

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

---

Eugene C. Griffith, Jr., Circuit Court Judge

---

Civil Action No.: 2012-CP-40-7874  
Appellate Case No.: 2014-001625

---

Christopher Carlton as the Personal Representative of the Estate of Helen Tucker Carlton;  
Christopher Carlton; John Thomas Carlton; and Christopher Carlton as the Personal  
Representative of the Estate of Kimberly Carlton Baker,.....Respondents.

v.

Greenlawn Funeral Home .....Appellant.

---

RECORD ON APPEAL

---

Drew Hamilton Butler, Esquire  
Caleb Martin Riser, Esquire  
Sheila Marlouvon Bias, Esquire  
RICHARDSON PLOWDEN & ROBINSON, P.A.  
1900 Barnwell Street  
Columbia, South Carolina 29202  
ATTORNEYS FOR APPELLANT GREENLAWN  
FUNERAL HOME

C. Cantzon Foster, II  
Bryan D. Caskey  
FOSTER LAW OFFICE, LLC  
3100 Devine Street  
Columbia, South Carolina 29205  
ATTORNEYS FOR RESPONDENTS

**RECEIVED**

NOV 21 2014

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

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Eugene C. Griffith, Jr., Circuit Court Judge

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Greenlawn Funeral Home.....Appellant.

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ATTORNEYS FOR RESPONDENTS

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Christopher Carlton as Personal Representative of the Estate of Helen Tucker Carlton, Christopher Carlton John Thomas Carlton and Christopher Carlton as the Personal Representative of the Estate of Kimberly Carlton Baker,

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-40-7874

ORDER

2014 JUL -3 PM 1:20  
JEANETTE H. MOORE  
C.C.P. & C.S.  
RICHLAND COUNTY  
FILED

This matter is before the Court on Defendant Greenlawn Funeral Home's ("Greenlawn") Motion for Reconsideration pursuant to Rules 52 and 59(e), SCRPC, for reconsideration of this Court's March 17, 2014 Order denying Greenlawn's Motion to Compel Arbitration. Greenlawn argued this Court erred in (1) finding the Federal Arbitration Act ("FAA") did not apply to the contracts between the parties; (2) that the 2006 Contract between Helen Carlton and Greenlawn was not subject to arbitration; and (3) that the 2011 contract between Christopher Carlton and Greenlawn was not subject to arbitration. After careful consideration and review of Greenlawn's Memorandum in Support of Reconsideration, as well as the other pleadings and Affidavits associated with the Motion to Dismiss<sup>1</sup>, this Court denies Greenlawn's Motion for Reconsideration.

<sup>1</sup> At the hearing, this Court specifically questioned counsel for Defendant as to the implications of interstate commerce and counsel for Defendants made reference to the possibility that the goods and services provided by the contracts at issue may be made out of state. Counsel for Defendant stated that such information would need to be verified by his client. Subsequent to the hearing, Defendants submitted a supplemental Affidavit of Tanya Brazier who stated that some of the products provided pursuant to the contracts were produced out of state and shipped to South Carolina. The Affidavit was considered, at this Court's discretion, and was not found persuasive with respect to Defendant's Motion for Reconsideration.

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SCANNED

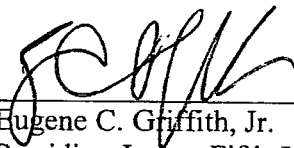
As stated in the March 17, 2014, Order, this Court finds the arbitration clauses in the 2006 and 2011 contracts do not comply with Uniform Arbitration Act (UAA), codified at S.C. Code Ann. § 15-48-10 *et seq.* S.C. Code Ann. § 15-48-10 requires notices of arbitration to be typed, in underlined capital letters, and on the first page of the contract. The 2006 contracts and 2011 contracts do not fully comply with the above requirements.

With regard to the Federal Arbitration Act's applicability to this matter, it remains this Court's ruling that the Federal Arbitration Act does not preempt the UAA and arbitration may not be compelled in this matter. Specifically, this Court is not satisfied that the 2006 and 2011 contracts implicated interstate commerce. It is implausible to this Court that a contract for the burial of South Carolina residents in South Carolina can implicate interstate commerce. Accordingly, this Court's original Order of March 17, 2014, requires no reconsideration and stands.

Defendant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

June <sup>24</sup>~~21~~, 2014  
Amber, South Carolina

  
\_\_\_\_\_  
Eugene C. Griffith, Jr.  
Presiding Judge, Fifth Judicial Circuit

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007874

Christopher Carlton

Greenlawn Funeral Home

John Thomas Carlton

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**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 \_\_\_\_\_
- 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:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 9 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Cantzon Foster II

Drew Hamilton Butler

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Christopher Carlton as the Personal  
Representative of the Estate of Helen  
Tucker Carlton; Christopher Carlton;  
John Thomas Carlton; and Christopher  
Carlton as the Personal Representative of  
the Estate of Kimberly Carlton Baker,

C/A No.: 12-CP-40-7874

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendant.

RICHLAND COUNTY  
FILED  
2014 APR -1 PM 12:27  
JEANETTE H. FIBRIDE  
C.C.P. & G.S.

**ORDER DENYING THE DEFENDANT'S MOTION TO DISMISS, OR IN THE  
ALTERNATIVE COMPEL ARBITRATION**

A hearing was held before this Court at 9:30AM on January 22, 2014, at the Richland County Courthouse on the Defendant's Motion to Dismiss, or in the Alternative, to Compel Arbitration. Present at the hearing were Plaintiff's counsel, C. Cantzon Foster, II and Bryan D. Caskey; and Defendant's counsel Drew Hamilton Butler.

The Defendant moved to dismiss, or alternatively, compel arbitration on the ground that the contracts at issue in this matter were subject to South Carolina Uniform Arbitration Act ("UAA") and therefore, arbitration should be compelled, and that this Court had no subject matter jurisdiction. The Defendant concedes that the Federal Arbitration Act ("FAA") does not apply to either of these contracts, as the Defendant conceded that no interstate commerce was implicated in either contract and all parties were South Carolina residents or had South Carolina as its principal place of business. Accordingly, the Court's analysis was confined to whether the contracts at issue complied with the specific statutory requirements of the UAA.

*SLA* 1/3

The Plaintiff's opposed the Defendant's motion on the grounds that neither of the contracts complied with the specific statutory requirements of the UAA.

After reviewing the pleadings of record, the memorandums of law provided by counsel, the exhibits attached thereto, and hearing argument of counsel, the Court makes the following conclusions of law:

#### CONCLUSIONS OF LAW

1. The Court finds that the FAA does not apply to either of these two contracts at issue in this case, as the Court finds no facts to implicate federal law through interstate commerce. Additionally, the Court finds that the Defendant conceded to the same in its written motion filed with the Court. Accordingly, the Court finds that as a matter of law, the UAA is not pre-empted by the FAA.
2. The Court finds that the 2006 contract, executed by Helen Carlton and the Defendant does not comply with the requirements of the UAA, as set forth in S.C. Code §15-48-10(a) in the following specifics:
  - a. The Court finds that the notice of arbitration did not reference the code section of the UAA;
  - b. The Court finds that the notice of arbitration was not underlined;
  - c. The Court finds that the notice of arbitration was not on the first page.
3. Accordingly, the Court finds that as a matter of law, the 2006 contract between Helen Carlton and the Defendant is not subject to arbitration.
4. The Court finds that the 2011 contract, executed by Christopher Carlton and the Defendant does not comply with the requirements of the UAA as set forth in S.C. Code §15-48-10(a) in the following specifics:

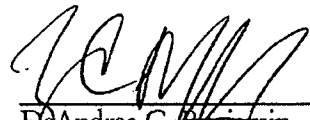
- a. The Court finds that the notice of arbitration did not reference the code section of the UAA;
  - b. The Court finds that the notice of arbitration was not underlined;
  - c. The Court finds the notice of arbitration was not capitalized;
  - d. The Court finds that the notice of arbitration was not on the first page.
5. Accordingly, the Court finds that as a matter of law, the 2011 contract between Christopher Carlton and the Defendant is not subject to arbitration.

