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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2026-000971

Mary Gray, by and through
her Attorney-In-Fact,
Thomas W. Cox, Appellant,

v.

Dominion Anderson, LLC d/b/a
Dominion Senior Living of
Anderson, and Dominion
Senior Living LLC, Respondents.

RECORD ON APPEAL

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

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

Attorneys for Appellant

Collie W. "Trip" Lehn, Jr.
Garrett W. Farrel
Huff, Powell & Bailey, LLC
15 S. Main St., Suite 602
Greenville, SC 29601
(864) 400-5949
tlehn@huffpowellbailey.com
gfarrel@huffpowellbailey.com

Attorneys for Respondents

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP0401069

Mary Gray et al
PLAINTIFF(S)

Dominion Anderson Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter was before the Court on 2/11/26 pursuant to the Plaintiff's motion to Confirm Award and to Enforce Terms of Offer of Judgment. After reviewing the file and hearing arguments of counsel. The Court DENIES the motion to apply the offer of judgment to the arbitration award. The Court rejects the argument that reservation of rights in the arbitration agreement allowed a parallel litigation to exist with the arbitration. All issues of the offer of judgment could have been submitted to the arbitrator. The role of the Circuit Court is to confirm the arbitration award provided it was entered into in accordance with the law. The arbitration award in this matter is CONFIRMED. Attorney Lehn is directed to submit a formal order outlining the procedural history, pertinent facts, and applicable law within ten (10) days, copying Attorney Mullman with same prior to submission to the Court.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/13/2026 .

Thomas W Cox Attorney in Fact

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Anderson Common Pleas

Case Caption: Mary Gray , plaintiff, et al VS Dominion Anderson Llc , defendant, et al
Case Number: 2024CP0401069
Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2026-02-13 14:43:26 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mary Gray, by and through her Attorney-In-Fact, Thomas W. Cox,

Plaintiff,

v.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson, and Dominion Senior Living, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2024-CP-04-01069

**ORDER CONFIRMING ARBITRATION AWARD AND DENYING PLAINTIFF'S
MOTION TO ENFORCE TERMS OF OFFER OF JUDGMENT**

This matter is before the Court on Plaintiff's Motion to Confirm Award and Enforce Terms of Offer of Judgment. Defendants did not oppose Plaintiff's application to confirm the January 14, 2026 award by the arbitrator but did oppose Plaintiff's motion to enforce the terms of the offer of judgment. The parties briefed the issues, and this Court heard arguments on the motion on February 11, 2026.

I. PROCEDURAL HISTORY AND RELEVANT FACTS

Plaintiff commenced a civil action in the Court of Common Pleas for Anderson County on May 21, 2024 (Civil Action No. 2024-CP-04-01069) alleging that she fell and sustained injuries when she was a resident in the memory care unit at Dominion Anderson. On August 6, 2024, Plaintiff filed and served an Offer of Judgment in the amount of \$350,000.00 pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP. Defendants did not accept the offer. On August 9, 2024, the Court entered a consent order referring the case to binding arbitration and staying the

litigation. The arbitration hearing was conducted on January 6-8, 2026. On January 14, 2026, the arbitrator issued an award in favor of Plaintiff which exceeded \$350,000. On January 29, 2026, Plaintiff filed a motion in this Court to confirm the arbitration award and enforce the terms of the offer of judgment. (The arbitrator's decision and award was filed under seal to preserve confidentiality.) Plaintiff never asked the arbitrator to enforce the terms of the offer of judgment. Defendants opposed the motion to enforce the terms of the offer of judgment but did not oppose the motion to confirm the arbitration award.

II. LEGAL ANALYSIS

Plaintiff asks the Court to confirm the arbitrator's award under the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 *et seq.* ("UAA"). However, the UAA does not apply to a "claim arising out of personal injury, based on contract or tort." S.C. Code Ann. § 15-48-10(b). Since Plaintiff's claim arises out of a personal injury, the UAA does not apply to the parties' arbitration agreement or to the arbitration conducted in this matter. Instead, the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), applies. Plaintiff's civil action was appropriately stayed upon the consent motion of the parties in accordance with the FAA. *See* 9 U.S.C. § 3. Upon Plaintiff's application, this Court may confirm the arbitrator's award pursuant to the FAA. *See* 9 U.S.C. § 9.

In confirming an arbitration award, the Court does not adjudicate the underlying dispute but only gives legal effect to the binding resolution the parties obtained through arbitration by entering a judgment or decree making the arbitrator's award enforceable. The "confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245, 248 (3d Cir. 2020) (citing *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)). Here, Plaintiff has applied to this Court for an order confirming the arbitrator's award and Defendants

do not oppose the motion to confirm the award. Accordingly, the Court finds that the award should be confirmed.

Defendants oppose Plaintiff's motion to enforce the terms of the offer of judgment, which was filed on August 6, 2024, three days before the Plaintiff's court case was referred to binding arbitration and the litigation was stayed. Defendants argue that Plaintiff's offer of judgment is inapplicable to this arbitration because an arbitration proceeding is not a civil action. S.C. Code 15-35-400 and Rule 68 of the South Carolina Rules of Civil Procedure govern offers of judgment in South Carolina. Rule 68 states that any "party in *a civil action*...may file...a written offer of judgment..." SCRCP 68 (emphasis added). S.C. Code Ann. Section 15-35-400 provides, "...after commencement of *any civil action*...any party may...file with the clerk of the court a written offer of judgment..." S.C. Code Ann. § 15-35-400 (emphasis added). By the plain terms of both the statute and the court rule, offers of judgment apply only to civil actions.

Arbitration is fundamentally distinct from a civil action. "[A]rbitration is not litigation carried on by other means. It is intended to be, and it is, an alternative means for resolving disputes without the cost and delay of a lawsuit." *White v. Preferred Research, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). The South Carolina Court of Appeals reaffirmed the principle in *Lauro v. Visnapuu*: "Arbitration is not litigation carried on by other means but is an alternative means for resolving disputes without the cost and delay of a lawsuit." 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) (citing *White, supra*). Federal courts also consistently distinguish between arbitration proceedings and civil actions, treating arbitration as an alternative dispute resolution mechanism that operates outside of the court system. In *Morrison v. Colorado Permanente Medical Group, P.C.*, the court held, "Arbitration is an alternative dispute resolution mechanism designed to avoid the need for filing a civil action or to resolve a civil action.

Moreover, cases and statutes discuss consistently the terms ‘arbitration’ and ‘civil action’ in a manner that leaves no doubt that arbitration is a creature separate from, and not just a form of civil action.” 983 F. Supp. 937, 944 (D. Colo. 1997).

When Plaintiff’s civil court case was referred to binding arbitration, the litigation was stayed pending resolution of the matter by means of arbitration, an alternative dispute resolution mechanism, not a civil action. This Court finds that the offer of judgment rule is inapplicable to arbitration because arbitration is not a civil action. Therefore, Plaintiff’s motion to enforce the terms of the offer of judgment is denied.

III. DECISION

The arbitrator’s award, filed with the Court under seal, is CONFIRMED, and Plaintiff’s motion to enforce the terms of the offer of judgment is DENIED.



Anderson Common Pleas

Case Caption: Mary Gray , plaintiff, et al VS Dominion Anderson Llc , defendant, et al
Case Number: 2024CP0401069
Type: Order/Other

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson,

Plaintiff,

v.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2024-CP-04-01069

**CONSENT ORDER TO REFER CASE TO
BINDING ARBITRATION AND TO STAY
LITIGATION**

THIS MATTER is before the Court pursuant to this Consent Order duly executed by counsel for the Parties in the above-captioned matter and submitted to this Court. Plaintiff and Defendants (hereinafter “Parties”) have reached an agreement that the matters between them will be referred to binding arbitration and this litigation be stayed. Therefore, the Court orders the following:

1. The matters raised in Plaintiff’s Complaint and any other known matter which can be or may have been asserted between the Parties and/or arising between the Parties in this case shall be referred to binding arbitration before Anne Culbreath, Esquire. If this arbitrator is not available, the Parties will attempt to secure and agree upon another arbitrator, but if the Parties cannot agree upon an arbitrator, they will petition the Circuit Court to appoint an arbitrator
2. That the dispute between the Parties related to discovery, evidentiary matters, dispositive motions and any other matter which would properly be before this Court shall be heard

and resolved by the arbitrator according to the South Carolina Rules of Civil Procedure and South Carolina Rules of Evidence.

3. This matter shall be stayed until the entry of an arbitration award or until a settlement is reached between the Parties. This Court shall retain jurisdiction to issue and enforce subpoenas duly served pursuant to Rule 45 of the South Carolina Rules of Civil Procedure.

4. All remedies that would otherwise be available to Plaintiff under applicable federal, state and local laws remain available in the arbitration. The damages which are recoverable in the arbitration shall be those damages to which Plaintiff would otherwise be entitled according to the laws of the State of South Carolina. Any contractual limitations regarding the amount or type of damages that are recoverable shall not be enforced in the arbitration.

5. The Parties will conduct discovery related to the issues of the claim. The scope of discovery shall be that defined by Rule 26 of the South Carolina Rules of Civil Procedure.

6. Plaintiff shall pay \$250 towards the cost of the arbitrator's fees. The Defendants shall pay the remainder of the arbitrator's fees.

7. The Parties may designate portions of deposition testimony, subject to any objection, as part of their arbitration presentation without the formality of calling the witnesses live or demonstrating their unavailability and the Parties may also call Parties to testify by phone or video conference without the formality of calling the witnesses live or demonstrating their unavailability.

8. An Arbitrator's Award will consist of a written statement stating the disposition of each claim within 10 days of the final hearing.

9. The Parties will conduct a mediation with Kip Darwin, Esquire, Darren Sanders, Esquire, or Rob Hassold, Esquire after Defendants have had the opportunity to depose Plaintiff, and prior to the arbitration. Plaintiff will provide a settlement demand before proceeding to this mediation. If these mediators are not available, the Parties will attempt to secure and agree upon another mediator, but if the Parties cannot agree upon a mediator, they will petition the Circuit Court to appoint a mediator.

10. The Parties shall jointly submit a Stipulation of Dismissal at the conclusion of this matter.

11. That this agreement may be amended by consent of the Parties, or by order of the arbitrator for good cause shown.

This ____ day of ____, 2024.

Presiding Judge

WE SO CONSENT:

s/ Timothy Maio
Trip Lehn (SC Bar #76582)
Timothy Maio (SC Bar #105171)
Huff Powell Bailey
15 S. Main Street, Suite 602
Greenville, SC 29601
T: (864) 400-5949
tlehn@huffpowellbailey.com
tmaio@huffpowellbailey.com

Attorneys for Defendants

s/ Ray Mullman, Jr.
Gary W. Poliakoff (SC Bar #4488)
Ray Mullman, Jr., (SC Bar #8662)
Poliakoff & Associates, P.A.
125 Magnolia Street
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
atty@gpoliakoff.com
rmullmanjr@gmail.com

Carolyn Baird
Jones Law Firm, P.A.
P.O. Box 987
Anderson, SC 29622
(864) 224-3474

Attorneys for Plaintiff



Anderson Common Pleas

Case Caption: Mary Gray , plaintiff, et al VS Dominion Anderson, Llc , defendant,
et al
Case Number: 2024CP0401069
Type: Order/Consent Order

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2024-08-09 11:45:39 page 5 of 5

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson,

Plaintiff,

v.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 2024-CP-04-1069

CONSENT ORDER TO AMEND THE COMPLAINT TO SUBSTITUTE PARTY

COMES NOW the parties to the above-captioned action who join in moving this Court for an Order allowing Plaintiff to amend the Complaint to substitute parties, pursuant to Rules 15 and 17 of the South Carolina Rules of Civil Procedure. Since the original filing, the Attorney-In-Fact, Nina Edmundson has died. The Probate Court of Anderson County has appointed Thomas W. Cox as Conservator of Mary Gray.

BY AND WITH THE CONSENT OF ALL PARTIES, Plaintiff is permitted to amend the Complaint to add Thomas W. Cox as Conservator of Mary Gray (Exhibit 1-Amended Summons and Complaint) and substitute the parties pursuant to SCRCP 15 and 17.

WE SO CONSENT:

s/Trip Lehn

Trip Lehn (SC Bar #76582)
Timothy Maio (SC Bar #105171)
Huff Powell Bailey
15 S. Main Street, Suite 602
Greenville, SC 29601
T: (864) 400-5949
tlehn@huffpowellbailey.com
tmaio@huffpowellbailey.com

Attorneys for Defendants

s/Ray Mullman

Gary W. Poliakoff (SC Bar #4488)
Ray Mullman, Jr., (SC Bar #8662)
Poliakoff & Associates, P.A.
125 Magnolia Street
P.O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
atty@gpoliakoff.com
rmullmanjr@gmail.com

Carolyn Baird
Jones Law Firm, P.A.
P.O. Box 987
Anderson, SC 29622
(864) 224-3474

Attorneys for Plaintiff

IT IS SO ORDERED:



Anderson Common Pleas

Case Caption: Mary Gray , plaintiff, et al VS Dominion Anderson, Llc , defendant,
et al
Case Number: 2024CP0401069
Type: Order/Amend

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

C.A. No.: 2024-CP-04-

Jury Trial Requested

Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson,

Plaintiff,

SUMMONS

vs.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

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

s/Raymond P. Mullman, Jr.

Gary W. Poliakoff, S.C. Bar # 4488

atty@gpoliakoff.com

Ray Mullman, Jr., S.C. Bar #8662

rmullmanjr@gmail.com

Poliakoff & Associates, P.A.

215 Magnolia Street

P. O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

Carolyn Baird

Jones Law Firm, P.A.

P.O. Box 987

Anderson, SC 29622

(864)224-3474

Date: May 21, 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. No.: 2024-CP-04-

Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson,

Plaintiff,

COMPLAINT

(Jury Trial Demanded)

vs.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

Plaintiff, Mary Gray, by and through her Attorney-in-Fact, Nina Edmondson (hereinafter "Plaintiff"), complains of the Defendants, and respectfully allege as follows:

PARTIES & JURISDICTION

1. That the Plaintiff, Mary Gray, is a citizen and resident of Anderson County, South Carolina. Plaintiff Mary Gray was a resident of Defendant's facility during the relevant time period which is located in Anderson County, South Carolina.
2. That Mary Gray appointed Nina Edmondson as her attorney-in-fact through a valid Power of Attorney. Nina Edmondson is also a citizen and resident of Anderson County.
3. Mary Gray was a vulnerable adult as defined by the South Carolina Omnibus Adult Protection Act.
4. Upon information and belief, Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson is a limited liability corporation organized and existing under the laws of the State of Tennessee and conducts business and maintains an office in Anderson, South Carolina.
5. Upon information and belief, Dominion Senior Living, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

6. Upon information and belief, Dominion Development Group, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

7. Upon information and belief, Dominion Group, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

8. Upon information and belief, Dominion Management Group, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

9. Upon information and belief, Dominion Senior Living, LLC, Dominion Development Group, LLC, Dominion Group, LLC, and Dominion Management Group, LLC, provided management and operational services to the facility and derived substantial revenue from such services.

