilities***"). For purposes of this definition, an obligation shall be deemed to "exist" prior to the Operations Transfer

Date if it relates to events, omissions or conditions that occurred or arose prior to the Operations Transfer Date, even if it is not asserted until after the Operations Transfer Date. The term Excluded Liabilities shall include, but not be limited to:

(i) liabilities or obligations of Licensee relating to employee benefits or compensation arrangements of any nature prior to the Operations Transfer Date (other than liabilities and obligations assumed by New Operator pursuant to Section 3 or 15(b)(v));

(ii) any liability or obligation of Licensee for breach of contract, personal injury or property damage (whether based on negligence, breach of warranty, strict liability or any other theory) caused by, arising out of or resulting from, directly or indirectly, any alleged or actual acts or omissions, including, but not limited to, malpractice or other tort claims to the extent based on acts or omissions of Licensee occurring before the Operations Transfer Date, or claims for breach of contract to the extent based on acts or omissions of Licensee occurring before the Operations Transfer Date,;

(iii) any liability or obligation of Licensee for money borrowed,

(iv) any amounts due, claimed or becoming due to any health care reimbursement or payment intermediary, including, but not limited to, any recapture, adjustment, overpayment, penalty assessment or any other financial obligation or charge whatsoever with respect to any period prior to the Operations Transfer Date,

(v) any liabilities under any contracts not expressly assumed by New Operator pursuant to this Agreement,

(vi) any accounts payable, taxes, or other obligation or liability of Licensee to pay money incurred by Licensee prior to the Operations Transfer Date, and

(vii) any and all other liabilities and obligations of every kind of Licensee incurred in connection with, or arising by reason of, their ownership or operation of the Facility prior to the Operations Transfer Date and events, occurrences or transactions with respect to the Facility occurring before the Operations Transfer Date, including, without limitation, Claims arising out of alleged or actual overpayments or false claims submitted or originating before the Operations Transfer Date and investigations and audits related thereto.

(c) No Sale for Tax Purposes. The parties understand and acknowledge that the assets transferred under this Agreement by Licensee shall be for the use of New Operator in furtherance of and in connection with the ongoing operations of the skilled nursing facility. The assets transferred hereunder to New Operator shall not be treated as a sale of all such assets by Licensee to New Operator for federal, state, and local tax purposes and the parties shall prepare

and file all required federal, state, and local tax returns and reports in a manner that is consistent therewith and consistent with the parties' understanding that the amount constituting Inventory as defined in this Agreement is negligible or de minimis. Notwithstanding the foregoing, in the event any taxing authority assesses a transfer tax on the transaction contemplated herein, and such assessment is final (following the completion of all appeals or the expiration of the time for appeal), New Operator shall be responsible for any and all such taxes, and any penalties and interest associated therewith.

(d) Nursing Home Licenses and Provider Agreements.

(i) On the Operations Transfer Date, New Operator shall use commercially reasonable efforts to transfer from Licensee to New Operator, or if not transferable, otherwise obtain or acquire, the Licenses, so that, on the Transition Date, New Operator shall have all legal authority to operate the Facility as a licensed nursing facility as defined by the laws of South Carolina. New Operator shall be fully responsible for and shall pay all costs and fees required to be paid in connection with the transfer or issuance of any and all Licenses with respect to the operation of the Facility, and shall pay all transfer and license application fees in connection therewith, as well as applying for and obtaining any and all new Licenses and/or approvals necessary or appropriate in connection with the operation of the Facility. New Operator shall use commercially reasonable efforts to pursue their applications in accordance with the rules and procedures set forth under applicable law.

(ii) New Operator shall use commercially reasonable efforts to execute and file any and all forms, notices, consents, and applications with Governmental Authorities, including the CMS, as may be necessary to timely obtain any Medicaid provider number and assume, if required by New Operator, any provider agreement utilized by Licensee in connection with the operation of the Facility and designated for transfer by the New Operator in (the "***Medicaid Provider Numbers***") and shall use commercially reasonable efforts to seek approval for transfer thereof from Licensee to New Operator. New Operator shall be fully responsible for and shall pay all costs and fees required to be paid in connection with obtaining the Medicaid Provider Numbers.

(iii) New Operator agrees to accept automatic assignment of the Existing Operator's Medicare provider agreements and shall use commercially reasonable efforts to execute and file any and all forms, notices, consents, and applications with Governmental Authorities and CMS as may be necessary to timely obtain any Medicare provider number and assume any provider certification and agreement utilized by Licensee in connection with the operation of the Facility (the "***Medicare Provider Numbers***"), and New Operator shall use commercially reasonable efforts to seek approval for the transfer thereof from Existing Operator to New Operator. New Operator shall be fully responsible for and shall pay all costs and fees required to be paid in connection with obtaining the Medicare Provider Numbers.

(iv) Licensee shall reasonably cooperate with reasonable requests of New Operator to furnish all necessary documentation and to execute all documents and consents reasonably necessary for New Operator to obtain any required Licenses,

agreements, certificates, and consents, necessary to operate the Facility not already in possession of New Operator, from third parties and Governmental Authorities, but New Operator shall bear the costs of obtaining all such Licenses, agreements, certificates, and consents.

(v) Promptly upon receipt of a request therefor from Licensee, New Operator will provide Licensee with copies of its licensure applications and any further documents submitted by New Operator to the South Carolina Department of Health and Environmental Control ("***DHEC***") in response to any requests from such governmental authority and with copies of Licenses, as applicable.

(vi) Licensee shall cooperate with New Operator, to the extent reasonably necessary, in order to facilitate the issuance of the new Licenses. Licensee shall not voluntarily surrender any permits or other approvals required in connection with the operation of the Facility and/or its Medicare Provider Agreement, and shall not pledge or permit a lien to attach to its account receivables relating to the Facility, unless such lien arises as a result of New Operator's request, direction, activity or omission, in which case Licensee shall be indemnified by New Operator against any and all liabilities, costs, and expenses, including attorneys' fees, arising from same.

(vii) Except as otherwise provided in this Agreement, on the Operations Transfer Date, New Operator shall assume all obligations and liabilities (in each case, whether or not accrued, whether fixed, contingent or otherwise, and whether known or unknown) pertaining to the operation the Facility, but only to the extent such liabilities relate to the period after the Operations Transfer Date.

(e) **"AS IS, WHERE IS". BY EXECUTING THIS AGREEMENT, NEW OPERATOR ACKNOWLEDGES AND AGREES THAT IT HAS CONDUCTED SUCH INSPECTIONS AS IT HAS DEEMED NECESSARY AND APPROPRIATE AND IS SATISFIED WITH THE RESULTS THEREOF INCLUDING, WITHOUT LIMITATION, AS TO THE PHYSICAL CONDITION, LOCATION, USABILITY, AND ALL OTHER MATTERS PERTAINING OR RELATING TO THE FACILITY AND THE TRANSFERRED ASSETS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSEE HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE FACILITY AND THE TRANSFERRED ASSETS OR ANY OTHER MATTER REGARDING OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSEE HEREBY DISCLAIMS, AND NEW OPERATOR FOREVER WAIVES AND RELEASES, ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND AS TO TITLE OR TO THE CONDITION OF SUCH TRANSFERRED ASSETS, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE TRANSFERRED ASSETS OR ANY OTHER MATTER REGARDING OR RELATING TO THE TRANSACTION CONTEMPLATED HEREBY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES AGAINST DEFECTS OR WARRANTIES OF FITNESS FOR INTENDED USE OR PARTICULAR PURPOSE UNDER APPLICABLE LAW. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, LICENSEE ACKNOWLEDGES AND AGREES THAT, IN ENTERING INTO THIS AGREEMENT**

Initials:
Licensee:_____/ New Operator:_____

AND IN CONSUMMATING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, NEW OPERATOR IS ENTITLED TO RELY UPON, AND IS IN FACT RELYING UPON, THE EXPRESS REPRESENTATIONS AND WARRANTIES OF LICENSEE AS SET FORTH IN SECTION 21 OF THIS AGREEMENT.

(f) New Operator will provide notice to Licensee that licensure applications and any further documents have been submitted to DHEC, the South Carolina Department of Health and Human Services, Palmetto GBA, and CMS, and will provide Licensee with copies of all such documentation.

(g) New Operator will keep Licensee apprised of the status of the obtaining of the Licenses and will provide Licensee with periodic updates as to the status of the obtaining of the Licenses and will notify Licensee once it receives the licenses for the Facility in the name of New Operator.

12. Cost Reports; Bad Debt.

(a) Existing Operator shall prepare and file any cost report or other report with respect to their operation of the Facility due for any period prior to the Transition Date, including any final Medicare or Medicaid cost reports not later than the date each such report is due, including any applicable extension period(s) (such cost reports, the "***Terminating Cost Reports***"). New Operator shall promptly provide to Existing Operator all data and information relating to the Management Period that is reasonably necessary for Existing Operator to produce Terminating Cost Reports. Existing Operator shall thereafter timely provide (or cause their accountants or other financial advisors to provide) any additional information which may be requested by the state agencies or CMS with respect to such Terminating Cost Reports or any prior cost report. Existing Operator shall provide (or cause its accountants or other financial or legal advisors to provide) New Operator with a copy of all such Terminating Cost Reports (and back up financial data, including fixed asset listings as of the Operations Transfer Date) and any additional information submitted to applicable state agencies and CMS in conjunction with such Terminating Cost Reports. All proceeds from Existing Operator's cost reports (including without limitation any appeals, settlements, and retroactive Medicaid rate increases, including payments or settlements for insurance deductibles) shall remain the property of Existing Operator, and New Operator shall timely forward any such proceeds (and to the extent such proceeds are held by New Operator, they shall be held in trust for the benefit of Existing Operator) and any related reports or correspondence to Existing Operator. Existing Operator and New Operator further agree to cooperate and coordinate with any audit of cost reports filed during Existing Operator's period of operation. Such audit may be conducted by CMS, the state, or any agency engaged to conduct cost report audits.

(b) Since New Operator will utilize Existing Operator's Medicare Provider Numbers and may, if applicable, utilize Existing Operator's Medicaid Provider Numbers, New Operator shall, in connection with the preparation and filing of their cost reports following the Transition Date, include in all such cost reports an amount equal to the amount of bad debt carried on the books of Existing Operator arising from Existing Operator's services provided to Medicare beneficiaries or Medicaid beneficiaries, if applicable, subject to receipt of reasonable supporting documentation. Reasonable supporting documentation includes, but is not limited to, bad debt logs, Medicare or Medicaid remittance advices (as applicable) and/or, as applicable, proof of

collection efforts in compliance with CMS regulations governing Medicare or Medicaid coinsurance bad debt. Upon settlement of such amounts under the Medicare or Medicaid program, New Operator shall timely forward all such amounts to Existing Operator within fifteen (15) business days of receipt. New Operator shall continue to include such bad debt amounts on their cost reports until reimbursement is finally made or denied.

13. Employees.

(a) Schedule 13 hereto is a schedule which reflects, in all material respects, the position, rate of pay and compensation, and original hire or engagement dates of each of the employees at each of the Facility. Existing Operator shall notify New Operator of any material changes in Schedule 13 as of the Operations Transfer Date. All existing employee recruitment bonuses, signing bonuses, and education reimbursement (collectively "Existing Incentive Program") that are due in advance of the Operations Transfer Date should be paid by Existing Operator before closing or may be paid from closing proceeds. Further, the Existing Incentive Program allows certain program costs to be paid to employees over time so to serve as retention incentives, all of which are listed on Schedule 13(a)-1. The New Operator shall be responsible for those Existing Incentive Program costs listed on Schedule 13(a)-1 which are payable after the Operations Transfer Date. Existing Operator agrees not to change the qualification requirements, bonus or education reimbursement amounts, or any other aspects of the Existing Incentive Program between the Execution Date and the Operations Transfer Date.

(b) New Operator shall offer employment to employees of Existing Operator in accordance with this Section 13 and, in connection therewith, Existing Operator represent and warrant that no employee is a party to an employment agreement with Existing Operator or entitled to any benefits pursuant to any severance or similar plan or arrangement:

(i) Existing Operator shall cease to be deemed the employer of all employees of the Existing Operator at the Facility, including, without limitation, persons temporarily absent from active employment by reason of disability, illness, injury, workers' compensation, approved leave of absence or layoff ("***Existing Operator Employees***"), as of 11:59 p.m. on the day before the Operations Transfer Date ("***Termination Date***"). Existing Operator shall timely pay to all applicable Governmental Authorities all employment-related taxes due with respect to Existing Operator Employees for periods ending at or prior to the Termination Date.

(ii) New Operator shall offer immediate employment (so that no period of unemployment shall occur between employment with Existing Operator and employment with New Operator) to such number of Existing Operator Employees at wages and benefits necessary to avoid the applicability of the Workers Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 ("***WARN Act***"), pursuant to employment terms acceptable to New Operator with such employment to commence at 12:01 a.m. on the Operations Transfer Date (collectively, the "***Transferred Employees***"). Should New Operator fail to hire or offer to rehire such Existing Operator Employees in a sufficient number and/or at sufficient wages and benefits such that there is WARN Act liability, New Operator shall fully indemnify and hold harmless Existing Operator with regard to such liability.

Initials:
Licensee:_____/ New Operator:_____

(iii) Anything to the contrary notwithstanding, this Agreement shall not be deemed to create or grant to any Existing Operator Employee or Transferred Employee any entitlement to employment or any third party beneficiary rights or claims or any cause of action of any kind or nature.

(iv) At New Operator's sole cost and expense, any offer of employment to the Transferred Employees by New Operator shall be to perform comparable services, in such position as is comparable to the position such Transferred Employee held with Existing Operator as of the Operations Transfer Date; provided, that New Operator may offer compensation to such Transferred Employees at levels commensurate with compensation levels paid to other employees of New Operator or its affiliates holding comparable positions, and, provided further, that any change in compensation levels does not result in any constructive discharge of any such Transferred Employee.

(v) Existing Operator shall be solely responsible for the payment of or liability associated with any and all severance pay or paid time off owed to Existing Operator Employees pursuant to Existing Operator's established plans, programs, practices, labor union contracts, and arrangements which were accrued but unpaid as of the Operations Transfer Date and any and all liability or claims associated therewith.

(vi) Except to the extent otherwise required by applicable law, New Operator shall be responsible for any obligations under Section 4980B(f) of the Code and Part 6 of Title I of ERISA or any similar Law (COBRA) in respect of Existing Operator Employees and Transferred Employees arising with respect to qualifying events that occur on or after the Operations Transfer Date.

(c) Raises and Bonuses. During the time period commencing on the date this Agreement is executed by the Parties and expiring on the Operations Transfer Date, Existing Operator shall not offer, announce, or implement any general wage or salary increase or award any bonus for any employees at the Facility, excepting customary cost of living increases incident to employees' periodic annual performance reviews, and continuation of other bonus programs, such as for recruitment and referrals of new hires, subject to coordination with and consent of New Operator.

14. Utilities. Schedule 14 hereto shall set out for each utility deposit made by Licensee for any utility service for the Facility, identification of the utility provider, a brief description of the utility and the amount of deposit held by such utility for services at the Facility. Licensee shall deliver a final statement with respect to all utilities serving the Facility prior to the Operations Transfer Date and shall pay all costs identified thereon, less any prepaid expenses and/or deposits held by utility providers in the name of Licensee. New Operator shall make all required utility deposits and arrange for all such utilities to be billed in their name commencing on and after the Operations Transfer Date, and shall pay all fees due therefore with respect to periods commencing on or after the Operations Transfer Date.

15. Assignment and Assumption of Contracts and Leases.

(a) Assignment. In connection with the transfer of the operations of the Facility to New Operator by Licensee, on the Operations Transfer Date, New Operator shall accept, assume, and discharge all contracts and leases set forth on Schedule 15(a) hereto (collectively, the "***Assumed Contracts***"), which shall include, but not be limited to, equipment leases disclosed to the New Operator prior to the Operations Transfer Date.The Parties shall cooperate to obtain any consent of any third parties necessary to permit the assignment of the Assumed Contracts. Licensee and New Operator acknowledge that certain of the Assumed Contracts may not, by their terms, be assignable; and, accordingly, none of such non-assignable Assumed Contracts shall be deemed assigned to or assumed by New Operator unless and until the same shall become so assignable or consent to assignment is obtained. If and when any necessary consent shall be obtained or any such Assumed Contract shall otherwise become assignable, Licensee shall undertake reasonable efforts to assign all of their rights and obligations thereunder to New Operator and New Operator shall, without the payment of any further consideration therefor, assume such rights and obligations.

(b) Assumed Contracts. After the Operations Transfer Date, until such time as the non-assignable Assumed Contracts are assumed by New Operator, New Operator shall perform and discharge fully all of the post Operations Transfer Date obligations of Licensee under any of such non-assignable Assumed Contracts to the extent the same would have constituted assumed liabilities if such non-assignable Assumed Contracts had been assumed by New Operator as of the Operations Transfer Date, and New Operator shall indemnify, hold harmless, protect, and defend Licensee, and their officers, employees, managers, members, and affiliates, from and against any and all damages, demands, costs, expenses, and liabilities arising out of New Operator's failure to make payments or perform any other obligations occurring under such non-assignable Assumed Contracts following the Operations Transfer Date.

(c) Facility Supplies. Subject to the terms and conditions of this Agreement, New Operator will pay Licensee within seven (7) business days following the Operations Transfer Date an amount representing Licensee's actual costs for all Inventory (defined hereinafter), with such costs to be mutually determined by Licensee and New Operator within five (5) business days following the Operations Transfer Date. Licensee shall transfer to New Operator and New Operator shall accept and assume from Licensee all of Licensee's rights, title, and interests in and to all owned supplies, consumables, medicines, and foodstuffs present in the Facility as of the Operations Transfer Date, excluding any Excluded Asset (collectively, the "***Inventory***"). Licensee shall ensure the Inventory at the Facility as of the Operations Transfer Date will be greater than or equal to the amount typically required by Existing Operator to operate the Facility for no less than seven (7) business days.

(d) Bulk Sales Laws; Free and Clear Transfer. The parties hereby waive compliance by Licensee with the requirements and provisions of any "bulk-transfer" laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Transferred Assets to New Operator. Except as otherwise specifically provided herein, the Facility, the Assets, and all operations pertaining thereto and transferred hereby shall be free and clear of the Encumbrances.

Initials:
Licensee:_____/ New Operator:_____

(e) Computer Equipment and Software. Subject to the terms and conditions of this Agreement, at the Operations Transfer Date, New Operator will pay Licensee within seven (7) business days following the Operations Transfer Date an amount representing the value of the Computer Equipment and Software listed in Schedule 15(f) (collectively, the "*Computer Equipment and Software*") that is owned by the Existing Operator and present in the Facility, with Licensee and New Operator to mutually determine the type and quantity of Computer Equipment and Software present in the Facility no later than fifteen (15) days before the Operations Transfer Date. Licensee shall transfer to New Operator and New Operator shall accept and assume from Licensee all of Licensee's rights, title, and interests in and to all Computer Equipment and Software that is present in the Facility, except the Existing Operator's corporate servers, back up batteries, cooling systems, and related equipment that facilitate corporate operations beyond the scope of existing operations at the subject premises. Notwithstanding anything in this Agreement to the contrary, for at least ten (10) days following the Operations Transfer Date, Licensee shall make its user-defined assessments and forms that are currently used by Licensee in Point Click Care (PCC) available for use by New Operator during such 10-day period in order to assist with the transition to New Operator's forms and New Operator will not retain any copies of such assessments and forms after such ten (10) day period.

16. Proprietary Information and Materials. New Operator acknowledges and agrees that any and all proprietary and confidential materials and information located at and used in connection with the operation of the Facility, which are not being transferred to New Operator pursuant to this Agreement, shall be and remain the property of Licensee, and accordingly, that Licensee shall remove all of such materials and information from the Facility on or immediately before the Operations Transfer Date. To the extent that New Operator will require use of Licensee's Proprietary Information and Materials in the furtherance of its operations, then it shall keep such documents and information confidential and shall return same to Licensee when no longer required.

17. Indemnification.

17.1 Licensee hereby agrees to indemnify, protect, defend, and hold harmless New Operator and its members, managers, directors, officers, employees, agents, successors and assigns from and against any and all demands, claims, causes of action, fines, penalties, damages (but specifically excluding lost profits and consequential damages), losses, liabilities (including strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' and other professionals' fees and court costs) (each, a "***Loss***," and collectively, "***Losses***") incurred in connection with or arising from the following (collectively, the "***Retained Liabilities***"): (a) a material breach by Licensee of its obligations under this Agreement which is not cured within thirty (30) days after receipt of written notice from New Operator setting forth, in reasonable detail, the nature of such breach, (b) the acts or omissions of Licensee under any Assumed Contract that occurred prior to the Operations Transfer Date, (c) the leasing, occupancy or operation of the Facility by Licensee prior to the Operations Transfer Date, including any liability arising from a breach of any applicable health care laws (including overpayments, recoupments or false claims under Medicare or Medicaid), (d) any acts or omissions, elder abuse or negligence of Licensee, or the contractors, agents, employees, invitees or visitors of Licensee with respect to the Facility and its residents prior to the Operations Transfer Date, and (e) any failure by Licensee to pay any

liabilities in connection with the Facility attributable to periods prior to the Operations Transfer Date, including but not limited to quality assurance fees or bed taxes.

17.2 New Operator hereby agrees to indemnify, protect, defend, and hold harmless Licensee and its directors, officers, employees, agents, successors and assigns from and against any and all "Loss" or "Losses" (as referenced and defined in Section 19.1) incurred in connection with or arising from: (a) a breach by New Operator of its obligations under this Agreement which is not cured within thirty (30) days after receipt of written notice from Licensee setting forth in reasonable detail the nature of such breach; (b) the occupancy or operation of the Facility by New Operator from and after the Operations Transfer Date, (c) any acts, omissions, elder abuse or negligence of New Operator, or the contractors, agents, employees, invitees or visitors of New Operator with respect to the Facility and its residents from and after the Operations Transfer Date, (d) the Assumed Contracts accruing on or after the Operations Transfer Date, (e) any employment claims made against Licensee for employment issues occurring or accruing on or after the Operations Transfer Date, or (f) any failure by New Operator to pay any liabilities in connection with the Facility attributable to period from and after the Operations Transfer Date (including, without limitation, reasonable attorneys' and other professionals' fees and court costs).

THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL SURVIVE THE OPERATIONS TRANSFER DATE FOR A PERIOD OF EIGHTEEN (18) MONTHS. ALL MATTERS ARISING FROM AN INDEMNIFIED PARTY'S NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ARE EXCLUDED FROM THE SCOPE OF THE INDEMNIFICATION OWING TO SUCH PARTY SET FORTH IN SECTIONS 19.1 AND 19.2 AND FROM THE SURVIVAL PERIOD IN THE PRECEDING SENTENCE.

17.3 Indemnification Limitations. Any Losses for which a party would be entitled to indemnification under Sections 17.1 and 17.2 shall be reduced by the amount of insurance proceeds actually received or recovered under any insurance policies for the benefit of a party and any cash payments, setoffs or recoupment of any payments actually recovered by such indemnified party in respect of such Losses. The parties shall use commercially reasonable efforts to mitigate Losses for which each is subject to indemnification under Sections 17.1 and 17.2. If, after a party has made an indemnification payment to the other with respect to Losses in satisfaction of its obligations under Sections 17.1 or 17.2, the indemnified party actually recovers from any third parties amounts in respect of such Losses, the indemnified party shall as promptly as practicable forward to the other such amounts, but not in excess of the indemnification payment received. In no event shall the indemnified parties receive duplicative Losses under this Agreement and the Purchase and Sale Agreement. The Indemnification Cap, as defined in the Purchase and Sale Agreement, shall be the maximum liability for indemnification claims with respect to any Loss hereunder.