IT IS THEREFORE ORDERED that the Defendant's motion to dismiss, or in the alternative, compel arbitration is denied.

IT IS FURTHER ORDERED, that this matter shall proceed to the discovery phase in preparation for a trial by jury as to all facts so triable.

IT IS SO ORDERED.

*Mond 27<sup>th</sup>*  
January \_\_\_\_\_, 2014  
Columbia, South Carolina

  
\_\_\_\_\_  
E. C. Griffith, Jr.  
S.C. Circuit Court - Richland County

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP4007874

Christopher Carlton

Greenlawn Funeral Home

John Thomas Carlton

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court	Attorney for: Plaintiff	Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

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
- 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 order vacates the attached order filed on April 1, 2014.**

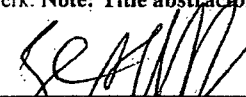
ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

 Circuit Court Judge	2154 Judge Code	4/15/14 Date
--	--------------------	-----------------

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Bryan Caskey

Drew Butler

Caleb Riser

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

Christopher Carlton as the Personal )  
Representative of the Estate of Helen )  
Tucker Carlton; Christopher Carlton; )  
John Thomas Carlton; and Kimberly )  
Carlton Baker, )

C/A No.: 12-CP-40-7874 )

Plaintiffs, )

vs. )

Greenlawn Funeral Home, )

Defendant. )

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2013 NOV 22 PM 2:58

RICHLAND COUNTY  
FILED

**CONSENT ORDER AUTHORIZING THE PLAINTIFFS TO AMEND THEIR  
COMPLAINT AND AUTHORIZING SUBSTITUTION OF PARTIES**

WHEREAS, the Plaintiffs filed the Complaint in this action on November 28, 2012, and the Defendant thereafter filed a responsive pleading on April 11, 2013;

WHEREAS, the Plaintiffs desire to file an Amended Complaint, and the Defendant consents to the same, pursuant to Rule 15(a), SCRPC;

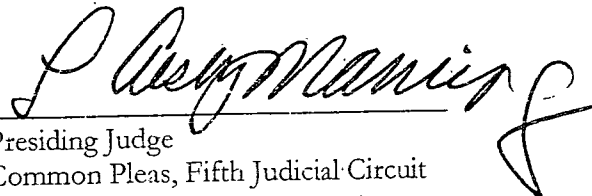
WHEREAS, one of the named Plaintiffs, Kimberly Carlton Baker, died on July 26, 2013, and Christopher Carlton has been named as the Personal Representative of her estate by the Lexington County Probate Court under docket number 2013-ES-32-01249; and,

WHEREAS, all parties desire to amend the caption of this matter to substitute the named parties pursuant to Rule 25(a), SCRPC, substituting "Christopher Carlton as the Personal Representative for the Estate of Kimberly Carlton Baker" for "Kimberly Carlton Baker".

NOW THEREFORE, for good cause shown, upon motion of the Plaintiffs, and with the consent of the Defendant, by and through the signatures of their undersigned counsel, the Court finds that the Plaintiffs shall have thirty (30) days from the date of the filing of this order to file an Amended Complaint; and that the above-referenced substitution of parties is hereby ordered, and

the caption of this matter shall be amended for all filings subsequent to this order, to reflect the substitution of the "Christopher Carlton as the Personal Representative for the Estate of Kimberly Carlton Baker" in the place of "Kimberly Carlton Baker".

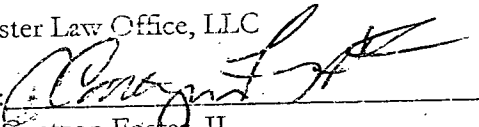
AND IT IS SO ORDERED.

  
Presiding Judge  
Common Pleas, Fifth Judicial Circuit

October 10, 2013  
Columbia, South Carolina

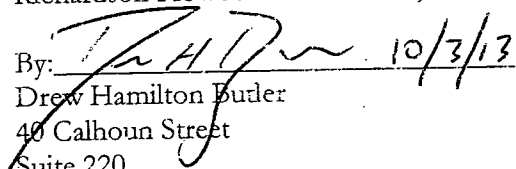
I SO MOVE:

Foster Law Office, LLC

By:   
C. Cantzon Foster, II  
Bryan D. Caskey  
3100 Devine Street  
Columbia, SC 29205  
COUNSEL FOR THE PLAINTIFFS

I CONSENT:

Richardson Plowden & Robinson, PA

By:  10/3/13  
Drew Hamilton Butler  
40 Calhoun Street  
Suite 220  
Charleston, SC 29401  
COUNSEL FOR THE DEFENDANT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Christopher Carlton. Et. al.

Plaintiff,

vs.

Greenlawn Funeral Home,

Defendant.

) IN THE COURT OF COMMON PLEAS

)  
) FOR THE FIFTH JUDICIAL CIRCUIT

) Civil Action No. 12-CP-40-7874

)

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CERTIFICATE OF SERVICE

This is to certify that I, Owen Elliott, have this day caused to be served upon the person named below a Consent Order Authorizing the Plaintiffs to Amend Their Complaint and Authorizing Substitution of Parties in the foregoing matter via First Class Mail, in an envelope addressed as follows:

Drew Butler, Esquire  
Richardson Plowden & Robinson, PA  
40 Calhoun Street, Ste 220  
Charleston, SC 29401

Dated at Columbia, this 3<sup>rd</sup> day of December, 2013



Owen Elliott

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Christopher Carlton as Personal )  
Representative of the Estate of )  
Helen Tucker Carlton; Christopher )  
Carlton; John Thomas Carlton; and )  
Kimberly Carlton Baker, )  
Plaintiff, )

Case No. ~~12-DR-40-~~ <sup>CP</sup> 7874

vs. )

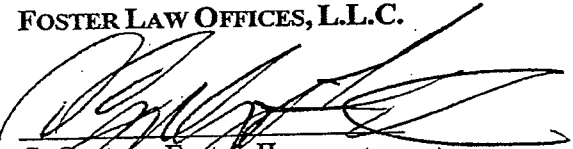
SUMMONS

Greenlawn Funeral Home, )  
Defendant. )

RICHLAND COURT  
FILED  
2012 NOV 28 PM 12:03  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

**TO: THE DEFENDANT, GREENLAWN FUNERAL HOME, NAMED ABOVE:**

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served on you, and to serve a copy of your Answer to the same upon the undersigned at 3100 Devine Street, Columbia, SC 29205, within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer said Complaint within the thirty (30) day period the Plaintiff will apply to the Court for the relief demanded therein, and judgment will be taken against you by default.

**FOSTER LAW OFFICES, L.L.C.**  
  
C. Cantzon Foster II  
(SC Bar # 69501)  
3100 Devine Street  
Columbia, South Carolina 29205  
(803) 400-1921  
(803) 400-1951 Facsimile  
**ATTORNEY FOR THE PLAINTIFF**

November 9, 2012  
Columbia, South Carolina



5. Helen Carlton died on May 9, 2011. She was survived by her two sons, Christopher Carlton and John Thomas Carlton, and her daughter, Kimberly Carlton Baker. Her dying request to her children was to be buried at Greenlawn Cemetery next to her late Husband.
6. On or about May 10, 2011, Christopher Carlton, personally, on behalf of Helen Carlton's family and on behalf of the Estate of Helen Carlton, contracted with Greenlawn Funeral Home to purchase funeral services for his mother, Helen Carlton's burial. Pursuant to the terms of the contract, Greenlawn Funeral Home was to provide funeral service for the burial of Helen Carlton and she was to be buried in the grave site next to her husband with a burial marker to be placed on her and her husbands' final resting place.
7. Christopher Carlton confirmed with representatives of Greenlawn on two separate occasions the specific location where his mother was to be laid to rest, which was next to her husband. The grave site was then marked by Greenlawn representatives so that no mistake could be made.
8. Funeral services were held at Greenlawn Cemetery on Garners Ferry Road and the burial site that the family believed their mother was to be buried was blessed by the Pastor officiating over the service.
9. Unbeknownst to Plaintiffs, Defendant did not bury Helen Carlton in the site she was supposed to be laid to rest in. Upon information and belief, the headstone which was supposed to mark Helen Carlton's final resting place was placed on an empty grave.
10. On or about June 13, 2012, while digging a burial site for a subsequent client, Greenlawn discovered a casket, which did not belong where they found it. Greenlawn then excavated the grave site of Helen Carlton, without notice or permission from the family, to confirm whether or not the newly discovered casket was Helen Carlton's casket. Upon

learning that Helen Carlton was not buried where she was supposed to be, Greenlawn placed plywood over the excavated site where her casket lay exposed. Only after several days passed and after strenuous urging from the family did Greenlawn reluctantly agree to remove the plywood from the gravesite and fill in the hole where the excavated casket lay exposed.