10. Defendants had the right and power to direct and control their employees and/or agents in the business of delivering care and services for a fee through community residential care facilities and elder facilities and they are personally, directly, jointly and severally liable for the acts and omissions committed.

11. Defendants were paid a fee to deliver care and services and had authority, express or implied, to control the means and agents employed to execute care at the facility at all times during the residency of Mary Gray and subject matter jurisdiction over this case and venue is proper in this Court.

12. That the above-named Defendants are liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, are a direct and proximate cause of the Plaintiffs' damages, injuries and losses.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

13. Relevant and consistent allegations contained in paragraphs 1 through 12 are incorporated by reference as if written verbatim herein.

14. Defendants held themselves out to the Plaintiff and the general public to provide custodial care and supervision pursuant to S.C. Regulation 61-84, and to have the expertise necessary to maintain and promote the health and safety of vulnerable adults unable to care for themselves.

15. At the time of her admission to the Defendants' facility, Mary Gray was dependent upon the care provided by employees and agents of the Defendants, and Defendants were required to operate the facility for the safety and well-being of the residents, and provide the necessary care in a safe manner to prevent injury, which they failed to do.

16. Defendants held themselves out to be staffed adequately so as to provide 24 hour care and supervision to residents, including Mary Gray, and including the provision of emergency care.

17. Defendants were negligent in failing to transfer Mary Gray out of the facility when they could no longer meet her needs and safety; failing to properly assess for fall risk; failing to provide a safe environment; failing to provide an adequate care plan; failing to provide adequate fall prevention interventions; and failing to supervise Mary Gray to avoid preventable falls; all of which caused or contributed to her surgery, hospitalization, and medical bills.

18. Upon information and belief, Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent elder care to Mary Gray pursuant to S.C. Regulation 61-84 and industry standards pertinent to assisted living facilities.

19. Section 801., Regulation 61-84, Standards for Licensing Community Residential Care Facilities, lists requirements for individuals eligible for admission and retention in community residential care facilities.

20. Regulation 61-64 Section 801.B., states, "The facility shall admit and retain only those persons whose needs can be met by the accommodations and services provided."

21. Regulation 61-84 Section 801.C.3., states, "Persons not eligible for admission/retention are: Any person needing hospitalization or nursing care."

22. Regulation 61-84 Section 801.C.4., states, "Persons not eligible for admission/retention are: Anyone needing the continuous daily attention of a facility staff licensed nurse..."

23. Regulation 61-84 Section 801.D., states, "Residents whose condition changes to a degree that nursing home care may be required, ... shall be examined by physician or other authorized healthcare provider regarding the possible necessity for transfer to a facility where the resident's eligibility for admission is appropriate."

24. Regulation 61-84 Section 801.E. states, "When the provision of care/services in the facility, combined with other appropriately licensed services, in accordance with facility policy, e.g., hospice, home health, as may be ordered by a physician or other authorized health care provider, does not meet the needs of the resident, or if any resident becomes in need of continuous medical

or nursing supervision, or the facility does not have the capability to provide necessary care/services, the resident shall be transferred within 30 days to a location which shall meet those needs. The administrator shall coordinate this transfer with the resident, next-of-kin/responsible party, and sponsor."

25. Regulation 61-84 Section 401.A states "Written policies and procedures addressing each section of this regulation regarding resident care, rights, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation.

26. Regulation 61-84 Section 401.B states "The policies and procedures shall describe the means by which the facility shall assure that the standards described in this regulation, which the licensee has agreed to meet, as confirmed by application for licensing, are met."

27. Regulation 61-84 Section 501.A states "Appropriate staff members/volunteers in numbers and training shall be provided to perform those duties that result in compliance to the regulation, to suit the needs and condition of the residents, and meet the demands of effective emergency on-site action that might arise. The facility may elect to not allow volunteers to work in the facility. Training requirements/qualifications for the tasks each performs shall be in compliance with all local, state, and federal laws, and current professional organizational standards."

28. Regulation 61-84 Section 503.A states "There shall be a staff member actively on duty at all times that the facility is occupied by residents and immediately accessible to all residents to whom the residents can report injuries, symptoms of illness, or emergencies, and who is responsible for assuring that appropriate action is taken promptly. This responsible staff member is defined as an adult, who through training or work experience, is capable of recognizing and reporting significant changes in the physical or mental condition of each resident."

29. Regulation 61-84 Section 503.B states "The number and qualifications of staff members/volunteers shall be determined by the number and condition of the residents. There shall be sufficient staff members/volunteers to provide supervision, direct care and basic services for residents, *e.g.*, those with Alzheimer's disease and/or related dementia or in an Alzheimer's special care unit or program."

30. The Defendants had an obligation to employ sufficient number of caregivers who were qualified to supervise and keep Mary Gray safe, and to render reasonable care and safety to a

resident in the condition of Mary Gray, and in accordance with federal and state regulations, as well as the representations made by the Defendants.

31. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care and services were rendered effectively and safely; that precautions are taken for residents at risk for falls; and to provide assistance and supervision to residents, as needed, during activities of daily living to prevent them from experiencing preventable falls.

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

33. Upon information and belief, the Defendants failed to provide sufficient and qualified staff to ensure that all necessary care, including emergency care, was delivered to Mary Gray.

34. Upon information and belief, the Defendants failed to ensure that the proper treatment was delivered to Mary Gray, and failed to act reasonably under the circumstances.

35. That the Defendants are liable and responsible for the acts and delicts of their employees, agents and servants.

36. That the Defendants, their officers, agents, servants, and employees negligently, recklessly, and carelessly failed to operate and manage the facility for the safety and well-being of the residents including Mary Gray, and failed to provide the care, treatment, and supervision to keep Mary Gray safe from preventable harm.

37. That, upon information and belief, Mary Gray' health conditions were aggravated and exacerbated by the Defendants' failure to properly supervise her or monitor her condition, in that she suffered preventable falls, which caused her to suffer injuries that required surgery, hospitalization and medical bills.

38. That, upon information and belief, during Mary Gray's residency, the facility was understaffed, and suffered a high turnover rate, and it failed to properly screen, train, supervise,

and discipline its staff, and to put them in suitable positions for their skills, experience, and competence.

FOR A FIRST CAUSE OF ACTION
(Negligence/Recklessness)

39. Plaintiffs reallege and reiterate paragraphs 1 through 38, as though fully set forth herein verbatim, and further allege:

40. That Defendants had a duty of due care to their residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; to transfer when the facility could no longer meet her needs or keep her safe; and to provide proper protection from harm.

41. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care and learning in their treatment of Mary Gray during her residency. More particularly the Defendants were negligent in the following particulars:

- a. failing to properly supervise as required, and as promised to the family upon admission;
- b. failing to provide the care, supervision and monitoring of residents, and in particular Mary Gray, which was required by law and which was necessary for her health and safety;
- c. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Mary Gray;
- d. failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the safety and needs of Mary Gray;
- e. failing to abide by applicable federal and state laws governing assisted living facilities and nursing care;
- f. failing to hire a sufficient number of trained and competent staff;
- g. failing to follow the licensing and regulatory rules of the State of South Carolina;
- h. failing to develop and follow an appropriate Plan of Care;
- i. failing to properly monitor Mary Gray;
- j. failing to appropriately provide Mary Gray emergency services;
- k. failing to monitor and assess Mary Gray adequately for pain and discomfort;
- l. failing to treat Mary Gray with dignity and respect;
- m. failing to exercise due care;
- n. failing to ensure that Mary Gray was timely transferred to a hospital for emergency care;

- o. failing to have in place proper and adequate policies, procedures and protocols for management of residents in need of emergency services or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- p. failing to transfer Mary Gray out of the facility when Defendant knew or should have known that Mary Gray needed more care than Defendant could provide;
- q. such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

42. That, as a result, Mary Gray experienced hospitalization, injuries and broken bones, incurred significant medical bills, prolonged conscious pain and suffering, and mental anguish.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

43. Relevant and consistent allegations contained in paragraphs 1 through 42 are incorporated by reference as if written verbatim herein.

44. That, according to the South Carolina Adult Protection Act, at all times relevant hereto Mary Gray was considered a vulnerable adult.

45. That Mary Gray trusted in, confided in and relied upon Defendants to use their expertise and discretion for Ms. Gray's care and safety.

46. That Defendant accepted Mary Gray's trust and reliance and so became responsible for Ms. Gray's health while residing at the assisted living facility.

47. That, as a result of aforementioned reliance and trust upon Defendant, Mary Gray's physical, mental and emotional health were placed in the hands of Defendant.

48. That Defendants breached this fiduciary relationship by allowing Mary Gray's physical, mental and emotional health to deteriorate during her residency at the assisted living facility, and in failing to develop a care plan to prevent falls, thereby proximately causing all damages and injuries referenced herein.

THIRD CAUSE OF ACTION
(Corporate Negligence)

49. Relevant and consistent allegations contained in paragraphs 1 through 48 are incorporated by reference as if written verbatim herein.

51. Upon information and belief, the Corporate Defendants implemented a business plan for the Facility that sought to maximize profits at the expense of patient care. Defendants controlled all aspects of the Facility, including but not limited to, receiving and controlling all revenues

generated by the Facility, preparing the budget, and establishing staffing levels. In order to maximize profits, Defendants excessively and dangerously underfunded the Facility such that neither nursing staff in adequate numbers nor adequate training of such staff could be provided to protect Facility residents from foreseeable harm.

52. Upon information and belief, the Corporate Defendants withheld resources from the Facility to the physical, mental, and psychosocial detriment of its residents. Funds which were required by law to be used for the protection of Facility residents were instead intentionally diverted to increase the profits of Defendants.

53. Upon information and belief, the Corporate Defendants made matters worse by encouraging the admission of residents whose care needs were higher than average, which resulted in higher financial gain from those residents. However, Defendants failed to provide the increased resources necessitated by admitting these high acuity residents, and did not adequately staff, or provide the necessary training to accommodate the level of care these residents required, particularly registered nurses, which put all residents of the Facility at even greater risk of harm.

54. As a result of the Corporate Defendants negligent management and use of resources, the facility could not properly supervise, monitor, and keep the residents safe, including Mary Gray, resulting in her injuries, hospitalizations, and medical bills.

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

Respectfully submitted,

s/Raymond P. Mullman, Jr.

Gary W. Poliakoff (S.C. Bar # 4488)

atty@gpoliakoff.com

Ray Mullman, Jr. (S.C. Bar # 8662)

rmullmanjr@gmail.com

POLIAKOFF & ASSOCIATES, P.A.

215 Magnolia Street

P.O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

Carolyn Baird
Jones Law Firm, P.A.
P.O. Box 987
Anderson, SC 29622
(864)224-3474

Attorneys for the Plaintiffs

Date: May 21, 2024

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

C.A. No.: 2024-CP-04-01069

Jury Trial Requested

Mary Gray, by and through her Attorney-In-Fact, **Thomas W. Cox,**

Plaintiff,

AMENDED SUMMONS

vs.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

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

s/Gary W. Poliakoff.

Gary W. Poliakoff, S.C. Bar # 4488

atty@gpoliakoff.com

Ray Mullman, Jr., S.C. Bar #8662

rmullmanjr@gmail.com

Poliakoff & Associates, P.A.

215 Magnolia Street

P. O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

Carolyn Baird

Jones Law Firm, P.A.

P.O. Box 987

Anderson, SC 29622

(864)224-3474

Date: June 6, 2025

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mary Gray, by and through her Attorney-In-Fact, Thomas W. Cox,

Plaintiff,

vs.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2024-CP-04-01069

AMENDED COMPLAINT

(Jury Trial Demanded)

Plaintiff, Mary Gray, by and through her Attorney-in-Fact, **Thomas W. Cox** (hereinafter "Plaintiff"), complains of the Defendants, and respectfully allege as follows:

PARTIES & JURISDICTION

1. That the Plaintiff, Mary Gray, is a citizen and resident of Anderson County, South Carolina. Plaintiff Mary Gray was a resident of Defendant's facility during the relevant time period which is located in Anderson County, South Carolina.
2. **That the Court appointed Thomas W. Cox as the Conservator for Mary Gray On January 21, 2025. Thomas W. Cox is also a citizen and resident of Anderson County.**
3. Mary Gray was a vulnerable adult as defined by the South Carolina Omnibus Adult Protection Act.
4. Upon information and belief, Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson is a limited liability corporation organized and existing under the laws of the State of Tennessee and conducts business and maintains an office in Anderson, South Carolina.
5. Upon information and belief, Dominion Senior Living, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

6. Upon information and belief, Dominion Development Group, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

7. Upon information and belief, Dominion Group, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

8. Upon information and belief, Dominion Management Group, LLC, is a corporation organized and existing under the laws of the State of Tennessee and conducts business in Anderson, South Carolina.

9. Upon information and belief, Dominion Senior Living, LLC, Dominion Development Group, LLC, Dominion Group, LLC, and Dominion Management Group, LLC, provided management and operational services to the facility and derived substantial revenue from such services.

10. Defendants had the right and power to direct and control their employees and/or agents in the business of delivering care and services for a fee through community residential care facilities and elder facilities and they are personally, directly, jointly and severally liable for the acts and omissions committed.

11. Defendants were paid a fee to deliver care and services and had authority, express or implied, to control the means and agents employed to execute care at the facility at all times during the residency of Mary Gray and subject matter jurisdiction over this case and venue is proper in this Court.

12. That the above-named Defendants are liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, are a direct and proximate cause of the Plaintiffs' damages, injuries and losses.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

13. Relevant and consistent allegations contained in paragraphs 1 through 12 are incorporated by reference as if written verbatim herein.

14. Defendants held themselves out to the Plaintiff and the general public to provide custodial care and supervision pursuant to S.C. Regulation 61-84, and to have the expertise necessary to maintain and promote the health and safety of vulnerable adults unable to care for themselves.