17.4 Assumption of Defense. A party seeking indemnification shall promptly give notice ("***Notice of Indemnification***") to each party from whom indemnification is sought after obtaining knowledge of any matter giving rise to the indemnification provisions of this Agreement. If such indemnity shall arise from the claim of a third party, and indemnifying party provides written notice to indemnified party stating that indemnifying party is responsible for the entire claim, within fifteen (15) business days after indemnifying party's receipt of the applicable Notice of Indemnification, the indemnified party shall permit such indemnifying party to assume

the defense of any such claim or any proceeding resulting from such claim. Failure to give any such Notice of Indemnification promptly shall not affect the indemnification provided under this Section 17, except and only to the extent such indemnifying party shall have been actually materially prejudiced as a result of such failure. If an indemnifying party assumes the defense of such third party claim, shall have full and complete control over the conduct of such proceeding on behalf of indemnified party and shall, subject to the provisions of this Section 17.4, have the right to decide all matters of procedure, strategy, and substance; however, the indemnified party shall participate in any decision related to the settlement of the claims relating to such proceeding should there be any payment of any nature expected from the indemnified party. Any counsel chosen by the indemnifying party to conduct the defense shall be reasonably satisfactory to the indemnified party. The indemnifying party shall not, without the written consent of indemnified party, consent to the entry of any judgment or enter into any settlement with respect to the matter which does not include a provision whereby the plaintiff or the claimant in the matter releases the indemnified party from all liability with respect thereto. The indemnified party may participate in such proceeding and retain separate co-counsel at its sole cost and expense (and, for the avoidance of doubt, such cost and expense shall not constitute a Loss for purposes of the indemnification obligations hereunder).

17.5 Non-Assumption of Defense. If the indemnifying party elects not to assume the defense of any such claim by a third party or proceeding resulting therefrom, the party seeking indemnification shall diligently defend against such claim or litigation in such manner as it may deem appropriate and, in such event, the indemnifying party or parties shall, subject to Section 17.3, reimburse indemnified party for all reasonable and actually incurred out-of-pocket costs and expenses, legal or otherwise, incurred by the indemnified party and its affiliates in connection with the defense against such claim or proceeding, within thirty (30) days after the receipt of detailed invoices, unless there is a legal objection to the alleged scope of the indemnification sought, in which case the party refusing to provide indemnification must seek resolution of the matter via declaratory judgment action brought in the state or federal courts serving the County of Greenville, South Carolina.

17.6 Indemnified Party's Cooperation as to Proceedings. An indemnified party will cooperate in all reasonable respects with any indemnifying party in the conduct of any proceeding as to which such indemnifying party assumes the defense, except to the extent indemnified party could reasonably be expected to be prejudiced thereby. Subject to Sections 17.3 and 17.4, an indemnifying party shall promptly reimburse an indemnified party for all reasonable out-of-pocket costs and expenses, legal or otherwise, incurred by indemnified party or its affiliates in connection therewith, within thirty (30) days after the receipt of detailed invoices therefor.

17.7 Indemnification for Resident Trust Property.

17.7.1. Licensee will indemnify, protect, defend and hold New Operator harmless for, from and against all liabilities, claims and demands, including reasonable attorneys' fees and costs, in the event the corpus of the Resident Trust Funds transferred to New Operator does not represent the correct balance of Resident Trust Funds delivered to Licensee as custodian, and for claims which arise from actions or omissions of Licensee with respect to the Resident Trust Funds held or handled by Licensee at any time.

Initials:
Licensee:_____/ New Operator:_____

17.7.2. New Operator will indemnify, protect, defend and hold Licensee harmless for, from and against all liabilities, claims and demands, including reasonable attorneys' fees and costs, in the event a claim is made against Licensee by a resident or his or her family for his/her Resident Trust Funds where: (i) such Resident's funds or other property were properly and wholly transferred to New Operator pursuant to the terms hereof; or (ii) the allegations pertaining to the Resident Funds regard actions or omissions occurring after the Operations Transfer Date.

18. **Further Assurances**. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate this Agreement and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder.

19. **Notices**. All notices to be given by either party to this Agreement to the other party hereto shall be in writing, and shall be (a) given in person, (b) deposited in the United States mail, certified or registered, postage prepaid, return receipt requested, or (c) sent by national overnight courier service with confirmed receipt, each addressed as follows:

If to New Operator: Fountain Inn Healthcare, LLC
c/o Providence Group, Inc.
262 N. University Avenue
Farmington, Utah 84025
Attn: John Mitchell, Vice President, General Counsel
Email: john.mitchell@pacshc.com

With a copy to (which shall not constitute notice)

Shumaker, Loop & Kendrick, LLP
176 Croghan Spur Road, Suite 400
Charleston, SC 29407
Attn: Laura J. Evans, Esquire
Email: levans@shumaker.com

If to Licensee: Carlyle Senior Care of Fountain Inn, LLC
1402 South Meadors Farm Rd., Suite D
Florence, SC 29505
Attn: Rick Cranford and/or Braxton Barnette
Email: rcranford@carlyleseniorcare.com

With a copy to (which shall not constitute notice):

J. Drayton Hastie III
The Carolina Law Firm, LLC
thecarolinalawfirm@gmail.com

Any such notice shall be deemed delivered when actually received or when delivery is first refused regardless of the method of delivery used. In the event that the delivery is alleged to be refused, then the other party shall ensure that it is emailed to the addresses set forth above for both

Initials:
Licensee:_____/ New Operator:_____

the party and its counsel. Any party to whom notices are to be sent pursuant to this Agreement may from time to time change its address for further communications thereunder by giving notice in the manner prescribed herein to all other parties hereto. Although either party shall have the right to change its address for notice purposes from time to time, any notice delivered pursuant to this Section 19 to the address set forth in this Section 19, or to such other address as may be hereafter specified in writing in accordance with this Section 19 shall be effective even if actual delivery cannot be made as a result of a change in the address of the recipient of such notice and the party delivering the notice has not received actual written notice in accordance with the provisions of this Section 19 of the current address to which notices are to be sent.

20. Payment of Expenses. Each party hereto shall bear its own legal, accounting and other expenses incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transaction contemplated hereby, whether or not the transaction is consummated.

21. Representations and Warranties.

21.1 To the best of Licensee's knowledge, Licensee hereby represents and warrants to New Operator, as of the Operations Transfer Date, that:

21.1.1. All Medicare and Medicaid Provider Agreements, certificates of need, if applicable, and all material certifications, governmental licenses, permits, regulatory agreements or other agreements and approvals, including certificates of operation, completion and occupancy, and state nursing facility licenses or other licenses required by any applicable health care authorities for the legal use, occupancy and operation of the Facility have been obtained by the Licensee and remain in full force and effect.

21.1.2. The Facility is duly licensed as a 60 bed skilled nursing facility licensed under the applicable laws of the State of South Carolina and there are no proceedings or actions pending or contemplated to reduce the number of licensed or certified beds of the Facility.

21.1.3. Licensee has not had any deficiencies on its most recent survey (standard or complaint) that would result in a denial of payment for new admissions with no opportunity to correct prior to termination, and the Facility has not been designated as a Special Focus Facility (as such term is defined by the CMS Special Focus Facility Program).

21.1.4. The Facility is in substantial compliance with applicable Federal and State laws governing or regulating the operation of skilled nursing Facility in South Carolina.

21.1.5. Except as disclosed in the attached Schedule 21.1.5, there are no pending actions, complaints, administrative or judicial proceedings pending against the Facility or Licensee relating to the Facility.

21.1.6. Regulatory Compliance.

(i) Existing Operator has duly and timely filed all reports and other items required to be filed under the Third Party Payor Programs (collectively, the "***Reports***") and have timely paid all amounts shown to be due thereon. At the time of filing,

to the best of Existing Operator's actual knowledge, each Report was true, accurate and complete. All rights and obligations of Existing Operator under such Reports are accurately reflected or provided for in the financial statements of Existing Operator.

(ii) Except as set forth in Schedule 21.1.6 attached hereto, (A) Existing Operator is not delinquent in the payment of any amount due under any of the Reports, (B) there are no written or, to Existing Operator's actual knowledge, threatened proposals by any Third Party Payor Program for collection of amounts for which Existing Operator could be liable, other than pre and post-payment reviews and reconciliations occurring in the ordinary course of business, consistent with past practice, (C) Existing Operator has received no notices of any current or pending claims, assessments, notices, proposals to assess or audits of Existing Operator or the Facility with respect to any of the Reports, and no such claims, assessments, notices, or proposals to assess or audit have been threatened, and (D) Existing Operator has not executed any presently effective waiver or extension of the statute of limitations for the collection or assessment of any amount due under or in connection with any of the Reports.

(iii) Existing Operator has not received any notice of failure to comply in any material respect with all applicable laws, settlement agreements, and other agreements with any Governmental Authority relating to or regarding the Facility. Existing Operator has and maintains all material licenses, registrations, approvals, and consents of Governmental Authorities, accreditations, certificates of need and Medicare, Medicaid certifications necessary for its activities and business including the operation of the Facility as currently conducted ("***Current Operator Licenses***"). The Current Operator Licenses are in full force and effect without any waivers of any kind (except as disclosed in Schedule 21.1.6) and have not been amended or otherwise modified, rescinded or revoked or assigned nor, to Existing Operator's actual knowledge, is there any threatened termination, modification, recession, revocation or assignment thereof, and to the best of Existing Operator's actual knowledge, no condition exists nor has any event occurred which, in itself or with the giving of notice, lapse of time or both would result in the suspension, revocation, termination, impairment, forfeiture, or non-renewal of any Current Operator License. No claim has been filed to the effect that any such governmental consent, participation or contract is not in full force and effect.

(iv) To Existing Operator's actual knowledge, as of the Operations Transfer Date, all material information in their possession regarding licensure and life safety code matters involving the Facility has been delivered to New Operator.

(v) Existing Operator has delivered to New Operator complete and accurate copies of the survey or inspection reports made by any Governmental Authority with respect to the Facility during the calendar years 2019, 2020, 2021, and year-to-date 2022. Except as shown on Schedule 21.1.6, all exceptions, deficiencies, violations, plans of correction, or other indications of lack of compliance in such reports have been fully corrected and there are no bans or limitations in effect, pending, or threatened with respect to admissions to the Facility nor are there any licensure curtailments in effect, pending, or threatened with respect to the Facility.

21.1.7. Enforcement Actions. As of the date hereof, and except as set forth in Schedule 21.1.7, there is no action pending or, to the actual knowledge of Licensee, recommended or threatened by any state or federal agency having jurisdiction over the Facility to revoke, withdraw or suspend any License to operate the Facility, or certification of the Facility, or, except as set forth in Schedule 21.1.7, any material action of any other type with regard to licensure or certification. Licensee hereby acknowledges and agrees the Facility are operating and functioning as a skilled nursing facility, without any waivers affecting the Facility except as set forth in Schedule 21.1.7, and is fully licensed as a skilled nursing facility by the State of South Carolina. Schedule 21.1.7 attached hereto contains a complete and accurate list of all life safety code waivers or other waivers affecting the Facility.

21.1.8. Assets. To Licensee's actual knowledge, the Transferred Assets are the material assets that are located at the Facility or that are held in connection with the operation of the Facility which may be transferred by Licensee to New Operator pursuant to this Agreement.

21.1.9. Union Matters. To Licensee's actual knowledge, none of the Existing Operator Employees are represented by a labor union and there are no union organizing activities at the Facility.

21.1.10. Financial Records. Licensee have kept all financial records and supporting documents required to prepare (i) accurate and complete Medicare and Medicaid cost reports and statements relating to accounts receivable for billing and reimbursement purposes and (ii) tax returns relating to the business to be conducted by New Operator at the Facility, in each case in accordance in all material respects with the rules and regulations of all Governmental Authorities and all applicable laws.

21.1.11. The execution and delivery of this Agreement by Licensee does not violate any provision of any agreement or judicial order to which Licensee is a party or to which Licensee is subject.

21.1.12. The execution, delivery and performance of this Agreement has been duly authorized by Licensee, and this Agreement constitutes the valid and binding obligation of Licensee, fully enforceable in accordance with its terms.

21.1.13. At any time, and from time to time on or prior to the Closing Date, Licensee may supplement or amend the schedules, which revisions or amendment are subject to acceptance by New Operator.

21.2 To the best of New Operator's knowledge, New Operator hereby represents and warrants to Licensee as of the Operations Transfer Date, that:

21.2.1. The execution and delivery of this Agreement by New Operator does not violate any provision of any agreement or judicial order to which New Operator is a party or to which New Operator is subject.

21.2.2. The execution, delivery and performance of this Agreement has been duly authorized by New Operator, and this Agreement constitutes the valid and binding obligation of New Operator, fully enforceable in accordance with its terms.

Initials:
Licensee:_____/ New Operator:_____

21.3 The representations and warranties set forth in Sections 21.1 and 21.2 shall survive the Transition Date for a period of six (6) months.

22. Entire Agreement; Amendment; No Reliance; Waiver. This Agreement, together with the other agreements referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. The parties expressly disclaim any reliance upon any facts, promises, undertakings, or representations made by any other party, or its agents, prior to the execution of this Agreement except as otherwise set for in this Agreement. This Agreement may not be modified or amended except in writing signed by the parties hereto. No waiver of any term, provision or condition of this Agreement in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition of this Agreement. No failure to act shall be construed as a waiver of any term, provision, condition or rights granted hereunder.

23. Assignment. Neither this Agreement, nor any rights, interests or obligations hereunder, may be assigned or transferred, in whole or in part, by operation of law or otherwise by Licensee or New Operator without the prior written consent of the other party which shall not be unreasonably withheld, conditioned or delayed, and any such assignment that is not consented to shall be null and void.

24. No Joint Venture; Third Party Beneficiaries. Nothing contained herein shall be construed as forming a joint venture or partnership between the parties hereto with respect to the subject matter hereof. The parties hereto do not intend that any third party shall have any rights under this Agreement.

25. Captions. The section headings contained herein are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

26. Counterparts. This Agreement may be executed and delivered via facsimile and in one or more counterparts and all such counterparts taken together shall constitute a single original

27. Covenants.

(a) Cooperation on Tax Matters. The parties shall cooperate with each other and shall make available to the other, as reasonably requested and at the expense of the requesting party, and to any taxing authority, all information, records, or documents relating to tax liabilities or potential tax liabilities of such parties for all periods prior to the Operations Transfer Date, and shall preserve all such information, records, and documents at least until the expiration of any applicable statute of limitations or extensions thereof and will not destroy such records without prior notice to the other parties.

(b) Applicable Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of South Carolina. With respect to any action between the parties arising out of or relating to this Agreement, or any of the transactions contemplated by this Agreement, (i) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of

either the state or federal courts located in the State of South Carolina, and (ii) each of the parties irrevocably consents to service of process by first-class certified mail, return receipt requested, postage prepaid. Each of the parties hereby irrevocably waives any and all right to trial by jury of any claim or cause of action in any legal proceeding arising out of or related to this Agreement or the transactions or events contemplated hereby or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. The parties each agree that any and all such claims and causes of action shall be tried by the court without a jury. Each of the parties hereto further waives any right to seek to consolidate any such legal proceeding in which a jury trial has been waived with any other legal proceeding in which a jury trial cannot or has not been waived.

28. **Costs and Attorneys' Fees**. In the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof, the prevailing party shall be entitled to collect from the other its reasonable costs and attorneys' fees, including its costs and fees on appeal.

29. **Construction**. Both parties acknowledge and agree that they have participated in the drafting and negotiation of this Agreement. Accordingly, in the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof no provision shall be construed so as to favor or disfavor either party hereto. All references to "applicable law" herein shall refer to laws, statutes, rules, regulations and judicial or administrative interpretations thereof.

30. **Opening Mail**. From and after the Operations Transfer Date, New Operator shall be authorized to open mail addressed to Licensee received at the Facility. All mail received at the Facility relating to Licensee's operation of the Facility prior to the Operations Transfer Date shall be promptly delivered to Licensee by New Operator at the address set forth in Section 19, with all such mail to be deposited in the United States mail, certified or registered, postage prepaid, return receipt requested within five (5) days of receipt.

31. **Protected Health Information**. The parties acknowledge that in performing its obligations under this Agreement, New Operator should be deemed to be a business associate of Licensee, as that term is defined in 45 CFR § 160.103 and for the exclusive purpose of ensuring proper protection and treatment of Protected Health Information. Accordingly, the parties adopt and incorporate by reference the provisions of the Business Associate Addendum attached to this Agreement as "**EXHIBIT D**."

32. **Successors**. Subject to the express provisions of this Agreements, the covenants and agreements contained in this Agreement bind and inure to the benefit of Licensee, New Operator, and their respective successors and assigns.

33. **Severability**. If any covenant, condition, provision, term or agreement of this Agreement is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Agreement will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.

Initials:
Licensee:_____/ New Operator:_____

34. Right to Cure. If either Seller or Purchaser fails to comply with any provision of this Agreement, the other party will deliver written notice of breach to the non-complying party, specifying with particularity the alleged breach. The non-complying party has the right to cure the breach prior to the Operations Transfer Date.

35. Fraud. None of the provisions set forth in this Agreement shall be deemed a waiver by any party to this Agreement of any right or remedy which such party may have at law or equity based upon any other party's (and/or the party's owners' or principals') acts or omissions which constitute fraud under applicable law, nor shall any such provisions limit, or be deemed to limit (i) the amounts of recovery sought or awarded in any such claim for fraud, (ii) the time period during which a claim for fraud may be brought, or (iii) the recourse which any such party may seek against another party with respect to a claim for fraud.

36. Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the Operations Transfer Date day and year first set forth above.

LICENSEE:
Carlyle Senior Care of Fountain Inn, LLC

DocuSigned by:
By: Rick Cranford
F656EDDBAD37406...
Name _____
Title: _____

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the Operations Transfer Date day and year first set forth above.

NEW OPERATOR:
Fountain Inn Healthcare, LLC

DocuSigned by:
By: _____
C8B5B88A666F4C2...
Name _____
Title: _____

Initials:
Licensee:_____/ New Operator:_____

Schedule 15(a) – Assumed Contracts

All resident agreements

All payor agreements

Equipment leases utilized in the ongoing operations of the Facility

Others as mutually agreed in writing by the parties

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0677 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Provide care and assistance to perform activities of daily living for any resident who is unable. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 42424 Based on observation, interview, and facility policy the facility failed to offer/provide Activities of Daily Living (ADL) care to Resident (R)12 and R27. 2 of 3 reviewed for ADL care. Findings include: Review of facility policy titled, ADLs Supporting revealed Residents will be provided with care, treatment and services as appropriate to maintain or improve their ability to carry out ADLs. Residents who are unable to carry out ADLs independently will receive necessary services to maintain good nutrition, grooming, personal, and oral hygiene. Policy interpretation and implementation include residents will be provided with care, treatment, and services to ensure that ADL do not diminish unless the circumstances of their clinical condition (s) demonstrate that diminishing ADLs are unavoidable. Appropriate care and services will be provided for residents who are unable to carry out ADLs independently, with the consent of the resident and in accordance with the plan of care, including appropriate support and assistance with: hygiene (bathing, dressing, grooming, and oral care). If residents with cognitive impairment or dementia resist care, staff will attempt to identify the underlying cause of the problem and not just assume the resident is refusing or declining care. Approaching the resident in a different way or at a different time or having another staff member speak with the resident may be appropriate. R12 was admitted to the facility on [DATE] with diagnoses including but not limited to Alzheimer's disease, legal blindness, mental disorder, and major depressive disorder. Review of a Quarterly Minimum Data Set (MDS) with an Assessment Reference Date (ARD) of 08/20/24, revealed R12 has a Brief Interview of Mental Status (BIMS) score of 03 out of 15, which indicates that she is not cognitively intact. Further review of the Quarterly MDS revealed R12 is dependent on staff for shower/bathing and personal hygiene. An observation on 09/24/24 at 9:30 AM revealed R12 in bed in her night wear, in need of facial care, oral care, and dry hair with dandruff build-up. A second observation on 09/25/24 at 8:02 AM revealed R12 in bed in her night wear, with dry hair and dandruff build-up. (continued on next page)

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE	TITLE	(X6) DATE

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0677 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	An observation and interview on 09/25/24 at 8:06 AM with Licensed Practical Nurse (LPN)5 revealed that the resident is legally blind, but if staff introduce themselves appropriately prior to giving her care that the resident is more agreeable to ADL care. LPN5 further stated that the resident has an order for Anti-Dandruff External Shampoo 1 % (Selenium Sulfide) that is to be applied by the Certified Nursing Assistants (CNA) on the resident's shower days. LPN5 observed R12's hair and agreed the resident has dandruff in her hair. Record review on 09/25/24 at 8:30 AM of R12's Physician Orders for September 2024 revealed that R12 has an order for Anti-Dandruff External Shampoo 1 % (Selenium Sulfide) to be applied on shower days (Tuesday, Thursday, Saturday). Record review on 09/25/24 at 8:33 AM of the Paper CNA Shower Sheet for the 300 Unit for the period 08/24/24-09/24/24 revealed no CNA Shower Sheet documentation for R12. Record review on 09/25/24 at 8:34 AM of the Electronic Medical Record (EMR) Bathing ADL Documentation for the period 08/27/24 - 09/24/24 revealed 1 shower for R12 on 09/19/24 and was completed at 10:11 PM. Further review of R12's ADL documentation revealed that R12 received bed baths on 08/30/24, 08/31/24, 09/3/24, 09/11/24, 09/13/24, 09/14/24, and 09/17/24. Record review on 09/25/24 at 8:37 AM of R12's Nurses Notes revealed no documentation of refusal of ADL care during the period of 08/27/24 - 09/24/24. Record review on 09/25/24 at 8:40 AM of R12's Care Plan, last revised 07/07/24, revealed Resident needs assistance with ADLs related to legal blindness, debility, and protein calorie malnutrition. Interventions include assist with AM and PM care as needed, bed mobility assist with one person, dressing with one assist. An interview with the Director of Nursing (DON) on 09/25/24 at 12:34 PM revealed that she expects residents to be offered/provided a shower at least twice a week and be offered/provided a bed bath every day other than shower days. The DON further stated that she expects for staff to document when residents refuse ADL care. R27 was admitted to the facility on [DATE] with diagnoses including but not limited to; vascular dementia without behaviors, congestive heart failure, and major depressive disorder. Review of the Annual MDS with an ARD date of 08/06/24 revealed R27 has a BIMS score of 14 out of 15, which indicates that he is cognitively intact. Further review of the annual MDS revealed R27 requires set up or clean up assistance with personal hygiene and partial/moderate assistance with shower and bathing. An observation and interview on 09/22/24 at 1:27 PM revealed R27 in bed without a shirt and with body odor. R27 stated that he prefers to stay in bed without a shirt most days. An observation on 09/24/24 at 8:20 AM revealed R27 in bed without a shirt on, eating snacks with a body odor still present. Record review on 09/24/24 at 09:10 AM of R27's ADL Documentation for the last 30 days (08/26/24 - 09/24/24) revealed Type of Bath and R27 received bed baths on the following dates - 08/31/24, 09/04/24, 09/14/24, and 09/24/24). There was no documentation of the resident receiving a shower during this period. (continued on next page)