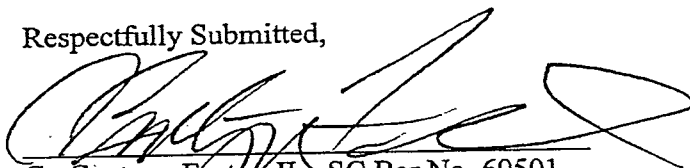
11. Upon information and belief, Defendant has removed the headstone marker from Plaintiffs father's burial site, without permission from the family and the father now lies in an unmarked grave.
12. Upon information and belief the Defendant breached its agreement with Plaintiffs causing actual, consequential damages to the Plaintiffs. In addition as a direct and proximate result of Defendant's breach the Plaintiffs have suffered special damages including but not limited to emotional distress and pain and suffering.
13. Upon information and belief, Defendant owed a duty of care to Plaintiffs which was breached and as a direct and proximate result of Defendant's willful, wanton and reckless actions as set forth above causing significant damage, pain and suffering, emotional distress, embarrassment, and humiliation to the Plaintiffs.
14. Plaintiffs are informed and believe that they are entitled to a judgment against the Defendant for trespass, breach of contract and negligence and for actual, consequential, special and punitive damages in an amount to be proven at trial, together with prejudgment and post-judgment interest.

**PRAYOR FOR RELIEF**

**WHEREFORE**, having set forth their Complaint, Plaintiffs pray for an Order of the Court as follows:

- A. Granting Plaintiffs judgment against the Defendant for trespass, breach of contract and negligence and for actual, consequential, special and punitive damages in an amount to be proven at trial, together with prejudgment and post-judgment interest.
- B. For such other relief as this Court deems just and proper.

Respectfully Submitted,



C. Cantzon Foster, II – SC Bar No. 69501  
Bryan D. Caskey – SC Bar No. 75754  
FOSTER LAW OFFICE, LLC  
3100 Devine Street  
Columbia, SC 29205  
(803) 400-1921  
(803) 400-1951  
ATTORNEY FOR PLAINTIFFS

November 9, 2012

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

Christopher Carlton as the Personal )  
Representative of the Estate of Helen )  
Tucker Carlton; Christopher Carlton; )  
John Thomas Carlton; and Christopher )  
Carlton as the Personal Representative of )  
the Estate of Kimberly Carlton Baker, )

C/A No.: 12-CP-40-7874 )

Plaintiffs, )

AMENDED SUMMONS )

vs. )

Greenlawn Funeral Home, )

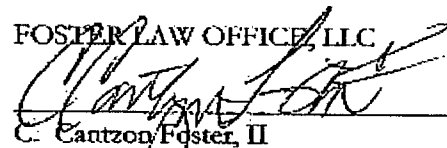
Defendant. )

RICHLAND COUNTY  
FILED  
2013 OCT 14 AM 10:01  
JEANETTE WILKINSON  
CLERK, S.C.S.

**TO: THE DEFENDANT, GREENLAWN FUNERAL HOME, NAMED ABOVE:**

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is attached hereto and herewith served on you, and to serve a copy of your Answer to the same upon the undersigned at 3100 Devine Street, Columbia, SC 29205, within fifteen (15) days after the service of same, exclusive of the day of such service, pursuant to Rule 15, SCRPC. If you fail to answer said Complaint within the thirty (30) day period the Plaintiff will apply to the Court for the relief demanded therein, and judgment will be taken against you by default.

FOSTER LAW OFFICE, LLC



C. Cantzon Foster, II  
Bryan D. Caskey  
FOSTER LAW OFFICE, LLC  
3100 Devine Street  
Columbia, SC 29205  
(803) 400-1921  
(803) 400-1951 Facsimile  
COUNSEL FOR THE PLAINTIFFS

October 11, 2013  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
)
Christopher Carlton as the Personal )  
Representative of the Estate of Helen )  
Tucker Carlton; Christopher Carlton; )  
John Thomas Carlton; and Christopher )  
Carlton as the Personal Representative of )  
the Estate of Kimberly Carlton Baker, )  
)
Plaintiffs, )  
)
vs. )  
)
Greenlawn Funeral Home, )  
)
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 12-CP-40-7874

**AMENDED COMPLAINT**  
(Jury Trial Demanded)

RICHLAND COUNTY  
FILED  
2012 OCT 14 AM 10:01  
JEANETTE W. ARRIDGE  
CLERK S.S.

COMES NOW, Plaintiffs, complaining of the Defendant, by and through their undersigned counsel, who would hereby show unto this Honorable Court as follows:

1. Plaintiffs are citizens and residents of the State of South Carolina.
2. Defendant is a corporation with its principal place of business in Richland County, South Carolina and has provided funeral services and burial plots for many years preceding the filing of this action.
3. Upon information and belief, this court has subject matter and personal jurisdiction and venue is proper in Richland County.
4. Helen Carlton purchased two adjacent cemetery burial plots and a grave marker from Greenlawn Funeral Home after her Husband, Fielder Carlton, died during the month of August, 2006. Her Husband was buried in one of the plots, and she was supposed to be buried in the plot next to her husband when she passed.
5. Helen Carlton died on May 9, 2011. She was survived by her two sons, Christopher Carlton and John Thomas Carlton, and her daughter, Kimberly Carlton Baker.

6. Helen Carlton's dying request to her children was to be buried at Greenlawn Cemetery next to her late Husband.
7. On or about May 10, 2011, Christopher Carlton, personally, on behalf of Helen Carlton's family and on behalf of the Estate of Helen Carlton, contacted with Greenlawn Funeral Home to purchase funeral services for his mother, Helen Carlton's burial.
8. Pursuant to the terms of the contract, Greenlawn Funeral Home was to provide funeral service for the burial of Helen Carlton, and she was to be buried in the grave site next to her husband with a burial marker to be placed on her and her husband's final resting place.
9. Christopher Carlton confirmed with representatives of Greenlawn on two separate occasions the specific location where his mother was to be laid to rest, which was next to her husband. The grave site was then marked by Greenlawn representatives so that no mistake could be made.
10. Funeral services for Helen Carlton were subsequently held at Greenlawn Cemetery on Gamers Ferry Road. The burial site that the family believed their mother was to be buried was blessed by the Pastor officiating over the service.
11. Unbeknownst to Plaintiffs, the Defendant did not bury Helen Carlton in the site she was supposed to be laid to rest in. Upon information and belief, the headstone which was supposed to mark Helen Carlton's final resting place was placed on an empty grave.
12. On or about June 13, 2012, while digging a burial site for a subsequent client, Greenlawn discovered a casket, which did not belong where they found it.
13. Greenlawn subsequently excavated the gravesite of Helen Carlton, without notice or permission from the family, to confirm whether or not the newly discovered casket was Helen Carlton's casket.