15. At the time of her admission to the Defendants' facility, Mary Gray was dependent upon the care provided by employees and agents of the Defendants, and Defendants were required to operate the facility for the safety and well-being of the residents, and provide the necessary care in a safe manner to prevent injury, which they failed to do.
16. Defendants held themselves out to be staffed adequately so as to provide 24 hour care and supervision to residents, including Mary Gray, and including the provision of emergency care.
17. Defendants were negligent in failing to transfer Mary Gray out of the facility when they could no longer meet her needs and safety; failing to properly assess for fall risk; failing to provide a safe environment; failing to provide an adequate care plan; failing to provide adequate fall prevention interventions; and failing to supervise Mary Gray to avoid preventable falls; all of which caused or contributed to her surgery, hospitalization, and medical bills.
18. Upon information and belief, Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent elder care to Mary Gray pursuant to S.C. Regulation 61-84 and industry standards pertinent to assisted living facilities.
19. Section 801., Regulation 61-84, Standards for Licensing Community Residential Care Facilities, lists requirements for individuals eligible for admission and retention in community residential care facilities.
20. Regulation 61-64 Section 801.B., states, "The facility shall admit and retain only those persons whose needs can be met by the accommodations and services provided."
21. Regulation 61-84 Section 801.C.3., states, "Persons not eligible for admission/retention are: Any person needing hospitalization or nursing care."
22. Regulation 61-84 Section 801.C.4., states, "Persons not eligible for admission/retention are: Anyone needing the continuous daily attention of a facility staff licensed nurse..."
23. Regulation 61-84 Section 801.D., states, "Residents whose condition changes to a degree that nursing home care may be required, ... shall be examined by physician or other authorized healthcare provider regarding the possible necessity for transfer to a facility where the resident's eligibility for admission is appropriate."
24. Regulation 61-84 Section 801.E. states, "When the provision of care/services in the facility, combined with other appropriately licensed services, in accordance with facility policy, e.g., hospice, home health, as may be ordered by a physician or other authorized health care provider, does not meet the needs of the resident, or if any resident becomes in need of continuous medical

or nursing supervision, or the facility does not have the capability to provide necessary care/services, the resident shall be transferred within 30 days to a location which shall meet those needs. The administrator shall coordinate this transfer with the resident, next-of-kin/responsible party, and sponsor."

25. Regulation 61-84 Section 401.A states "Written policies and procedures addressing each section of this regulation regarding resident care, rights, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation.

26. Regulation 61-84 Section 401.B states "The policies and procedures shall describe the means by which the facility shall assure that the standards described in this regulation, which the licensee has agreed to meet, as confirmed by application for licensing, are met."

27. Regulation 61-84 Section 501.A states "Appropriate staff members/volunteers in numbers and training shall be provided to perform those duties that result in compliance to the regulation, to suit the needs and condition of the residents, and meet the demands of effective emergency on-site action that might arise. The facility may elect to not allow volunteers to work in the facility. Training requirements/qualifications for the tasks each performs shall be in compliance with all local, state, and federal laws, and current professional organizational standards."

28. Regulation 61-84 Section 503.A states "There shall be a staff member actively on duty at all times that the facility is occupied by residents and immediately accessible to all residents to whom the residents can report injuries, symptoms of illness, or emergencies, and who is responsible for assuring that appropriate action is taken promptly. This responsible staff member is defined as an adult, who through training or work experience, is capable of recognizing and reporting significant changes in the physical or mental condition of each resident."

29. Regulation 61-84 Section 503.B states "The number and qualifications of staff members/volunteers shall be determined by the number and condition of the residents. There shall be sufficient staff members/volunteers to provide supervision, direct care and basic services for residents, *e.g.*, those with Alzheimer's disease and/or related dementia or in an Alzheimer's special care unit or program."

30. The Defendants had an obligation to employ sufficient number of caregivers who were qualified to supervise and keep Mary Gray safe, and to render reasonable care and safety to a

resident in the condition of Mary Gray, and in accordance with federal and state regulations, as well as the representations made by the Defendants.

31. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care and services were rendered effectively and safely; that precautions are taken for residents at risk for falls; and to provide assistance and supervision to residents, as needed, during activities of daily living to prevent them from experiencing preventable falls.

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

33. Upon information and belief, the Defendants failed to provide sufficient and qualified staff to ensure that all necessary care, including emergency care, was delivered to Mary Gray.

34. Upon information and belief, the Defendants failed to ensure that the proper treatment was delivered to Mary Gray, and failed to act reasonably under the circumstances.

35. That the Defendants are liable and responsible for the acts and delicts of their employees, agents and servants.

36. That the Defendants, their officers, agents, servants, and employees negligently, recklessly, and carelessly failed to operate and manage the facility for the safety and well-being of the residents including Mary Gray, and failed to provide the care, treatment, and supervision to keep Mary Gray safe from preventable harm.

37. That, upon information and belief, Mary Gray' health conditions were aggravated and exacerbated by the Defendants' failure to properly supervise her or monitor her condition, in that she suffered preventable falls, which caused her to suffer injuries that required surgery, hospitalization and medical bills.

38. That, upon information and belief, during Mary Gray's residency, the facility was understaffed, and suffered a high turnover rate, and it failed to properly screen, train, supervise,

and discipline its staff, and to put them in suitable positions for their skills, experience, and competence.

FOR A FIRST CAUSE OF ACTION
(Negligence/Recklessness)

39. Plaintiffs reallege and reiterate paragraphs 1 through 38, as though fully set forth herein verbatim, and further allege:

40. That Defendants had a duty of due care to their residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; to transfer when the facility could no longer meet her needs or keep her safe; and to provide proper protection from harm.

41. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care and learning in their treatment of Mary Gray during her residency. More particularly the Defendants were negligent in the following particulars:

- a. failing to properly supervise as required, and as promised to the family upon admission;
- b. failing to provide the care, supervision and monitoring of residents, and in particular Mary Gray, which was required by law and which was necessary for her health and safety;
- c. failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, Mary Gray;
- d. failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the safety and needs of Mary Gray;
- e. failing to abide by applicable federal and state laws governing assisted living facilities and nursing care;
- f. failing to hire a sufficient number of trained and competent staff;
- g. failing to follow the licensing and regulatory rules of the State of South Carolina;
- h. failing to develop and follow an appropriate Plan of Care;
- i. failing to properly monitor Mary Gray;
- j. failing to appropriately provide Mary Gray emergency services;
- k. failing to monitor and assess Mary Gray adequately for pain and discomfort;
- l. failing to treat Mary Gray with dignity and respect;
- m. failing to exercise due care;
- n. failing to ensure that Mary Gray was timely transferred to a hospital for emergency care;

- o. failing to have in place proper and adequate policies, procedures and protocols for management of residents in need of emergency services or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- p. failing to transfer Mary Gray out of the facility when Defendant knew or should have known that Mary Gray needed more care than Defendant could provide;
- q. such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

42. That, as a result, Mary Gray experienced hospitalization, injuries and broken bones, incurred significant medical bills, prolonged conscious pain and suffering, and mental anguish.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

43. Relevant and consistent allegations contained in paragraphs 1 through 42 are incorporated by reference as if written verbatim herein.

44. That, according to the South Carolina Adult Protection Act, at all times relevant hereto Mary Gray was considered a vulnerable adult.

45. That Mary Gray trusted in, confided in and relied upon Defendants to use their expertise and discretion for Ms. Gray's care and safety.

46. That Defendant accepted Mary Gray's trust and reliance and so became responsible for Ms. Gray's health while residing at the assisted living facility.

47. That, as a result of aforementioned reliance and trust upon Defendant, Mary Gray's physical, mental and emotional health were placed in the hands of Defendant.

48. That Defendants breached this fiduciary relationship by allowing Mary Gray's physical, mental and emotional health to deteriorate during her residency at the assisted living facility, and in failing to develop a care plan to prevent falls, thereby proximately causing all damages and injuries referenced herein.

THIRD CAUSE OF ACTION
(Corporate Negligence)

49. Relevant and consistent allegations contained in paragraphs 1 through 48 are incorporated by reference as if written verbatim herein.

51. Upon information and belief, the Corporate Defendants implemented a business plan for the Facility that sought to maximize profits at the expense of patient care. Defendants controlled all aspects of the Facility, including but not limited to, receiving and controlling all revenues

generated by the Facility, preparing the budget, and establishing staffing levels. In order to maximize profits, Defendants excessively and dangerously underfunded the Facility such that neither nursing staff in adequate numbers nor adequate training of such staff could be provided to protect Facility residents from foreseeable harm.

52. Upon information and belief, the Corporate Defendants withheld resources from the Facility to the physical, mental, and psychosocial detriment of its residents. Funds which were required by law to be used for the protection of Facility residents were instead intentionally diverted to increase the profits of Defendants.

53. Upon information and belief, the Corporate Defendants made matters worse by encouraging the admission of residents whose care needs were higher than average, which resulted in higher financial gain from those residents. However, Defendants failed to provide the increased resources necessitated by admitting these high acuity residents, and did not adequately staff, or provide the necessary training to accommodate the level of care these residents required, particularly registered nurses, which put all residents of the Facility at even greater risk of harm.

54. As a result of the Corporate Defendants negligent management and use of resources, the facility could not properly supervise, monitor, and keep the residents safe, including Mary Gray, resulting in her injuries, hospitalizations, and medical bills.

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

Respectfully submitted,

s/Gary W. Poliakoff

Gary W. Poliakoff (S.C. Bar # 4488)

atty@gpoliakoff.com

Ray Mullman, Jr. (S.C. Bar # 8662)

rmullmanjr@gmail.com

POLIAKOFF & ASSOCIATES, P.A.

215 Magnolia Street

P.O. Box 1571

Spartanburg, SC 29304

(864) 582-5472

Carolyn Baird
Jones Law Firm, P.A.
P.O. Box 987
Anderson, SC 29622
(864)224-3474

Attorneys for the Plaintiffs

Date: June 6, 2025

1 STATE OF SOUTH CAROLINA
2 IN THE COURT COMMON PLEAS
3 COUNTY OF ANDERSON

4 Mary Gray,

5 Plaintiff,

6 vs. Transcript of Record
2024-CP-04-01069

7 Dominion Anderson, LLC.,

8 Defendant.

9
10
11 February 11, 2026
12 Anderson, South Carolina

13 B E F O R E:

14 The HONORABLE R. SCOTT SPROUSE

15 A P P E A R A N C E S:

16 Raymond Mullman, Representing the plaintiff
17 Trip Lehn, Representing the defendant

18
19
20
21 SHARON G. HARDOON, CSR
22 Official Circuit Court Stenographr, III
23
24
25

1 THE COURT: Okay.

2 THE CLERK: The next case is a motion to confirm award
3 and enforce terms of offer of judgment, case number
4 2024-CP-04-01069, Mary Gray, et. al. vs. Dominion Anderson,
5 et. al.

6 THE COURT: Okay, let me look here.

7 Okay. Anything been resolved?

8 MR. MULLMAN: No, sir. My name is Ray Mullman for the
9 plaintiffs. I'm here on behalf of Gary Poliakoff.

10 THE COURT: Mr. Mullman, you're here for the
11 plaintiffs.

12 MR. MULLMAN: Yes, sir.

13 THE COURT: Mr. Mullman, let me hear from you.

14 MR. MULLMAN: Your Honor, Mary Gray, initiated this
15 civil action against the defendants who are an assisted
16 living facility. On August 6th, she filed an offer of
17 judgment for \$350,000, which was not accepted.

18 On August 9th, the parties entered into a consent order
19 which the Court filed to arbitrate the civil action in the
20 case. I had to hand up that consent order under seal,
21 Your Honor, and, at the same time, I'd like hand up the
22 arbitrator's award.

23 That consent order allowed for all remedies to be
24 preserved. It also said the South Carolina civil procedure,
25 which includes rule 68 offer of judgment would apply.

1 On January 6th through 8th of 2026, the parties
2 participated in an arbitration trial.

3 On January 14th, arbitrator awarded in excess of the
4 offer of judgment, and we've handed that up. It is
5 confidential, Your Honor, both documents are. That is
6 clearly more than the offer of judgment.

7 By statute, we are entitled to eight percent
8 interesting and some court costs. The statute is mandatory,
9 not discretionary. It uses the term "shall." The statute
10 clearly applies not only to probates, but any favorable
11 determination. And, in fact, uses the word "award" in the
12 statute. These terms are plain and unambiguous and cannot
13 be considered superfluous under statutory interpretation.

14 The statute is triggered after commencement of a civil
15 action. The civil action was only stayed, not dismissed.
16 So there still is a civil action going on. All remedies
17 were preserved. The South Carolina rules of civil procedure
18 apply and also the South Carolina substantive law, which the
19 statute would apply.

20 The public policy and legislative intent certainly
21 supports enforcement of the offer of judgment in an
22 arbitration proceeding because they want resolutions, they
23 want encouragement to settle, and it would actually punish
24 people who agree to arbitration if they don't have that
25 remedy of an offer of judgment.

1 So we're here today asking for interest calculated from
2 the date of the offer, August 6, 2024, until the award is
3 confirmed as a judgment. That's what I statute says. We're
4 here to confirm the award to make that a judgment, which I
5 don't think there's a dispute about that under the FAA or
6 the Uniform Arbitration Act. Both contemplate the Court
7 confirming the award, and the statute allows us, after the
8 arbitration, after the judgment is filed to seek the offer
9 of judgment interest.

10 Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Mullman.

12 All right. Mr. Lehn.

13 MR. LEHN: Thank you, Your Honor. May it please the
14 Court?

15 So the plaintiff's motion is essentially to in one.
16 There's a motion to confirm the arbitrator's award which the
17 defendants do not oppose. And, in fact, my clients have
18 already made payment on the award by the arbitrator. So
19 there's no dispute as to that aspect of the motion. But the
20 dispute is about whether the offer of judgment rule can be
21 applied to this arbitration award, and the defendants
22 contend it cannot, and the reason is based on the plain
23 language of the rule in the statute.

24 The statute and the rule don't read verbatim word for
25 word, but they are entirely consistent. As far as I can

1 tell, we're talking about rule 68 of the rules of civil
2 procedure and then South Carolina code section 15-35-400.

3 And when you read this rule it says: "Any party in a
4 civil action, except a domestic relations action, may file
5 no later than 20 days before the trial date a written offer
6 of judgment signed by the offerer or his attorney directed
7 to the opposing party," et cetera.

8 It continues to use -- the rule continues to use
9 language that is specific to civil cases to court cases. It
10 says, "Within 20 days after service of the offer of judgment
11 or at least 10 days prior to the trial date whichever is
12 earlier." It's in the middle of the first paragraph there,
13 the rule says, "If the offer of judgment is not accepted
14 within 20 days after notification or prior to or on the 10th
15 day before the actual trial date, whichever occurs first,
16 the offer shall be considered rejected and evidence there of
17 is not admissible except in a proceeding after trial to fix
18 costs, interest, attorney fees and other recoverable
19 monies."

20 And then the last sentence of that paragraph, "All
21 offers of judgment and any acceptance of offers of judgment
22 must be included by the clerk in the record of the case."
23 The statutory language is the same, Your Honor. So by the
24 plain terms of both the statute and the court rule, offers
25 of judgment apply only to civil actions.

1 Now, arbitration is fundamentally distinct from a civil
2 action. As you know, arbitration is not litigation carried
3 on by other means. It is intended to be and is an
4 alternative means for resolving disputes without the cost
5 and delay of a lawsuit, and that's from a Court of Appeals
6 case in 1993 from *White*, and that's cited in our brief.
7 This principle has been reaffirmed by the Court of Appeals
8 in multiple cases.

9 So here in this instance, the parties agreed to binding
10 arbitration to resolve any disputes. The plaintiff did file
11 a lawsuit, but when I showed plaintiff's counsel the binding
12 arbitration agreement, the enforceable agreement, the
13 plaintiff consented to have the case referred to arbitration
14 after the litigation was stayed, and that's appropriate
15 under the procedures of the Federal Arbitration Act.