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0677 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Record review on 09/24/24 at 09:23 AM of R27's ADL Documentation for the last 30 day (08/26/24 - 09/24/24) Comments revealed on 09/24/24 at 02:23 AM and 02:25 PM, R27 He needs a good shower asap. An interview on 09/24/24 at 9:30 AM with CNA1 revealed that the resident receives showers on Wednesday's and Saturday's but often refuses. On the days in between the resident's shower days, he receives bed baths when he allows staff to provide care. CNA1 further stated that when residents refuse, they will offer 3 times and inform the nursing staff. ADL refusals are to be documented in the Electronic Medical Record (EMR) by both CNAs and Nursing Staff. A phone interview on 09/24/24 with CNA2 revealed they wrote in the ADL Documentation that R27 needs a good shower due to his body odor. CNA2 stated that showers are provided during the day shift, but they provided R27 a bed bath last night (09/23/24) after he had a bowel movement. CNA2 stated that R27 can be resistive to care, but they are able to redirect the resident after a few attempts, and eventually he is agreeable to ADL care. An interview with the Director of Nursing (DON) on 09/24/24 at 5:05 PM revealed the 300 Unit Shower Documentation Sheets and that staff are required to document on the shower sheets and in the medical record when showers/bed baths are completed. Review of the shower documentation sheets revealed one shower/bed bath during the period 08/24/24 - 09/24/24 dated 09/04/24, resident received a bed bath on that date. An observation and interview on 09/25/24 at 8:06 AM with LPN5 revealed that the resident can be resistive to ADL care and specifically receiving showers at times. LPN5 further stated that the CNAs are responsible for ensuring residents receive ADL care and if a resident refuses they should inform the nurse of the situation so they can document the refusal in the resident's EMR. During an observation, this surveyor and LPN5 spoke with resident, and exited room. LPN5 stated that R27 did have body odor and would follow up with his CNA for the day related to his ADL care and shower schedule. Record review of R27's Care Plan, last revised 08/11/24, revealed R27 requires assistance with ADLs related to congestive heart failure, vascular dementia, and major depressive disorder. Interventions include assist resident with bathing with one assist, resident has history of refusal of baths, incontinent care, and getting out of bed. Record review of R27's Nurses Notes for September 2024 revealed no documentation of refusal of ADL care.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0759 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Ensure medication error rates are not 5 percent or greater. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 48835 Based on review of the facility policy, observation, record review and interview, the facility failed to ensure the medication error rate was 5% or less. The medication error rate was 7.69%. Findings include: Review of the facility policy, dated 2001 and titled, Administering Medications records under the policy, Medications are administered in accordance with prescriber orders, including any required time frame. An observation was conducted on 09/23/24 at 9:17 AM of Licensed Practical Nurse (LPN)1 during medication administration for Resident (R)4. During medication administration LPN1 stated, There are 2 medications that I do not have available to give him right now. I will make the Unit Manager (UM) and Nurse Practitioner (NP) aware. The medications that were not available included Floraster oral capsules and Donepezil 10 milligrams (mg). Record review for R4 revealed he was admitted to the facility on [DATE] with diagnoses to include the following; acute respiratory failure with hypoxia, Type 2 diabetes, morbid obesity, sick sinus syndrome, atrial fibrillation, chronic kidney disease and hypertension. Record review of R4's physician orders revealed Floraster Oral Capsule- give 1 capsule by mouth two times a day, order date 08/18/24 and Donepezil Tablet 10 mg- 1 tablet by mouth one time a day, order date 08/19/24. Record review of R4's medication administration record (MAR) revealed on 09/23/24, LPN1 signed the Florastor at 0900 and Donepezil 0900 medication with a code of 9, which indicated other, see nurses notes. On 09/24/24 at 10:27 AM, during an interview with LPN1, she stated, I called the pharmacy yesterday to have the 2 medications delivered for R4. I also told my UM and the NP. There was not an order to hold the medication for 1 day or until the medication arrived from pharmacy, I looked for it. I didn't document it in the nurses notes. On 09/25/24 at 11:54 AM, during an interview with the Director of Nurses (DON), she stated, For medications not available, contact the physician (MD) or NP, tell them, usually they will order for the medications to be placed on hold. Then notify the residents representative and resident that the medication is not available. Once it comes in, then notify MD to release the hold. The DON confirmed LPN1 did not follow these steps.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0761 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Some	Ensure drugs and biologicals used in the facility are labeled in accordance with currently accepted professional principles; and all drugs and biologicals must be stored in locked compartments, separately locked, compartments for controlled drugs. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 48835 Based on review of the facility policy, observation and interview, the facility failed to ensure medications were free of expiration and properly labled for 2 of 3 medication carts and 1 of 1 treatment carts. Findings include: Review of the facility policy dated 2001, titled, Medication Labeling and Storage, revealed under the policy, If the facility has discontinued , outdated or deteriorated medications or biologicals, the dispending pharmacy is contacted for instructions regarding returning or destroying these items. Labeling of medications and biolagicals dispensed by the pharmacy is consistant with applicable federal and state requirements and currently accepted pharmceutical practices. The medication label includes, at a minimum: medication name, prescribed dose, strength, expiration date, when applicable, residents name, route of administration and appropriate instructions and precautions. An observation of the treatment cart on [DATE] at 9:41 AM revealed the following: Nystation cream for Resident (R) 47 with a label for 7 days, dated [DATE]. There was no lot number. Mupirocin 2% with a label for R27 to apply to left lower leg; one time day for skin infection until [DATE]- Lot #291044. Greers [NAME] with an open date of [DATE], and expiration date of [DATE], Lot number 1988939.02. Minerin Cre'me- discard date of [DATE], Lot # 62647981. On [DATE] at 10:03 AM, an interview with Licensed Practical Nurse (LPN)3 revealed, The medications were expired and should have been discarded. LPN3 then stated, I usually go through the carts once a week, and the nurses also go through them. An observation of Medication 300 Cart, on [DATE] at 3:41 PM with LPN2 revealed the following; A bottle of Oyster Shell Calcium 500 milligram (mg) stock with expiration date of ,d+[DATE]. Lot # none. EV0822BA number was on the label. Levemir Flex Pen, Lot # 4F9602A Date open [DATE], discard after 28 days. LPN2 confirmed today was day 30. Even Care G3 Test Strips Glucose Control, not dated with open date. Lot# ,d+[DATE]. Refresh Tears opened, not dated. room [ROOM NUMBER] B. (continued on next page)

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0761 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Some	Geri Care Iron Supplement, with date rubbed off. LPN2 could not identify the date, this writer cannot identify the date and the lot number was also rubbed off. An observation of medication cart 200 with LPN1 on [DATE] at 4:05 PM revealed the following; Tresiba Flex Touch Pen Insulin Degludec- no open date or expiration date. Discard after 28 days. LPN1 said she will look it up to see when it was ordered. Insulin Lispro kwik Pen open date [DATE]. Date expired [DATE]. Discard after 28 days. Lot#D707988A Novolin Lot # PZFAG68, opened, discard date after 28 days. There was no open date or expiration date. Liquid Protein 30 fluid Ounces, Lot# X1050124 . About ,d+[DATE] remains in the bottle. There was no open date. LPN1 confirmed the medications were either not dated or expired. On [DATE] at 1:11 PM, an interview with the Director of Nurses (DON) revealed, The unit managers (UM) are supposed to complete weekly audits on the medication carts. The nurses are ultimately responsible for their cart, checking dates and discarding expired items or discontinued medications. The UM are to keep the treatment carts clean, discard if out of date, or if anyone has been discharged or passed.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0851 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Electronically submit to CMS complete and accurate direct care staffing information, based on payroll and other verifiable and auditable data. 42424 Based on interview, record review, and review of the facility policy, the facility failed to accurately submit the Payroll Based Journal (PBJ) for Quarter Three (April 1st - June 1st), 2024 to reflect Registered Nurse (RN) hours. 15 of 19 days reviewed for RN coverage. Findings include: Review of facility policy titled, Reporting Direct Care Staffing Information (PBJ) last revised August 2022, revealed Direct care staffing is reported electronically to CMS through the PBJ System. Policy Interpretation and Implementation include complete and accurate direct care staffing information is reported electronically to CMS through the PBJ system in a uniform format specified by CMS. Direct care staff are those who, through interpersonal contact with residents or resident care management provide care and services to allow residents to attain or maintain their highest practicable physical, mental, and psychosocial well being. Record review prior to the entrance of the survey of the PBJ Staffing Data Report for Quarter 3 (April 2024 - June 2024) revealed the following dates with missing RN Coverage: 05/02/24; 05/15/24; 05/20/24; 05/22/24; 05/23/24; 05/29/24; 06/03/24; 06/05/24; 06/10/24; 06/12/24; 06/17/24; 06/19/24; 06/24/24; 06/26/24; 06/27/24. A phone interview on 09/22/24 at 2:13 PM with the Administrator revealed that the previous staff member that was responsible for submitting the PBJ Staffing submitted the data incorrectly by failing to include RN hours in the staffing report. Record review on 09/25/24 at 12:01 PM for May 2024, June 2024, July 2024, August 2024, and September 2024 revealed the facility did have adequate RN coverage. The facility is a 60 bed facility and utilized the Director of Nursing (DON) as their RN coverage most week days. A follow up phone interview with the Administrator on 09/25/24 at 12:45 PM revealed that the facility had an error with submitting the PBJ data related to the unit managers and the DON being salary employees. The previous person that was submitting the PBJ did not include their hours, which made the facility reflect not having RN hours.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0868 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Have the Quality Assessment and Assurance group have the required members and meet at least quarterly 42424 Based on interview, facility policy, and federal regulation the facility failed to provide documentation that the Medical Director (MD) attended the quarterly Quality Assurance and Performance Improvement (QAPI) Program. 1 of 2 Quarters reviewed. Findings include: Review of facility policy titled, QAPI Program revealed This facility shall develop, implement and maintain an ongoing, facility wide, data driven QAPI Program that is focused on indicators of the outcomes of care and quality of life for our residents. Policy interpretation and implementation include the Administrator is responsible for assuring that this facility's QAPI Program complies with federal, state and local regulatory agency requirements. A phone interview on 09/25/24 at 12:45 PM with the Administrator revealed that have recently been hired at the facility, during interview the Administrator revealed he was unable to find sign in sheets to verify that the previous Medical Director (MD) attended the quarterly QAPI meetings. An interview on 09/25/24 at 1:39 PM with the current MD for the facility revealed that they attended QAPI meeting in July, but a sign in sheet was not available.

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	425168	A. Building B. Wing	09/25/2024

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
Carlyle Senior Care of Fountain Inn	501 Gulliver St Fountain Inn, SC 29644

For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)
F 0880 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	Provide and implement an infection prevention and control program. 48835 Based on review of the facility policy, observation, and interviews, the facility failed to follow proper infection control practices to clean the glucometer for 1 of 1 resident (R) reviewed for glucometer cleaning. Findings include: Review of the facility's policy dated 05/25/2019, and titled, Glucometer Cleaning revealed The purpose of this procedure are to provide guidelines for cleaning a glucometer used for blood sugars and to prevent the introduction of bacteria. If residents use individual glcometers, clean prior to use or when visibly soiled. On 09/24/2024 at 8:19 AM, an observation of Registered Nurse (RN)1 performing an accu check revealed the following: RN1 stated, All the glucometers are individual. She then removed the glucometer from the medication cart. She was asked if she cleaned the glucometer, RN1 said, No, it should be clean since it was in the container for the resident. She placed a barrier on an overbed table and placed the glucometer on the barrier. RN1 donned gloves, cleaned the finger with an alcohol prep pad, and pricked it with a lancet. After obtaining the blood glucose reading, RN1 exited the room without handwashing or sanitizing, placed the accu check machine back into the container, without cleaning it, and placed into the medication cart. She then went back to the room to wash her hands. On 09/24/2024 at 8:40 AM, an interview with RN1 revealed, The blood glucometer should still be cleaned after each use. I'll go back and clean it. On 09/24/2024 at 2:00 PM, an interview with the Director of Nurses (DON) revealed, If residents use individual glucometers, clean prior to use or when visibly soiled. On 09/24/2024 at 2:50 PM, a second interview with the DON revealed, I was incorrect, we clean the glucometers after use, not before.

Carlyle Senior Care of Fountain Inn

Health inspections

State inspectors conduct yearly health and safety inspections of nursing homes for compliance with Medicare and Medicaid regulations. A nursing home may also be inspected based on a complaint submitted by a resident (or other individual), or based on a facility's self-reported incident. Nursing homes are also inspected for compliance with infection control and prevention standards.

Learn more about health inspections

Health inspections rating

Average

The health inspection star rating is based on each nursing home's current health inspection and 2 prior inspections, as well as findings from the most recent 3 years of complaint inspections and 3 years of infection control inspections.

Most recent health inspection

Date of most recent inspection

09/25/2024

Read the full report (PDF)

Total number of health citations

Lower is better

6

Average number of health citations in the U.S.: 9.5

Average number of health citations in South Carolina: 4.1

Complaint inspections

Date(s) of complaint inspection(s) between 7/1/2024 - 6/30/2025

No complaint inspections

Number of complaints in the past 3 years that resulted in a citation

Lower is better

0

Number of times in the past 3 years a facility-reported issue resulted in a citation

Lower is better

0

Infection control inspections

Date(s) of infection control inspection(s) between 7/1/2024 - 6/30/2025

No infection control inspections

Number of citations from infection control inspections in the past 3 years

Lower is better

This provider has had no infection control inspections in the past 3 years

View all health inspection, infection control inspection, complaint, and facility-reported issue details

Note: Some inspection reports may include explicit language that some people may find offensive. We include this language to accurately document verbal communications related to inspection findings.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBERS: 2025-CP-23-01757 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S MOTION TO RECONSIDER THE COURT'S ORDER**

Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through their undersigned counsel, submit this Motion pursuant to South Carolina Rules of Civil Procedure 52 and 59 to reconsider the Court's Order dated September 22, 2025, granting jurisdictional discovery on the grounds that the Court only granted 30-days of jurisdictional discovery and reconsider its Order denying Defendants' Motion to Compel Arbitration as it is inconsistent with the Court's Order granting jurisdictional discovery.

I. Thirty Days Discovery is Insufficient under the Rules and Practical Considerations.

South Carolina Rule 33 Interrogatories and Rule 34 Requests for Production allow for 30-days to respond but the Court's Order only gives the parties thirty days to conduct full discovery. The Order is not realistic under the Rules. Additionally, undersigned counsel only has one (1) day

available to conduct depositions during the thirty (30) day window provided by the Court's Order because of counsel's prior commitments on other cases. If a party needs to involve the Court on a jurisdictional discovery issue, it is unlikely to be considered by the Court within thirty (30) days. If a Motion to Compel is filed, it will certainly not get heard and ruled upon in thirty (30) days. Lastly, subpoenas will likely need to be sent following the receipt of discovery responses and deposition testimony. That information may not become available until late in the discovery window. Thirty days is simply not enough time to conduct discovery when considering the Rules and the fact that all the attorneys and witnesses will be difficult to schedule in that short of time.

The Parties need at least ninety (90) days to be able to conduct jurisdictional discovery to accommodate the rules of discovery, the schedules of counsel and the schedules of potential witnesses. In short, thirty (30) days is not practicable under the Rules and the circumstances and the Court must reconsider its Order.

II. The Court's Order denying Defendants' Motion to Compel Arbitration is inconsistent with the Court's Order granting jurisdictional discovery.

The Court's Order is inconsistent because it makes an ultimate ruling on arbitration jurisdiction and then orders jurisdictional discovery in the same Order. If the Court is inclined to grant jurisdictional discovery, then this Court should have taken the Motion to Compel under advisement, not denied the Motion. The Court said that "the parties shall have 30 days to engage in jurisdictional discovery. At the conclusion of those 30 days, this matter may be reset if deemed appropriate." This Order is unclear because it states "the matter may be reset." Defendants need more clarity on that the Court means by the matter may be "reset." Under the Order, the Court has denied the Motion to Compel Arbitration. The Rules do not allow a Motion that has been denied to be "reset" or reheard. The Rules and the law require an appeal if your Motion is denied. The Order also states that it may be "reset if deemed appropriate" but does not provide guidance as to what would make the "reset" appropriate. The Court should say the Motion is under advisement

or stayed pending the jurisdictional discovery and after discovery, the Parties may move the Court to have the Motion heard on the merits.

The Court must reconsider its Order and either issue a ruling on the merits of the Motion or hold the Motion while jurisdictional discovery is conducted. At present, the Order is inconsistent because it ruled on the pending Motion and then ordered jurisdictional discovery on the matters raised in the pending Motion. The Court must reconsider its ruling and refrain from ruling on the merits of the Motion to Compel Arbitration until jurisdictional discovery is completed.

CONCLUSION

Based on the above stated arguments, Defendants respectfully request this Court reconsider its Order granting jurisdictional discovery and allow the parties ninety (90) days to conduct meaningful jurisdictional discovery and reconsider its Order denying the Motions to Compel Arbitration because the ruling is inconsistent with the Court's order granting jurisdictional discovery.

BURR & FORMAN LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Charleston, SC 29492
bcrites@burr.com
nstewart@burr.com

Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

October 2, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBERS: 2025-CP-23-01757 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S MOTION TO RECONSIDER THE COURT'S ORDER**

Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through their undersigned counsel, submit this Motion pursuant to South Carolina Rules of Civil Procedure 52 and 59 to reconsider the Court's Order dated September 22, 2025, granting jurisdictional discovery on the grounds that the Court only granted 30-days of jurisdictional discovery and reconsider its Order denying Defendants' Motion to Compel Arbitration as it is inconsistent with the Court's Order granting jurisdictional discovery.

I. Thirty Days Discovery is Insufficient under the Rules and Practical Considerations.

South Carolina Rule 33 Interrogatories and Rule 34 Requests for Production allow for 30-days to respond but the Court's Order only gives the parties thirty days to conduct full discovery. The Order is not realistic under the Rules. Additionally, undersigned counsel only has one (1) day

available to conduct depositions during the thirty (30) day window provided by the Court's Order because of counsel's prior commitments on other cases. If a party needs to involve the Court on a jurisdictional discovery issue, it is unlikely to be considered by the Court within thirty (30) days. If a Motion to Compel is filed, it will certainly not get heard and ruled upon in thirty (30) days. Lastly, subpoenas will likely need to be sent following the receipt of discovery responses and deposition testimony. That information may not become available until late in the discovery window. Thirty days is simply not enough time to conduct discovery when considering the Rules and the fact that all the attorneys and witnesses will be difficult to schedule in that short of time.

The Parties need at least ninety (90) days to be able to conduct jurisdictional discovery to accommodate the rules of discovery, the schedules of counsel and the schedules of potential witnesses. In short, thirty (30) days is not practicable under the Rules and the circumstances and the Court must reconsider its Order.

II. The Court's Order denying Defendants' Motion to Compel Arbitration is inconsistent with the Court's Order granting jurisdictional discovery.

The Court's Order is inconsistent because it makes an ultimate ruling on arbitration jurisdiction and then orders jurisdictional discovery in the same Order. If the Court is inclined to grant jurisdictional discovery, then this Court should have taken the Motion to Compel under advisement, not denied the Motion. The Court said that "the parties shall have 30 days to engage in jurisdictional discovery. At the conclusion of those 30 days, this matter may be reset if deemed appropriate." This Order is unclear because it states "the matter may be reset." Defendants need more clarity on that the Court means by the matter may be "reset." Under the Order, the Court has denied the Motion to Compel Arbitration. The Rules do not allow a Motion that has been denied to be "reset" or reheard. The Rules and the law require an appeal if your Motion is denied. The Order also states that it may be "reset if deemed appropriate" but does not provide guidance as to what would make the "reset" appropriate. The Court should say the Motion is under advisement

or stayed pending the jurisdictional discovery and after discovery, the Parties may move the Court to have the Motion heard on the merits.

The Court must reconsider its Order and either issue a ruling on the merits of the Motion or hold the Motion while jurisdictional discovery is conducted. At present, the Order is inconsistent because it ruled on the pending Motion and then ordered jurisdictional discovery on the matters raised in the pending Motion. The Court must reconsider its ruling and refrain from ruling on the merits of the Motion to Compel Arbitration until jurisdictional discovery is completed.

CONCLUSION

Based on the above stated arguments, Defendants respectfully request this Court reconsider its Order granting jurisdictional discovery and allow the parties ninety (90) days to conduct meaningful jurisdictional discovery and reconsider its Order denying the Motions to Compel Arbitration because the ruling is inconsistent with the Court's order granting jurisdictional discovery.

BURR & FORMAN LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Charleston, SC 29492
bcrites@burr.com
nstewart@burr.com

Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

October 2, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C/A No.: 2025-CP-23-01757
	)	(Survival Action)
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,	)	C/A No.: 2025-CP-23-01759
	)	(Wrongful Death)
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS CARLYLE SENIOR CARE OF FOUNTAIN INN, LLC, CARLYLE SENIOR CARE MANAGEMENT COMPANY, INC., NEW DAY HEALTH VENTURES, LLC, AND LARK OF FOUNTAIN INN, LLC'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION**
Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC,	)	
Defendants.	)	

Pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP"), Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC (collectively, "Defendants"), by and through their undersigned counsel, respectfully request this Honorable Court reconsider its Form 4 Order entered on September 22, 2025 ("September 22, 2025 Order"), granting jurisdictional discovery on the grounds that the Court only provided Defendants with thirty (30) days to engage in the same, and to reconsider its ruling denying Defendants' Motion to Compel Arbitration ("Motion") as it is inconsistent with the September 22, 2025 Order granting jurisdictional discovery, or in the alternative, amend its ruling to allow for additional time to substantially engage in and/or complete jurisdictional discovery.

PROCEDURAL HISTORY

This case involves Raymond Zeigler ("Zeigler"), who allegedly experienced falls while he was a resident at Carlyle Senior Care of Fountain Inn, LLC ("CSC Fountain Inn"), a skilled nursing facility. On March 18, 2025, Plaintiff Kimberly Haag ("Plaintiff") filed a Summons and Complaint against Defendants. On May 14, 2025, Defendants timely filed their Answers to Plaintiff's Complaint, wherein they asserted Arbitration as an Affirmative Defense, along with Defendants' Motion. On September 17, 2025, Defendants filed a Memorandum of Law in Support of their Motion, and Plaintiff filed a Memorandum of Law in Opposition to Defendant's Motion. On September 19, 2025, a hearing was held on Defendants' Motion. On September 22, 2025, the Court entered a Form 4 Order, denying Defendants' Motion, which included a Statement of Judgment by the Court. In pertinent part, that Statement of Judgment by the Court provided the following:

> [A]fter careful consideration of the arguments of the parties and the materials filed, Defendants' Motion to Dismiss, Stay Litigation, and Compel Arbitration is DENIED. The parties shall have 30 days to engage i[n] jurisdictional discovery. At the conclusion of those 30 days, this matter may be reset if deemed appropriate. . . .[.]

With an entry of order date of September 22, 2025, the deadline to engage in jurisdictional discovery is October 22, 2025.