14. Upon learning that Helen Carlton was not buried where she was supposed to be, Greenlawn placed plywood over the excavated site where her casket lay exposed to the elements. Only after several days and after strenuous urging from the family, did Greenlawn remove the plywood from the gravesite and fill in the hole where the excavated casket lay exposed.
15. Upon information and belief, Defendant has removed the headstone marker from Plaintiffs father's burial site, without permission from the family and the father now lies in an unmarked grave.
16. Upon information and belief the Defendant breached its agreement with Plaintiffs causing actual, consequential damages to the Plaintiffs. In addition as a direct and proximate result of Defendant's breach the Plaintiffs have suffered special damages including but not limited to emotional distress and pain and suffering.
17. Upon information and belief, Defendant owed a duty of care to the Plaintiffs which was breached, and as a direct and proximate result of Defendant's willful, wanton and reckless and grossly negligent actions stemming from the Defendant's conduct by burying the body of Helen Carlton in the incorrect grave site on or about May 10, 2011 and, subsequently, by excavating and inappropriately exposing the gravesite of Helen Carlton without notice or permission of the family on or about June 13, 2012, as set forth above, Plaintiffs have suffered injury, including but not limited to, bodily injury, mental anguish, mental injury, shock, fright, humiliation, which have physically manifested with the Plaintiffs in amount to be determined at trial by jury.
18. The Plaintiffs are informed and believe that they are entitled to a judgment against the Defendant for trespass, breach of contract and negligence and for actual, consequential, special and punitive damages in an amount to be proven at trial, together with prejudgment and post-judgment interest.

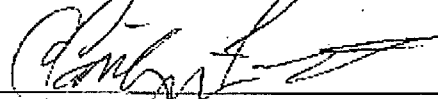
**PRAYOR FOR RELIEF**

WHEREFORE, having set forth their Complaint, Plaintiffs pray for an Order of the Court as follows:

- A. Granting Plaintiffs judgment against the Defendant for trespass, breach of contract and negligence and for actual, consequential, special and punitive damages in an amount to be proven at trial, together with prejudgment and post-judgment interest.
- B. For such other relief as this Court deems just and proper.

Respectfully Submitted,

FOSTER LAW OFFICE, LLC



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Bryan D. Caskey

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COUNSEL FOR THE PLAINTIFFS

October 11, 2013  
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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTH JUDICIAL CIRCUIT )

Christopher Carlton as the Personal )  
Representative of the Estate of Helen )  
Tucker Carlton; Christopher Carlton; )  
John Thomas Carlton; and Christopher )  
Carlton as the Personal Representative of )  
the Estate of Kimberly Carlton Baker, )

C/A No.: 12-CP-40-7874

Plaintiffs, )

JURY TRIAL DEMAND )

vs. )

Greenlawn Funeral Home, )

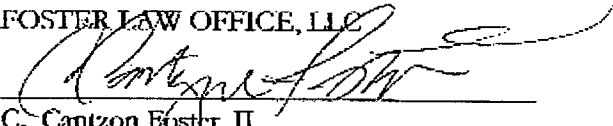
Defendant. )

HIGH AND COURTY  
FILED  
2013 OCT 14 AM 10:02  
JEANETTE W. MORRIS  
CLERK, S.C. J.P. & G.S.

The Plaintiffs, pursuant to Rule 38, SCRCP, hereby demand a trial by jury in connection with the foregoing matter, as to all issues so triable.

Respectfully Submitted,

FOSTER LAW OFFICE, LLC



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COUNSEL FOR THE PLAINTIFFS

October 11, 2013  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Christopher Carlton as Personal Representative  
of the Estate of Helen Tucker Carlton; John  
Thomas Carlton; and Kimberly Carlton Baker

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-7874

MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, TO COMPEL  
ARBITRATION

FILED  
RICHLAND COUNTY  
APR 11 AM 11:20  
DEBORAH W. McBRIDE  
CLERK  
S.C.P. & G.S.

PLEASE TAKE NOTICE that, pursuant to Rules 12(b)(1) and 12(b)(6), SCRC, the undersigned as counsel for Defendant, Greenlawn Memorial Park (incorrectly identified as "Greenlawn Funeral Home"), will move before this Court for an Order dismissing the present Complaint or, in the alternative, for an Order to Compel Arbitration in accordance with South Carolina Code Annotated, § 15-48-10 et seq. In support of this Motion, the Defendants would respectfully show the following:

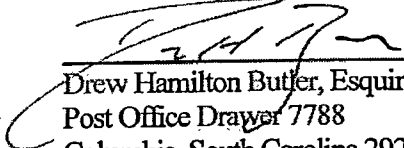
1. The Plaintiff's Complaint should be dismissed pursuant to Rule 12 (b)(1), SCRC, as the Court of Common Pleas in Richland County lacks jurisdiction to hear this matter.
2. Furthermore, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRC, as the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action.
3. There is a valid and enforceable arbitration agreement executed as part of the Contract between the parties.

4. All of the Claims arise out of the Contract and are subject to the Contract's Arbitration Clause; none of the Claims are included in the exceptions of S.C. Code Ann. § 15-48-10(b).
5. This arbitration agreement requires arbitration of this dispute to be held in Richland County, South Carolina pursuant to the South Carolina Uniform Arbitration Act (UAA), Section 15-48-10 et seq.
6. The Federal Arbitration Act (FAA) does not preempt the UAA because the Contract does not involve interstate commerce, as the Defendant and Plaintiffs are domiciled in and locate their principle place of business in South Carolina.

For the foregoing reasons, the Defendant respectfully request entry of an Order dismissing the present case or, in the alternative, entry of an Order Compelling Arbitration in accordance with South Carolina Code Annotated, § 15-48-10 et seq.

Respectfully submitted this the 11th day of April, 2013.

**RICHARDSON PLOWDEN & ROBINSON, P.A.**



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Drew Hamilton Butler, Esquire  
Post Office Drawer 7788  
Columbia, South Carolina 29202  
(803) 771-4400  
[DButler@RichardsonPlowden.com](mailto:DButler@RichardsonPlowden.com)

And

40 Calhoun Street, Suite 220  
Charleston, SC 29401  
(843) 805-6550

GREENLAWN MEMORIAL PARK #0546  
843 Leeberg Rd., Columbia, SC 29209-2103  
(803) 774-1092

WOODRIDGE MEMORIAL PARK #0547  
138 Corley Hill Rd., Lexington, SC 29072  
(803) 957-7292

GREENLAWN MEMORIAL PARK #0549  
11020 Two Notch Rd., Egin, SC 29045  
(803) 774-1092

No 710670 ✓

**CEMETERY INTERMENT RIGHTS, MERCHANDISE AND SERVICES PURCHASE/SECURITY AGREEMENT**  
THIS AGREEMENT PROVIDES FOR PERPETUAL CARE

This Agreement is made this 11<sup>th</sup> day of August, 2006, by and between the undersigned "Seller" and Helen A. Cayton hereinafter called the "Purchaser" Address 348 Cherry Blossom Rd. Gaston SC 29053

Residence Telephone No. (803) 795-0963 Day Telephone No. \_\_\_\_\_  
WITNESSETH THAT: The Seller agrees to sell and Purchaser agrees to buy the following described Interment Rights, Merchandise and Services.  
 Developed  Predeveloped  Lot  Lawn Crypt  Mausoleum  Niche  Other \_\_\_\_\_