16 So the case went to arbitration and it ceased to be a
17 civil case. It is not a civil case. The matter was
18 arbitrated and the arbitrator issued an award.

19 Now, it's important to know that in this case the
20 arbitration was governed by the Federal Arbitration Act, not
21 by the South Carolina Uniform Arbitration Act, which says
22 that it does not apply to personal injury actions. So we
23 need to be sure that we're looking at the law under the FAA.
24 Either way it doesn't matter. There's no case in South
25 Carolina applying the Uniform Arbitration Act that says that

1 offers of judgment are applicable to arbitration. So there
2 is no case on that issue at all.

3 Under the FAA, it gives no court the authority to
4 enforce the terms of an offer of judgment in a proceeding
5 like this to confirm the arbitrator's award. There is a
6 case that we cited where the Court recognized it had no
7 authority in a confirmation proceeding to award attorney's
8 fees to the plaintiff. We think that that's analogous, that
9 it's not exactly on the point with the offers of judgment.

10 But the FAA says nothing about offers of judgment, and
11 it gives courts no authority to apply offer of judgment
12 rules to an arbitrator's award.

13 So, Your Honor, after very careful research, I have
14 found no reported South Carolina or federal case in which
15 the terms of an offer of judgment were enforced in either a
16 motion to confirm an arbitrator's award or a motion to
17 modify or correct an arbitrator's award. And plaintiffs
18 have not made that motion here, but they could have. And if
19 they would have, it would still be the same argument that
20 offers of judgment are inapplicable.

21 Now, one of the arguments that the plaintiff makes is
22 that the consent order that the parties agreed to, it was
23 filed in the civil action to refer to the case to
24 arbitration, provides, "All remedies that would otherwise be
25 available to plaintiff under applicable or federal, state,

1 and local laws remain available in the arbitration. The
2 damages which are recoverable in the arbitration shall be
3 those no damages to which plaintiff would otherwise be
4 entitled according to the laws of the state of South
5 Carolina. Any contractual limitations regarding the amount
6 or type of damages that are recoverable shall not be
7 enforced in the arbitration."

8 Now, there's a couple of things to understand about
9 this language. The first is, they're trying to say, "All
10 remedies available under federal, state, and local laws
11 remain available." Well, this is a state law personal
12 injury action. So under South Carolina law, we're only
13 talking about the damages available in a personal injury
14 case. There are no federal remedies or damages available
15 and there are no local damages or remedies available. So
16 we're talking about South Carolina damages.

17 Now, the arbitration agreement provided that the
18 arbitrator could not award punitive damages. This provision
19 overrode that term of the agreement, and it allows for the
20 possibility that the arbitrator could award, not only
21 economic damages and non-economic damages, but also punitive
22 damages. Unfortunately for the defendants, she did not
23 award punitive damages, but that would have been a
24 possibility.

25 But there was no language in this order that says that

1 offers of judgment would be applied or could be applied, or
2 that the offer of judgment rule that applies to civil cases
3 could be applied to this arbitration. The intent of the
4 agreement that the rules of civil procedure and the South
5 Carolina Rules of Evidence were going to apply to the
6 arbitration was to make it clear that we weren't going to
7 use an alternative set of rules that sometimes is done in
8 arbitration proceeding. Maybe more limited discovery, maybe
9 different procedural rules about preparing the case for the
10 hearing.

11 Now, we were going to abide by the discovery rules
12 under the South Carolina rules of procedure, let the
13 arbitrator resolve any discovery disputes pursuant to those
14 rules, and then at the hearing, we were going to apply the
15 rules of evidence.

16 So that's the meaning of that language. It does not
17 mean that every rule of civil procedure that applies to
18 court cases should then applicable in the arbitration. That
19 is not what we agreed to and that is not the meaning --
20 that's not the obvious meaning of the plain language of this
21 document.

22 So I understand that it says the rules of civil
23 procedure are going to apply, but that doesn't mean that the
24 arbitration becomes a civil case.

25 One of the plaintiff's arguments has to do with the

1 interpretation of the rule and the statute itself. If you
2 look at part (b) under the rule, the consequences of not
3 accepting an offer of judgment. It says if they get a more
4 favorable verdict or determination than the rejected offer,
5 and the offer is to plaintiff, then eight percent interest
6 is computed on the amount of the verdict or award from the
7 date of the offer to the date of the entry of the judgment.

8 Okay. So their argument is, it doesn't just say
9 "verdict," it says "award." So that means an arbitration
10 award. Not correct. Not correct at all.

11 What this language means is, it's either the verdict of
12 the jury and the judgment is being rendered by the Court on
13 that verdict without modification, or it's the award that a
14 judge in a bench trial renders, or it's a post-verdict award
15 that the Court has modified.

16 So say, as an example, if the jury awards \$25 million
17 of punitive damages against a defendant and only \$50,000 of
18 actual damages, the Court under governing law is going to
19 have to reduce the punitive damages award, and the judge
20 will then issue a post-verdict award and judgment will be
21 rendered on that award. And that is what rule 68 refers to
22 when it says "award." It does not say "arbitration."
23 There's no reference in arbitration in either the rule or
24 the statute. And it is wrong for the plaintiff to say that
25 this language contemplates an arbitration award. It does

1 not.

2 Thank you, Your Honor.

3 THE COURT: Mr. Lehn, let me just ask you this -- and
4 I'm going to read what you submitted, but did not the
5 arbitrator use the term of "award" in the actual arbitration
6 order? How that does affect your argument?

7 MR. LEHN: Your Honor, it doesn't. The terminology of
8 "award" in the arbitration context is common. Right? You
9 would say it's a decision. The arbitrator makes a decision.
10 And if the arbitrator makes a decision for the plaintiff,
11 there's going to be a monetary award.

12 So there's going to be an award in every arbitration in
13 favor of the plaintiff, if it goes in the favor of the
14 plaintiff.

15 But my argument, Your Honor, is that the term of
16 "award" in the rule and the statute does not refer to that.
17 It doesn't refer to an arbitrator's award. It refers to the
18 Courts award.

19 THE COURT: Okay, I got you.

20 MR. LEHN: Thank you, Your Honor.

21 THE COURT: Mr. Mullman, any response?

22 MR. MULLMAN: Of course, Your Honor. In defending its
23 interpretation of what the legislator means for award is
24 just made up. There's no case law that says that. There's
25 no legislative intent that says that. I think it's clear

1 when we see "verdict or a determination at least as
2 favorable as the rejected offer," then later on when it says
3 "verdict" or "award," clearly means any kind of award
4 determination. It doesn't have to be a verdict. It can be
5 an arbitration. It can be a bench trial.

6 And the civil action part is, it says, "After
7 commencement of any civil." There was a civil action. We
8 filed the offer of judgment. And there's still a civil
9 action because, as paragraph 3 states to the consent order
10 to refer the case, it says, "This matter shall be stayed
11 until the attribute of an arbitration award or until a
12 settlement is reached between parties." As soon as that
13 arbitration award was over, the statement is over and we're
14 back into a civil action, and we're allowed to ask the Court
15 for interest of the offer of judgment.

16 Why would the legislature not include arbitrations in
17 this after -- it would make every arbitration agreement
18 unconscionable because they're taking away a right, a
19 remedy, a substantive South Carolina law. So it would make
20 every arbitration unconscionable if you're taking that away,
21 similar to the punitive damages that had be taken away in
22 this case because it's unconscionable to not allow punitive
23 damages.

24 And to be clear, we did not arbitrate under the
25 original agreement anyway. That agreement we said we're not

1 going to arbitrate under there, but we will agree to a
2 different climate, which is what we did in this case, and we
3 specifically included all remedies. We even negotiated
4 about the offer of judgment with the prior defense attorney,
5 Mr. Maio. I don't know if Trip is aware of that or not.
6 And the solution was, *Hey, we'll just put all remedies*
7 *instead of specifically putting offer of judgment.* And I
8 can show you the back and forth on that.

9 I just think the legislative intent, the public policy,
10 and clear language supports enforcement of the offer of
11 judgment. And just for the Court's edification, we are not
12 seeking court costs. Just the interest from the day that we
13 offered the offer to the date of the award or the date of
14 the judgment, whatever the Court prefers. I'm not really
15 sure how that plays in, because it seems unfair to the
16 defendant to make it till the judgment is filed instead of
17 on the award that's actually done because that could
18 cause -- you know, you get it, wait six months, and then
19 give getting the judgment. That doesn't seem right, but
20 that's what the statute says, Your Honor.

21 Do you have any questions of me?

22 THE COURT: Like I said, I'm going to take this under
23 advisement.

24 Mr. Lehn has a case that was on attorney's fees. Do
25 have any directly on point?

1 MR. MULLMAN: I don't think that case is directly on
2 point. There is no South Carolina case on point and there's
3 no federal case, and FAA is silent when it comes to offers
4 of judgment. And then FAA wouldn't follow a South Carolina
5 civil procedure or a South Carolina statute anyway. They
6 use federal law in arbitration.

7 So for defendants to say, well, there's no case law on
8 that. Under FAA, of course they would be silent. It would
9 be pursuant to the contract, and we specifically put in the
10 court order all remedies would be preserved.

11 Thank you, Your Honor.

12 THE COURT: You wanted to add something, Mr. Lehn?

13 MR. LEHN: Yes, Your Honor. Thank you.

14 Just to keep it very, very brief, but what Mr. Mullman
15 has just discussed is critically important for the Court.
16 He's trying to say that because the plaintiff started a
17 civil case, and then it was referred to arbitration and the
18 proceedings were stayed, that now, after the arbitration is
19 done, it comes back and they still have the civil case.
20 That is incorrect, Your Honor.

21 There is a case number, yes, but the whole point of
22 arbitration is that it is an alternative dispute resolution.
23 It is not a court case. The parties agreed and the
24 defendants get the benefit of the agreement to arbitrate.

25 And so the parties who agreed to arbitrate, they can

1 craft the scope of the remedies available in arbitration
2 however they want to subject to a court deciding that it's
3 unconscionable.

4 But just because in this example, you know, the
5 arbitration agreement said that the arbitrator couldn't
6 award punitive damages, that does not mean that it was
7 unconscionable or would not have ended in enforcement.

8 The parties can agree pursuant to a contract as to the
9 remedies available and how they're going to conduct the
10 proceeding.

11 This arbitration does not now become a court case.
12 It's not a court case that allows the application of a rule
13 that applies to the trials, to civil action trials, and
14 that's what they're trying to do. There is no precedent for
15 that. The UAA and the FAA do not mention offers of
16 judgment. They could have. And they could have used a tool
17 like that within those statutes, but they didn't.

18 So I just want the Court to keep the very important
19 distinction between the arbitration and a civil case.

20 THE COURT: All right. Guys, I'm going read what you
21 submitted. Interesting question.

22 MR. MULLMAN: Thank you, Your Honor. Appreciate it.

23 THE COURT: I'll take it under advisement.

24 MR. MULLMAN: Thank you for your time.

25 (The hearing was concluded.)

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
C.A. No.: 2024CP0401069

Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson,

Plaintiff,

PLAINTIFF'S OFFER OF JUDGMENT

vs.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

TO: TIMOTHY MAIO, ATTORNEY FOR ALL DEFENDANTS

Plaintiffs hereby submit an Offer of Judgment to Defendants in the above-referenced case, for the sum of \$350,000.00, pursuant to S.C. Code Ann. 15-35-400. If Defendants reject or do not accept this offer within twenty days, the offer is deemed rejected and subjects Defendants to possible exposure of costs and 8% interest on judgment from time of rejection or refusal of acceptance of Offer of Judgment.

POLIAKOFF & ASSOCIATES, P.A.

s/Gary W. Poliakoff

Gary Poliakoff, Esq., S.C. Bar No. 4488

atty@gpoliakoff.com

Ray Mullman, Esq., S.C. Bar No. 8662

rmullmanjr@gmail.com

Attorneys for Plaintiffs

215 Magnolia Street

Spartanburg, SC 29306

(864) 582-5472

August 6, 2022

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mary Gray, by and through her Attorney-In-Fact, Thomas W. Cox,

Plaintiff,

v.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC

Defendants.

IN THE ARBITRATION MATTER

C.A. No.: 2024-CP-04-01069

**STIPULATION OF DISMISSAL OF
DOMINION DEVELOPMENT GROUP, LLC, DOMINION GROUP, LLC AND
DOMINION MANAGEMENT GROUP, LLC**

The Plaintiff does hereby agree and consent to the DISMISSAL of his complaint, with prejudice, against Defendants Dominion Development Group, LLC, Dominion Group, LLC, and Dominion Management Group, LLC in the above-captioned matter with each party to bear its own attorney's fees and costs.

WE SO STIPULATE:

s/Ray Mullman, Jr.

Gary W. Poliakoff (S.C. Bar # 4488)

atty@gpoliakoff.com

Ray Mullman, Jr. (S.C. Bar # 8662)

Rmullmanjr@gmail.com

POLIAKOFF & ASSOCIATES, P.A.

215 Magnolia Street

P.O. Box 1571

Spartanburg, SC 29304

(864)582-5472

Attorneys for the Plaintiff

s/ Garrett W. Farrel

Collie W. "Trip" Lehn, Jr.

SC Bar No. 76582

Garrett W. Farrel

Huff, Powell & Bailey, LLC

15 S. Main St., Suite 602

Greenville, SC 29601

(864) 400-5949

tlehrn@huffpowellbailey.com

gfarrel@huffpowellbailey.com

Attorney for Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson, Dominion Senior Living, LLC, Dominion Development Group, LLC, Dominion Group, LLC, and Dominion Management Group, LLC

Dominion Senior Living

RESIDENT ADMISSION AGREEMENT

This Resident Admission Agreement (the "Agreement") dated this 12 day of August, 2021 (the "Effective Date") is made by and between Dominion Anderson, LLC doing business as **Dominion Senior Living of Anderson** ("Community"), located at 3461 N. Hwy 81, Anderson (the "Establishment"), Chris Pepper ("Manager") and Mary Tuck' Gray ("Resident").

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

1. TERM.

This Agreement shall become effective on Mon, Aug 16 and shall have a term of one (1) month (the "Term") unless terminated earlier as provided below. Following the end of a Term, and provided that the Resident is not in default under this Agreement, this Agreement shall automatically renew for an additional one (1) month Term, unless either Party sends a written notice of termination as provided below.

2. ACCOMMODATIONS.

- A. **Room.** The Resident will reside in Room Number 131 at the Establishment (the "Room"). The Resident is encouraged to furnish the room with the resident's own furniture. The community may provide a twin bed, linens, pillows, compartmentalized nightstand, and a chair for sitting if needed.
- B. **Common Areas.** The Resident can use the general-purpose rooms of the Establishment, such as lounges, library, and meeting rooms, as applicable.
- C. **Dual Occupancy.** Only two residents may occupy the Room. If only one resident has signed this Agreement, a second person may move into the Room with the prior approval of the Community. The second occupant must meet all of the Community's admission

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

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

and personal in house pets if these requirements are not met and if the pet poses a threat to safety.