On September 30, 2025, counsel for Co-Defendants, Nicholas Stewart, Esq., with undersigned counsel in copy, asked Plaintiff's counsel for date(s) to depose Plaintiff, and whether Plaintiff's counsel would consent to extend the Court's thirty (30) day deadline – to ninety (90) days – to allow all parties additional time to engage and complete jurisdictional discovery. On September 30, 2025, Plaintiff's counsel responded with his potential availability for Plaintiff's deposition and indicated that he may wish to depose a facility employee as well, but he did not address the request for an extension. That same day, September 30, 2025, undersigned counsel responded, also asking Plaintiff's counsel for consent to extend the jurisdictional discovery

deadline to ninety (90) days, and advised Plaintiff's counsel that efforts would be made to identify the witness he requested. Finally, on September 30, 2025, Plaintiff served Defendants and Co-Defendants with a Second Set of Interrogatories and Requests for Production, which contained jurisdictional discovery requests, with a thirty (30) day deadline, making Defendants' Answers/Responses due no later than October 31, 2025. To date, no response has been received from Plaintiff's counsel regarding the requests for an extension.[1]

FACTUAL SUMMARY

On May 8, 2018, Zeigler executed a General Durable Power of Attorney ("GDPOA") wherein he appointed his daughter, Plaintiff, as his true and lawful attorney-in-fact with authority to act on his behalf. A copy of the GDPOA was attached to Defendants' Motion as Exhibit A. On December 22, 2022, Plaintiff, on behalf of Zeigler, and in her capacity as Legal Representative and Power of Attorney, entered into an Admission Agreement with CSC Fountain Inn for Zeigler's residency, and executed a Mediation and Binding Arbitration Agreement ("Arbitration Agreement") included within the Admission Agreement. True and accurate copies of the Admission ~~Agreement~~ and Arbitration Agreements were attached to Defendants' Motion as Exhibit B.

STANDARD OF REVIEW

Rule 59(e), SCRCP, provides a mechanism for parties to move the court to alter or amend a judgment within ten (10) days following receipt of written notice of the entry of the order. See Rule 59 (e), SCRCP; see also Rule 52(c), SCRCP, (providing that a motion to amend findings or make additional findings must be made not later than ten days after receipt of written notice of

[1] Arguably, Plaintiff's counsel acknowledged the need for additional time beyond the thirty (30) days ordered by the Court by serving written jurisdictional-related discovery requests that are not due until **after** the Court's thirty (30) day deadline.

entry of judgment). The purpose of a motion to alter or amend is "to request the trial judge reconsider matters properly encompassed in a decision on the merits." Coward Hund Constr. Co., Inc. v. Ball Corp., 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999). A party may file a Rule 59(e) motion "when [it] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

ARGUMENTS

I. Thirty (30) Days is Insufficient to Substantially Engage In and/or Complete Jurisdictional Discovery.

The Court's deadline of thirty (30) days is not a reasonable timeframe to substantially engage in, much less, complete basic jurisdictional discovery. Jurisdictional discovery, while not specifically defined in the September 22, 2025 Order, generally includes deposing key witnesses, serving written Interrogatories and/or Requests for Production, and obtaining additional information from third parties via subpoena, if/when determined necessary. Here, Plaintiff served Defendants with written discovery, containing jurisdictional discovery requests, with a deadline of October 31, 2025, which is beyond the Court's thirty (30) day deadline of October 22, 2025. Additionally, the parties exchanged communications regarding the depositions of Plaintiff and a former employee of CSC Fountain Inn.[2]

As a practical matter, for the deposition of any former CSC Fountain Inn employee to occur, the former employee must first be identified and, then, his/her contact information must be located and shared with the party requesting his/her deposition, the employee's location must be verified, and the employee must be properly served pursuant to Rules 30(b) and 45(b), SCRCP.

[2] Pursuant to a change in operations that occurred on or around March 14, 2023, CSC Fountain Inn is no longer operating as a skilled nursing facility and, therefore, has no current employees.

Regarding Plaintiff's deposition, due to preexisting scheduling obligations, there appears to be one date, October 21, 2025, that is within the Court's thirty (30) day deadline that all counsel are available. However, that date has not been confirmed by Plaintiff's counsel and, therefore, no Notice of Deposition has been able to be served to date. Additionally, based on Plaintiff's Memorandum of Law in Opposition to Defendants' Motion and the arguments made at the September 19, 2025 hearing, additional testimony may be requested regarding the terms of the change in operations from CSC Fountain Inn to Co-Defendant Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute. Further, thirty (30) days does not allow for any additional time for unexpected scenarios that could cause delays such as personal emergencies of counsel or witnesses and/or inclement weather. Finally, with three (3) attorneys and multiple parties involved, scheduling conflicts are a significant factor and concern in meeting the Court's deadline.

The parties have demonstrated that they are willing to participate in jurisdictional discovery as ordered in the September 22, 2025 Order and have already undertaken steps to start that process. However, thirty (30) days simply does not provide the parties with adequate time to complete the task ordered. Accordingly, Defendants respectfully request the Court to reconsider its deadline of September 22, 2025, for jurisdictional discovery.

II. The September 22, 2025 Order Denying Defendants' Motion is Inconsistent with the Court's Ruling Granting Jurisdictional Discovery.

The September 22, 2025 Order denying Defendants' Motion is inconsistent with the Court's decision to allow the parties to conduct jurisdictional discovery. Specifically, the September 22, 2025 Order states "the parties shall have 30 days to engage in jurisdictional discovery. At the conclusion of those 30 days, this matter may be reset if deemed appropriate." The language "may be reset" appears to allow Defendants with an opportunity to revisit and/or re-

argue their Motion after jurisdictional discovery is completed. However, the September 22, 2025 Order also states that Defendants' Motion is denied, which would indicate that it could not be revisited by the Court. Hence, Defendants only recourse for additional review would be through the appellate process. Further, the language "if deemed appropriate" is unclear as to what evidence would need to be obtained through jurisdictional discovery to allow Defendants the opportunity to be heard again. Because the Court determined the parties could participate in jurisdictional discovery, Defendants' Motion should have been taken under advisement, not denied. Accordingly, Defendants respectfully request that the Court reconsider its September 22, 2025 Order, ~~to~~ take Defendants' Motion under advisement or grant Defendants' Motion to Stay, and allow the parties to have the Motion heard on the merits after the completion of jurisdictional discovery.

CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court reconsider its September 22, 2025 Order and issue a new Order that Defendants' Motion is taken under advisement and the case is stayed pending the completion of meaningful jurisdictional discovery to be completed within ninety (90) days of the September 22, 2025 Order, at which time the parties may move this Court to have additional evidence presented and arguments heard on the merits of Defendants' Motion.

This Motion is supported by the SCRCP, applicable statutory and case law, the pleadings and documents on file, arguments of counsel, any supporting memoranda and/or affidavits, and any other such information and/or materials the court may request prior to or at the time of a hearing.

Respectfully submitted this 2nd day of October 2025, in Charleston, South Carolina.

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

_____

Ashley S. Heslop, SC Bar No. 71148
Caroline K. Buchanan, SC Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com

Counsel for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C/A No.: 2025-CP-23-01757
	)	(Survival Action)
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,	)	C/A No.: 2025-CP-23-01759
	)	(Wrongful Death)
Plaintiff,	)	
	)	
vs.	)	**DEFENDANTS CARLYLE SENIOR CARE OF FOUNTAIN INN, LLC, CARLYLE SENIOR CARE MANAGEMENT COMPANY, INC., NEW DAY HEALTH VENTURES, LLC, AND LARK OF FOUNTAIN INN, LLC'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION**
Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC,	)	
Defendants.	)	

Pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP"), Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC (collectively, "Defendants"), by and through their undersigned counsel, respectfully request this Honorable Court reconsider its Form 4 Order entered on September 22, 2025 ("September 22, 2025 Order"), granting jurisdictional discovery on the grounds that the Court only provided Defendants with thirty (30) days to engage in the same, and to reconsider its ruling denying Defendants' Motion to Compel Arbitration ("Motion") as it is inconsistent with the September 22, 2025 Order granting jurisdictional discovery, or in the alternative, amend its ruling to allow for additional time to substantially engage in and/or complete jurisdictional discovery.

PROCEDURAL HISTORY

This case involves Raymond Zeigler ("Zeigler"), who allegedly experienced falls while he was a resident at Carlyle Senior Care of Fountain Inn, LLC ("CSC Fountain Inn"), a skilled nursing facility. On March 18, 2025, Plaintiff Kimberly Haag ("Plaintiff") filed a Summons and Complaint against Defendants. On May 14, 2025, Defendants timely filed their Answers to Plaintiff's Complaint, wherein they asserted Arbitration as an Affirmative Defense, along with Defendants' Motion. On September 17, 2025, Defendants filed a Memorandum of Law in Support of their Motion, and Plaintiff filed a Memorandum of Law in Opposition to Defendant's Motion. On September 19, 2025, a hearing was held on Defendants' Motion. On September 22, 2025, the Court entered a Form 4 Order, denying Defendants' Motion, which included a Statement of Judgment by the Court. In pertinent part, that Statement of Judgment by the Court provided the following:

> [A]fter careful consideration of the arguments of the parties and the materials filed, Defendants' Motion to Dismiss, Stay Litigation, and Compel Arbitration is DENIED. The parties shall have 30 days to engage i[n] jurisdictional discovery. At the conclusion of those 30 days, this matter may be reset if deemed appropriate. . . .[.]

With an entry of order date of September 22, 2025, the deadline to engage in jurisdictional discovery is October 22, 2025.

On September 30, 2025, counsel for Co-Defendants, Nicholas Stewart, Esq., with undersigned counsel in copy, asked Plaintiff's counsel for date(s) to depose Plaintiff, and whether Plaintiff's counsel would consent to extend the Court's thirty (30) day deadline – to ninety (90) days – to allow all parties additional time to engage and complete jurisdictional discovery. On September 30, 2025, Plaintiff's counsel responded with his potential availability for Plaintiff's deposition and indicated that he may wish to depose a facility employee as well, but he did not address the request for an extension. That same day, September 30, 2025, undersigned counsel responded, also asking Plaintiff's counsel for consent to extend the jurisdictional discovery

deadline to ninety (90) days, and advised Plaintiff's counsel that efforts would be made to identify the witness he requested. Finally, on September 30, 2025, Plaintiff served Defendants and Co-Defendants with a Second Set of Interrogatories and Requests for Production, which contained jurisdictional discovery requests, with a thirty (30) day deadline, making Defendants' Answers/Responses due no later than October 31, 2025. To date, no response has been received from Plaintiff's counsel regarding the requests for an extension.[1]

FACTUAL SUMMARY

On May 8, 2018, Zeigler executed a General Durable Power of Attorney ("GDPOA") wherein he appointed his daughter, Plaintiff, as his true and lawful attorney-in-fact with authority to act on his behalf. A copy of the GDPOA was attached to Defendants' Motion as Exhibit A. On December 22, 2022, Plaintiff, on behalf of Zeigler, and in her capacity as Legal Representative and Power of Attorney, entered into an Admission Agreement with CSC Fountain Inn for Zeigler's residency, and executed a Mediation and Binding Arbitration Agreement ("Arbitration Agreement") included within the Admission Agreement. True and accurate copies of the Admission ~~Agreement~~ and Arbitration Agreements were attached to Defendants' Motion as Exhibit B.

STANDARD OF REVIEW

Rule 59(e), SCRCP, provides a mechanism for parties to move the court to alter or amend a judgment within ten (10) days following receipt of written notice of the entry of the order. See Rule 59 (e), SCRCP; see also Rule 52(c), SCRCP, (providing that a motion to amend findings or make additional findings must be made not later than ten days after receipt of written notice of

[1] Arguably, Plaintiff's counsel acknowledged the need for additional time beyond the thirty (30) days ordered by the Court by serving written jurisdictional-related discovery requests that are not due until **after** the Court's thirty (30) day deadline.

entry of judgment). The purpose of a motion to alter or amend is "to request the trial judge reconsider matters properly encompassed in a decision on the merits." Coward Hund Constr. Co., Inc. v. Ball Corp., 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999). A party may file a Rule 59(e) motion "when [it] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

ARGUMENTS

I. Thirty (30) Days is Insufficient to Substantially Engage In and/or Complete Jurisdictional Discovery.

The Court's deadline of thirty (30) days is not a reasonable timeframe to substantially engage in, much less, complete basic jurisdictional discovery. Jurisdictional discovery, while not specifically defined in the September 22, 2025 Order, generally includes deposing key witnesses, serving written Interrogatories and/or Requests for Production, and obtaining additional information from third parties via subpoena, if/when determined necessary. Here, Plaintiff served Defendants with written discovery, containing jurisdictional discovery requests, with a deadline of October 31, 2025, which is beyond the Court's thirty (30) day deadline of October 22, 2025. Additionally, the parties exchanged communications regarding the depositions of Plaintiff and a former employee of CSC Fountain Inn.[2]

As a practical matter, for the deposition of any former CSC Fountain Inn employee to occur, the former employee must first be identified and, then, his/her contact information must be located and shared with the party requesting his/her deposition, the employee's location must be verified, and the employee must be properly served pursuant to Rules 30(b) and 45(b), SCRCP.

[2] Pursuant to a change in operations that occurred on or around March 14, 2023, CSC Fountain Inn is no longer operating as a skilled nursing facility and, therefore, has no current employees.

Regarding Plaintiff's deposition, due to preexisting scheduling obligations, there appears to be one date, October 21, 2025, that is within the Court's thirty (30) day deadline that all counsel are available. However, that date has not been confirmed by Plaintiff's counsel and, therefore, no Notice of Deposition has been able to be served to date. Additionally, based on Plaintiff's Memorandum of Law in Opposition to Defendants' Motion and the arguments made at the September 19, 2025 hearing, additional testimony may be requested regarding the terms of the change in operations from CSC Fountain Inn to Co-Defendant Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute. Further, thirty (30) days does not allow for any additional time for unexpected scenarios that could cause delays such as personal emergencies of counsel or witnesses and/or inclement weather. Finally, with three (3) attorneys and multiple parties involved, scheduling conflicts are a significant factor and concern in meeting the Court's deadline.

The parties have demonstrated that they are willing to participate in jurisdictional discovery as ordered in the September 22, 2025 Order and have already undertaken steps to start that process. However, thirty (30) days simply does not provide the parties with adequate time to complete the task ordered. Accordingly, Defendants respectfully request the Court to reconsider its deadline of September 22, 2025, for jurisdictional discovery.

II. The September 22, 2025 Order Denying Defendants' Motion is Inconsistent with the Court's Ruling Granting Jurisdictional Discovery.

The September 22, 2025 Order denying Defendants' Motion is inconsistent with the Court's decision to allow the parties to conduct jurisdictional discovery. Specifically, the September 22, 2025 Order states "the parties shall have 30 days to engage in jurisdictional discovery. At the conclusion of those 30 days, this matter may be reset if deemed appropriate." The language "may be reset" appears to allow Defendants with an opportunity to revisit and/or re-

argue their Motion after jurisdictional discovery is completed. However, the September 22, 2025 Order also states that Defendants' Motion is denied, which would indicate that it could not be revisited by the Court. Hence, Defendants only recourse for additional review would be through the appellate process. Further, the language "if deemed appropriate" is unclear as to what evidence would need to be obtained through jurisdictional discovery to allow Defendants the opportunity to be heard again. Because the Court determined the parties could participate in jurisdictional discovery, Defendants' Motion should have been taken under advisement, not denied. Accordingly, Defendants respectfully request that the Court reconsider its September 22, 2025 Order, ~~to~~ take Defendants' Motion under advisement or grant Defendants' Motion to Stay, and allow the parties to have the Motion heard on the merits after the completion of jurisdictional discovery.

CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court reconsider its September 22, 2025 Order and issue a new Order that Defendants' Motion is taken under advisement and the case is stayed pending the completion of meaningful jurisdictional discovery to be completed within ninety (90) days of the September 22, 2025 Order, at which time the parties may move this Court to have additional evidence presented and arguments heard on the merits of Defendants' Motion.

This Motion is supported by the SCRCP, applicable statutory and case law, the pleadings and documents on file, arguments of counsel, any supporting memoranda and/or affidavits, and any other such information and/or materials the court may request prior to or at the time of a hearing.

Respectfully submitted this 2nd day of October 2025, in Charleston, South Carolina.

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

_____

Ashley S. Heslop, SC Bar No. 71148
Caroline K. Buchanan, SC Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com

Counsel for Defendants

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2025-CP-23-01757 & 2025-CP-23-01759
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendant(s).	)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS CARLYLE SENIOR CARE OF FOUNTAIN INN, LLC, CARLYLE SENIOR CARE MANAGEMENT COMPANY, INC., NEW DAY HEALTH VENTURES, LLC, LARK OF FOUNTAIN INN, LLC, FOUNTAIN INN HEALTHCARE, LLC D/B/A FOUNTAIN INN POST ACUTEPOST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC, PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROERTY, LLC'S MOTIONS FOR RECONSIDERATION**

Defendants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Providence Defendants") filed their Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration on May 8, 2025. Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC (hereinafter "Carlyle Defendants") filed their Motion to Compel Arbitration on May 14, 2025. These motions were originally scheduled to be heard on July 23, 2025, and were continued at Defendants' requests,

meaning that the Motions to Compel Arbitration were not heard until September 19, 2025, some four months after being filed.

The Court denied Defendants' Motions with a Form 4 Order on September 22, 2025, and granted Defendants thirty (30) days for jurisdictional discovery and further allowed for the matter to be reset if deemed appropriate. Defendants have now filed a Motion to Reconsider this Court's Order. Since the Court has denied Defendants' Motions, resetting the matter for a second hearing should not be permitted. While Plaintiff is unsure of any time period for when the matter could be reset or what the conditions for that may be, Defendants' Motions to Reconsider should be denied, and Plaintiff submits this Memorandum in Opposition.

ARGUMENT

I. Defendants raise no new issues not previously considered or ruled upon by the Court.

Defendants have asked the Court to reconsider their motions but raise no issues that the Court did not address or consider as part of Defendants' Rule 59(e) motions. Essentially, Defendants filed these Motions to Reconsider because Defendants do not like the Court's Order despite it being appropriately issued.

Defendants' Motions to Reconsider are simply a repetition of arguments made by Defendants in the original Motions to Compel Arbitration. S.C.R.C.P. 59(e) is substantially similar to Federal Rule 59(e). A party moving pursuant to Rule 59 must demonstrate more than a "mere disagreement" with the court's order. Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). A Rule 59(e) motion is not a proper forum to relitigate old matters or to raise arguments or present evidence that could have been raised prior to the entry of judgment. II Charles Alan Wright and Arthur R. Miller.

Federal Practice and Procedures § 2810.1 (3d ed.). Defendants raise no errors of law by the Court, and further, Defendants do not identify any issues not ruled upon by the Court pertinent to the motions. As a result, Defendants' Motions should be denied on this basis alone.

II. Defendants' Motions should be denied because South Carolina law provides that motions to compel arbitration are essentially a legal issue and jurisdictional discovery is typically not necessary or allowed.

Beyond the justiciability flaws, which will be addressed hereinbelow, the Defendants' request for discovery was actually in opposition to recent appellate South Carolina law. Hodge v. Uni-Health Post-Acute Care of Bamberg, Opinion No. 5541 (S.C. Ct. App. March 7, 2018) addressed a similar argument where the Court of Appeals affirmed the Circuit Court's refusal to compel a deposition that would add nothing probative to the arbitration analysis. 425 S.C. 578, 813 S.E.2d 310. (See also Hopkins v. World Acceptance Corp., No. 1:10-cv-03429-SCJ (U.S. District Ct., No. District of GA 2011) also holding discovery for determination of Motion to Compel Arbitration not necessary.) In Hodge, the court found that because most of the issues involved in the motion were legal issues, any discovery would not be probative or helpful.

In the present case, the facts are essentially uncontested. Defendants presented no affidavit of facts to contest anything other than the Arbitration Agreement and Power of Attorney. No one is contesting whether or not a power of attorney existed at the time that the Arbitration Agreement was signed. Defendants only want to conduct discovery for a fishing expedition and for further delay. Within just a few days of Defendants' request for Plaintiff's deposition on October 21, 2025, Plaintiff confirmed that she would be

available on that date for a jurisdictional deposition for discovery, despite the fact that the deposition will likely add nothing probative to this matter.

Carlyle Defendants have also since served extensive discovery on Plaintiff that has absolutely nothing to do with arbitration. See Carlyle Defendants' discovery requests served on Plaintiff after this Court's ruling at Exhibit A. Defendants are seeking, among other things, the following:

a. Identification of witnesses;
b. Identification of felonies;
c. Whether Plaintiff's Decedent was under any physical or emotional condition at the time of the admission;
d. Whether Plaintiff's Decedent had any conditions ten (10) years prior to his death;
e. All healthcare providers who have examined or treated Decedent in the past ten (10) years;
f. Employment information;
g. Identification of any attorneys involved in drafting documents for the estate;
h. Documents related to the drafting of a power of attorney;
i. Documents related to cellular telephone account information;
j. Financing information for automobiles;
k. Email account information;
l. Social media account information;
m. Credit card company account information;

n. Financial service account information;

o. Home mortgage information;

p. Insurance information;

q. Leases entered into in the past ten (10) years for real property; and

r. Utility providers for the past ten (10) years.

Clearly, Defendants are trying to delay and burden Plaintiff with discovery that has nothing to do with the issues before the Court on the Motions to Compel Arbitration.

Defendants had ample opportunity to serve discovery or conduct discovery prior to the hearing on their motions. Defendants had approximately five to six months after being served with the Summons and Complaint prior to the hearing to serve discovery or request a deposition as to any factual issues that they thought necessary should be explored for the Motions to Compel Arbitration. Instead, Defendants elected not to pursue that route and chose to move forward on their Motions, and as a last second outlet in the event their motions were unsuccessful, Defendants requested an opinion from this Court allowing discovery that could have been served months earlier. Defendants now seek discovery that is wholly unrelated, irrelevant, and overly broad in so many ways.

The only issues before the Court related to the arbitration motions were:

1. Whether or not there a meeting of the minds, which is based upon the four corners of the contract and a legal issue based upon the language of the Arbitration Agreement;
2. Whether the execution of the Arbitration Agreement complied with Federal Regulations for which Defendants offered no support in

opposition despite being aware of the Federal Regulations and the requirement for same;

3. Whether the Arbitration Agreement was enforceable by the Providence Defendants who were neither parties nor involved with the facility in any way at the time of the execution of the agreement but subsequently purchased the facility later and had no agreement with Plaintiff;
4. Whether the Arbitration Agreement was enforceable as to the independent claims of the wrongful death statutory beneficiaries who were not signatories nor parties to the agreement; and
5. Whether the Arbitration Agreement applied to the Corporate Defendants who were not parties to the agreement;

All of these issues were legal issues which were uncontested at the hearing and could be determined by the documents, primarily the Arbitration Agreement, submitted to the Court. Therefore, as Hodge has previously held, discovery would have no probative value and would serve no purpose, as the facts uncovered in discovery would not aid in the determination of these issues. The only potential factual claim could be whether or not the Arbitration Agreement complied with Federal laws in the execution of same. However, Defendants were aware of these requirements from the outset of the execution of the Arbitration Agreement, filed their Motions to Compel Arbitration, and had months to address this issue and chose not to do so until now.

In addition to the fact that discovery would serve no probative value and the fact that Defendants are seeking to abuse the discovery process, the Defendants have

essentially sought an advisory opinion from this court allowing discovery that Defendants could have served or sought for months leading up to their motions.