No.	Description of Interment Rights, Merchandise and Services	Price	Less:
1	Interment Rights (inc. P.C.F.)	\$5190	
1	Memorialization-Type: <u>Green Match</u>	995	Down Payment Cash <u>(3822.62)</u>
1	Size: <u>24x12</u> Design		Credit For _____
1	Memorial Base-Type: <u>granite</u>	350	(b) Total Down Payment <u>(3822.62)</u>
1	Size: <u>62x16</u> Design		Unpaid Balance of <u>(6319.92)</u>
1	Memorial Perpetual Care	645	(c) Amount Financed <u>6319.92</u>
1	Memorial Installation/Inspection Fee		Less Interment and Recording Fee not subject to Finance Charge _____
2	Outer Burial Container		Amount Subject to Finance Charge _____
2	Category I*	1790	(d) Finance Charge _____
2	Interment and Recording Fee	75	(e) Total of Payments (c + d) <u>6319.92</u>
2	Processing Fee	75	(f) Deferred Payment Price (a + d) <u>10142.54</u>
2	Other: <u>Registry</u>	75	
2	Other: <u>Red Seal</u>	300	
2	Other: <u>Red Seal</u>	300	
2	Merchandise/Services Discount	<u>(1150.00)</u>	Remarks: _____
2	Sales Tax	<u>(101.54)</u>	
	(a) Total Cash Price (Including Sales Tax)	<u>10142.54</u>	

\* Definition: Category I is an outer burial container designed to resist the entrance of water or any other ground elements. No representations are made to the effect that a Category I outer burial container is airtight or waterproof or would protect the body from gravesite substances for an indefinite time.  
\*\* Definition: Category II is a nonsealing outer burial container. The only representations or warranties regarding outer burial containers are those extended by the manufacturer. See the reverse side of this Agreement for details.  
ITEMIZATION OF AMOUNT FINANCED OF \$6319.92 shall be credited to your account with Seller. Amount paid to others on your behalf: \$ 96.54 to public officials.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
<u>0</u> %	The dollar amount the credit will cost you. <u>0</u>	The amount of credit provided to you or on your behalf. <u>(c) \$6319.92</u>	The amount you will have paid after you have made all payments as scheduled. <u>(e) \$6319.92</u>	The total cost of your purchase on credit, including your down payment of <u>\$3822.62</u> (b) (a+d) <u>\$10142.54</u>

Number of Payments	Amount of Payment	When Payments Are Due
<u>59</u>	<u>\$105.33</u>	<u>Sept. 25, 2006</u> Beginning
One	<u>\$105.45</u>	

Prepayment: If you pay off early, you will be entitled to a rebate of all or part of the Finance Charge.  
Security: You are giving a security interest in the goods and property being purchased.  
Late Charges: If full payment is not made within 10 days after it is due, you will be charged \$5.00 or 5% of such payment, whichever is less.  
Other Provisions: See this Agreement for any additional information about nonpayment, default, any required repayment in full (exclusive of unearned finance charges) before the scheduled date, and prepayment rebates and penalties.

1. The Annual Percentage Rate is imposed only on the portion of the Amount Financed that is subject to Finance Charge.  
2. Finance Charges are computed on all items excluding the Interment and Recording Fee.  
If accepted by Seller, the parties hereto agree to the following terms and conditions:  
1. Agreement to Pay. Having first been quoted both a Total Cash Price and a Total Sale Price for the items described above, and for value received, the undersigned Purchaser, jointly and severally, if more than one, promises to pay to the order of Seller, at its address shown above, the amount identified above as the Total of Payments in accordance with the payment schedule dates set out above.  
2. Title. Seller will retain title to said Interment Rights and Merchandise until the Total Sale Price has been paid by Purchaser to Seller.  
3. Cemetery Rules and Regulations. Purchaser agrees that all rights conveyed under this Agreement are subject to, and Purchaser agrees to at all times comply with, the present (and as may be hereinafter adopted, amended or altered) rules and regulations of Seller, which are available for examination in Seller's office.  
4. Prepayment. Upon prepayment in full, whether voluntarily or upon acceleration by reason of Purchaser's default and payment in full or judgment being entered against Purchaser for the unpaid balance, Purchaser shall receive a rebate of any unearned Finance Charge computed in accordance with the Actuarial method. If (i) the need for interment arises within 120 days of the date of this Agreement and the Agreement is paid in full or (ii) this Agreement provides only for the purchase of memorialization and its installation and is paid in full within 120 days of the date of this Agreement, Purchaser will be entitled to a full rebate of all Finance Charges previously paid.  
5. Interment and Recording Fee. Unless otherwise specifically provided herein, a charge for opening and closing the interment space and applicable cemetery document recording (herein referred to as "Interment and Recording Fee"), is not included in the Total Cash Price set forth herein, and there will be an added charge for this service at the time of need. If the Interment and Recording Fee is purchased hereunder, the price set forth herein reflects normal work hour rates. There will be an additional charge if the interment service is provided on a weekend, holiday, or after normal work hours.  
6. Issuance of Certificate of Interment Rights. Upon payment of the Total Sale Price by the Purchaser, the Seller agrees to convey the above-described Interment Rights by issuance of a Certificate of Interment Rights to the Person(s) designated below.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_  
NEXT OF KIN \_\_\_\_\_

NOTICE: BY SIGNING THIS AGREEMENT, PURCHASER IS AGREEING THAT ANY CLAIM PURCHASER MAY HAVE AGAINST THE SELLER SHALL BE RESOLVED BY ARBITRATION AND PURCHASER IS GIVING UP HIS/HER RIGHT TO A COURT OR JURY TRIAL AS WELL AS HIS/HER RIGHT OF APPEAL.  
BY SIGNING THIS AGREEMENT, THE PURCHASER CONFIRMS HAVING BEEN MADE AWARE THAT THE PURCHASER HAS THE RIGHT TO SELECT ONLY THOSE ITEMS, SERVICES AND MERCHANDISE THAT THE PURCHASER DESIRES.  
NOTICE TO PURCHASER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law. Purchaser also hereby acknowledges that this Agreement was completed as to all essential provisions before it was signed by Purchaser and a copy thereof was delivered to Purchaser at the time this Agreement was signed.

Signed this 11<sup>th</sup> day of August, 2006.  
The Internal Revenue Service does not require your consent to any provision of this document other than the certificate of federal backup withholding.  
Purchaser: Helen A. Cayton 11/23/149  
\*S.S.N. 250-96-7690  Male  Female  
Co-Purchaser \_\_\_\_\_  
Time 11:30 AM  AM  PM Source PN  
Seller (Creditor):  
 GREENLAWN MEMORIAL PARK  
 WOODRIDGE MEMORIAL PARK  
 GREENLAWN MEMORIAL PARK NE  
Accepted by: [Signature] 8/11/06  
Counselor: [Signature] No. \_\_\_\_\_

\*Under penalties of perjury, the Purchaser represents and warrants that the Social Security number shown on this Agreement is his or her correct identification number and that he or she is not subject to federal backup withholding or any order from the Internal Revenue Service that would require special reporting to the IRS by Seller.  
If This Sale Was Solicited And Your Agreement To Purchase Was Made At A Place Other Than The Seller's Place of Business: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.  
NOTICE: SEE OTHER SIDE FOR ADDITIONAL TERMS THAT ARE PART OF THIS AGREEMENT.