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

3. SERVICES.

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

facilities and other fixtures installed for the general supply of hot and cold water, and HVAC.

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

4. **WELLNESS SERVICES.**

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

medical assessment completed will result in termination of the Agreement.

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

release of personal and medical records does not apply when the Resident is transferred to another health care facility or record release is required by law or third party payment contract. The state has the authority to examine such records as part of its licensing activities without the Resident's consent.

- H. **Medical or Other Emergency.** In the event of an emergency, the Resident shall contact the staff and, if appropriate, the staff will summon emergency service personnel to assist the Resident. If the situation is not deemed an emergency by the staff, the staff has the discretion to instead contact the Resident's Financially Responsible Party, Resident Representative and/or the Resident's physician as appropriate. Where the staff judges a situation to be a possible medical emergency (and the Resident does not agree), the staff has the right (but not the obligation) to take whatever steps are necessary to meet the Resident's emergency medical needs, including summoning emergency service personnel. Any costs incurred, even if the staff ordered the emergency medical services, will be the Resident's sole responsibility.
- I. **Excluded Services.** The Community shall not be responsible for furnishing or paying for any supplies or services not expressly included in this Agreement, including, without limitation, hospital services, physicians' services, nursing services, skilled nursing facility services, private duty assistants, medications, personal supplies, toiletries, vitamins, eyeglasses, eye examinations, hearing aids, ear examinations, dental work, dental examinations, orthopedic appliances, laboratory tests, x-ray services, rehabilitative services, or any other care or equipment beyond the Community's routine levels of staffing and equipment. The Community has no express or implied duty to provide services not listed in Exhibits A, B or C (the "Contractual Services").

5. RENT.

The Resident agrees to pay in advance on the first (1st) day of each month during the Term the amount of Five Thousand Two Hundred Fifty and 00/100 Dollars (\$ 5,250⁰⁰) (the "Rent").

When there are charges for less than one full month, the Rent will be pro-rated based on the number of days in the given month. The Community anticipates that the Rent will be adjusted annually, but reserves the right to adjust the Rent upon thirty (30) days prior written notice to the Tenant. The fees resulting from Exhibit B services are also due on the first of the month.

The Community may adjust the fees as it deems necessary to reflect the costs of providing the facilities, programs, and services described in this Agreement. The Community will provide at least thirty (30) days' written notice to the Resident and the Financially Responsible Party and/or Resident's Representative (if any) prior to any fee changes.

\$5,250

+ \$30
cable

6. PAYMENT AND LATE CHARGES.

The Resident's stay at the Establishment will be paid for by Nina Edmondson. If a third party pays the Resident's bills, their non-payment of any amounts due pursuant to this Agreement shall not relieve the Resident of any obligation to pay such amounts. If the Rent, Establishment Service Fee or any other amount due under this Agreement is not paid on the first of the month, the Community may charge the Resident One-Hundred Fifty Dollars (\$150.00) to cover administrative expenses. Failure to make timely payments may result in the Community terminating this Agreement. Medicaid does not pay for services provided for by the Community. Dominion Senior Living will charge the Resident any associated bank charges for returned check fee for each check returned by a financial institution for any reason including insufficient funds or for incompleteness. After two (2) payments are returned by a financial institution, Resident must pay monthly rental and all other fees by cashier's check

7. ESTABLISHMENT SERVICE FEE.

The Resident shall pay a non-refundable Community Fee of Two Thousand Dollars (\$2,000) the "Community Fee") to the Community concurrently with the execution of this Agreement, which covers administrative costs regarding the Resident's application and other administrative fees.

8. ASSISTED LIVING.

- A. Admission/Retention Criteria.** The criteria applied by the Community for the admission and discharge of assisted living residents are set forth in The Resident Handbook, a copy of which is provided to all Residents.
- B. Licensing.** The Establishment is licensed as a Community Residential Care Facility (Assisted Living) governed by the State of South Carolina. The State of South Carolina conducts annual, unannounced, on-site visit of the Establishment to determine compliance with applicable licensure requirements and standards. Additional visits may be conducted without prior notice to the Community. During on-site reviews, State representatives may observe staff and residents in the common areas of the Assisted Living Section of the Establishment, communicate privately with any resident who consents, and inspect the residents' clinical and administrative records. State

representatives may only enter a resident's Room if the resident grants permission and entry.

- C. **Assisted Living.** The Establishment consists of residential rooms for seniors who are capable of living on their own, provided they have assistance with certain activities of daily living ("Assisted Living"). The Establishment is not licensed to provide 24-hour skilled nursing care or care for serious psychiatric disorders and is not intended as a substitute for a Skilled Nursing Facility. The Community has no duty to provide, or obtain for the Resident, nursing or health care services other than what is agreed to in Exhibit A. The Resident agrees that the Community has no duty to assess, diagnose, examine or treat any medical, psychological or health care condition the Resident might have or develop.
- D. **Release and Assumption of Risk.** With the freedom and independence of Assisted Living come certain risks of personal injury, such as falls or broken bones. The Resident knowingly and voluntarily agrees to assume all risks related to or arising from living in the Establishment, and not a facility that offers a higher level of care. The Resident agrees to waive, release, indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from their failure to obtain or furnish services beyond the Contractual Services.
- E. **Injury by Others.** The Resident agrees that the Community, its Manager, and their employees and affiliates are not responsible or liable for injury or loss sustained by the Resident as a result of the act or omission of other residents, their guests or Private Duty Assistant (as such term is defined below).
- F. **Transfer to Meet Care Needs.** If at any time, the Community's staff or a physician determines that the Establishment cannot meet your needs, this Agreement will be terminated and the Resident agree to transfer to another facility that is appropriate for the Resident's needs. Upon determination by the Community that the Resident needs services beyond those provided by the Establishment, the Resident (together with the Resident's Representative and/or Responsible Party) shall be notified in writing that the Agreement is terminated and the Resident shall be transferred to an appropriate care setting. The notification will serve as a thirty (30) day notice. The Establishment shall assist the Responsible Party and/or Resident's Representative with discharge planning and referrals.

9. PRIVATE DUTY ASSISTANTS.

- A. Services from Third Parties.** All third party contractors, outside caregivers, companions, private duty aides and other personnel (collectively "Private Duty Assistants") employed or engaged by the Resident to render services to the Resident at the Establishment can do so only if both the Resident and the Private Duty Assistant comply with the Community's policy on Private Duty Assistants and complete the forms and agreements referenced therein. The Private Duty Assistant needs the prior permission of the Community, which may be revoked by the Community in its sole discretion. It is the Resident's responsibility to ensure that the Resident's Private Duty Assistant complies with the Community's rules, regulations, Resident Handbook and general policies, together with any specific policies and rules governing Private Duty Assistants. The Resident hereby authorizes and directs that the records regarding the Resident kept by the Resident's Private Duty Assistant will be released to the Community upon request. The community shall not be held responsible for costs or fees associated with hiring or employing any third party or private duty assistants.
- B. Injury Caused by Private Duty Assistant.** The Resident is responsible for all injury or damage caused by a Private Duty Assistant, including injury to the Resident. The Community has no responsibility for the care (or lack thereof) provided by the Private Duty Assistant. The Resident hereby indemnifies, holds harmless and releases Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from the acts or omissions of the Private Duty Assistant.

10. ACCESS TO ROOMS.

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

11. RESIDENT'S RIGHTS AND RESPONSIBILITIES.

- A. Rules, Regulations and Resident Handbook.** The Resident agrees to abide by the Community's Rules, Regulations and Resident Handbook as they now exist and as amended. A copy of the Community's rules, regulations, Resident Bill of Rights, and the Resident Handbook has been provided to the Resident as evidenced by the Resident's signature on Exhibit D attached hereto. The Resident, the Resident's guests and Private Duty Assistant shall conduct themselves in a manner that is peaceful and harmonious, and will not engage in conduct that interferes with or jeopardizes the health, safety, or peaceful lodging of the residents, staff and others at the Establishment.
- B. Loss/Theft and Insurance.** The Resident is responsible for providing at the Resident's own expense insurance to protect the Resident and the Resident's personal belongings against loss or injury. The Resident is strongly urged to procure insurance including health, life, disability, property, renter's and, if applicable, motor vehicle insurance for the Resident's own protection. The Community shall not be responsible for the loss of any property belonging to the Resident due to theft or any other reason, unless such loss is directly caused by the Community's staff.
- C. Resident's Liability to Others.** The Resident accepts sole responsibility for any loss, injury or damage to others, to the Resident, the Room, the Establishment and the Community caused by or resulting from, in whole or in part, the Resident's acts or omissions, or those of the Resident's guests and Private Duty Assistant. The Resident agrees to indemnify, defend and hold harmless the Community, its Manager, and their employees and affiliates from and against all liability, loss, costs (including attorneys' fees) or claims pertaining to or arising from such loss, injury or damage.
- D. Admission Information.** The Resident represents that the information set forth on the Resident's application forms, health history and medical report, personal interview and emergency information records, as applicable, is true and correct. Any substantive inaccurate statement made by the Resident, including the Resident's age, finances, resources and health history may render this Agreement voidable and/or immediately terminated at the option of the Community. The Resident agrees to submit updated copies of the above forms upon request from the Community, when required by state regulations or when the Resident become aware of a change in the Resident's medical condition.
- E. Resident Rights.** The Resident has been advised and received a copy of Resident Rights. The Community shall not deprive Residents of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of South Carolina, or the Constitution of the United States solely on account of his or her status as a resident.

- F. **Complaint Resolution Procedure.** All Residents are encouraged to exercise their rights as a resident and citizen. Grievances, and recommendations for changes in policies and services, may be voiced to facility staff or outside representatives without interference, discrimination, reprisal, coercion, or restraint. Residents are encouraged to bring their concerns to the Executive Director. The following Parties are also available to assist the Resident with resolution of complaints:

Dominion Senior Living
3612 Henson Rd.
Knoxville, TN 37919

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

12. TERMINATION OF AGREEMENT.

- A. **Termination by Resident.** The Resident may terminate this Agreement for any reason by giving the Community at least fourteen(14) days prior written notice of termination. Where a physician certifies that it is proper for the Resident to relocate to a facility that provides greater care than provided at the Community, the Resident may terminate this Agreement by giving the Community written notice of termination, together with a copy of the physician's certification. The Resident will continue to be responsible for the Rent and any other fees payable under this Agreement until the notice period has expired or until the Resident has vacated the Room as described below, whichever is later.
- B. **Termination by the Landlord.** The Community may terminate this Agreement for any reason by giving thirty (30) days prior written notice to the Resident. The Resident will continue to be responsible for the Rent and any other fees payable under this Agreement until the thirty (30) day period has expired or until the Resident has vacated the Room as

described below, whichever is later.

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

13. AGREEMENT TO ARBITRATE.

The Parties desire to resolve disputes between them as expeditiously and economically as possible. Therefore, any claim or dispute (including those based on contract, negligence or statute) amongst the Parties, involving an amount in excess of \$15,000, arising out of or related to this Agreement, the

Establishment or the services/care provided to the Resident, shall be determined by arbitration in South Carolina, before a sole arbitrator. The arbitration shall be administered by JAMS (formerly Judicial Arbitration and Mediation Services) pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. The Parties agree that this Agreement evidences a transaction involving interstate commerce. The U. S. Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration provisions in this Agreement. The arbitrator may award economic and non-economic damages, but shall have no authority to award punitive damages to any Party. Each side shall bear an equal share of the arbitrator's fees and the costs of the arbitration.

14. WAIVER OF JURY TRIAL.

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

15. LIMITATIONS OF LIABILITY PROVISION.

The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement. Liability for any claim brought by a party of this Agreement against the other party, including but not limited to a claim by the Community for unpaid charges, or a claim by the Resident, Resident's Representative or by the Resident's estate, arising out of the care or treatment received by the Resident at the Establishment, including without limitation, claims for medical negligence or violation(s) of South Carolina Statutes, arising from simple or gross negligence, shall be limited as follows:

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

16. ADVANCE DIRECTIVES.

If the Resident has executed an advance directive or if the Resident executes such documents after the Resident moves into the Establishment, it is the Resident's responsibility to inform the Community's staff and supply a copy to the Community. (The term "advance directive" includes health care powers of attorney, living wills, or other documents that describe the amount or type of health care that the Resident would want to receive at a time when the Resident can no longer communicate those decisions directly to a physician or other health care professional.) If the Resident provides a copy of an advance directive to the Community, the Community will endeavor to provide it to health care professionals who are called to assist the Resident in the event of an emergency or otherwise. The Community does not guarantee that the Resident's advance directive will be given to such health care professionals nor does it guarantee that such health care professionals will abide by its terms. It is also the Resident's responsibility to inform the Community if the Resident revokes or changes the Resident's advance directive.

17. FINANCIALLY RESPONSIBLE PARTY.

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

18. RESIDENT'S REPRESENTATIVE.

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

19. OWNERSHIP and NO RELIGIOUS AFFILIATION.

The Establishment is owned by Dominion Anderson, LLC with its principal place of business located at 3461 N. Hwy 81, Anderson SC 29621. The Establishment is not affiliated with any religious organization.

20. MISCELLANEOUS.

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

Nina Edmondson Email: - NinaEdmondson@Charter.net
5006 King Drive
Anderson, SC 29621 Phone Cell - 864-356-0217

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

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

General Provisions

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

receiving one-on-one staff supervision or assistance, the Resident's requests for non-emergency staff assistance will often *not* be responded to immediately. If the Resident desires quicker response time, the Resident and the Resident's Representative understand that the Resident will need to hire a private helper/companion. If the Resident desires quicker response time and the Resident is not willing to pay for a private helper/companion, then the Resident should consider a different facility.

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

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

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

- i. The Resident may choose not to request staff supervision or assistance before attempting to perform an activity of daily living such as walking, dressing, transferring, bathing, etc.
- ii. The Resident may forget to request staff supervision or assistance before attempting to perform an activity of daily living such as walking, dressing, transferring, bathing, etc.
- iii. The Resident may request staff supervision or assistance but then decide to perform an activity of daily living before the staff member has been able to reasonably respond to the Resident's request.
- iv. The Resident may choose to exercise the Resident's right to refuse medications or refuse to follow the Resident's physician's advice.