Neither the procedural rules nor Plaintiff's conduct prevented the Facility from conducting discovery. The Facility had the right to serve written discovery requests and to notice depositions from the moment Plaintiff filed her Complaint with the Court. Rule 30(a)(1), SCRCP (permitting depositions "[a]fter commencement of an action"); Rule 33(a), SCRCP (same for serving interrogatories); Rule 34(b), SCRCP (same for serving requests for production); see also Rule 3(a), SCRCP (stating that a civil action is "commenced" when the complaint is filed if later served within the statute of limitations). The rules specifically provide that a party need not seek a court's permission before serving discovery requests. Rule 33(a), SCRCP; Rule 34(b), SCRCP. Additionally, it is not as if the Defendants tried and failed or were somehow thwarted in seeking information from Plaintiff. Plaintiff has not ignored or objected to any discovery requests. Defendants lack the information they claim now to need only because the Defendants never asked for it.

The Defendants do not contest that they were fully within their power to obtain information from Plaintiff or others before moving to compel arbitration. Instead, the Defendants' concerns relate to the possible consequences of pursuing discovery. South Carolina law holds that a party may waive any right it may have to pursue arbitration if it first chooses to litigate in a way that would render a shift to arbitration prejudicial to its opponent. Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 513, 788 S.E.2d 216, 218 (2016); Dean, 408 S.C. at 388, 759 S.E.2d at 736. The point at which a party delves too deeply into litigation to assert a right to arbitrate varies because the analysis is

heavily fact driven. Johnson, 416 S.C. at 513, 788 S.E.2d at 219 (citing Liberty Builders, Inc. v. Horton, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999)). In any given case, a party seeking arbitration faces uncertainty in knowing when it is vulnerable to a waiver argument, and the opposing party is uncertain when it may become necessary to assert one.

What the Defendants now call their request for discovery is actually their improper effort to eliminate uncertainty at Plaintiff's expense. The Defendants sought assurances from the Court that choosing to conduct discovery would not expose them to a waiver argument. This request does not present an issue any court could resolve in the Defendants' favor. No South Carolina court can address the merits of a party's argument unless it presents a justiciable claim. Lennon v. S.C. Coastal Council, 330 S.C. 414, 417-18, 498 S.E.2d 906, 908 (Ct. App. 1998). South Carolina courts cite the "case or controversy" requirement in the U.S. Constitution's Article III and apply federal standards for identifying a justiciable controversy. Id.; Waters v. S.C. Land Resources Conservation Comm'n, 321 S.C. 219, 227-28, 467 S.E.2d 913, 917-18 (1996). A claim is justiciable only if it presents a "real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Sloan v. Greenville Cnty., 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003). Justiciability specifically considers a party's standing as well as the suitability of the dispute for resolution. Courts may not address claims that are unripe, moot, or seek an advisory opinion. Jowers v. S.C. Dep't of Health & Envtl. Control, 423 S.C. 343, 815 S.E.2d 446 (2018).

Here, the Defendants lack standing to assert a discovery argument that is both unripe and seek an advisory opinion. Under South Carolina law, standing may be acquired by satisfying the requirements of "constitutional standing" derived from federal constitutional principles. ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). The Defendants cannot meet those requirements for their discovery-based argument. Constitutional standing demands a concrete and particularized "injury-in-fact," a causal connection between the injury and the conduct complained of, and a finding that the injury will likely be redressed by a ruling in the injured party's favor. Id. (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). The Defendants have not suffered any concrete and particularized injury. The rules authorized the precise action—serving discovery requests—the Defendants claims they were denied. Rules 30(a)(1), 33(a), and 34(b), SCRCP. The Defendants cannot claim to be injured by their own decision to forego a right the law unconditionally provided.

The Facility also cannot meet the remaining constitutional standing requirements. There is no causal connection between the proposed injury (i.e. a lack of discovery) and either Plaintiff's conduct or the Court's Order. Neither denied the Defendants the right to conduct discovery before filing their motions to compel arbitration. Nor can the Defendants meet the redressability requirement. Given the rules' repeated statements that discovery requests may be made "without leave of court,"[1] it is not at all clear it would ever be appropriate for a party in the Defendants' position to ask a circuit court to grant leave to conduct discovery, much less ask for an additional three (3) months to complete it with discovery requests well beyond the scope of the issues in these arbitration motions.

[1] Rule 33(a), SCRCP; Rule 34(b), SCRCP.

As a result, Defendants should not be granted an additional ninety (90) days by this Court to extend discovery as to all of these unrelated issues, nor will discovery serve any beneficial purpose here in this case. In addition, as indicated hereinabove, Plaintiff has already offered to sit for a deposition within the thirty (30) day deadline and Defendants are seeking to abuse the discovery process by serving discovery requests seeking unrelated and irrelevant information. If the Court does choose to amend its Order, Plaintiff would request that the Cout deny Defendants the opportunity conduct any discovery at all for the above stated reasons, particularly in light of the fact that the Motions were denied and leaving a second hearing on the same issues should not be permitted.

CONCLUSION

As a result, because Defendants raise no new issues of fact or law not considered by this Court for Rule 59(e) motions, and further, because South Carolina law specifically recognizes that discovery is unnecessary in these matters, and further, because Defendants had months to conduct discovery, chose not to do so, and now are seeking to abuse the discovery process for this issue, Defendants' Motions for Reconsideration should be denied in their entirety. Plaintiff would further request this Court deny Defendants' requests for discovery in its entirety.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

s/Matthew W. Christian
Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: October 9, 2025

EXHIBIT A

BURR & FORMAN

Nicholas C.C. Stewart
nstewart@burr.com
Direct Dial & Fax: (843) 973-6888

115 Fairchild Street
Suite 200
Daniel Island, SC 29492

Office (843) 972-6177
BURR.COM

October 2, 2025

VIA EMAIL ONLY
Matthew W. Christian
Christian & Christian, LLC
PO Box 332
Greenville, SC 29602
mchristian@cclawfirm.com

Re: *Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler vs. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC*
Case No.: 2025-CP-23-01757 and 2025-CP-23-01759

Dear Counsel,

Enclosed please find Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC First Set of Interrogatories and Requests for Production to Plaintiff in regards to the above-referenced matter.

Sincerely,

Burr & Forman LLP

Nicholas C.C. Stewart

NCCS/whp
Enclosure
cc: Ashley S. Heslop

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBER 2025-CP-23-01757 & 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: MATTHEW W. CHRISTIAN, ESQUIRE COUNSEL FOR PLAINTIFF:

COMES NOW Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through their undersigned counsel pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, who hereby submit the following Interrogatories to be answered by the Plaintiff Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, in writing, under oath, and within thirty (30) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

Unless the context indicates otherwise, the following words and phrases are defined and used herein as follows:

(a) *"Identify"* with reference to a document means to state:

(i) The type of document (e.g., letter, memorandum, telegram, telex, chart, etc.) or some other means of identifying it;

(ii) Its title;

(iii) Its author or originator;

(iv) Its date or dates;
(v) Its present location or custodian; and

(vi) A summary of its contents; or in the alternative, to produce that document, separated and identified in some appropriate manner with reference to the interrogatory without further identification or explanation provided the document itself provides the identifying information herein referred to or, when the document does not, by affixing to it by a cover sheet or some other form of notation the "identifying information" not appearing from the face thereof, to wit, such as its date or author or originator.

(b) *"Identify"* with respect to a person or institution (such as a hospital) means to state the full name and present business address and telephone number of the person and the full name and address of the institution.

(c) *"Document"* is used in its broadest sense, and means every writing or other source of recorded information of whatever nature and by whatever means recorded and whether or not claimed to be privileged or otherwise excludable from discovery, including, without limitation, the following: written memoranda, notes, records, interoffice communications, emails, telegrams, letters, correspondence, reports, minutes, diaries, books, manuscripts, gallery proofs, sound recordings, microfilms, computer printouts or documents obtainable from electronic data storage equipment, summaries of personal conversations, invoices, specifications, shipping papers, sketches, blueprints, reports of tests, photocopies and any and all other papers and writings, including drafts, originals, and copies. Any document bearing on any sheet or side thereof any marks such as initials, receipt stamps, routing information or comments – not part of the original text of the document – is considered a separate document for the purpose of these Interrogatories. These definitions apply to the Interrogatories herein set forth.

(d) "*Plaintiff*," *"You"* and "*your*" means the as Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, and all attorneys or other persons acting, or purporting to act on behalf of Plaintiff.

(e) *Decedent"* means Raymond Zeigler and all representatives, attorneys or other persons acting, or purporting to act on behalf of *Decedent Raymond Zeigler*.

(f) "*Defendants*" mean Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC.

(g) These interrogatories are deemed to be continuing, such as to require Plaintiff to file and serve supplemental answers should he/she learn of additional information called for by these interrogatories between the time of trial and the time his/her answers are filed. Supplemental answers are required to be served within a reasonable time after the discovery of such additional information.

(h) You are under a duty to promptly amend prior responses to these interrogatories if you learn that the response was incorrect when made or that the response, though correct when made, is no longer true.

(i) If you object to, or otherwise decline to answer any portion of any Interrogatory, specifically set forth each and every reason for such objection. Furthermore, you should provide a response to that portion of the Interrogatory to which you do not object, or to which you do not decline to provide a response. If you object to an Interrogatory on the ground that it is too broad, provide a response to that portion which is concededly relevant.

(j) If in responding to any of these Interrogatories, you reasonably encounter any ambiguity in construing the Interrogatory or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in answering the Interrogatory.

(k) If in response to an Interrogatory you do not know all facts necessary to provide a complete and specific answer, you should provide an answer to such portion of the Interrogatory as you can, and provide such facts as are known to you and any estimates, approximations or beliefs should be clearly denoted as such, and the basis for your belief in their reliability should be explained.

(l) The terms "and," "or," shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the Interrogatory.

(m) References to the singular shall include the plural, and references to the plural shall include the singular. Also, the past verb tense shall include the present, and the present verb shall include the past.

PRIVILEGE

Whenever an Interrogatory calls for information pertaining to a communication claimed by you to be privileged, supply a privilege log of sufficient factual detail to enable the Court to determine whether or not such communication is entitled to a claim of privilege, including (1) the date or dates of the communication; (2) the name and position of each person who participated in the communication, and such persons' respective roles; (3) the general subject matter of the communication; and (4) the basis for the claim of privilege.

INTERROGATORIES

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning Decedent's mental abilities at the time of admission to Defendant's Facility.

2. Please identify the Decedent by stating her full name (including all previous legal names, nicknames and aliases), residential addresses for the ten (10) years prior to her death, marital status at the time of her death, date of birth, Social Security number, driver's license state and number, Medicare Health Insurance Claim Number ("HICN"), as well as the full name of any spouse and/or former spouse at the time of her death.

3. List all felonies and Class Al, Class 1 and Class 2 misdemeanors for which the Decedent or Plaintiff had either been convicted or pled guilty within the ten (10) years preceding her death. Your answer should include the disposition of each such offense and the date, city, county, state and court in which it occurred.

4. Please identify all persons, legal heirs and/or statutory beneficiaries entitled to receive any damages recovered in this action, including full name, age, date of birth, residential address, business or occupational address, and that person's relationship to the Decedent.

5. If the Decedent was under care for any physical, mental or emotional condition at the time of her residency with the Defendants, please identify the nature of the condition, the type of treatment he was receiving, and the identity of all health care providers providing her treatment.

6. If the Decedent had any physical, mental, or emotional illnesses or conditions in the ten (10) years prior to her death, please state the exact nature of such illness or condition, the type of treatment he received, and the identity of the health care providers providing her treatment.

7. Please list all health care providers who have examined or treated the Decedent in the ten (10) years prior to her death. Include in your answer for each health care provider the

address, the health care specialty, the approximate period of treatment and care, the reason for the treatment and care, and a brief description of the treatment and care received.

8. Please list the names and addresses of all hospitals, clinics, and urgent care facilities in which the Decedent had been examined or treated including both inpatient and outpatient treatment during the ten (10) years prior to her death, including the dates of injury or treatment.

9. If any health care provider has been critical of the care rendered to the Decedent by the Defendant or its employees, please state the name of the health care provider, the statement made by the health care provider, and the date(s) any such statement was made.

10. Identify the name, current address and telephone number of each person who you know has personal knowledge of the matters regarding the Decedent's admissions to the Facility, and state which of those persons identified will be called to testify at the trial of this matter.

11. State the name, address and employer of any person who, to your knowledge, has investigated or made any examination or evaluation of any aspect of the occurrence which is the subject of this litigation and identify each person contacted during the course of such investigation.

12. Identify the county, case name and case number associated with the Estate of Raymond Zeigler.

13. Identify all attorneys and/or law firms responsible for the drafting of estate documents for Decedent.

14. Identify all attorneys and/or law firms responsible for drafting any power of attorney for Decedent.

15. Identify all documents that Plaintiff executed on behalf of Decedent.

16. Identify your cellular telephone provider(s) for the previous (10) ten years and the number(s) associated with those accounts.

17. Identify all companies that you have received financing for automobiles and account numbers for the previous ten (10) years.

18. Identify all e-mail accounts maintained by you the previous ten (10) years.

19. Identify all social media accounts that you have maintained the previous ten (10) years.

20. Identify all credit card companies you have maintained an account ten (10) years and account numbers.

21. Identify all medical providers that you have treated with the previous ten (10) years.

22. Identify all financial service companies, including but not limited to banks, investment advisors and stockbrokers. and account numbers that you have utilized the past ten (10) years.

23. Identify all companies that you have received financing for home mortgages the past ten (10) years, including account numbers.

24. Identify all companies that you have purchased insurance from the previous ten (10) years, including account numbers.

25. Identify any lease agreement that you have entered into in the previous ten (10) years for real property.

26. Identify all companies that you have utilized for utilities such as power, water, sewer and internet for the previous ten (10) years, including account numbers.

BURR & FORMAN, LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
bcrites@burr.com
nstewart@burr.com
Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

October 2, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBER 2025-CP-23-01757 & 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF**

TO: MATTHEW W. CHRISTIAN, ESQUIRE COUNSEL FOR PLAINTIFF:

COME NOW Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through its undersigned counsel pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, and hereby request that Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, produce, within thirty (30) days of service hereof, at the offices of Burr & Forman, or at such other location mutually agreed upon by counsel, for the purpose of inspection and copying by said Defendants any and all records and documents of any nature, available by request or otherwise in the care, custody, or control of said Plaintiff, as follows:

DEFINITIONS AND INSTRUCTIONS

Unless the context indicates otherwise, the following words and phrases are defined and used herein as follows:

(a) *"Identify"* with reference to a document means to state:

(i) The type of document (e.g., letter, memorandum, telegram, telex, chart, etc.) or some other means of identifying it;

(ii) Its title;

(iii) Its author or originator;

(iv) Its date or dates;

(v) Its present location or custodian; and

(vi) A summary of its contents; or in the alternative, to produce that document, separated and identified in some appropriate manner with reference to the interrogatory or request without further identification or explanation provided the document itself provides the identifying information herein referred to or, when the document does not, by affixing to it by a cover sheet or some other form of notation the "identifying information" not appearing from the face thereof, to wit, such as its date or author or originator.

(b) *"Identify"* with respect to a person or institution (such as a hospital) means to state the full name and present business address and telephone number of the person and the full name and address of the institution.

(c) *"Document"* is used in its broadest sense, and means every writing or other source of recorded information of whatever nature and by whatever means recorded and whether or not claimed to be privileged or otherwise excludable from discovery, including, without limitation, the following: written memoranda, notes, records, interoffice communications, emails, telegrams, letters, correspondence, reports, minutes, diaries, books, manuscripts, gallery proofs, sound recordings, microfilms, computer printouts or documents obtainable from electronic data storage equipment, summaries of personal conversations, invoices, specifications, shipping papers, sketches, blueprints, reports of tests, photocopies and any and all other papers and writings, including drafts, originals, and copies. Any document bearing on any sheet or side thereof any marks such as initials, receipt stamps, routing information or comments – not part of the original text of the document – is considered a separate document for the purpose of these Requests. These definitions apply to the Requests herein set forth.

(d) "*Plaintiff*," *"You"* and "*your*" means the as Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, and all attorneys or other persons acting, or purporting to act on behalf of Plaintiff.

(e) *Decedent"* means Raymond Zeigler and all representatives, attorneys or other persons acting, or purporting to act on behalf of *Decedent Raymond Zeigler*.

(f) "*Defendants*" mean Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC.

(g) These requests are deemed to be continuing, such as to require Plaintiff to file and serve supplemental responses should he/she learn of additional information or documents called for by these requests between the time of trial and the time his/her requests are filed. Supplemental requests are required to be served within a reasonable time after the discovery of such additional information or documents.

(h) You are under a duty to promptly amend prior responses to these requests if you learn that the response was incorrect when made or that the response, though correct when made, is no longer true.

(i) If you object to, or otherwise decline to answer any portion of any request, specifically set forth each and every reason for such objection. Furthermore, you should provide a response to that portion of the request to which you do not object, or to which you do not decline to provide a response. If you object to a request on the ground that it is too broad, provide a response to that portion which is concededly relevant.

(j) If in responding to any of these requests, you reasonably encounter any ambiguity in construing the request or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in answering the request.

(k) If in response to a request you do not know all facts necessary to provide a complete and specific response, you should provide response to such portion of the request as you can, and provide such facts as are known to you and any estimates, approximations or beliefs should be clearly denoted as such, and the basis for your belief in their reliability should be explained.

(l) The terms "and," "or," shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

(m) References to the singular shall include the plural, and references to the plural shall include the singular. Also, the past verb tense shall include the present, and the present verb shall include the past.

PRIVILEGE

Whenever a request calls for information pertaining to a communication claimed by you to be privileged, supply a privilege log of sufficient factual detail to enable the Court to determine whether or not such communication is entitled to a claim of privilege, including (1)

the date or dates of the communication; (2) the name and position of each person who participated in the communication, and such persons' respective roles; (3) the general subject matter of the communication; and (4) the basis for the claim of privilege.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All documents upon which you relied or reviewed in answering Defendants' First Set of Interrogatories to Plaintiff.

2. All documents reflecting the creation of the Estate of the Decedent.

3. Copies of all State and Federal Tax returns for the Estate of Decedent.

4. Copies of all documents, photographs, radiographic films, video or audio recordings, and other pieces of documentary evidence regarding Decedent's admission to Defendant's facility and Decedent's mental abilities at the time of admission to Defendant's facility.

5. Copies of any diary, journal, notes, day-planners, calendars, or other documents or writings created or maintained by you or Decedent regarding admission to Defendant's facility.

6. A copy of any statement taken by you, your attorneys, or anyone acting on your behalf which was taken from the Defendants, or any past or present agents or employees thereof.

7. Please produce a copy of any documents that you or any of the Decedent's family members received from the Defendants, or any agents or employees thereof, past or present, which referenced or was in any way related to the Decedent.

8. Please produce a copy of any and all documents related to any claim, complaint or grievance filed by you or any of the Decedent's family members or other interested individuals, regarding the care and treatment that the Decedent received from the Defendants, or any employees or agents thereof, past or present.

9. Copies of all photographs, video or audio recordings of the Decedent taken within

the two (2) year period preceding his admission.

10. Copies of all powers of attorneys for Decedent.

11. Copies of all estate planning documents for Decedent including but not limited to wills, trusts and other testamentary documents.

12. Copies of every document that you executed on behalf of Decedent.

13. Copies of every document that you executed on behalf of Decedent related to medical care.

14. Copies of every document that you executed on behalf of Decedent related to financial services.

15. Produce copies of your automobile financing agreement for the previous ten (10) years.

16. Produce copies of your cellular telephone contract for the previous ten (10) years.

17. Produce copies of any mortgage agreements that you have executed.

18. Produce copies of any contract you have executed on your individual behalf on behalf of Decedent that contains an arbitration agreement.

19. Produce copies of any agreements you have entered into with financial services including but not limited to banks, investment advisors and stockbrokers.

20. Produce copies of all credit card agreements that you have executed in the past ten (10) years.

21. Produce copies of all leases that you have entered into for real property in the past ten (10) years.

22. Produce all agreements that you have entered into on behalf of yourself and Decedent the past ten (10) years.

BURR & FORMAN, LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
bcrites@burr.com
nstewart@burr.com
Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

October 2, 2025
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that this 2nd day of October, 2025, I served a true and correct copy of the foregoing ***Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC First Set of Interrogatories and Requests for Production to Plaintiff*** via electronic mail, upon counsel of record addressed as follows:

Matthew W. Christian
Christian & Christian, LLC
PO Box 332
Greenville, SC 29602
Phone: 864.232.7363
mchristian@cclawfirm.com
Counsel for Plaintiffs

Ashley S. Heslop
Caroline K. Buchanan
111 Coleman Blvd., Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Fax: 843.606.6536
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com
Counsel for Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC

Wendy Price

Wendy H. Price
BURR & FORMAN
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
Ph. 843.973.6829
Fax: 843.722.3227
wprice@burr.com

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2025-CP-23-01757 & 2025-CP-23-01759
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendant(s).	)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS CARLYLE SENIOR CARE OF FOUNTAIN INN, LLC, CARLYLE SENIOR CARE MANAGEMENT COMPANY, INC., NEW DAY HEALTH VENTURES, LLC, LARK OF FOUNTAIN INN, LLC, FOUNTAIN INN HEALTHCARE, LLC D/B/A FOUNTAIN INN POST ACUTEPOST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC, PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROERTY, LLC'S MOTIONS FOR RECONSIDERATION**

Defendants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Providence Defendants") filed their Motion to Dismiss, Stay Litigation and Discovery, and Compel Arbitration on May 8, 2025. Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC (hereinafter "Carlyle Defendants") filed their Motion to Compel Arbitration on May 14, 2025. These motions were originally scheduled to be heard on July 23, 2025, and were continued at Defendants' requests,

meaning that the Motions to Compel Arbitration were not heard until September 19, 2025, some four months after being filed.

The Court denied Defendants' Motions with a Form 4 Order on September 22, 2025, and granted Defendants thirty (30) days for jurisdictional discovery and further allowed for the matter to be reset if deemed appropriate. Defendants have now filed a Motion to Reconsider this Court's Order. Since the Court has denied Defendants' Motions, resetting the matter for a second hearing should not be permitted. While Plaintiff is unsure of any time period for when the matter could be reset or what the conditions for that may be, Defendants' Motions to Reconsider should be denied, and Plaintiff submits this Memorandum in Opposition.

ARGUMENT

I. Defendants raise no new issues not previously considered or ruled upon by the Court.

Defendants have asked the Court to reconsider their motions but raise no issues that the Court did not address or consider as part of Defendants' Rule 59(e) motions. Essentially, Defendants filed these Motions to Reconsider because Defendants do not like the Court's Order despite it being appropriately issued.

Defendants' Motions to Reconsider are simply a repetition of arguments made by Defendants in the original Motions to Compel Arbitration. S.C.R.C.P. 59(e) is substantially similar to Federal Rule 59(e). A party moving pursuant to Rule 59 must demonstrate more than a "mere disagreement" with the court's order. Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). A Rule 59(e) motion is not a proper forum to relitigate old matters or to raise arguments or present evidence that could have been raised prior to the entry of judgment. II Charles Alan Wright and Arthur R. Miller.

Federal Practice and Procedures § 2810.1 (3d ed.). Defendants raise no errors of law by the Court, and further, Defendants do not identify any issues not ruled upon by the Court pertinent to the motions. As a result, Defendants' Motions should be denied on this basis alone.

II. Defendants' Motions should be denied because South Carolina law provides that motions to compel arbitration are essentially a legal issue and jurisdictional discovery is typically not necessary or allowed.