## ADDITIONAL TERMS AND CONDITIONS

7. **Application of Payments.** In the event of the death of either Purchaser or Co-Purchaser prior to payment in full, all payments made by Purchaser shall be applied to the Interment Right being used in the following order: First, to the Finance Charge, if any; next, to the Interment Right; then to the Perpetual Care Fund; and finally, to Merchandise and Services. All payments by Purchaser shall be applied in the same order as stated above even where such a death has not occurred. All prepayments will be applied to the next installment then due.
8. **Death Prior to Full Payment.** Should the need for interment occur before final payment of the Total Sale Price set forth herein, the Purchaser shall have the right to inter the deceased in the interment space selected, provided the proportionate part of said Total Sale Price applicable to the Interment Right, Merchandise or Service to be used shall have first been paid.
9. **Default or Cancellation:** Failure to make a payment within ten (10) days of the time required shall be a default. Upon the minimum applicable legal period to cure the default or failure by the Purchaser to comply with the provisions hereunder or upon receipt of Purchaser's written request to cancel this Agreement, or in the event of a proceeding in receivership or insolvency instituted by or against Purchaser, Seller shall have the right to cancel all or any part of this Agreement, as related to any unused Interment Rights, and to retain all monies paid as liquidated damages and not as a penalty. No refunds will be made of any monies paid for Interment Rights by Purchaser hereunder except as expressly provided herein. Upon cancellation, at Seller's discretion, Seller may issue a Certificate of Interment Rights of the Seller's selection, provided the Purchaser's Net Equity (total amount paid less earned Finance Charge) is equal to or greater than the selling price of said Interment Rights. If Seller elects to cancel this Agreement, it shall be relieved of all further obligations hereunder.  
If this Agreement includes the purchase of cemetery Merchandise and Seller is unable to deliver the Merchandise within a reasonable time after the selling price of the Merchandise has been fully paid, and after a written request for delivery has been made by Purchaser, Purchaser shall be entitled to a refund of the entire amount paid for said Merchandise together with any income earned thereon. After payment in full and before delivery of Merchandise, Purchaser may make written demand for a refund of the amount deposited in the Merchandise and Services Trust fund in the credit of Purchaser, and within ninety (90) days of receipt of the written demand, Seller shall deliver the Merchandise or refund to Purchaser the amount on deposit to his/her credit, less any service fees charged by the administering financial institution. Upon the refund or delivery of Merchandise, the Seller is relieved from further liability for the Merchandise.
10. **Liquidated Damages.** It is impractical and extremely difficult to fix the actual damages, if any, which may result from the breach or cancellation of this Agreement by Purchaser. If this Agreement is cancelled, Seller may retain as liquidated damages all monies paid hereunder to Seller allocable to the Interment Right, which shall be Seller's exclusive remedy against Purchaser. Upon such cancellation, all rights, title and interests of Purchaser under or by virtue of this Agreement shall terminate.
11. **Collection Costs.** If the liquidated damages provision herein is held to be unenforceable, Seller's remedies shall be limited to compensatory damages measured by the difference between the Total Sale Price and the amount at which Seller could resell the Interment Rights, increased by any collection and recalc expenses borne by Seller and decreased (but not below zero) by all monies paid hereunder and allocable to the Interment Rights. It is further agreed that the waiver by the Seller of any breach of the covenants contained herein shall not be construed as a waiver of the covenant itself or any subsequent breach thereof.
12. **Assignment.** Purchaser's rights under this Agreement may not be assigned without the prior written consent of the Seller. This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the Purchaser. Purchaser further agrees that Seller may assign its rights under this Agreement and that this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Seller.
13. **Conveyance of Title and Delivery.** Notwithstanding any other provision to the contrary in this Agreement, the parties hereto agree that delivery of the good(s) and performance of the Service(s) purchased hereunder commences upon the date the Purchaser approves and authorizes the manufacture, installation and performance of the same. Upon payment in full of the Total Sale Price to Seller or Seller's assignee, Seller will, upon Purchaser's request, complete delivery of within-described goods and performance of within-described Services. Upon payment in full of the Total Sale Price to Seller or Seller's assignee, Seller will convey to Purchaser all rights, title or interests in the within-described Interment Rights and will deliver, upon Purchaser's request, the within-described Merchandise.
14. **Substitution of Merchandise.** Purchaser and Seller acknowledge and agree that this Agreement does not call for the sale of any specific brand or make of outer burial container. If the outer burial container purchased pursuant to this Agreement is not available at the time of need, Seller shall make available to Purchaser or his/her representative an outer burial container of equal or greater value. Purchaser or his/her representative is entitled to approve any substitutions.
15. **Sale for Personal/Family Use Only.** Purchaser agrees that the Interment Rights purchased hereunder are being purchased for personal or family interment purposes only and not for speculation, and neither Seller, its agents nor sales persons, in any way represent or guarantee a resale thereof.
16. **Acceptance by Seller.** This Agreement will be of no force or effect until countersigned by a duly authorized representative of Seller.
17. **Preconstruction Sales.** In the event this Agreement includes Interment Rights in a section of a preconstructed mausoleum or belowground crypts, Seller agrees to commence construction within thirty-six (36) months after the date of the first sale of Interment Rights therein, and to complete construction within sixty (60) months after the date of such first sale of Interment Rights therein. If construction is not commenced within 36 months of the date of such first sale, all monies paid by the Purchaser hereunder for such Interment Rights shall be refunded to Purchaser upon Purchaser's request and neither party shall have any further obligation to the other hereunder. Extensions for completion, not to exceed one year, may be granted by the South Carolina Perpetual Care Cemetery Board.
18. **Need for Interment Prior to Development.** In the event the need for interment occurs prior to the development or completion of the interment property described herein, Seller may, with the consent of Purchaser, and at no increase in price, permanently transfer Purchaser's Interment Rights to other reasonably comparable developed interment property, or temporarily transfer Purchaser's rights to other reasonably comparable interment property, until such time that construction is completed. It is further agreed that Seller retains the right and authority of interment and disinterment and there shall be no additional charge to the Purchaser for this service. The need for interment means that a death has occurred in the family after the date of purchase of pre-developed cemetery property.
19. **Limitation of Damages.** It is impractical and extremely difficult to fix the actual damage, if any, which may proximately result from a breach of this Agreement by Seller or any error or mistake in connection with the Interment Rights provided hereunder, or any other breach of the Agreement and in the event of a resulting loss, Seller's liability hereunder shall be limited to amounts theretofore paid to Seller by Purchaser plus a maximum of \$100.00 as liquidated damages, not as a penalty, and this remedy shall be exclusive.
20. **Merchandise and Services Trust Fund.** Any amounts paid hereunder for the purchase of cemetery Merchandise and Services shall be deposited by Seller in a Merchandise and Services Trust Fund in accordance with applicable state law.
21. **Perpetual Care Fund (hereinafter referred to as "Care and Maintenance Trust Fund").** Seller hereby binds itself to maintain the interment spaces or other interment facilities described herein, and to deposit from payments received hereunder the amounts required by law to a Care and Maintenance Trust Fund created for the continual maintenance of all developed cemetery property without further assessment to Purchaser. Such deposit to the Care and Maintenance Trust Fund shall be in trust with an established State or National bank or savings and loan association licensed in this State as Trustee and in accordance with the applicable law governing such Care and Maintenance Trust Fund. The net income from the Care and Maintenance Trust Fund shall be used solely for the continuing care and maintenance of the developed cemetery and to pay such costs as may be reasonably necessary for the administration of the Care and Maintenance Trust Fund.
22. **Notice.** Notices to the Purchaser shall be sufficient if mailed to the Purchaser's last known address, as reflected in Seller's records.

**INCOME TAX NOTICE:** PURCHASER MAY BE SUBJECT TO INCOME TAX ON INCOME EARNED ON ANY FUNDS REQUIRED TO BE TRUSTED RELATING TO MERCHANDISE AND/OR SERVICES PURCHASED HEREUNDER.

**ARBITRATION:** PURCHASER AGREES THAT ANY CLAIM HE/SHE MAY HAVE RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT (INCLUDING ANY CLAIM OR CONTROVERSY REGARDING THE INTERPRETATION OF THIS ARBITRATION CLAUSE) SHALL BE SUBMITTED TO AND FINALLY RESOLVED BY MANDATORY AND BINDING ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); PROVIDED, HOWEVER, THAT THE FOREGOING REFERENCE TO THE AAA RULES SHALL NOT BE DEEMED TO REQUIRE ANY FILING WITH THAT ORGANIZATION, NOR DIRECT INVOLVEMENT OF THAT ORGANIZATION. THE ARBITRATOR SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES FAIL TO OR ARE UNABLE TO AGREE ON THE SELECTION OF AN APPROPRIATE ARBITRATOR, THE AAA SHALL SELECT THE ARBITRATOR PURSUANT TO ITS RULES AND PROCEDURES UPON THE APPLICATION OF ONE OR BOTH PARTIES. THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY CLAIM OR DISPUTE BETWEEN OR AMONG THE SELLER, YOU AS THE PURCHASER, ANY PERSON WHO CLAIMS TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT, ANY OF THE SELLER'S EMPLOYEES OR AGENTS, ANY OF THE SELLER'S PARENT, SUBSIDIARY, OR AFFILIATE CORPORATIONS, AND ANY OF THE EMPLOYEES OR AGENTS OF THOSE PARENT, SUBSIDIARY OR AFFILIATE CORPORATIONS. EXCEPT AS MAY BE REQUIRED BY LAW, NEITHER PARTY NOR AN ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF BOTH PARTIES.