- v. The Resident may refuse to comply with staff's recommendation to use a cane, walker, wheelchair, or other safety precautions.
 - vi. The Resident may exercise the Resident's right to refuse therapy.
 - vii. The Resident may exercise the Resident's right to refuse to have a private helper/companion.
- O. Falls.** Generally, as individuals age, they begin to experience an increase in falls, often due to decreased eyesight, weaker muscles, slower response time, shuffling gait and/or side effects of medications. The Resident and the Resident's Representative understand that the Community cannot guarantee that the Resident will not experience a fall, or an injury from a fall, at the Establishment.
- P. Role of the Resident's Physician.** The Resident and the Resident's Representative understand that *only* the Resident's physician can do the following: (1) prescribe any medications or treatments for the Resident; (2) diagnose any medical condition that the Resident may have; (3) order any lab work, therapy or limitations on the Resident's activities that the physician deems appropriate and (4) determine if any follow-up action is necessary based on the results of the Resident's lab work. The Community's staff cannot prescribe medications, nor can they make a medical diagnosis or order lab work, physical, speech or occupational therapy, etc.

21. Alzheimer's Disclosure act

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

22. OPPORTUNITY TO READ AGREEMENT.

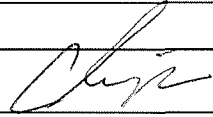
The Resident acknowledges that he or she was given the opportunity to read this Agreement before signing it. The Resident acknowledges that if he or she was unable to read the Agreement, the Community took special steps to assure communication of its contents to the Resident.

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

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

Community:

DOMINION Anderson, LLC
dba DOMINION SENIOR LIVING OF

By: 

Name: Chris Pepper

Title: Executive Director

Resident:

By: _____

Name: _____

Financially Responsible Party:

X By: Nina Edmondson

X Name: NINA Edmondson

Resident's Representative:

X By: Nina Edmondson

X Name: Nina Edmondson



TAPESTRY MISSION AND PHILOSOPHY

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

1) PHILOSOPHY

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

2) ADMISSION AND SCREENING CRITERIA

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

Eligibility Criteria:

- Physician determination that admission to a secured unit is warranted.
- Diagnosis of Alzheimer's disease or related dementia.
- Requires 24 hour supervision and ADL care due to cognitive and/or physical impairment.
- Ability to ambulate, or be mobile non-ambulatory.
- Ability to bear weight and transfer independently or with assistance.
- Ability to communicate verbally or non-verbally to indicate needs and ability to respond to direction and cueing.
- Ability to participate in personal care and mealtimes, either independently or with assistance. Assistance may include such actions as cueing, reminders, and prompting.
- Incontinence, bladder and bowel, should be manageable. Unmanageable bowel incontinence will preclude admission.
- No Stage 2 or higher decubitus.

- Hospice residents may be admitted or be permitted to continue to reside if state regulations permit
- The following care needs must be met with an outside agency in order for a resident to be admitted:
 - Complicated wound care such as stage 1 or lower decubitus, new amputations, vascular or non-healing wound
 - Physical, Occupational, or Speech Therapy
 - Catheter care
 - Colostomy/Ileostomy care
 - Cutting of Diabetic toenails

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

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

3) TRANSFER / DISCHARGE CRITERIA AND PROCEDURES

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

- Resident develops an inappropriate diagnosis (such as treatable illness (or untreatable) or psychosis due to mental illness)
- Resident becomes non-ambulatory and cannot benefit from assistive devices such as walkers or manual/motorized wheelchairs that can be propelled independently.
- Resident's cognitive impairment progresses so that needs cannot be understood, either verbally or non-verbally.
- Resident is no longer able to benefit from the special programming and environment.
- Resident experiences unmanageable issues related to bowel or bladder incontinence.
- Resident develops a Stage 3 or higher decubitus.

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

4) STAFFING

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

5) PROGRAMMING AND ACTIVITIES

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

Examples of common Tapestry activities

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

6) COSTS AND SERVICES

The accommodations and services fee for residents residing in the Tapestry range in price from \$4800 per month. Rates vary depending upon the accommodations chosen, levels of care are inclusive. There is a New Resident Application/Assessment Fee in the amount of \$1,200.00 charged upon move-in. Additional fees apply for optional services provided by the Community or another third party, including but not limited to: private duty care, personal telephone service, beauty and barber services, personal and medical supplies, pharmacy supplies, medications, and other medical services or emergency transportation.

Dominion Tapestry Supplemental Services and other Ancillary Charges:

Guest Meals

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

TENA Incontinence Program

Light Tier 1	\$76.00
Moderate Tier 2	\$113.00
Heavy Tier 3	\$145.00

Other Supplies

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

Personal Transportation Service

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

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

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

Respite Fees

Daily (up to 8hrs)	\$175/Day
Weekly	\$1200/Week

7) SPECIALIZED STAFF TRAINING

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

8) ASSESSMENT PROCESS – PROVISION OF SERVICES AND ALTERING SERVICES

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

9) BEHAVIORAL HEALTH CARE NEEDS

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

10) PHYSICAL ENVIRONMENT

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

11) FAMILY INVOLVEMENT AND FAMILY SUPPORT PROGRAMS

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

12) OTHER SERVICE PROVIDED

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

(Exhibit A)

Rate Sheet

Private Room or Companion Room Fee \$ 5,250⁰⁰

Establishment Service Fee \$ 2000.00 (one time charge)

Services Include:

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

(Exhibit B)

Supplemental Rate Sheet

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

Administrative/Community Living

Apartment Transfer Fee	\$500.00
Key Duplication	\$5.00/key
Cable Service	\$30.00 (Monthly)

Food Service

Guest Meal Tickets

Breakfast	\$6.00
Lunch	\$6.00
Dinner	\$6.00
Holiday/Theme Meal	\$12.00
Room Service	Not provided

Housekeeping/Maintenance

Additional Housekeeping/Maintenance	\$ 15.00/hr
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Transportation

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

(Exhibit C)

ADDENDUM TO THE ASSISTED LIVING ESTABLISHMENT AGREEMENT

TRANSPORTATION GUIDELINE

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

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

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

LIABILITY INSURANCE

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

DOMINION SENIOR LIVING — ROOM KEY RECEIPT AND ACKNOWLEDGEMENT

I Nina Edmandson / May 9th acknowledge receipt of room key for room 131 and understand that any duplicates made are at the expense and responsibility of the resident. If this room key is lost, a replacement will be provided at the resident's expense.

Signature

Date

Community Representative

Date

No Keys

DOMINION SENIOR LIVING — CONSENT FOR RELEASE TO MEDIA

I hereby give my full consent to Dominion Senior Living to record my participation in any programs or events associated with Dominion Senior Living. Further, I hereby transfer and assign Dominion Senior Living the exclusive right to use and to authorize others to use said images, video, and audio recordings for promotional and educational use or resource sale in the future. I understand that my image may be used, but my name or personal information will never be shared publicly without additional, separate consent.

Signature – Resident/Representative: *Dino Edmundson* Date: 8-12-21

Witness: *Chap* Date: 8/12/2021

Dominion Senior Living

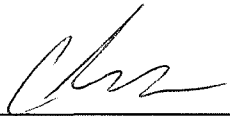
RESIDENT RIGHTS

Receipt and Acknowledgement

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

X 
Resident Signature

X 8-12-21
Date


Community Representative

8/12/21
Date

Dominion Senior Living

RECEIPT AND ACKNOWLEDGEMENT

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

X Nina Edmondson
Resident Signature

X 8-12-21
Date

Chris
Community Representative

8/12/21
Date

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
C.A. No.: 2024-CP-04-01069

Mary Gray, by and through her Conservator,
Tom Cox,

Plaintiff,

**PLAINTIFF'S MOTION TO CONFIRM
AWARD AND ENFORCE TERMS OF
OFFER OF JUDGMENT**

vs.

Dominion Anderson, LLC d/b/a Dominion
Senior Living of Anderson; Dominion Senior
Living, LLC; Dominion Development Group,
LLC; Dominion Group, LLC; and Dominion
Management Group, LLC,

Defendants.

TO: TRIP LEHN, ATTORNEY FOR THE ABOVE-NAMED DEFENDANTS:

Plaintiff Mary Gray, by and through her appointed Conservator, Tom Cox ("Plaintiff" or "Gray"), submits this Motion and Memorandum of Law (a) to confirm the Arbitration Award and enter judgment, and (b) to enforce the statutory interest and costs consequences of Plaintiff's Offer of Judgment. In accordance with the Agreement to Arbitrate, Plaintiff files the exhibits to this Motion under seal per SCRCP 41.1

Plaintiff asks this Court to seal the exhibits to this Motion, and intend to provide at the hearing pursuant to Rule 41.1 of the South Carolina Rules of Civil Procedure. Plaintiff's request is due to the confidential nature of Arbitration, as well as the Confidentiality Clause in the Agreement to Arbitrate as drafted and signed by the Parties. Neither of the Parties are public bodies or institutions and the case does not involve any matters of public or professional significance. The subject matter of this case is limited to the private interests of the Parties and allowing a public record of this matter may potentially harm the Parties by intruding on the confidential and private matters of the Parties. Furthermore, there are no feasible alternatives to protecting this confidential

information other than sealing it. The sealed documents include the Parties' Arbitration Agreement and the Decision by the Arbitration Panel.

I. PROCEDURAL HISTORY AND RELEVANT FACTS

This civil action was commenced in the Court of Common Pleas for Anderson County. On August 9, 2024, the Court entered a Consent Order referring the case to binding arbitration before Anne Culbreath, Esquire, and staying the litigation pending an arbitration award or settlement. The Consent Order provides that discovery, evidentiary matters, and motions would be heard and resolved by the arbitrator "according to the South Carolina Rules of Civil Procedure and South Carolina Rules of Evidence," and that "[a]ll remedies" otherwise available under applicable law remain available in the arbitration.

On August 6, 2024, Plaintiff served and filed a written Offer of Judgment in the amount of \$350,000.00 pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP. Defendants did not accept the Offer within the time permitted by statute and Rule 68, and the Offer was therefore deemed rejected.

The arbitration hearing was conducted January 6-8, 2026. The arbitrator issued a written award dated January 14, 2026, finding in favor of Plaintiff and awarding damages in the amount exceeding the Offer of Judgment (the "Arbitration Award").

II. THE COURT MUST CONFIRM THE AWARD AND ENTER JUDGMENT

South Carolina's Uniform Arbitration Act provides that, upon application of a party, "the court shall confirm an award" unless timely grounds are urged for vacating, modifying, or correcting the award. S.C. Code Ann. § 15-48-120. The Federal Arbitration Act similarly directs that a court "must" confirm an arbitration award where the parties have agreed that judgment may be entered upon the award, unless the award is vacated, modified, or corrected on statutory grounds. 9 U.S.C. § 9.

The South Carolina Supreme Court has emphasized that confirmation is a continuation of the arbitration process and is mandatory where no proper motion to vacate, modify, or correct the award has been filed. Henderson v. Summerville Ford-Mercury Inc., 405 S.C. 440, 747 S.E.2d 507 (2013). In Henderson, the Court rejected the argument that confirmation is improper merely because the award has been paid or because the confirmation request does not present a separate,

justiciable controversy; the Court explained that the statutory confirmation procedure is designed to permit entry of an enforceable judgment on the award. Plaintiff contends that the recordation of an arbitration award is a ministerial act that is a basic part of the arbitration process, not a new judicial proceeding that would require a different justiciable issue. Confirmation is mandatory unless the opposing party has established statutory grounds to vacate, modify, or correct the award.

Here, Plaintiff timely applies for confirmation. Defendants have not filed any motion to vacate, modify, or correct the Arbitration Award within the statutory time limits. Accordingly, the Court should confirm the Arbitration Award pursuant to S.C. Code Ann. § 15-48-120 and enter judgment on the award pursuant to S.C. Code Ann. §§ 15-48-150 and 15-48-160.

III. PLAINTIFF IS ENTITLED TO OFFER-OF-JUDGMENT INTEREST AND COSTS

S.C. Code Ann. § 15-35-400 authorize any party, more than twenty days before the actual trial date, to file with the clerk of court a written offer of judgment. If the offer is not accepted and the offeror later obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree (1) court costs from the date of the offer until entry of judgment and (2) if the offeror is a plaintiff, eight percent (8%) interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment. Rule 68, SCRPC; S.C. Code Ann. § 15-35-400(B).

These provisions apply here. Plaintiff filed and served her Offer of Judgment in this pending civil action well more than twenty days before the arbitration hearing. The arbitration proceeding was conducted pursuant to a court order staying the civil action and expressly applying the South Carolina Rules of Civil Procedure. After Defendants rejected Plaintiff's \$350,000.00 offer, Plaintiff obtained an Arbitration Award in excess of that amount which is more favorable than the Offer. Under the plain language of Rule 68 and § 15-35-400, Plaintiff is therefore entitled to the mandatory costs and interest consequences running from the date of the Offer to the entry of judgment on the confirmed award.

IV. INTEREST CALCULATION

Interest under Rule 68 is computed as simple interest at eight percent (8%) per year on the amount of the verdict or award, from the date of the Offer of Judgment to the entry of judgment.

As an example, from August 6, 2024 through January 29, 2026 (540 days), eight percent interest on the Arbitration Award equals the amount requested. Interest continues to accrue at a per diem rate of \$86.58 per day until the entry of judgment or payment.

V. CONCLUSION AND PRAYER FOR RELIEF

Plaintiffs ask this Court for Orders Confirming the Award decided upon by the Arbitrators; enforcing the terms outlined in Plaintiff's Offer of Judgment; and to seal the confidential information referenced above. For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order:

- Confirming the Arbitration Award and entering judgment for Plaintiff in the amount of the Award;
- Awarding Plaintiff eight percent (8%) interest on the Arbitration Award from the date of Plaintiff's Offer of Judgment to the entry of judgment;
- Awarding Plaintiff court costs recoverable under Rule 68 and S.C. Code Ann. § 15-35-400 from the date of the Offer until the entry of judgment;
- Granting such other and further relief as the Court deems just and proper.

POLIAKOFF & ASSOCIATES, P.A.

s/Gary W. Poliakoff

Gary Poliakoff, Esq., S.C. Bar No. 4488

atty@gpoliakoff.com

Ray Mullman, Esq., S.C. Bar No. 8662

rmullmanjr@gmail.com

Attorneys for Plaintiffs

215 Magnolia Street

Spartanburg, SC 29306

(864) 582-5472

January 29, 2026

Spartanburg, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

C.A. No.: 2024-CP-04-01069

Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson,

Plaintiff,

MEMORANDUM OF LAW

vs.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson; Dominion Senior Living, LLC; Dominion Development Group, LLC; Dominion Group, LLC; and Dominion Management Group, LLC,

Defendants.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ENFORCE
TERMS OF PLAINTIFF'S OFFER OF JUDGMENT**

Plaintiff Mary Gray, by and through her Attorney-In-Fact, Nina Edmondson ("Plaintiff" or "Gray"), submits this Memorandum of Law in support of her Motion (a) to confirm the Arbitration Award and enter judgment, and (b) to enforce the statutory interest and costs consequences of Plaintiff's Offer of Judgment.

I. PROCEDURAL HISTORY AND RELEVANT FACTS

This civil action was commenced in the Court of Common Pleas for Anderson County. On August 9, 2024, the Court entered a Consent Order referring the case to binding arbitration before Anne Culbreath, Esquire, and staying the litigation pending an arbitration award or settlement. The Consent Order provides that discovery, evidentiary matters, and motions would be heard and resolved by the arbitrator "according to the South Carolina Rules of Civil Procedure and South Carolina Rules of Evidence," and that "[a]ll remedies" otherwise available under applicable law remain available in the arbitration.