Beyond the justiciability flaws, which will be addressed hereinbelow, the Defendants' request for discovery was actually in opposition to recent appellate South Carolina law. Hodge v. Uni-Health Post-Acute Care of Bamberg, Opinion No. 5541 (S.C. Ct. App. March 7, 2018) addressed a similar argument where the Court of Appeals affirmed the Circuit Court's refusal to compel a deposition that would add nothing probative to the arbitration analysis. 425 S.C. 578, 813 S.E.2d 310. (See also Hopkins v. World Acceptance Corp., No. 1:10-cv-03429-SCJ (U.S. District Ct., No. District of GA 2011) also holding discovery for determination of Motion to Compel Arbitration not necessary.) In Hodge, the court found that because most of the issues involved in the motion were legal issues, any discovery would not be probative or helpful.

In the present case, the facts are essentially uncontested. Defendants presented no affidavit of facts to contest anything other than the Arbitration Agreement and Power of Attorney. No one is contesting whether or not a power of attorney existed at the time that the Arbitration Agreement was signed. Defendants only want to conduct discovery for a fishing expedition and for further delay. Within just a few days of Defendants' request for Plaintiff's deposition on October 21, 2025, Plaintiff confirmed that she would be

available on that date for a jurisdictional deposition for discovery, despite the fact that the deposition will likely add nothing probative to this matter.

Carlyle Defendants have also since served extensive discovery on Plaintiff that has absolutely nothing to do with arbitration. See Carlyle Defendants' discovery requests served on Plaintiff after this Court's ruling at Exhibit A. Defendants are seeking, among other things, the following:

a. Identification of witnesses;
b. Identification of felonies;
c. Whether Plaintiff's Decedent was under any physical or emotional condition at the time of the admission;
d. Whether Plaintiff's Decedent had any conditions ten (10) years prior to his death;
e. All healthcare providers who have examined or treated Decedent in the past ten (10) years;
f. Employment information;
g. Identification of any attorneys involved in drafting documents for the estate;
h. Documents related to the drafting of a power of attorney;
i. Documents related to cellular telephone account information;
j. Financing information for automobiles;
k. Email account information;
l. Social media account information;
m. Credit card company account information;

n. Financial service account information;

o. Home mortgage information;

p. Insurance information;

q. Leases entered into in the past ten (10) years for real property; and

r. Utility providers for the past ten (10) years.

Clearly, Defendants are trying to delay and burden Plaintiff with discovery that has nothing to do with the issues before the Court on the Motions to Compel Arbitration.

Defendants had ample opportunity to serve discovery or conduct discovery prior to the hearing on their motions. Defendants had approximately five to six months after being served with the Summons and Complaint prior to the hearing to serve discovery or request a deposition as to any factual issues that they thought necessary should be explored for the Motions to Compel Arbitration. Instead, Defendants elected not to pursue that route and chose to move forward on their Motions, and as a last second outlet in the event their motions were unsuccessful, Defendants requested an opinion from this Court allowing discovery that could have been served months earlier. Defendants now seek discovery that is wholly unrelated, irrelevant, and overly broad in so many ways.

The only issues before the Court related to the arbitration motions were:

1. Whether or not there a meeting of the minds, which is based upon the four corners of the contract and a legal issue based upon the language of the Arbitration Agreement;
2. Whether the execution of the Arbitration Agreement complied with Federal Regulations for which Defendants offered no support in

opposition despite being aware of the Federal Regulations and the requirement for same;

3. Whether the Arbitration Agreement was enforceable by the Providence Defendants who were neither parties nor involved with the facility in any way at the time of the execution of the agreement but subsequently purchased the facility later and had no agreement with Plaintiff;
4. Whether the Arbitration Agreement was enforceable as to the independent claims of the wrongful death statutory beneficiaries who were not signatories nor parties to the agreement; and
5. Whether the Arbitration Agreement applied to the Corporate Defendants who were not parties to the agreement;

All of these issues were legal issues which were uncontested at the hearing and could be determined by the documents, primarily the Arbitration Agreement, submitted to the Court. Therefore, as Hodge has previously held, discovery would have no probative value and would serve no purpose, as the facts uncovered in discovery would not aid in the determination of these issues. The only potential factual claim could be whether or not the Arbitration Agreement complied with Federal laws in the execution of same. However, Defendants were aware of these requirements from the outset of the execution of the Arbitration Agreement, filed their Motions to Compel Arbitration, and had months to address this issue and chose not to do so until now.

In addition to the fact that discovery would serve no probative value and the fact that Defendants are seeking to abuse the discovery process, the Defendants have

essentially sought an advisory opinion from this court allowing discovery that Defendants could have served or sought for months leading up to their motions.

Neither the procedural rules nor Plaintiff's conduct prevented the Facility from conducting discovery. The Facility had the right to serve written discovery requests and to notice depositions from the moment Plaintiff filed her Complaint with the Court. Rule 30(a)(1), SCRCP (permitting depositions "[a]fter commencement of an action"); Rule 33(a), SCRCP (same for serving interrogatories); Rule 34(b), SCRCP (same for serving requests for production); see also Rule 3(a), SCRCP (stating that a civil action is "commenced" when the complaint is filed if later served within the statute of limitations). The rules specifically provide that a party need not seek a court's permission before serving discovery requests. Rule 33(a), SCRCP; Rule 34(b), SCRCP. Additionally, it is not as if the Defendants tried and failed or were somehow thwarted in seeking information from Plaintiff. Plaintiff has not ignored or objected to any discovery requests. Defendants lack the information they claim now to need only because the Defendants never asked for it.

The Defendants do not contest that they were fully within their power to obtain information from Plaintiff or others before moving to compel arbitration. Instead, the Defendants' concerns relate to the possible consequences of pursuing discovery. South Carolina law holds that a party may waive any right it may have to pursue arbitration if it first chooses to litigate in a way that would render a shift to arbitration prejudicial to its opponent. Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 513, 788 S.E.2d 216, 218 (2016); Dean, 408 S.C. at 388, 759 S.E.2d at 736. The point at which a party delves too deeply into litigation to assert a right to arbitrate varies because the analysis is

heavily fact driven. Johnson, 416 S.C. at 513, 788 S.E.2d at 219 (citing Liberty Builders, Inc. v. Horton, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999)). In any given case, a party seeking arbitration faces uncertainty in knowing when it is vulnerable to a waiver argument, and the opposing party is uncertain when it may become necessary to assert one.

What the Defendants now call their request for discovery is actually their improper effort to eliminate uncertainty at Plaintiff's expense. The Defendants sought assurances from the Court that choosing to conduct discovery would not expose them to a waiver argument. This request does not present an issue any court could resolve in the Defendants' favor. No South Carolina court can address the merits of a party's argument unless it presents a justiciable claim. Lennon v. S.C. Coastal Council, 330 S.C. 414, 417-18, 498 S.E.2d 906, 908 (Ct. App. 1998). South Carolina courts cite the "case or controversy" requirement in the U.S. Constitution's Article III and apply federal standards for identifying a justiciable controversy. Id.; Waters v. S.C. Land Resources Conservation Comm'n, 321 S.C. 219, 227-28, 467 S.E.2d 913, 917-18 (1996). A claim is justiciable only if it presents a "real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." Sloan v. Greenville Cnty., 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003). Justiciability specifically considers a party's standing as well as the suitability of the dispute for resolution. Courts may not address claims that are unripe, moot, or seek an advisory opinion. Jowers v. S.C. Dep't of Health & Envtl. Control, 423 S.C. 343, 815 S.E.2d 446 (2018).

Here, the Defendants lack standing to assert a discovery argument that is both unripe and seek an advisory opinion. Under South Carolina law, standing may be acquired by satisfying the requirements of "constitutional standing" derived from federal constitutional principles. ATC South, Inc. v. Charleston Cnty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). The Defendants cannot meet those requirements for their discovery-based argument. Constitutional standing demands a concrete and particularized "injury-in-fact," a causal connection between the injury and the conduct complained of, and a finding that the injury will likely be redressed by a ruling in the injured party's favor. Id. (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)). The Defendants have not suffered any concrete and particularized injury. The rules authorized the precise action—serving discovery requests—the Defendants claims they were denied. Rules 30(a)(1), 33(a), and 34(b), SCRCP. The Defendants cannot claim to be injured by their own decision to forego a right the law unconditionally provided.

The Facility also cannot meet the remaining constitutional standing requirements. There is no causal connection between the proposed injury (i.e. a lack of discovery) and either Plaintiff's conduct or the Court's Order. Neither denied the Defendants the right to conduct discovery before filing their motions to compel arbitration. Nor can the Defendants meet the redressability requirement. Given the rules' repeated statements that discovery requests may be made "without leave of court,"[1] it is not at all clear it would ever be appropriate for a party in the Defendants' position to ask a circuit court to grant leave to conduct discovery, much less ask for an additional three (3) months to complete it with discovery requests well beyond the scope of the issues in these arbitration motions.

[1] Rule 33(a), SCRCP; Rule 34(b), SCRCP.

As a result, Defendants should not be granted an additional ninety (90) days by this Court to extend discovery as to all of these unrelated issues, nor will discovery serve any beneficial purpose here in this case. In addition, as indicated hereinabove, Plaintiff has already offered to sit for a deposition within the thirty (30) day deadline and Defendants are seeking to abuse the discovery process by serving discovery requests seeking unrelated and irrelevant information. If the Court does choose to amend its Order, Plaintiff would request that the Cout deny Defendants the opportunity conduct any discovery at all for the above stated reasons, particularly in light of the fact that the Motions were denied and leaving a second hearing on the same issues should not be permitted.

CONCLUSION

As a result, because Defendants raise no new issues of fact or law not considered by this Court for Rule 59(e) motions, and further, because South Carolina law specifically recognizes that discovery is unnecessary in these matters, and further, because Defendants had months to conduct discovery, chose not to do so, and now are seeking to abuse the discovery process for this issue, Defendants' Motions for Reconsideration should be denied in their entirety. Plaintiff would further request this Court deny Defendants' requests for discovery in its entirety.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

CHRISTIAN & CHRISTIAN
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363

s/Matthew W. Christian
Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: October 9, 2025

EXHIBIT A

BURR & FORMAN

Nicholas C.C. Stewart
nstewart@burr.com
Direct Dial & Fax: (843) 973-6888

115 Fairchild Street
Suite 200
Daniel Island, SC 29492

Office (843) 972-6177
BURR.COM

October 2, 2025

VIA EMAIL ONLY
Matthew W. Christian
Christian & Christian, LLC
PO Box 332
Greenville, SC 29602
mchristian@cclawfirm.com

Re: *Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler vs. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC*
Case No.: 2025-CP-23-01757 and 2025-CP-23-01759

Dear Counsel,

Enclosed please find Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC First Set of Interrogatories and Requests for Production to Plaintiff in regards to the above-referenced matter.

Sincerely,

Burr & Forman LLP

Nicholas C.C. Stewart

NCCS/whp
Enclosure
cc: Ashley S. Heslop

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBER 2025-CP-23-01757 & 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: MATTHEW W. CHRISTIAN, ESQUIRE COUNSEL FOR PLAINTIFF:

COMES NOW Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through their undersigned counsel pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, who hereby submit the following Interrogatories to be answered by the Plaintiff Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, in writing, under oath, and within thirty (30) days after service hereof.

DEFINITIONS AND INSTRUCTIONS

Unless the context indicates otherwise, the following words and phrases are defined and used herein as follows:

(a) *"Identify"* with reference to a document means to state:

(i) The type of document (e.g., letter, memorandum, telegram, telex, chart, etc.) or some other means of identifying it;

(ii) Its title;

(iii) Its author or originator;

(iv) Its date or dates;
(v) Its present location or custodian; and

(vi) A summary of its contents; or in the alternative, to produce that document, separated and identified in some appropriate manner with reference to the interrogatory without further identification or explanation provided the document itself provides the identifying information herein referred to or, when the document does not, by affixing to it by a cover sheet or some other form of notation the "identifying information" not appearing from the face thereof, to wit, such as its date or author or originator.

(b) *"Identify"* with respect to a person or institution (such as a hospital) means to state the full name and present business address and telephone number of the person and the full name and address of the institution.

(c) *"Document"* is used in its broadest sense, and means every writing or other source of recorded information of whatever nature and by whatever means recorded and whether or not claimed to be privileged or otherwise excludable from discovery, including, without limitation, the following: written memoranda, notes, records, interoffice communications, emails, telegrams, letters, correspondence, reports, minutes, diaries, books, manuscripts, gallery proofs, sound recordings, microfilms, computer printouts or documents obtainable from electronic data storage equipment, summaries of personal conversations, invoices, specifications, shipping papers, sketches, blueprints, reports of tests, photocopies and any and all other papers and writings, including drafts, originals, and copies. Any document bearing on any sheet or side thereof any marks such as initials, receipt stamps, routing information or comments – not part of the original text of the document – is considered a separate document for the purpose of these Interrogatories. These definitions apply to the Interrogatories herein set forth.

(d) "*Plaintiff*," *"You"* and "*your*" means the as Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, and all attorneys or other persons acting, or purporting to act on behalf of Plaintiff.

(e) *Decedent"* means Raymond Zeigler and all representatives, attorneys or other persons acting, or purporting to act on behalf of *Decedent Raymond Zeigler*.

(f) "*Defendants*" mean Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC.

(g) These interrogatories are deemed to be continuing, such as to require Plaintiff to file and serve supplemental answers should he/she learn of additional information called for by these interrogatories between the time of trial and the time his/her answers are filed. Supplemental answers are required to be served within a reasonable time after the discovery of such additional information.

(h) You are under a duty to promptly amend prior responses to these interrogatories if you learn that the response was incorrect when made or that the response, though correct when made, is no longer true.

(i) If you object to, or otherwise decline to answer any portion of any Interrogatory, specifically set forth each and every reason for such objection. Furthermore, you should provide a response to that portion of the Interrogatory to which you do not object, or to which you do not decline to provide a response. If you object to an Interrogatory on the ground that it is too broad, provide a response to that portion which is concededly relevant.

(j) If in responding to any of these Interrogatories, you reasonably encounter any ambiguity in construing the Interrogatory or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in answering the Interrogatory.

(k) If in response to an Interrogatory you do not know all facts necessary to provide a complete and specific answer, you should provide an answer to such portion of the Interrogatory as you can, and provide such facts as are known to you and any estimates, approximations or beliefs should be clearly denoted as such, and the basis for your belief in their reliability should be explained.

(l) The terms "and," "or," shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the Interrogatory.

(m) References to the singular shall include the plural, and references to the plural shall include the singular. Also, the past verb tense shall include the present, and the present verb shall include the past.

PRIVILEGE

Whenever an Interrogatory calls for information pertaining to a communication claimed by you to be privileged, supply a privilege log of sufficient factual detail to enable the Court to determine whether or not such communication is entitled to a claim of privilege, including (1) the date or dates of the communication; (2) the name and position of each person who participated in the communication, and such persons' respective roles; (3) the general subject matter of the communication; and (4) the basis for the claim of privilege.

INTERROGATORIES

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning Decedent's mental abilities at the time of admission to Defendant's Facility.

2. Please identify the Decedent by stating her full name (including all previous legal names, nicknames and aliases), residential addresses for the ten (10) years prior to her death, marital status at the time of her death, date of birth, Social Security number, driver's license state and number, Medicare Health Insurance Claim Number ("HICN"), as well as the full name of any spouse and/or former spouse at the time of her death.

3. List all felonies and Class Al, Class 1 and Class 2 misdemeanors for which the Decedent or Plaintiff had either been convicted or pled guilty within the ten (10) years preceding her death. Your answer should include the disposition of each such offense and the date, city, county, state and court in which it occurred.

4. Please identify all persons, legal heirs and/or statutory beneficiaries entitled to receive any damages recovered in this action, including full name, age, date of birth, residential address, business or occupational address, and that person's relationship to the Decedent.

5. If the Decedent was under care for any physical, mental or emotional condition at the time of her residency with the Defendants, please identify the nature of the condition, the type of treatment he was receiving, and the identity of all health care providers providing her treatment.

6. If the Decedent had any physical, mental, or emotional illnesses or conditions in the ten (10) years prior to her death, please state the exact nature of such illness or condition, the type of treatment he received, and the identity of the health care providers providing her treatment.

7. Please list all health care providers who have examined or treated the Decedent in the ten (10) years prior to her death. Include in your answer for each health care provider the

address, the health care specialty, the approximate period of treatment and care, the reason for the treatment and care, and a brief description of the treatment and care received.

8. Please list the names and addresses of all hospitals, clinics, and urgent care facilities in which the Decedent had been examined or treated including both inpatient and outpatient treatment during the ten (10) years prior to her death, including the dates of injury or treatment.

9. If any health care provider has been critical of the care rendered to the Decedent by the Defendant or its employees, please state the name of the health care provider, the statement made by the health care provider, and the date(s) any such statement was made.

10. Identify the name, current address and telephone number of each person who you know has personal knowledge of the matters regarding the Decedent's admissions to the Facility, and state which of those persons identified will be called to testify at the trial of this matter.

11. State the name, address and employer of any person who, to your knowledge, has investigated or made any examination or evaluation of any aspect of the occurrence which is the subject of this litigation and identify each person contacted during the course of such investigation.

12. Identify the county, case name and case number associated with the Estate of Raymond Zeigler.

13. Identify all attorneys and/or law firms responsible for the drafting of estate documents for Decedent.

14. Identify all attorneys and/or law firms responsible for drafting any power of attorney for Decedent.

15. Identify all documents that Plaintiff executed on behalf of Decedent.

16. Identify your cellular telephone provider(s) for the previous (10) ten years and the number(s) associated with those accounts.

17. Identify all companies that you have received financing for automobiles and account numbers for the previous ten (10) years.

18. Identify all e-mail accounts maintained by you the previous ten (10) years.

19. Identify all social media accounts that you have maintained the previous ten (10) years.

20. Identify all credit card companies you have maintained an account ten (10) years and account numbers.

21. Identify all medical providers that you have treated with the previous ten (10) years.

22. Identify all financial service companies, including but not limited to banks, investment advisors and stockbrokers. and account numbers that you have utilized the past ten (10) years.

23. Identify all companies that you have received financing for home mortgages the past ten (10) years, including account numbers.

24. Identify all companies that you have purchased insurance from the previous ten (10) years, including account numbers.

25. Identify any lease agreement that you have entered into in the previous ten (10) years for real property.

26. Identify all companies that you have utilized for utilities such as power, water, sewer and internet for the previous ten (10) years, including account numbers.

BURR & FORMAN, LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
bcrites@burr.com
nstewart@burr.com
Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

October 2, 2025
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEEN JUDICIAL COURT
Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Plaintiff, v. Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, LARK of Fountain Inn, LLC, Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC, Defendants.	CASE NUMBER 2025-CP-23-01757 & 2025-CP-23-01759 **DEFENDANTS FOUNTAIN INN HEALTHCARE D/B/A FOUNTAIN INN POST ACUTE, PROVIDENCE GROUP, INC., PROVIDENCE ADMINISTRATIVE CONSULTING SERVICES, INC., PACS GROUP, INC., PACS HOLDINGS, LLC, AND 501 GULLIVER PROPERTY, LLC'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF**

TO: MATTHEW W. CHRISTIAN, ESQUIRE COUNSEL FOR PLAINTIFF:

COME NOW Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC (hereinafter "Defendants"), by and through its undersigned counsel pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, and hereby request that Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, produce, within thirty (30) days of service hereof, at the offices of Burr & Forman, or at such other location mutually agreed upon by counsel, for the purpose of inspection and copying by said Defendants any and all records and documents of any nature, available by request or otherwise in the care, custody, or control of said Plaintiff, as follows:

DEFINITIONS AND INSTRUCTIONS

Unless the context indicates otherwise, the following words and phrases are defined and used herein as follows:

(a) *"Identify"* with reference to a document means to state:

(i) The type of document (e.g., letter, memorandum, telegram, telex, chart, etc.) or some other means of identifying it;

(ii) Its title;

(iii) Its author or originator;

(iv) Its date or dates;

(v) Its present location or custodian; and

(vi) A summary of its contents; or in the alternative, to produce that document, separated and identified in some appropriate manner with reference to the interrogatory or request without further identification or explanation provided the document itself provides the identifying information herein referred to or, when the document does not, by affixing to it by a cover sheet or some other form of notation the "identifying information" not appearing from the face thereof, to wit, such as its date or author or originator.

(b) *"Identify"* with respect to a person or institution (such as a hospital) means to state the full name and present business address and telephone number of the person and the full name and address of the institution.

(c) *"Document"* is used in its broadest sense, and means every writing or other source of recorded information of whatever nature and by whatever means recorded and whether or not claimed to be privileged or otherwise excludable from discovery, including, without limitation, the following: written memoranda, notes, records, interoffice communications, emails, telegrams, letters, correspondence, reports, minutes, diaries, books, manuscripts, gallery proofs, sound recordings, microfilms, computer printouts or documents obtainable from electronic data storage equipment, summaries of personal conversations, invoices, specifications, shipping papers, sketches, blueprints, reports of tests, photocopies and any and all other papers and writings, including drafts, originals, and copies. Any document bearing on any sheet or side thereof any marks such as initials, receipt stamps, routing information or comments – not part of the original text of the document – is considered a separate document for the purpose of these Requests. These definitions apply to the Requests herein set forth.

(d) "*Plaintiff*," *"You"* and "*your*" means the as Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, and all attorneys or other persons acting, or purporting to act on behalf of Plaintiff.

(e) *Decedent"* means Raymond Zeigler and all representatives, attorneys or other persons acting, or purporting to act on behalf of *Decedent Raymond Zeigler*.

(f) "*Defendants*" mean Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC.

(g) These requests are deemed to be continuing, such as to require Plaintiff to file and serve supplemental responses should he/she learn of additional information or documents called for by these requests between the time of trial and the time his/her requests are filed. Supplemental requests are required to be served within a reasonable time after the discovery of such additional information or documents.

(h) You are under a duty to promptly amend prior responses to these requests if you learn that the response was incorrect when made or that the response, though correct when made, is no longer true.

(i) If you object to, or otherwise decline to answer any portion of any request, specifically set forth each and every reason for such objection. Furthermore, you should provide a response to that portion of the request to which you do not object, or to which you do not decline to provide a response. If you object to a request on the ground that it is too broad, provide a response to that portion which is concededly relevant.

(j) If in responding to any of these requests, you reasonably encounter any ambiguity in construing the request or a definition or instruction relevant to it, set forth the matter deemed ambiguous and the construction selected or used in answering the request.

(k) If in response to a request you do not know all facts necessary to provide a complete and specific response, you should provide response to such portion of the request as you can, and provide such facts as are known to you and any estimates, approximations or beliefs should be clearly denoted as such, and the basis for your belief in their reliability should be explained.

(l) The terms "and," "or," shall be interpreted conjunctively and shall not be interpreted to exclude information otherwise within the scope of the request.

(m) References to the singular shall include the plural, and references to the plural shall include the singular. Also, the past verb tense shall include the present, and the present verb shall include the past.

PRIVILEGE

Whenever a request calls for information pertaining to a communication claimed by you to be privileged, supply a privilege log of sufficient factual detail to enable the Court to determine whether or not such communication is entitled to a claim of privilege, including (1)

the date or dates of the communication; (2) the name and position of each person who participated in the communication, and such persons' respective roles; (3) the general subject matter of the communication; and (4) the basis for the claim of privilege.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All documents upon which you relied or reviewed in answering Defendants' First Set of Interrogatories to Plaintiff.

2. All documents reflecting the creation of the Estate of the Decedent.

3. Copies of all State and Federal Tax returns for the Estate of Decedent.

4. Copies of all documents, photographs, radiographic films, video or audio recordings, and other pieces of documentary evidence regarding Decedent's admission to Defendant's facility and Decedent's mental abilities at the time of admission to Defendant's facility.