**DISCLAIMER OF SELLER'S WARRANTIES:** THE ONLY WARRANTY ON ANY GOODS SOLD IN CONNECTION WITH THIS AGREEMENT IS THE EXPRESS WRITTEN WARRANTY, IF ANY, GRANTED BY THE MANUFACTURER. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WITH RESPECT TO THE GOODS SO DESCRIBED. WITH RESPECT TO MAUSOLEUM CRYPTS, LAWN CRYPTS, OR NICHES SOLD HEREUNDER, THE ONLY WARRANTIES RELATING TO SUCH ITEMS SHALL BE THOSE IMPLIED WARRANTIES PROVIDED BY LAW AND SELLER MAKES NO EXPRESS WARRANTIES WITH RESPECT TO SAID ITEMS.

**ENTIRE AGREEMENT:** THIS AGREEMENT CONTAINS ALL TERMS WHICH HAVE BEEN AGREED UPON BY THE PURCHASER AND THE SELLER RELATING TO THE GOODS AND SERVICES LISTED ON THE OTHER SIDE. THIS CONTRACT REPLACES ALL OTHER DISCUSSIONS AND AGREEMENTS, WHETHER ORAL OR WRITTEN, RELATING TO THOSE GOODS AND SERVICES. NO SUBSEQUENT DISCUSSION OR AGREEMENT CAN CHANGE THE TERMS OF THIS CONTRACT UNLESS IT IS WRITTEN AND IS SIGNED BY BOTH THE PURCHASER AND THE SELLER (OR THE SELLER'S ASSIGNEE).

**NOTICE:** ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

**NOTICE:** WE TRUST THAT YOUR DEALINGS WITH US HAVE BEEN SATISFACTORY. IF, FOR ANY REASON, YOU ARE NOT SATISFIED, WE HOPE YOU WILL CONTACT US AND GIVE US THE OPPORTUNITY TO ADDRESS ANY PROBLEMS OR CONCERNS. WE ARE CONFIDENT THAT, IF GIVEN THE OPPORTUNITY, WE WILL BE ABLE TO RESOLVE YOUR CONCERNS. ALTERNATIVELY, YOU SHOULD FEEL FREE TO CONTACT THE CEMETERY CONSUMER SERVICE COUNCIL, WHICH IS AN INDUSTRY-SPONSORED CONSUMER ASSISTANCE ORGANIZATION WHOSE PURPOSE IS TO ANSWER CONSUMER INQUIRIES AND TO INFORMALLY HELP RESOLVE COMPLAINTS. THE CCSC CAN BE CONTACTED AT P. O. BOX 2028, RESTON, VA 20195-0028, (703) 391-8407.

SEE OTHER SIDE FOR ADDITIONAL TERMS AND CONDITIONS

**Greenlawn Funeral Home**

845 Leesburg Road, Columbia, SC 29209 - (803) 776-1092

**STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED**

SERVICE NO. SCGRE11091

Charges are only for those items that you selected or that are required. If we are required by law or a cemetery or crematory to use any item, we will explain the reasons in writing below.

ARRANGEMENTS FOR: Helen T. Carlton DATE OF ARRANGEMENT May 10, 2011  
 DATE OF DEATH May 09, 2011

**A. SERVICES, FACILITIES, AUTOMOBILE, OTHER EQUIPMENT AND SERVICES:**

Basic Professional Service of Director and Staff	\$ <u>Included</u>
Embalming	\$ <u>Included</u>
Other Preparation of the Deceased	\$ <u>Included</u>
Washing and Disinfection of Unembalmed Remains	\$ <u>-0-</u>
Dressing, Casketing & Cosmetology	\$ <u>-0-</u>
Post Autopsy Care/Post Organ Donation	\$ <u>-0-</u>
Restoration Charge	\$ <u>-0-</u>
Refrigeration	\$ <u>-0-</u>
Other Care of the Deceased	\$ <u>-0-</u>
Use of Facilities & Related Staff	\$ <u>Included</u>
Visitation	\$ <u>-0-</u>
Other Visitation	\$ <u>-0-</u>
Funeral Service	\$ <u>Included</u>
Other Funeral Service	\$ <u>-0-</u>
Memorial Service	\$ <u>-0-</u>
Graveside	\$ <u>-0-</u>
Additional facilities/ Staff	\$ <u>-0-</u>
Automotive/Transportation	\$ <u>Included</u>
Transfer of Remains to Funeral Home	\$ <u>Included</u>
Funeral Vehicle & Driver	\$ <u>Included</u>
Service Vehicle	\$ <u>-0-</u>
Other Services	\$ <u>-0-</u>
Immediate Burial	\$ <u>-0-</u>
Direct Cremation	\$ <u>-0-</u>
Forwarding Remains to Another Funeral	\$ <u>-0-</u>
Receiving Remains from Another Funeral	\$ <u>-0-</u>
Catering	\$ <u>-0-</u>
Cemetery Tent & Grave Equipment	\$ <u>-0-</u>
Guide to Creating Eulogy Labor of Love	\$ <u>Included</u>

**B. MERCHANDISE:**

Burial Casket SM10B	\$ <u>Included</u>
Outer Burial Container	\$ <u>-0-</u>
Cremation Casket/Container	\$ <u>-0-</u>
Cremation Urn	\$ <u>-0-</u>
Collection Book	\$ <u>Included</u>
Basic NOA	\$ <u>Included</u>
Video Tribute	\$ <u>Included</u>
Flower Arrangements	\$ <u>810.00</u>
Remembrance Items	\$ <u>-0-</u>
Package Disc Traditional Burial	\$ <u>(485.00)</u>
<b>TOTAL CHARGES FOR SECTIONS A &amp; B</b>	\$ <u>10,125.00</u>

**C. CASH ADVANCES:**

SALES TAX	\$ <u>285.25</u>
Death Certificates	\$ <u>39.00</u>
Newspaper Notice	\$ <u>385.00</u>
Clergy Honorarium	\$ <u>100.00</u>
Musicians/Vocalist	\$ <u>100.00</u>
escort	\$ <u>50.00</u>
Hairdresser	\$ <u>55.00</u>
We charge you for our services in obtaining the fo	\$ <u>0.00</u>
<b>TOTAL CHARGES FOR SECTION C</b>	\$ <u>1024.25</u>
<b>TOTAL SERVICE, MERCHANDISE, CASH ADVANCE CHARGES (Sections A, B, C)</b>	\$ <u>11,149.25</u>
(Credits) to Account	\$ _____
<b>BALANCE DUE AFTER CREDITS</b>	\$ <u>11,149.25</u>

HC      5-10-2011  
 Buyer Initials      Date

Payment Option 1  Payment at the time of service by cash or check. This option saves you finance charges.  
 Payment Option 2  Credit Card - I authorize Greenlawn Funeral Home to charge my credit card for \$ \_\_\_\_\_

Card # \_\_\_\_\_ Exp. Mo \_\_\_\_\_ Yr \_\_\_\_\_ Card Type \_\_\_\_\_ Signature of Cardholder X \_\_\_\_\_

Cardholder acknowledges receipt of funeral merchandise and services in the amount shown above and agrees to perform the obligations set forth in the Cardholder's agreement with the issuer.