On August 6, 2024, Plaintiff served and filed a written Offer of Judgment in the amount of \$350,000.00 pursuant to S.C. Code Ann. §15-35-400 and Rule 68, SCRCF. Defendants did not accept the Offer within the time permitted by Rule 68, and the Offer was therefore deemed rejected.

The arbitration hearing was conducted January 6-8, 2026. The arbitrator issued a written award dated January 14, 2026, finding in favor of Plaintiff and awarding damages (See Exhibit 2 for the amount of the Arbitration Award).

II. THE COURT MUST CONFIRM THE AWARD AND ENTER JUDGMENT

South Carolina's Uniform Arbitration Act provides that, upon application of a party, "the court shall confirm an award" unless timely grounds are urged for vacating, modifying, or correcting the award. S.C. Code Ann. §15-48-120. The Federal Arbitration Act similarly directs that a court "must" confirm an arbitration award where the parties have agreed that judgment may be entered upon the award, unless the award is vacated, modified, or corrected on statutory grounds. 9 U.S.C. §9.

The South Carolina Supreme Court has emphasized that confirmation is a continuation of the arbitration process and is mandatory where no proper motion to vacate, modify, or correct the award has been filed. *Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 747 S.E.2d 507 (2013). In *Henderson*, the Court rejected the argument that confirmation is improper merely because the award has been paid or because the confirmation request does not present a separate, justiciable controversy; the Court explained that the statutory confirmation procedure is designed to permit entry of an enforceable judgment on the award.

Here, Plaintiff timely applies for confirmation. Defendants have not filed any motion to vacate, modify, or correct the Arbitration Award within the statutory time limits. Accordingly, the Court should confirm the Arbitration Award pursuant to S.C. Code Ann. § 15-48-120 and enter judgment on the award pursuant to S.C. Code Ann. §15-48-150 and §15-48-160.

III. PLAINTIFF IS ENTITLED TO OFFER-OF-JUDGMENT INTEREST AND COSTS

S.C. Code Ann. §15-35-400 authorizes any party more than twenty days before the actual trial date, to file with the clerk of court a written offer of judgment. If the offer is not accepted and the offeror later obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree (1) court costs from the date of the offer until entry of judgment and (2) if the offeror is a plaintiff, eight percent (8%) interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment. Rule 68, SCRCP; S.C. Code Ann. §15-35-400(B).

These provisions apply here. Plaintiff filed and served her Offer of Judgment in this pending civil action well more than twenty days before the arbitration hearing. The arbitration proceeding was conducted pursuant to a court order staying the civil action and expressly applying the South Carolina Rules of Civil Procedure. After Defendants rejected Plaintiff's \$350,000.00 offer, Plaintiff obtained an Arbitration Award in excess of said amount, which is more favorable than the Offer. Under the plain language of Rule 68 and § 15-35-400, Plaintiff is therefore entitled to the mandatory costs and interest consequences running from the date of the Offer to the entry of judgment on the confirmed award. (See Exhibit 2 for the amount of the award.)

IV. INTEREST CALCULATION

Interest under Rule 68 is computed as simple interest at eight percent (8%) per year on the amount of the verdict or award, from the date of the Offer of Judgment to the entry of judgment. Along with Exhibit 2, Plaintiff will provide a proposed calculation of interest on the Award (and is hereby providing a copy of the proposed calculation to the Defendants).

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order:

1. Confirming the Arbitration Award and entering judgment for Plaintiff in the amount of the Award (See Ex.2)
2. Awarding Plaintiff eight percent (8%) interest on the Arbitration Award from the date of Plaintiff's Offer of Judgment to the entry of judgment;
3. Awarding Plaintiff court costs recoverable under Rule 68 and S.C. Code Ann. § 15-35-400 from the date of the Offer until the entry of judgment;
4. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Gary W. Poliakoff

POLIAKOFF & ASSOCIATES, P.A.

Gary W. Poliakoff, Esq. (SC Bar No. 4488)

Ray Mullman, Jr., Esq. (SC Bar No. 8662)

215 Magnolia Street

Spartanburg, South Carolina 29306

(864) 582-5472

atty@gpoliakoff.com | rmullmanjr@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
C.A. No.: 2024-CP-04-01069

Mary Gray, by and through her Conservator,
Tom Cox,

Plaintiff,

**PLAINTIFF'S AMENDED
MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO ENFORCE TERMS OF
PLAINTIFF'S OFFER OF JUDGMENT**

vs.

Dominion Anderson, LLC d/b/a Dominion
Senior Living of Anderson; Dominion Senior
Living, LLC; Dominion Development Group,
LLC; Dominion Group, LLC; and Dominion
Management Group, LLC,

Defendants.

Plaintiff Mary Gray, by and through her appointed Conservator, Tom Cox ("Plaintiff" or "Gray"), submits this Amended Memorandum of Law in support of her Motion (a) to confirm the Arbitration Award and enter judgment, and (b) to enforce the statutory interest and costs consequences of Plaintiff's Offer of Judgment.

I. PROCEDURAL HISTORY AND RELEVANT FACTS

This civil action was commenced in the Court of Common Pleas for Anderson County. On August 9, 2024, the Court entered a Consent Order referring the case to binding arbitration before Anne Culbreath, Esquire, and staying the litigation pending an arbitration award or settlement. The Consent Order provides that discovery, evidentiary matters, and motions would be heard and resolved by the arbitrator "according to the South Carolina Rules of Civil Procedure and South Carolina Rules of Evidence," and that "[a]ll remedies" otherwise available under applicable law remain available in the arbitration.

On August 6, 2024, Plaintiff served and filed a written Offer of Judgment in the amount of \$350,000.00 pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP. Defendants did not accept the Offer within the time permitted by Rule 68, and the Offer was therefore deemed rejected.

The arbitration hearing was conducted January 6-8, 2026. The arbitrator issued a written award dated January 14, 2026, finding in favor of Plaintiff and awarding damages (See Exhibit 2 for the amount of the Arbitration Award).

II. THE COURT MUST CONFIRM THE AWARD AND ENTER JUDGMENT

South Carolina's Uniform Arbitration Act provides that, upon application of a party, "the court shall confirm an award" unless timely grounds are urged for vacating, modifying, or correcting the award. S.C. Code Ann. § 15-48-120. The Federal Arbitration Act similarly directs that a court "must" confirm an arbitration award where the parties have agreed that judgment may be entered upon the award, unless the award is vacated, modified, or corrected on statutory grounds. 9 U.S.C. § 9.

The South Carolina Supreme Court has emphasized that confirmation is a continuation of the arbitration process and is mandatory where no proper motion to vacate, modify, or correct the award has been filed. *Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 747 S.E.2d 507 (2013). In *Henderson*, the Court rejected the argument that confirmation is improper merely because the award has been paid or because the confirmation request does not present a separate, justiciable controversy; the Court explained that the statutory confirmation procedure is designed to permit entry of an enforceable judgment on the award.

Here, Plaintiff timely applies for confirmation. Defendants have not filed any motion to vacate, modify, or correct the Arbitration Award within the statutory time limits. Accordingly, the Court should confirm the Arbitration Award pursuant to S.C. Code Ann. § 15-48-120 and enter judgment on the award pursuant to S.C. Code Ann. § 15-48-150 and § 15-48-160.

III. PLAINTIFF IS ENTITLED TO OFFER-OF-JUDGMENT INTEREST AND COSTS

S.C. Code Ann. § 15-35-400 authorizes any party more than twenty days before the actual trial date, to file with the clerk of court a written offer of judgment. If the offer is not accepted and the offeror later obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree (1) court costs from the date of the offer until entry of

judgment and (2) if the offeror is a plaintiff, eight percent (8%) interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment. Rule 68, SCRCP; S.C. Code Ann. § 15-35-400(B).

These provisions apply here. Plaintiff filed and served her Offer of Judgment in this pending civil action well more than twenty days before the arbitration hearing. The arbitration proceeding was conducted pursuant to a court order staying the civil action and expressly applying the South Carolina Rules of Civil Procedure. After Defendants rejected Plaintiff's \$350,000.00 offer, Plaintiff obtained an Arbitration Award in excess of said amount, which is more favorable than the Offer. Under the plain language of Rule 68 and § 15-35-400, Plaintiff is therefore entitled to the mandatory costs and interest consequences running from the date of the Offer to the entry of judgment on the confirmed award. (See Exhibit 2 for the amount of the award.)

IV. INTEREST CALCULATION

Interest under Rule 68 is computed as simple interest at eight percent (8%) per year on the amount of the verdict or award, from the date of the Offer of Judgment to the entry of judgment. Along with Exhibit 2, Plaintiff will provide a proposed calculation of interest on the Award (and is hereby providing a copy of the proposed calculation to the Defendants).

V. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order:

1. Confirming the Arbitration Award and entering judgment for Plaintiff in the amount of the Award (See Ex.2)
2. Awarding Plaintiff eight percent (8%) interest on the Arbitration Award from the date of Plaintiff's Offer of Judgment to the entry of judgment;
3. Awarding Plaintiff court costs recoverable under Rule 68 and S.C. Code Ann. § 15-35-400 from the date of the Offer until the entry of judgment;
4. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,
s/ Gary W. Poliakoff

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Gary W. Poliakoff, Esq. (SC Bar No. 4488)

Ray Mullman, Jr., Esq. (SC Bar No. 8662)

215 Magnolia Street

Spartanburg, South Carolina 29306

(864) 582-5472

atty@gpoliakoff.com | rmullmanjr@gmail.com

February 9, 2026

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Mary Gray, by and through her Attorney-In-Fact, Thomas W. Cox,

Plaintiff,

v.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson, and Dominion Senior Living, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2024-CP-04-01069

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
CONFIRM AWARD AND ENFORCE TERMS OF OFFER OF JUDGMENT**

Defendants Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson and Dominion Senior Living, LLC hereby respond to Plaintiff's Motion to Confirm Award and Enforce Terms of Offer of Judgment. Defendants do not oppose Plaintiff's request to confirm the January 14, 2026 award by the arbitrator without modification (a copy of which will be presented to the Court at the upcoming hearing), but Plaintiff's motion to enforce the terms of the offer of judgment must be denied because South Carolina's offer of judgment statute and court rule are applicable only to civil actions and not to arbitration proceedings.

I. PROCEDURAL HISTORY

Plaintiff filed a Summons and Complaint in the Court of Common Pleas for Anderson County on May 21, 2024 (Civil Action No. 2024-CP-04-01069). By agreement of all parties, the case was subsequently referred to binding arbitration, pursuant to the Consent Order To Refer Case To Binding Arbitration and To Stay Litigation, on August 9, 2024 (Exhibit 1). The arbitration hearing

was conducted January 6-8, 2026. The arbitrator issued an award in favor of Plaintiff on January 14, 2026.

II. ARGUMENT

A. Defendants do not oppose Plaintiff's motion to *confirm* the arbitrator's award as it stands without modification.

Plaintiff relies on South Carolina's Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 *et seq.* ("UAA"), in asserting that this Court must "confirm" the arbitration award, citing section 15-48-120 ("Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in SECTIONS 15-48-130 and 15-48-140."). *See* Mot., p. 2. Plaintiff's reliance on South Carolina's UAA is misplaced, however. The UAA provides, "This chapter [i.e., the entire UAA] however shall *not* apply to: ... (4) Any claim *arising out of personal injury*, based on contract or tort..." S.C. Code Ann. § 15-48-10(b) (emphasis added). Plaintiff's claim arises out of a personal injury; therefore, the UAA does *not* apply to the parties' arbitration agreement or to the arbitration conducted in this matter.

Instead, the applicable statutory law is the **Federal Arbitration Act**, 9 U.S.C. §§ 1-16 ("FAA"). Here, the parties' "Agreement to Arbitrate" was valid and enforceable because Mary Gray's Resident Admission Agreement (containing the arbitration agreement) implicated interstate "commerce." *See* 9 U.S.C. § 2; Resident Admission Agreement (a sealed exhibit to Plaintiff's Motion). Plaintiff's state court civil action was appropriately stayed upon the consent motion of the parties in accordance with 9 U.S.C. § 3. As to confirmation of awards, the FAA provides, in pertinent part:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, *and shall specify the court*, then at any time within one year after the award is made any party to the arbitration may apply

to *the court so specified* for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If *no court is specified in the agreement* of the parties, then such application may be made to the United States court in and for the district within which such award was made...

9 U.S.C. § 6 (emphasis added).

The arbitration agreement here provided, “Judgment on the Award may be entered *in any court having jurisdiction.*” See Resident Admission Agreement, at ¶ 13 (emphasis added). Defendants concede the jurisdiction of this Court to confirm the arbitration award, pursuant to the FAA, even though they regard Plaintiff’s motion to confirm the award as unnecessary, since Defendants, through their undersigned counsel, have affirmed their acceptance of the arbitrator’s award and their intention to pay the award. Indeed, Defendants have already paid to Plaintiff’s counsel more than $\frac{3}{4}$ of the sum awarded by the arbitrator and are making arrangements for imminent payment of the remainder of the award even prior to resolution of the instant dispute concerning the applicability of the Plaintiff’s offer of judgment.

It is vital to understand that to “confirm” an arbitration award is not to “modify” or “correct” the award. Plaintiff did not denominate her motion as one to modify or correct the arbitrator’s award but is effectively asking the Court to do so, without justification. Plaintiff never asked the arbitrator to award pre-award interest or costs pursuant to the terms of an offer of judgment. (And any such request would have been legally in error.)

Federal courts characterize a court proceeding to confirm an arbitration award as ministerial rather than adjudicative. The “confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245 (3d Cir. 2020) (citing *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)). The court in confirming an arbitration award does

not adjudicate the underlying dispute but only gives legal effect to the binding resolution the parties obtained through arbitration by entering a judgment or decree making the arbitrator's award enforceable.

The FAA, like South Carolina's UAA, gives courts no authority to enforce the terms of an offer of judgment in a proceeding to confirm an arbitrator's award. In a case looking at whether the court could award attorney's fees after an arbitration proceeding, the Court held "there is nothing in the Federal Arbitration Act itself that would authorize a district court to go beyond confirming an arbitrators' award and independently award additional attorneys' fees." *Menke v. Monchecourt*, 17 F.3d 1007, 1009 (7th Cir. 1994). The Court explained that Section 9 of the Federal Arbitration Act "is intended to be a summary proceeding that merely makes the arbitrators' award a final, enforceable judgment of the court." *Id* (citing *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1986)). After careful research, Defendants have found no reported federal case in which the terms of an offer of judgment were enforced in a motion to confirm an arbitration award pursuant to 9 U.S.C. § 9 (confirmation) or to modify an arbitration award pursuant to 9 U.S.C. § 11 (modification/correction), and Plaintiff has cited no binding or persuasive authority indicating that *any court* has done so.