5. Copies of any diary, journal, notes, day-planners, calendars, or other documents or writings created or maintained by you or Decedent regarding admission to Defendant's facility.

6. A copy of any statement taken by you, your attorneys, or anyone acting on your behalf which was taken from the Defendants, or any past or present agents or employees thereof.

7. Please produce a copy of any documents that you or any of the Decedent's family members received from the Defendants, or any agents or employees thereof, past or present, which referenced or was in any way related to the Decedent.

8. Please produce a copy of any and all documents related to any claim, complaint or grievance filed by you or any of the Decedent's family members or other interested individuals, regarding the care and treatment that the Decedent received from the Defendants, or any employees or agents thereof, past or present.

9. Copies of all photographs, video or audio recordings of the Decedent taken within

the two (2) year period preceding his admission.

10. Copies of all powers of attorneys for Decedent.

11. Copies of all estate planning documents for Decedent including but not limited to wills, trusts and other testamentary documents.

12. Copies of every document that you executed on behalf of Decedent.

13. Copies of every document that you executed on behalf of Decedent related to medical care.

14. Copies of every document that you executed on behalf of Decedent related to financial services.

15. Produce copies of your automobile financing agreement for the previous ten (10) years.

16. Produce copies of your cellular telephone contract for the previous ten (10) years.

17. Produce copies of any mortgage agreements that you have executed.

18. Produce copies of any contract you have executed on your individual behalf on behalf of Decedent that contains an arbitration agreement.

19. Produce copies of any agreements you have entered into with financial services including but not limited to banks, investment advisors and stockbrokers.

20. Produce copies of all credit card agreements that you have executed in the past ten (10) years.

21. Produce copies of all leases that you have entered into for real property in the past ten (10) years.

22. Produce all agreements that you have entered into on behalf of yourself and Decedent the past ten (10) years.

BURR & FORMAN, LLP

s/ Nicholas C.C. Stewart
J. Bennett Crites, III
Nicholas C.C. Stewart
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
bcrites@burr.com
nstewart@burr.com
Attorneys for Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC

October 2, 2025
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that this 2nd day of October, 2025, I served a true and correct copy of the foregoing ***Defendants Fountain Inn Healthcare d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC First Set of Interrogatories and Requests for Production to Plaintiff*** via electronic mail, upon counsel of record addressed as follows:

Matthew W. Christian
Christian & Christian, LLC
PO Box 332
Greenville, SC 29602
Phone: 864.232.7363
mchristian@cclawfirm.com
Counsel for Plaintiffs

Ashley S. Heslop
Caroline K. Buchanan
111 Coleman Blvd., Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Fax: 843.606.6536
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com
Counsel for Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., New Day Health Ventures, LLC, and LARK of Fountain Inn, LLC

Wendy Price

Wendy H. Price
BURR & FORMAN
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
Ph. 843.973.6829
Fax: 843.722.3227
wprice@burr.com

RECEIVED
Nov 07 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01757

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,…… Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC,…… Defendants,

of which

Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, are the ……. Appellants.

NOTICE OF APPEAL

Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC ("Appellants") appeal the order of the Honorable William C. McMaster, III entered on September 22, 2025 (the "Order") and the order of the Honorable William C. McMaster, III entered on October 24, 2025 (the "Order on Motion to Reconsider"). Appellants received written notice of entry of the Order on September 22, 2025, and served and filed a timely motion to reconsider the Order on October 2, 2025. Appellants received written notice of entry of the Order on Motion to Reconsider on October 24, 2025.

BURR & FORMAN, LLP

s/ Cameron A. Tabrizian
Cameron A. Tabrizian
S.C. Bar No. 106448
Email: ctabrizian@burr.com

Nicholas C.C. Stewart
S.C. Bar No. 102434
Email: nstewart@burr.com

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 6802
Email: cmcqueeney@burr.com

J. Bennett Crites, III
S.C. Bar No. 71695
Email: bcrites@burr.com

115 Fairchild Street, Suite 200
Ph. 843.341.4918

Attorneys for Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

November 7, 2025
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01757

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,..... Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC,..... Defendants,

of which

Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, are the ..... Appellants.

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, and Order No. 2024-04-24-01(d), I certify that I have served the Notice of Appeal on Respondent Kimbery Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler (the "Respondent"), by electronic mail to the Respondent's counsel of record utilizing counsel's primary email address listed in the Attorney Information System, on November 7, 2025, as follows:

(1) Matthew W. Christian at mchristian@cclawfirm.com;

All other counsel of record in the lower court, including counsel for all defendants, have also been served with the Notice of Appeal in the same manner.

See Exhibit A, attached hereto and incorporated herein by reference.

BURR & FORMAN, LLP

s/ Cameron Tabrizian
Cameron A. Tabrizian
S.C. Bar No. 106448
Email: ctabrizian@burr.com

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 6802
Email: cmcqueeney@burr.com

J. Bennett Crites, III
S.C. Bar No. 71695
Email: bcrites@burr.com

Nicholas C.C. Stewart
S.C. Bar No. 102434
Email: nstewart@burr.com

115 Fairchild Street, Suite 200
Ph. 843.341.4918

Attorneys for Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

November 7, 2025
Charleston, South Carolina

EXHIBIT A

Tabrizian, Cameron

From: Tabrizian, Cameron
Sent: Friday, November 7, 2025 1:04 PM
To: 'mchristian@cclawfirm.com'
Cc: 'aheslop@hallboothsmith.com'; 'ajohnson@cclawfirm.com'; 'cbuchanan@hallboothsmith.com'; 'mwaters@hallboothsmith.com'; Price, Wendy; Crites, J. Bennett; Stewart, Nick; Wilson, Jenna; McQueeney, Chip
Subject: Notice of Appeal in Case No. 2025-CP-23-01757, Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler v. Fountain Inn Healthcare, LLC et al.
Attachments: Notice of Appeal 2025-CP-23-01757(63511674.1).pdf; Order Denying Motion to Compel Arbitration 2025-CP-23-01757(63509157.1).pdf; Order Denying in Part Motion to Reconsider 2025-CP-23-01757(63509156.1).pdf

Attached for service upon you as attorney for Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, in the case bearing the Civil Action No. 2025-CP-23-01757, please find a Notice of Appeal which will be filed with the South Carolina Court of Appeals, along with copies of the orders being appealed. I will also plan to copy you on my email to the Clerk of the Court of Appeals filing the attached.

All counsel of record are copied on this email as well.

Thank you, and please let me know if you have any questions or concerns.

Cameron A. Tabrizian
SC Bar No. 106448

BURR & FORMAN

Nicholas C.C. Stewart
nstewart@burr.com
Direct Dial & Fax: (843) 973-6888

106412

115 Fairchild Street
Suite 200
Daniel Island, SC 29492

Office (843) 972-6177
BURR.COM

November 7, 2025

Via U.S. Certified Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **Case No. 2025-CP-23-01757,** Kimberly Haag, Individually and as Personal representative of the Estate of Raymond Zeigler v. Fountain Inn Healthcare, LLC et al

Dear Madam Clerk,

Please be advised that I represent the Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC ("Appellants"). We have not been assigned an appellate case number yet, so I have referred to the case number in the circuit court. Enclosed, please find the $250.00 filing fee for the Notice of Appeal in this matter. The Notice of Appeal was filed on November 7, 2025.

All counsel of record have been provided a copy of this letter by email upon mailing.

Thank you for your careful attention to this matter. Please let me know if you have any questions or concerns.

Sincerely,

Burr & Forman LLP

Nicholas C.C. Stewart

NCCS/cat

CERTIFIED MAIL®

COLUMBIA SC 290

9414 8118 9956 1941 4327 13

Stamps

$8.86⁰

US POSTAGE IMI

FIRST-CLASS

FROM 29492

11/07/2025

Stamps.com

063S0010282454

BURR & FORMAN

115 Fairchild Street, Suite 200

Daniel Island, SC 29492 JW

The Hon. Jenny Abbott Kitchings

Clerk of Court

Po Box 11629

Columbia SC 29211

RECEIVED

NOV 12 2025

SC Court of Appeals

29211-1629 1493

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01759

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,…… Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC,…… Defendants,

of which

Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, are the ……. Appellants.

NOTICE OF APPEAL

Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC ("Appellants") appeal the order of the Honorable William C. McMaster, III entered on September 22, 2025 (the "Order") and the order of the Honorable William C. McMaster, III entered on October 24, 2025 (the "Order on Motion to Reconsider"). Appellants received written notice of entry of the Order on September 22, 2025, and served and filed a timely motion to reconsider the Order on October 2, 2025. Appellants received written notice of entry of the Order on Motion to Reconsider on October 24, 2025.

BURR & FORMAN, LLP

s/Cameron A. Tabrizian
Cameron A. Tabrizian
S.C. Bar No. 106448
Email: ctabrizian@burr.com

Nicholas C.C. Stewart
S.C. Bar No. 102434
Email: nstewart@burr.com

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 6802
Email: cmcqueeney@burr.com

J. Bennett Crites, III
S.C. Bar No. 71695
Email: bcrites@burr.com

115 Fairchild Street, Suite 200
Ph. 843.341.4918

Attorneys for Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

November 7, 2025
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01759

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler,..... Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC,..... Defendants,

of which

Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, are the ..... Appellants.

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, and Order No. 2024-04-24-01(d), I certify that I have served the Notice of Appeal on Respondent Kimbery Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler (the "Respondent"), by electronic mail to the Respondent's counsel of record utilizing counsel's primary email address listed in the Attorney Information System, on November 7, 2025, as follows:

(1) Matthew W. Christian at mchristian@cclawfirm.com;

All other counsel of record in the lower court, including counsel for all defendants, have also been served with the Notice of Appeal in the same manner.

See Exhibit A, attached hereto and incorporated herein by reference.

BURR & FORMAN, LLP

s/Cameron Tabrizian
Cameron A. Tabrizian
S.C. Bar No. 106448
Email: ctabrizian@burr.com

Daniel S. ("Chip") McQueeney, Jr.
S.C. Bar No. 6802
Email: cmcqueeney@burr.com

J. Bennett Crites, III
S.C. Bar No. 71695
Email: bcrites@burr.com

Nicholas C.C. Stewart
S.C. Bar No. 102434
Email: nstewart@burr.com

115 Fairchild Street, Suite 200
Ph. 843.341.4918

Attorneys for Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

November 7, 2025
Charleston, South Carolina

EXHIBIT A

Tabrizian, Cameron

From: Tabrizian, Cameron
Sent: Friday, November 7, 2025 1:13 PM
To: 'mchristian@cclawfirm.com'
Cc: 'aheslop@hallboothsmith.com'; 'ajohnson@cclawfirm.com'; 'cbuchanan@hallboothsmith.com'; 'mwaters@hallboothsmith.com'; Price, Wendy; Crites, J. Bennett; Stewart, Nick; Wilson, Jenna; McQueeney, Chip
Subject: Notice of Appeal in Case No. 2025-CP-23-01759, Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler v. Fountain Inn Healthcare, LLC et al.
Attachments: Notice of Appeal 2025CP2301759(63511744.1).pdf; Order 2 2025CP2301759(63509161.1).pdf; Order 1 2025CP2301759(63509162.1).pdf

Attached for service upon you as attorney for Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, in the case bearing the Civil Action No. 2025-CP-23-01759, please find a Notice of Appeal which will be filed with the South Carolina Court of Appeals, along with copies of the orders being appealed. I will also plan to copy you on my email to the Clerk of the Court of Appeals filing the attached.

All counsel of record are copied on this email as well.

Thank you, and please let me know if you have any questions or concerns.

Cameron A. Tabrizian
SC Bar No. 106448

BURR & FORMAN

Nicholas C.C. Stewart
nstewart@burr.com
Direct Dial & Fax: (843) 973-6888

115 Fairchild Street
Suite 200
Daniel Island, SC 29492

Office (843) 972-6177
BURR.COM

November 7, 2025

Via U.S. Certified Mail

10411

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: **Case No. 2025-CP-23-01759**, Kimberly Haag, Individually and as Personal representative of the Estate of Raymond Zeigler v. Fountain Inn Healthcare, LLC et al

Dear Madam Clerk,

Please be advised that I represent the Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC ("Appellants"). We have not been assigned an appellate case number yet, so I have referred to the case number in the circuit court. Enclosed, please find the $250.00 filing fee for the Notice of Appeal in this matter. The Notice of Appeal was filed on November 7, 2025.

All counsel of record have been provided a copy of this letter by email upon mailing.

Thank you for your careful attention to this matter. Please let me know if you have any questions or concerns.

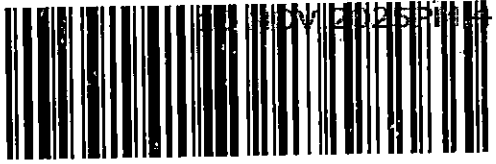
Sincerely,

Burr & Forman LLP

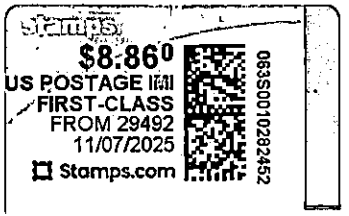
Nicholas C.C. Stewart

NCCS/cat

CERTIFIED MAIL®
COLUMBIA SC 290



9414 8118 9956 1941 4309 31



BURR & FORMAN

115 Fairchild Street, Suite 200
Daniel Island, SC 29492

RECEIVED
NOV 12 2025
SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk of Court
Po Box 11629
Columbia SC 29211

29211-16[illegible] RDA 1501

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01757

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, Defendants,

of which

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC are the Appellants.

NOTICE OF APPEAL

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC (collectively, "Appellants") appeal the Orders of the Honorable William C. McMaster, III dated September 22, 2025, and October 24, 2025, denying Appellants' Motion to Stay and Compel Arbitration. Appellants received written notice of entry of the Order on their Motion for Reconsideration on October 24, 2025. A related appeal brought by Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC is pending but, upon information and belief, has not been assigned an appellate case number yet.

November 10, 2025

[SIGNATURE ON FOLLOWING PAGE]

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

Ashley S. Heslop, S.C. Bar No. 71148
Caroline K. Buchanan, S.C. Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com

Counsel for Appellants

Other Counsel of Record:
Matthew W. Christian, S.C. Bar No. 70516
Post Office Box 332
Greenville, South Carolina 29602
Phone: (864) 232-7363
Email: mchristian@cclawfirm.com

Counsel for Respondent

J. Bennett Crites, III, S.C. Bar No. 71695
Nicholas C.C. Stewart, S.C. Bar No. 102434
Cameron A. Tabrizian, S.C. Bar No. 106448
Daniel S. ("Chip") McQueeney, Jr., S.C. Bar No. 6802
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
Phone: (843) 341-4918
Email: bcrites@burr.com
nstewart@burr.com
ctabrizian@burr.com
cmcqueeney@burr.com

Counsel for Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01757

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, Defendants,

of which

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC are the Appellants.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November 2025, a true and correct copy of the above and foregoing Appellants' Notice of Appeal with exhibits was served upon counsel of record by email and US Mail to the following:

Matthew W. Christian, Esq.
Christian & Christian
P.O. Box 332
Greenville, SC 29602
mchristian@cclawfirm.com
Counsel for Respondent

J. Bennett Crites, III, Esq.
Nicholas C.C. Stewart, Esq.
Cameron A. Tabrizian, Esq.
Daniel S. ("Chip") McQueeney, Jr., Esq.
Burr & Foreman LLP
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
bcrites@burr.com
nstewart@burr.com
ctabrizian@burr.com
cmcqueeney@burr.com
Counsel for 501 Gullifer Property, LLC; Fountain Inn Healthcare, LLC; Fountain Inn Post Acute; PACS Group Inc.; PACS Holdings LLC; Providence Administrative Consulting Services, Inc.; and Providence Group, Inc.

November 10, 2025

HALL BOOTH SMITH, P.C.

Ashley S. Heslop, S.C. Bar No. 71148
Caroline K. Buchanan, S.C. Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com

Counsel for Appellants

H|B|S HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

Ashley S. Heslop
Phone: (843) 720-3460
aheslop@hallboothsmith.com

111 Coleman Boulevard
Suite 301
Mount Pleasant, SC 29464

Office: (843) 720-3460
www.hallboothsmith.com

November 10, 2025

VIA EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street, Suite 200
Columbia, SC 29201-3739
ctappfilings@sccourts.org

Re: Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler v. Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC
Civil Action No.: 2025-CP-23-01757 (Survival Action)

Dear Ms. Kitchings:

Please find enclosed for filing Appellants' Notice of Appeal with Exhibit in this matter. Please return a clocked copy. We are having a check in the amount of $250 sent by Federal Express. Thank you for your assistance.

With kind regards, I am

Very truly yours,

Ashley S. Heslop

ASH/sec
Enclosures
cc: Matthew W. Christian, Esq.
J. Bennett Crites, III, Esq.
Nicholas C.C. Stewart, Esq.
Cameron A. Tabrizian, Esq.
Daniel S. ("Chip") McQueeney, Jr., Esq.

H|B|S HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

Ashley S. Heslop
Phone: (843) 720-3460
aheslop@hallboothsmith.com

111 Coleman Boulevard
Suite 301
Mount Pleasant, SC 29464

Office: (843) 720-3460
www.hallboothsmith.com

November 10, 2025

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street, Suite 200
Columbia, SC 29201-3739

106401

Re: Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler v. Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC
Civil Action No.: 2025-CP-23-01757 (Survival Action)

Dear Ms. Kitchings:

Please find enclosed a check in the amount of $250 for Appellants' Notice of Appeal in the referenced matter.

Thank you for your consideration of this request.

With kind regards, I am

Very truly yours,

/s/ Susan Creel

Susan Creel
Assistant to Ashley S. Heslop

ASH/sec
Enclosure

ORIGIN ID:BFTA (843) 720-3460
ASHLEY S. HESLOP
HALL BOOTH SMITH, P.C.
111 COLEMAN BLVD
SUITE 301
MT PLEASANT, SC 29464
UNITED STATES US

SHIP DATE: 10NOV25
ACTWGT: 1.00 LB
CAD: 100935146/INET4535

BILL SENDER

RECEIVED
NOV 12 2025
SC Court of Appeals

TO **JENNY ABBOTT KITCHINGS, CLERK**
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET, SUITE 200

COLUMBIA SC 29201
(803) 734-1890 REF: 20057.0005 ZEIGLER
INV:
PO: DEPT:

58HJ2/5010/59F

FedEx Express

TUE - 11 NOV 5:00P
STANDARD OVERNIGHT

TRK# 0201 **8859 2114 4109**

28 USCA

29201
SC-US CAE

After printing this label:
CONSIGNEE COPY - PLEASE PLACE IN FRONT OF POUCH
1. Fold the printed page along the horizontal line.
2. Place label in shipping pouch and affix it to your shipment.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01759

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, Defendants,

of which

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC are the Appellants.

NOTICE OF APPEAL

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC (collectively, "Appellants") appeal the Orders of the Honorable William C. McMaster, III dated September 22, 2025, and October 24, 2025, denying Appellants' Motion to Stay and Compel Arbitration. Appellants received written notice of entry of the Order on their Motion for Reconsideration on October 24, 2025. A related appeal brought by Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute, Providence Group, Inc., Providence Administrative Consulting Services, Inc., PACS Group, Inc., PACS Holdings, LLC, and 501 Gulliver Property, LLC is pending but, upon information and belief, has not been assigned an appellate case number yet.

November 10, 2025

[SIGNATURE ON FOLLOWING PAGE]

HALL BOOTH SMITH, P.C.

/s/ Ashley S. Heslop

Ashley S. Heslop, S.C. Bar No. 71148
Caroline K. Buchanan, S.C. Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com

Counsel for Appellants

Other Counsel of Record:
Matthew W. Christian, S.C. Bar No. 70516
Post Office Box 332
Greenville, South Carolina 29602
Phone: (864) 232-7363
Email: mchristian@cclawfirm.com

Counsel for Respondent

J. Bennett Crites, III, S.C. Bar No. 71695
Nicholas C.C. Stewart, S.C. Bar No. 102434
Cameron A. Tabrizian, S.C. Bar No. 106448
Daniel S. ("Chip") McQueeney, Jr., S.C. Bar No. 6802
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
Phone: (843) 341-4918
Email: bcrites@burr.com
nstewart@burr.com
ctabrizian@burr.com
cmcqueeney@burr.com

Counsel for Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, III, Circuit Court Judge

Case No. 2025-CP-23-01759

Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler, Respondent,

v.

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC, Defendants,

of which

Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC are the Appellants.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November 2025, a true and correct copy of the above and foregoing Appellants' Notice of Appeal with exhibits was served upon counsel of record by email and US Mail to the following:

Matthew W. Christian, Esq.
Christian & Christian
P.O. Box 332
Greenville, SC 29602
mchristian@cclawfirm.com
Counsel for Respondent

J. Bennett Crites, III, Esq.
Nicholas C.C. Stewart, Esq.
Cameron A. Tabrizian, Esq.
Daniel S. ("Chip") McQueeney, Jr., Esq.
Burr & Foreman LLP
115 Fairchild Street, Suite 200
Daniel Island, SC 29492
bcrites@burr.com
nstewart@burr.com
ctabrizian@burr.com
cmcqueeney@burr.com
Counsel for 501 Gullifer Property, LLC; Fountain Inn Healthcare, LLC; Fountain Inn Post Acute; PACS Group Inc.; PACS Holdings LLC; Providence Administrative Consulting Services, Inc.; and Providence Group, Inc.

November 10, 2025

HALL BOOTH SMITH, P.C.

Ashley S. Heslop, S.C. Bar No. 71148
Caroline K. Buchanan, S.C. Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
Phone: 843.720.3460
Email: aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com

Counsel for Appellants

H|B|S HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

Ashley S. Heslop
Phone: (843) 720-3460
aheslop@hallboothsmith.com

111 Coleman Boulevard
Suite 301
Mount Pleasant, SC 29464

Office: (843) 720-3460
www.hallboothsmith.com

November 10, 2025

VIA EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street, Suite 200
Columbia, SC 29201-3739
ctappfilings@sccourts.org

Re: Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler v. Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC
Civil Action No.: 2025-CP-23-01759 (Wrongful Death Action)

Dear Ms. Kitchings:

Please find enclosed for filing Appellants' Notice of Appeal with Exhibit in this matter. Please return a clocked copy. We are having a check in the amount of $250 sent by Federal Express. Thank you for your assistance.

With kind regards, I am

Very truly yours,

Ashley S. Heslop

ASH/sec
Enclosures
cc: Matthew W. Christian, Esq.
J. Bennett Crites, III, Esq.
Nicholas C.C. Stewart, Esq.
Cameron A. Tabrizian, Esq.
Daniel S. ("Chip") McQueeney, Jr., Esq.

H|B|S HALL BOOTH SMITH, P.C.
ATTORNEYS AT LAW

Ashley S. Heslop
Phone: (843) 720-3460
aheslop@hallboothsmith.com

111 Coleman Boulevard
Suite 301
Mount Pleasant, SC 29464

Office: (843) 720-3460
www.hallboothsmith.com

106400

November 10, 2025

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street, Suite 200
Columbia, SC 29201-3739

Re: Kimberly Haag, Individually and as Personal Representative of the Estate of Raymond Zeigler v. Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; LARK of Fountain Inn, LLC; Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC
Civil Action No.: 2025-CP-23-01759 (Wrongful Death Action)

Dear Ms. Kitchings:

Please find enclosed a check in the amount of $250 for Appellants' Notice of Appeal in the referenced matter.

Thank you for your consideration of this request.