The arbitration confirmation proceeding is only ministerial, serving to render the arbitrators' award legally enforceable by way of judgment or decree. The Court's authority is appropriately limited because the parties contractually agreed to resolve the conflict in a private arbitration forum as opposed to a court case. Defendants accept the arbitrator's award and ask this Court to confirm the award as it stands, without modification, in accordance with the applicable law, 9 U.S.C. § 9.

B. Plaintiff's motion to enforce the terms of the offer of judgment must be denied because South Carolina's offer of judgment statute and court rule apply only to civil actions and do not apply to arbitration.

Plaintiff's offer of judgment simply is inapplicable to this arbitration because an arbitration proceeding is *not a civil action*. S.C. Code 15-35-400 and South Carolina Rule of Civil Procedure 68 govern offers of judgment in South Carolina. Rule 68 states that any "party in *a civil action*...may file...a written offer of judgment..." SCRCP 68 (emphasis added). S.C. Code Ann. Section 15-35-400 provides, "...after commencement of *any civil action*...any party may...file with the clerk of the court a written offer of judgment..." S.C. Code Ann. § 15-35-400 (emphasis added). By the plain terms of both the statute and the court rule, offers of judgment apply only to *civil actions*.

Arbitration is fundamentally distinct from a civil action. "[A]rbitration is not litigation carried on by other means. It is intended to be, and it is, an alternative means for resolving disputes without the cost and delay of a lawsuit." *White v. Preferred Rsch, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). The South Carolina Court of Appeals reaffirmed the principle in *Lauro v. Visnapuu*: "Arbitration is not litigation carried on by other means, but is an alternative means for resolving disputes without the cost and delay of a lawsuit." 351 S.C. 507, 516, 570 S.E.2d 551, 556 (Ct. App. 2002). The South Carolina offer of judgment statute and court rule make no reference to arbitration. Rather, they are self-limited to "civil actions."

Federal courts consistently distinguish between arbitration proceedings and civil actions, treating arbitration as an alternative dispute resolution mechanism that operates outside of the court system. In *Morrison v. Colorado Permanente Medical Group, P.C.*, the court held, "Arbitration is an alternative dispute resolution mechanism designed to avoid the need for filing a civil action or to resolve a civil action. Moreover, cases and statutes discuss consistently the terms 'arbitration'

and ‘civil action’ in a manner that leaves no doubt that arbitration is a creature separate from, and not just a form of civil action.” 983 F. Supp. 937, 944 (D. Colo. 1997). Similarly, state courts have held consistently that arbitration is not a civil action. *See, e.g., Fishman v. Middlesex Mut. Assur. Co.*, 4 Conn. App. 339, 494 A.2d 606 (1985) (“Arbitration proceedings have generally not been viewed as encompassed within the concept of civil actions.”).

Plaintiff contends that she is entitled to pre-judgment or pre-award interest and costs according to the offer of judgment rule because the consent order to refer the case to arbitration provided that she was entitled to “all remedies” available under applicable law. *See* Plaintiff’s Memo in Supp. of Mot., p. 1. The Consent Order actually provided:

All remedies that would otherwise be available to Plaintiff under applicable federal, state and local laws remain available in the arbitration. The damages which are recoverable in the arbitration shall be those damages to which Plaintiff would otherwise be entitled according to the laws of the State of South Carolina. Any contractual limitations regarding the amount or type of damages that are recoverable shall not be enforced in the arbitration.

Consent Order, at ¶ 4.

Defendants contend, however, that pre-judgment interest and costs which may be assessed pursuant to South Carolina’s offer of judgment rule in a civil action (*but not in an arbitration*) do not constitute “damages” or “remedies” available to a personal injury plaintiff under South Carolina tort law. (Plaintiff brought only a claim under South Carolina tort law, so damages under federal law or local laws were not applicable and not at issue.) Under the South Carolina law of damages, three distinct categories of damages may be available to a claimant in a civil action for personal injury: (1) economic damages, (2) noneconomic damages, and (3) punitive damages. Here, the arbitration agreement precluded the resident from recovering any punitive damages. *See* Resident Admission Agreement, at ¶ 13 (“The arbitrator may award economic and non-economic damages but shall have no authority to award punitive damages to any Party.”) The terms of the

parties' Consent Order, however, altered that prohibition on punitive damages and allowed for the potential recovery of economic, noneconomic, and punitive damages (upon a proper showing). The arbitrator did not award any punitive damages. The pre-judgment interest and costs recoverable pursuant to South Carolina's offer of judgment rule do not fall within the definition of damages or within the categories of economic, noneconomic, or punitive damages. Rather, the rule incentivizes parties in litigation in the South Carolina courts to resolve matters early, before a trial becomes necessary, to expedite resolution and conserve judicial resources. Contrary to Plaintiff's assertion, nothing in the Consent Order To Refer Case To Binding Arbitration and To Stay Litigation allows Plaintiff to recover pre-award or pre-judgment interest and costs by virtue of her offer of judgment. As Defendants have shown conclusively, South Carolina's offer of judgment statute and court rule apply only to civil actions, not to arbitrations. Accordingly, Plaintiff's motion to enforce the terms of the offer of judgment must be denied.

III. CONCLUSION

For the foregoing reasons, and any that may be presented in oral argument at the hearing on this Motion and Response, Defendants respectfully ask the Court to only confirm the arbitrator's award, without modification, and to deny Plaintiff's motion to enforce the terms of the offer of judgment.

s/ Collie W. "Trip" Lehn, Jr.
Collie W. "Trip" Lehn, Jr.
Garrett W. Farrel
Huff, Powell & Bailey, LLC
15 S. Main St., Suite 602
Greenville, SC 29601
(864)400-5949
tlehn@huffpowellbailey.com
gfarrel@huffpowellbailey.com

*Attorneys for Dominion Anderson, LLC d/b/a
Dominion Senior Living of Anderson and
Dominion Senior Living, LLC*

February 9, 2026

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
C.A. No.: 2024-CP-04-01069

Mary Gray, by and through her Conservator,
Tom Cox,

Plaintiff,

**PLAINTIFF’S REPLY MEMORANDUM
IN SUPPORT OF MOTION TO
ENFORCE OFFER-OF-JUDGMENT
INTEREST AND COSTS**

vs.

Dominion Anderson, LLC d/b/a Dominion
Senior Living of Anderson; Dominion Senior
Living, LLC; Dominion Development Group,
LLC; Dominion Group, LLC; and Dominion
Management Group, LLC,

Defendants.

Plaintiff Mary Gray submits this Reply Memorandum in further support of her Motion to enforce the mandatory interest and cost consequences triggered by Plaintiff’s filed Offer of Judgment under S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP. Defendants do not oppose confirmation of the Award. The facts do not appear to be in dispute. Their only dispute is legal: they contend an arbitration “is not a civil action,” so an offer of judgment can never apply once a case is referred to arbitration. That argument fails for three independent reasons. First, § 15-35-400 and Rule 68 are triggered “after commencement of any civil action” and require filing with the clerk in the court record - exactly what occurred here. Second, the statute and rule expressly contemplate the post-determination event being an “award,” not only a “verdict,” and they authorize a “proceeding after the trial to fix costs, interests, attorney’s fees, and other recoverable monies.” Third, the parties’ Consent Order made South Carolina procedure and law controlling for this arbitration and preserved “all remedies” available under applicable law including the offer of judgment.

I. RELEVANT PROCEDURAL HISTORY

1. Plaintiff filed this civil action in the Court of Common Pleas for Anderson County on **May 21, 2024**. (Defs.' Resp. at 1.)
2. On **August 6, 2024**, Plaintiff served and filed a written Offer of Judgment in the amount of \$350,000.00 pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCPP. Defendants did not accept the Offer within the time permitted by statute and Rule 68, and the Offer was therefore deemed rejected.
3. On **August 9, 2024**, the Court entered a Consent Order referring "the matters raised in Plaintiff's Complaint" to binding arbitration and staying the civil action pending an arbitration award or settlement. (Consent Order ¶¶ 1, 3.)
4. The Consent Order further provides: "All remedies that would otherwise be available to Plaintiff under applicable federal, state and local laws remain available in the arbitration." (Consent Order ¶ 4.)
5. The arbitration hearing occurred **January 6-8, 2026**, and the Arbitrator issued a written Award dated **January 14, 2026**, awarding Plaintiffs more than the offer of judgment.

II. DEFENDANTS' "ARBITRATION IS NOT A CIVIL ACTION" ARGUMENT MISREADS THE TEXT OF § 15-35-400 AND RULE 68

Defendants' objection rests on a framing sleight of hand. The statute and rule do not require that arbitration itself be labeled a "civil action." They require that an offer be made "after commencement of any civil action" and be filed with the clerk in the court record. § 15-35-400(A); Rule 68(a), SCRCPP. Once that predicate is satisfied, the statute directs what happens if the rejecting party later faces a "*verdict or determination*" at least as favorable to the offeror - including eight percent (8%) interest computed on the "*verdict or award*." § 15-35-400(B); Rule 68(b), SCRCPP.

The General Assembly's deliberate use of "determination" and "award" defeats Defendants' attempt to cabin the statute to jury verdicts. A reading that makes "award" surplusage should be rejected. See, e.g., Garrison v. Target Corp., 440 S.C. 618, 880 S.E.2d 386 (2022) (applying plain-language principles to post-trial rulings; quoting Sonoco Prods. Co. v. S.C. Dep't of Revenue, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) (courts must give effect to the legislature's words)). The statute is not ambiguous. The legislative intent and public policy also supports enforcement.

The offer-of-judgment statute was enacted as part of South Carolina's Tort Reform Act of 2005. See 2005-2006 S.C. H. 83 (Act title and text adding § 15-35-400). Its evident purpose is to promote early, fair settlement by imposing predictable consequences when a party rejects a

reasonable offer and the offeror later obtains a more favorable result. Excluding court-referred arbitration from the statute would create an irrational loophole: a defendant could avoid § 15-35-400 consequences simply by compelling arbitration in a pending civil action. Nothing in the statutory text supports that carve-out, and the legislature’s inclusion of “award” indicates the opposite.

Section 15-35-400(A) states that, if the offer is not accepted, “evidence thereof is not to be admissible except in a proceeding after the trial to fix costs, interests, attorney’s fees, and other recoverable monies,” and it directs that “any and all offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case.” § 15-35-400(A). That structure confirms two points: (1) offers of judgment are designed to be decided after the merits are resolved, and (2) the relief is not a change to the merits determination - it is a statutory consequence fixed in a post-determination proceeding in the civil action.

Accordingly, Plaintiff is not asking the Court to “modify” the Arbitration Award. Plaintiff asks the Court to apply a separate, mandatory statutory consequence triggered by Defendants’ rejection of a filed offer and Plaintiff’s later receipt of an “award” more favorable than the offer. § 15-35-400(B); Rule 68(b), SCRPC. Courts routinely enter judgments that include statutory costs and interest in addition to the adjudicated principal amount; doing so does not alter the adjudicator’s merits decision.

III. SOUTH CAROLINA PROCEDURAL AND SUBSTANTIVE LAW CONTROLLED

Defendants rely on White v. Preferred Research and Lauro v. Visnapuu for the unremarkable proposition that arbitration can be an alternative to litigation. (Defs.’ Resp. at 5.) Those cases do not address the situation here: a filed civil action stayed and referred to arbitration by court order, with the court retaining jurisdiction and the parties agreeing that South Carolina procedure and law would govern. The Consent Order expressly directs that discovery and evidentiary disputes are to be resolved under the South Carolina Rules of Civil Procedure and South Carolina Rules of Evidence, and it preserves “all remedies” available under applicable law. (Consent Order ¶¶ 2-4.)

Consistent with the Consent Order, the Arbitrator confirmed: “Per the Consent Order, the South Carolina Rules of Civil Procedure, the South Carolina Rules of Evidence, and the South Carolina statutory and common law are the controlling laws for this proceeding.” (Arbitrator’s

Award at 1.) Defendants cannot credibly contend that South Carolina civil procedure governed this matter for discovery, evidentiary rulings, and motions, yet the offer-of-judgment rule and statute (both embedded in South Carolina procedure and expressly keyed to an “award”) are uniquely excluded.

IV. DEFENDANTS’ “NOT DAMAGES OR REMEDIES” DISTINCTION FAILS

Defendants argue offer-of-judgment interest and post-offer costs are not “damages” and therefore were not preserved by the Consent Order. (Defs.’ Resp. at 6-7.) That argument misreads both the Consent Order and § 15-35-400. The Consent Order preserves “all remedies” available under applicable law and then separately addresses “damages.” (Consent Order ¶ 4.) Section 15-35-400(A) expressly characterizes the post-offer consequences as “costs, interests, attorney’s fees, and other recoverable monies” fixed in a post-determination proceeding. Whether labeled damages or not, they are recoverable relief the statute mandates when its conditions are met.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court (1) confirm the Arbitrator’s Award and enter judgment for Plaintiff in the principal sum of the Award, and (2) enforce the mandatory consequences of Plaintiff’s rejected Offer of Judgment under S.C. Code Ann. § 15-35-400 and Rule 68, SCRCPP, including post-offer court costs and eight percent (8%) interest computed on the amount of the Award from the date of the offer to entry of judgment.

Respectfully submitted,

s/Gary W. Poliakoff
 POLIAKOFF & ASSOCIATES, P.A.
 Gary W. Poliakoff, Esq. (SC Bar No. 4488)
 atty@gpoliakoff.com
 Ray Mullman, Jr., Esq. (SC Bar No. 8662)
 RMullmanjr@gmail.com
 125 Magnolia Street
 P.O. Box 1571
 Spartanburg, South Carolina 29304
 (864) 582-5472

February 10, 2026

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Apr 20 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Civil Action No. 2024-CP-04-01069

Mary Gray, by and through
her Attorney-In-Fact,
Thomas W. Cox, Appellant,

v.

Dominion Anderson, LLC d/b/a
Dominion Senior Living of
Anderson, and Dominion
Senior Living LLC, Respondents.

NOTICE OF APPEAL

Appellant Mary Gray, by and through, her Attorney-In-Fact, Thomas W. Cox, appeals from the Form 4 order of the Honorable R. Scott Sprouse issued on February 13, 2026, denying Plaintiff's Motion to Enforce Terms of Offer of Judgment. The Form 4 order called for the later creation of a formal order which was entered on March 25, 2026. This Notice covers both orders.

Respectfully submitted,

/s/ Jordan C. Calloway

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

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

Attorneys for Appellant

Other attorneys of record:

Collie W. “Trip” Lehn, Jr.
Garrett W. Farrel
Huff, Powell & Bailey, LLC
15 S. Main St., Suite 602
Greenville, SC 29601
(864) 400-5949
tlehn@huffpowellbailey.com
gfarrel@huffpowellbailey.com

Attorneys for Respondents

April 20, 2026
Rock Hill, SC