With kind regards, I am

Very truly yours,

/s/ Susan Creel

Susan Creel
Assistant to Ashley S. Heslop

ASH/sec
Enclosure

ORIGIN ID:BFTA (843) 720-3460
ASHLEY S. HESLOP
HALL BOOTH SMITH, P.C.
111 COLEMAN BLVD
SUITE 301
MT PLEASANT, SC 29464
UNITED STATES US

SHIP DATE: 10NOV25
ACTWGT: 1.00 LB
CAD: 100935146/INET4535

BILL SENDER

TO **JENNY ABBOTT KITCHINGS, CLERK**
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE STREET, SUITE 200
COLUMBIA SC 29201
(803) 734-1890
REF: 20057.0005 ZEIGLER
INV:
PO:
DEPT:

58HJ2/501C/59F2

FedEx Express
J254025092401uv

TUE - 11 NOV 5:00P
STANDARD OVERNIGHT

TRK# 0201 **8859 2114 4109**

28 USCA

29201
SC-US CAE

RECEIVED
NOV 12 2025
SC Court of Appeals

After printing this label:
CONSIGNEE COPY - PLEASE PLACE IN FRONT OF POUCH
1. Fold the printed page along the horizontal line.
2. Place label in shipping pouch and affix it to your shipment.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO: 2021-CP-23-02194
	)	2021-CP-23-02195
Christopher B. Woods, Individually and as Personal Representative of the Estate of Lucille E. Woods,	)	
	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANTS CARLYLE SENIOR CARE OF FOUNTAIN INN, LLC, CARLYLE SENIOR CARE MANAGEMENT COMPANY, INC., AND NEW DAY HEALTH VENTURES, LLC'S MOTION TO COMPEL ARBITRATION**
	)	
v.	)	
	)	
Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., and New Day Health Ventures, LLC,	)	
	)	
Defendants.	)	

THIS MATTER came before the Court on August 26, 2021, for a hearing on Defendants Carlyle Senior Care of Fountain Inn, LLC, Carlyle Senior Care Management Company, Inc., and New Day Health Ventures, LLC's ("Defendants") Motion to Dismiss and/or Compel Arbitration filed July 15, 2021. After considering all evidence of record and arguments presented by counsel for the parties, the Court hereby GRANTS Defendants' Motion to Compel Arbitration.

PROCEDURAL BACKGROUND

On December 21, 2020, Plaintiff filed a Notice of Intent to File Suit pursuant to S.C. Code Ann. § 15-79-125. Plaintiff alleges that Lucille E. Woods suffered from multiple falls, including falls with injuries. On April 20, 2020, the parties participated in a telephonic pre-suit mediation, which resulted in an impasse. Accordingly, Plaintiff filed a Summons and Complaint on May 7, 2021. On June 18, 2021, Defendants filed Answers, and, on July 15, 2021, Defendants filed a Motion to Dismiss and/or Compel Arbitration.

FACTUAL BACKGROUND

On or about November 3, 2014, Lucille E. Woods ("Woods"), was admitted to Carlyle Senior Care of Fountain Inn, LLC ("CSC"), the subject skilled nursing facility. Prior to that, on May 2, 2012, Woods executed a Durable General Power of Attorney ("DGPOA"), appointing her son, Plaintiff Christopher B.

Woods ("Plaintiff"), as her attorney-in fact. On or about November 3, 2014, Plaintiff entered into an Admission Agreement ("Admission Agreement") with Defendants on behalf of Woods as her legal representative, and a Mediation and Binding Arbitration Agreement ("Arbitration Agreement"), (collectively "Agreements"), which was contained within the Admission Agreement.

STANDARD OF REVIEW

"[T]he party [opposing] arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (alteration in original) (quoting Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 91, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000)) (internal quotation marks omitted). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Furthermore, unless the court can state with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001); Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (citation and internal quotation marks omitted). Hence, it is the policy of South Carolina to favor the arbitration of disputes. Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003).

LEGAL ANALYSIS

I. The Arbitration Agreement is a Valid and Enforceable Contract signed by Woods' Attorney-in-Fact.

On November 3, 2014, Plaintiff entered into an Arbitration Agreement with Defendants, pursuant to his power under the DGPOA. In pertinent part, the Arbitration Agreement provides:

MEDIATION AND BINDING ARBITRATION AGREEMENT

> **THIS IS A BINDING AGREEMENT TO ARBITRATE ALL CLAIMS ARISING OUT OF THE RELATIONSHIP BETWEEN THE RESIDENT AND THE FACILITY. THE EXPRESS INTENT OF THE PARTIES IS TO SUBMIT ALL CLAIMS TO BINDING ARBITRATION EXCEPT AS EXPRESSLY SET FORTH HEREIN. ANY AMBIGUITY OR DOUBT AS TO THE INTENDED SCOPE OF THIS AGREEMENT SHALL BE RESOLVED IN FAVOR OF SUBMITTING ALL CLAIMS TO BINDING ARBITRATION.**

***

This MEDIATION AND BINDING ARBITRATION AGREEMENT is entered into on November 3, 2014 by and between [CSC] and Lucile Woods and/or Chris Woods, the Resident's Legally Designated Representative.

2. Binding Arbitration:

(a) **Intent of the Parties**: The parties expressly intend that all matters be resolved by arbitration, including, but not limited to, resolving any questions regarding the applicability and/or enforceability of this Agreement as well as resolving all Claims, existing presently or in the future, between the Parties without regard for whether such Claims are presently known or unknown.

(1) **Scope of Agreement**: Unless the Claims are resolved by mediation, or are expressly excluded in Section II(c), or are excluded from the scope of this Agreement by mutual written consent of the Parties, the Parties expressly intend that the binding arbitration provisions of this Agreement apply to any and all Claims arising out of the relationship between the Parties, without regard for the nature of the Claim(s), the facts alleged to support or refute the Claim(s), or circumstances from which the alleged Claims(s) arose. This means that neither the Facility nor the Resident will be able to file a lawsuit in court to resolve any Claim(s) against the other. It also means that both the Facility and the Resident are relinquishing their right to a trial by judge and/or jury to resolve any Claim(s) against the other. The Parties freely choose arbitration, and the Parties understand that the arbitrator's decision is final and binding.

The Arbitration Agreement described the nature and scope of arbitration, clearly stated the parties' intent to waive their rights to trial and gave the parties the opportunity to consult with an attorney before signing. Additionally, the Arbitration Agreement is replete with multiple references making it clear that the parties' intention is to arbitrate any and all claims. See e.g., Section II. (f) "the parties agree that ambiguities, if any, are to be construed in favor of submitting all claims to binding Arbitration." Accordingly, by signing the Arbitration Agreement, Plaintiff acknowledged he understood the terms of the Arbitration Agreement

and agreed to the same. See e.g., Towles v. United HealthCare Corp., 338 S.C. 29, 39, 524 S.E.2d 839, 845 (Ct. App. 1999); Kindred Nursing Ctrs. Ltd. P'ship v. Clark, 137 S.Ct. 1421, 1426 (2017).

II. Plaintiff was Authorized to Execute the Arbitration Agreement

Plaintiff executed the Arbitration Agreement with Defendants, pursuant to his authority granted by Woods in the DGPOA. Specifically, Woods' DGPOA granted Plaintiff:

> full power and authority to do and perform all and every act, deed, matter and thing whatsoever in and about my estate, property, and affairs as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the herein specifically enumerated powers being in aid and exemplification of the full, complete and general powers herein granted and not in limitation or definition thereof

Plaintiff cited Arredondo v. SNH SE Ashley River Tenant, LLC 433 S.C. 69, 856 S.E.2d 550 (2021), in support of his contention that the DGPOA did not grant him specific authority to execute the Arbitration Agreement on Woods' behalf (finding there was no authority to sign the arbitration agreement based on the specific language in the applicable power of attorney, which the Supreme Court interpreted to be limited to business and property decisions only). However, the Arredondo Court also noted that the power of attorney *could* have been drafted to grant broad authority to sign all documents and cited the power of attorney language in Clark as an example of broad general powers that would encompass authority to sign an arbitration agreement. The Clark power of attorney provided the attorney-in-fact the authority to "transact, handle, and dispose of all matters affecting me and/or my estate in any possible way" and "generally to do and perform for me and in my name all that I might do if present."

Like the Clark power of attorney, the DGPOA in this case specifically provides Plaintiff with the authority to "manage and conduct all of [Woods'] estate and all of [Woods'] affairs" and provides Plaintiff with "full power and authority to do and perform all and every act, deed, matter and thing whatsoever . . . to all intents and purposes as [Woods] might or could do in [her] own proper person." The broad powers granted to Plaintiff in the DGPOA are the same as those contemplated and discussed in Arredondo and present in Clark. Thus, the DGPOA gave Plaintiff the authority to enter into the Arbitration Agreement on behalf of Woods. See also Watson v. Underwood, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014)

(the authority of a power of attorney relates to any act, power, duty, right, or obligation which the principal has or may acquire relating to the principal or any matter, transaction, or property, including the power to consent or withhold consent on behalf of the principal as to health care); see also S.C. Code Ann. § 62-5-501(A), (The power of attorney gains the ability to act on behalf of the principal immediately upon the principal's execution of the instrument.). Bennett v. Carter, 421 S.C. 374, 807 S.E.2d 197, 201 (2017) ("[T]he holder of a power of attorney steps into the shoes of the grantor and [,] [therefore] [,] is . . . the alter ego of the grantor.") (internal citation omitted). Clark, 137 S.Ct. 1421, 1429, 197 L.Ed.2d 806 (2017) (reversing state law frustrating FAA's purpose where agreement to arbitrate was within scope of power of attorney in nursing home context).

III. The Arbitration Agreement is Enforceable under the Federal Arbitration Act and South Carolina law.

"[T]he Federal Arbitration Act applies . . . to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538–39, 542 S.E.2d 360, 363 (2001) (footnote omitted) (citing Allied–Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995)). Pursuant to the Federal Arbitration Act ("FAA"), "A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." See 9 U.S.C. § 2. General contract principles of state law apply to arbitration clauses governed by the FAA. Allied–Bruce, 513 U.S. at 281, 115 S.Ct. 834.

The Arbitration Agreement affirmatively states that the FAA shall apply to determine the arbitrability of any disputes. Dean, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (holding that nursing home residency contracts implicate interstate commerce and the FAA, overruling Timms v. Greene, 310 S.C. 469, 427 S.E.2d 642(1993)); Towles v. United HealthCare Corp., 338 S.C. 29, 36, 524 S.E.2d 839, 843 (Ct. App. 1999) (If an arbitration agreement . . . exists, the FAA requires arbitration.); Kindred Nursing

Centers Ltd. P'ship v. Clark, 137 S. Ct. 1421, 1429, 197 L.Ed.2d 806 (2017) (holding arbitration agreements are valid, irrevocable, and enforceable and should be given equal treatment as any contract).

i.) Plaintiff Failed to Assert any Applicable Contract Defenses to Invalidate the Arbitration Agreement.

An arbitration clause may be invalidated under state law only if that law governs the enforceability of all contracts generally. Zabinski v. Bright Acres Associates, 346 S.C. 580, 593, 553 S.E.2d 110, 116 (2001) (courts may invalidate arbitration agreements on general state law "contract defenses, such as fraud, duress, and unconscionability"); Gaddy v. Douglass, 359 S.C. 329, 345, 597 S.E.2d 12, 20 (Ct. App. 2004) (discussing circumstances in which dementia may render an individual incompetent to execute a binding agreement). However, Plaintiff has failed to set forth any applicable contract defenses in this case.

The Arbitration Agreement is a valid contract under state law. The Arbitration Agreement expressly and clearly states that it is an agreement to arbitrate and a waiver of rights to a trial. The Arbitration Agreement is a voluntary agreement and was not required for the admission of Woods to CSC. Further, it includes a rescission provision. Finally, the Arbitration Agreement encouraged Plaintiff to review the terms with an attorney prior to and/or subsequent to signing.

> (d) **Right to Legal Counsel.** Both Parties have the right to be represented by legal counsel in any binding arbitration proceedings initiated under this Agreement. Because this Agreement addresses important legal rights, the Facility encourages and recommends that the Resident obtain the advice and assistance of legal counsel to review the legal significance of this binding arbitration provision either prior to signing this Agreement, or subsequent to signing but within the rescission period. Should any Party fail to obtain legal counsel at any point, they do so willingly and voluntarily.

Accordingly, there is no evidence presented that the Arbitration Agreement in any way violates general contract principles and, therefore, it is valid and enforceable under the FAA and South Carolina law. Kindred, 137 at 1426, 197 L.Ed.2d 806 (Arbitration agreements must be enforced unless Plaintiffs are able to demonstrate the existence of "generally applicable contract defenses.").

V. The Arbitration Agreement is Enforceable Because There was a Meeting of the Minds to Submit all Claims to Arbitration.

There was a meeting of the minds between the parties to submit all claims to binding arbitration and this intent is reiterated throughout the Arbitration Agreement. Plaintiff argues the forum selection provision of the Arbitration Agreement was not complete and was an integral part of the contract. Plaintiff

relies on Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009), in arguing the selection of a forum is required to have a meeting of the minds. However, Grant also held that "only [when] the choice of forum is an integral part of the agreement to arbitrate, rather than an ancillary logistical concern, will the failure of the chosen forum preclude arbitration." (quoting Brown v. ITT Consumer Fin. Corp., 211 F.3d 1217, 1220 (11th Cir. 2000)); Carideo v. Dell, Inc., No. C06-1772JLR, 2009 WL 3485933, at *4 (W.D. Wash. Oct. 26, 2009). Further, the importance of this distinction was clarified by the South Carolina Court of Appeals in York v. Dodgeland of Columbia, Inc., stating that:

> the lack of a specified arbitrator is not an omission of a material term. While the Grant court held that a named arbitrator is a material term when one is specified within an agreement, and that FAA Section 5 does not apply when such a specification exists, these holdings are inapplicable when the contract does not specify a particular arbitrator

406 S.C. 67, 83, 749 S.E.2d 139, 147 (Ct. App. 2013) (emphases added). See also, Dean v. Heritage Healthcare of Ridgeway, LLC, 408 SC 371, 759 S.E.2d 727 (2014).

While Grant held that if an exclusive arbitrator is specified in the agreement, the specification becomes a material term of the agreement, York and Dean clarified that the lack of a specified arbitrator is not a material omission of an integral term of the contract. In this case, the parties to the Arbitration Agreement had several options for selecting an arbitrator, and the Arbitration Agreement did not specify one particular arbitrator. Accordingly, Plaintiff's reliance on Grant is misplaced. Therefore, the failure of the parties to fill in their selection of an arbitrator is not an omission of a material term. However, even if the omission was material, which the Court finds it is not, the FAA provides a remedy in such situations. See 9 U.S.C.A. § 5[1].

VI. Mutual Consideration was Given in Exchange for the Arbitration Agreement.

Plaintiff asserts there is a lack of consideration for the Arbitration Agreement. The Court disagrees and finds mutual consideration was given. The parties to the Arbitration Agreement both receive the

[1] "If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators…, such method shall be followed; but if no method be provided therein, or … if for any other reason there shall be a lapse in the naming of an arbitrator … the court shall designate and appoint an arbitrator or arbitrators."

benefits of arbitration, both waive their right to a jury trial, and Woods received services in exchange for payment. Boyd v. Liberty Life Ins. Co., 399 S.C. 401, 407, 732 S.E.2d 180, 183 (Ct. App. 2012) ("Valuable consideration for a contract may consist of some forbearance given or detriment suffered").

i) The Admission Agreement and Arbitration Agreement are Merged.

The Arbitration Agreement was a part of, and included in, the Admission Agreement. Further, the Agreements were signed by the same person (Plaintiff), at the same time (November 3, 2014), for the same purpose (Woods' admission to CSC), and in the course of the same transaction (the admission process). Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 555, 813 S.E.2d 292, 298 (Ct. App. 2018) (citing Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014); Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977) (Courts will consider documents together where the instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction.) Further, Plaintiff identified himself as the legal representative in both Agreements. Accordingly, the Admission Agreement and Arbitration Agreement are effectively one contract.

Plaintiff argues the Admission Agreement and Arbitration Agreement are two separate contracts and, thus, do not merge, and that separate consideration is required for the Arbitration Agreement to be valid. However, Plaintiff relies on cases where the signatory of such Agreements held a health care power of attorney and/or was a family member of the resident who gave consent under the Adult Healthcare Consent Act. However, neither of these scenarios apply in this case. Plaintiff had a separate, recorded, DGPOA that authorized him to enter into any type of agreement on behalf of Woods, including the Admission Agreement and the Arbitration Agreement. The DGPOA gave Plaintiff the power to enter into each of these Agreements independently of one another.

ii) The Revocability and Voluntariness of the Arbitration Agreement is Insufficient to Show a Lack of Merger with the Admission Agreement

Plaintiff argues that the voluntariness and revocability of the Arbitration Agreement indicate an intention for the Arbitration Agreement to be separate from the Admission Agreement. However, the ability

to revoke the Arbitration Agreement is not enough to claim that no merger existed. See Order Granting Defendant's Motion to Enforce Arbitration, Bryant v. NHC Healthcare/Bluffton, LLC, 2017-CP-07-01446 (April 3, 2018) (Allowing a party to disclaim an arbitration agreement without effect on discharge follows the basic principles of contract law and satisfies concerns associated with adhesion contracts and duress as contemplated by the FAA).

In sum, the Arbitration Agreement is independently valid and enforceable, as each party gave some benefit (mandatory arbitration) in exchange for some forbearance (the right to a jury trial). Alternatively, the Arbitration Agreement is part of the Admission Agreement as each document was executed at the same time, by the same parties, during the same transaction, for the same purpose, and valuable consideration was exchanged pursuant to the terms of the Admission Agreement. See Hennes v. Shaw, 397 S.C. 391, 399 725 S.E.2d 501, 505 (Ct. App. 2012) ("valuable consideration may consist of some right, interest, profit or benefit according to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.")

VII. The Arbitration Agreement is Binding on the Wrongful Death Beneficiaries Because the Agreement and the DGPOA Specifically Contemplate Application to Such Claims and Claimants.

The Arbitration Agreement specifically states that it "shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors, purchasers, and assigns." The definition of "Resident" in the Arbitration Agreement includes "Resident's family, and anyone situated in such a manner so as to assert a claim against the Facility." Further, the DGPOA expressly granted Plaintiff the power to bind Woods' beneficiaries and heirs when acting as her attorney-in-fact stating, "any act or thing lawfully done hereunder by my said attorney in fact shall be binding on myself and my heirs, legal and personal representatives, and assigns." Thus, the Arbitration Agreement is binding upon any heirs or statutory beneficiaries of Woods' estate as to any claim. See Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019)(binding wrongful death beneficiaries to the decedent's arbitration agreement where agreement plainly applies to a claim brought for any reason).

The South Carolina Supreme Court has made clear that an arbitration agreement can be binding on a decedent's estate for a claim of wrongful death. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 378 n.3, 759 S.E.2d 727, 731 n.3 (2014). Wrongful death claims can only exist when there is an underlying claim related to the death itself. A wrongful death claim cannot stand alone. One must flow from the other. The damages claimed by wrongful death beneficiaries are the loss of companionship, society, relationship, and support, they claim to have suffered as a result of Woods' death. Thus, the wrongful death damages only exist and flow directly from the acts alleged to have occurred during Woods' admission. Accordingly, because the Arbitration Agreement contemplates any claims surrounding Woods' admission and alleged death, it necessarily contemplates her beneficiaries' wrongful death action. Here, the express terms of the Arbitration Agreement were applicable to other parties including "heirs, personal representatives, successors, purchasers, and assigns."

Further, South Carolina courts have recognized that "a party can agree to submit to arbitration by means other than personally signing a contract containing an arbitration clause." Pearson v. Hilton Head Hosp., 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012). Thus, "South Carolina has recognized several theories that could bind non-signatories to arbitration agreements under general principles of contract and agency law." Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019); See also GE Energy Power Conversion France SAS, Corp v. Outokumpu Stainless USA, LLC, No. 18-1048, 2020 WL 2814297 (U.S. June 1, 2020).

Accordingly, Woods' beneficiaries are bound by the terms of the Arbitration Agreement and Admission Agreement and the DGPOA, and therefore, their claims for wrongful death are subject to the Arbitration Agreement.

VIII. The Arbitration Agreement Is Binding on All Defendants Based on the Plain Language of the Agreement.

"Facility" is defined in the Arbitration Agreement and Admission Agreement to include "affiliated companies." The Arbitration Agreement also states that it "shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, *successors, purchasers, and assigns.*"

It is undisputed that CSC purchased Cooke Associates of Fountain Inn, LLC d/b/a Fountain Inn Nursing and Rehab effective June 30, 2016, and that Woods remained a resident. Accordingly, CSC was a "successor[s], purchaser, and assign" as well as an "affiliated company" within the definition of "Facility".

Further, Defendants Carlyle Senior Care Management Company, Inc. and New Day Health Ventures, LLC are related entities of CSC per Plaintiff's Complaint. CSC is the licensee and operator of the facility. Carlyle Senior Care Management Company, Inc. provides certain management services to CSC pursuant to a contract. New Day Health Ventures, LLC is the sole member of CSC. See Defendants' Answer to Plaintiff's Complaint. Accordingly, all Defendants are "affiliated" entities as defined in the Arbitration Agreement and all Defendants are parties contemplated by and subject to the Arbitration Agreement.

CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED AND DECREED** that Defendant's Motion to Compel Arbitration is **GRANTED**; and it is further **ORDERED, ADJUDGED, AND DECREED** that this matter is **STAYED**; and it is further **ORDERED, ADJUDGED AND DECREED** that the Defendant's Motion to Dismiss is **DENIED**.

AND IT IS SO ORDERED!

_____
The Honorable J. Cordell Maddox, Jr.
Judge, Thirteenth Judicial Circuit

_____, 2021
Anderson, South Carolina

Greenville Common Pleas

Case Caption:	Christopher B Woods , plaintiff, et al vs. Carlyle Senior Care Of Fountain Inn LLC , defendant, et al
Case Number:	2021CP2302194
Type:	Order/Compel

So Ordered

s/ J. Cordell Maddox Jr.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. Undersigned counsel also certify that this Record on Appeal complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

Respectfully submitted,

BURR & FORMAN LLP

s/ Nicholas C. C. Stewart
J. Bennett Crites, III
S.C. Bar No. 71695
Daniel S. McQueeney, Jr.
SC Bar No. 6802
Nicholas C.C. Stewart
SC Bar No. 102434
Cameron Tabrizian
SC Bar No. 106448
115 Fairchild Street, Suite 200
Charleston, SC 29492
(843) 972-6177
bcrites@burr.com
cmqueeney@burr.com
nstewart@burr.com
ctabrizian@burr.com
Attorneys for Appellants Fountain Inn Healthcare, LLC d/b/a Fountain Inn Post Acute; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; PACS Group, Inc.; PACS Holdings, LLC; and 501 Gulliver Property, LLC

HALL BOOTH SMITH, P.C.

s/ Ashley S. Heslop
Ashley S. Heslop
S.C. Bar No. 71148
Caroline K. Buchanan
S.C. Bar No. 105244
111 Coleman Boulevard, Suite 301
Mt. Pleasant, SC 29464
(843) 720-3460
aheslop@hallboothsmith.com
cbuchanan@hallboothsmith.com
Attorneys for Appellants Carlyle Senior Care of Fountain Inn, LLC; Carlyle Senior Care Management Company, Inc.; New Day Health Ventures, LLC; and LARK of Fountain Inn, LLC

July 9, 2026
Charleston, South Carolina