Payment Option 3  Third Party Credit Alternative (with approval)      Payment Option 4  Insurance Assignment (Verified assignable insurance policy)

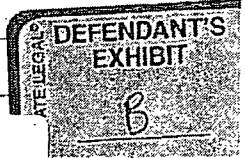
IF MORE THAN ONE BUYER IS EXECUTING THIS CONTRACT, EACH SUCH BUYER HEREBY ACKNOWLEDGES THAT HIS/HER OBLIGATIONS UNDER THIS CONTRACT ARE JOINT AND SEVERAL. EACH BUYER UNDER THIS CONTRACT IS OBLIGED TO PAY THIS CONTRACT EVEN IF ANOTHER PERSON OR PERSON(S) HAS ALSO AGREED TO PAY IT.

The undersigned Buyer acknowledges that Buyer has the legal right to arrange the final services for the Deceased, and Buyer authorizes Greenlawn Funeral Home ("Funeral Home") to furnish the services, merchandise and accommodations described in this Contract, and in consideration the Buyer promises to pay FUNERAL HOME the Balance Due set forth on the attached Statement of Funeral Goods and Services Selected (the "Statement of Goods & Services") in the amount of \$ 11,149.25 and any items ordered subsequent to the execution of this Contract, on or before the date of the funeral service.


Embalming: If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Embalming Approved By Family For Viewing Purposes \_\_\_\_\_

If any legal, cemetery, or crematory requirement has required the purchase of any of the items listed on this agreement, we will explain the requirement below.



Buyer acknowledges receipt of a completed copy of this Contract at the time of execution, and further acknowledges that Buyer has been given for retention the General Price List and has reviewed the Casket Price List and the Outer Burial Container Price List with certain disclosures concerning embalming, required purchase of caskets or outer burial containers and warranty disclaimer.

 \$ 11,149.25  
Initials

IN TESTIMONY WHEREOF, Buyer has caused this Contract to be properly executed as of the date written above. By signing this Contract, Buyer authorizes and directs the disposition of the remains of Deceased, using the services and merchandise described on the attached Statement of Goods And Services and is liable for the payment of the Balance Due.

Executed on May 10, 2011

SELLER AGREES: We agree to furnish all services and merchandise as indicated on the Statement of Funeral Goods and Services Selected/Purchase Agreement.

\_\_\_\_\_  
Funeral Home Authorized Agent  
  
Desi Montez Corley, 2685  
\_\_\_\_\_  
Funeral License No.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

1. BUYER SIGNATURE \_\_\_\_\_  
BUYER'S ADDRESS \_\_\_\_\_  
S.S. NUMBER (Required) \_\_\_\_\_  
2. BUYER SIGNATURE \_\_\_\_\_  
BUYER'S ADDRESS \_\_\_\_\_  
S.S. NUMBER (Required) \_\_\_\_\_  
3. BUYER SIGNATURE \_\_\_\_\_  
BUYER'S ADDRESS \_\_\_\_\_  
S.S. NUMBER (Required) \_\_\_\_\_

CHARGES ARE ONLY FOR ITEMS THAT ARE USED. IF THE TYPE OF FUNERAL SELECTED REQUIRES EXTRA ITEMS, WE WILL EXPLAIN THE REASONS FOR THE EXTRA ITEMS IN WRITING ON THIS CONTRACT.

**NOTICE OF RIGHT TO MODIFY OR CANCEL**  
THIS FUNERAL HOME'S POLICY IS TO OFFER A 14-HOUR PERIOD IN WHICH OUR CUSTOMERS MAY CANCEL OR MODIFY (ALL OR PART) OF THIS TRANSACTION ON ANY SERVICE OR MERCHANDISE NOT ALREADY PERFORMED OR USED AT THE TIME OF RECESSION. WE ARE CONFIDENT WE OFFER THE BEST SERVICE AND QUALITY OF MERCHANDISE TO OUR CUSTOMER.

**ADDITIONAL TERMS AND CONDITIONS**

**ASSIGNMENT TO USE OF MONIES DUE:** You agree that any monies assigned to us in conjunction with this sale shall be paid to us within 30 days of the date of this Agreement. Upon our giving you at least five (5) days prior written notice that any monies due under any such assignment(s) have not been paid to us as provided, we can require that any such unpaid amount(s) previously credited to your account be paid by you at once.

**WAIVER OF RIGHTS:** We have not, by the execution of this Agreement with you, waived any rights we have to file a claim in the estate of the decedent named in Agreement. Any amounts collected by us from estate of the decedent, or from any other source, shall be credited against any amount owed by you under this Agreement.

**WARRANTIES WE DISCLAIM:** BY SIGNING THIS AGREEMENT YOU UNDERSTAND THAT WE, NOT BEING THE MANUFACTURER OF ANY OF THE GOODS BEING PURCHASED, EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE GOODS REMAINS WITH THE MANUFACTURER AND NOT US. SHOULD THE GOODS PROVE DEFECTIVE FOLLOWING THEIR PURCHASE, EITHER THE MANUFACTURER OR YOU, AND NOT US, WILL ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR. WE ARE SELLING THE GOODS ON AN AS IS OR WITH ALL FAULTS BASIS. YOU AGREE THAT YOU ARE NOT ENTERING INTO THIS AGREEMENT BASED ON ANY STATEMENT OF FACT OR PROMISE MADE BY US TO YOU WHICH RELATES TO THE GOODS BEING PURCHASED, ON ANY DESCRIPTION BY US OF THE GOODS, OR ON THE EXHIBITION OF ANY SAMPLE OR MODEL OF THE GOODS. YOU ALSO AGREE THAT THE FAILURE OF THE GOODS TO CONFORM TO ANY SUCH STATEMENT OF FACT, PROMISE, DESCRIPTION, SAMPLE OR MODEL SHALL NOT GIVE YOU ANY RIGHTS AGAINST US.

**LIMITATION OF DAMAGES AND REMEDIES:** By signing this Agreement you expressly waive, and you agree that you shall not be entitled to recover, damages or losses of any kind, whether direct or consequential, based on negligence. You further acknowledge and agree that emotional distress will not be one of the claimed items of damage for any breach of contract.

**NOTICES TO YOU (THE BUYER):** Notices to you shall be sufficient if mailed to your last known address.

**DELAY IN ENFORCEMENT:** We can delay enforcing any of our rights under this Agreement without losing them and no such delay, forbearance or other action or inaction on our part will create any new Agreement or understanding with respect to the payment or other terms herein unless there is a writing signed by both parties with respect to any such new Agreement or understanding.

**PARTIAL PAYMENTS:** We can accept partial payments, even though marked to indicate payment in full or full satisfaction of debt, without losing any of our rights under this Agreement and no acceptance by us of a check for such partial payment shall be deemed a modification of this Agreement.

**COLLECTION COST AND ATTORNEY'S FEES:** This Agreement may be referred to an attorney who is not our salaried employee for collection or enforcement. In such event, you agree to pay all reasonable cost of collection to the extent permitted by law, including court cost, disbursements, and other lawful charges incurred in the collection of your indebtedness, provided, however, that each party shall pay its own attorney's fees incurred in connection with any collection effort or any other dispute of any nature relating to this Agreement and the transaction contemplated hereby. In the event of payment default, I expressly authorize or your agent to obtain a consumer report under the Fair Credit Reporting Act to be used in attempting to collect such defaulted payment(s).

**RESPONSIBILITY FOR PAYMENT:** This Agreement shall not constitute a release of liability imposed by law upon the decedent's estate, but all persons signing this Agreement will be responsible individually and together, for paying all amounts due under this Agreement. We can take action against you to collect amounts due under this Agreement, even if we do not take such action against any other person(s) signing this Agreement.

**LIMITATION OF ACTION:** You agree that to the extent allowed by law, any action against us for breach of this Agreement must be commenced by you or your representative(s) within one year after such cause of action has accrued.

**INVALID PROVISIONS:** If any part of this Agreement is unenforceable, the rest of the Agreement will stay in effect.

**TITLES AND CAPTION:** The titles and captions appearing at the beginning of the various sections of this Agreement have been inserted for Convenience of reference only and shall not in any way affect the construction, interpretation or meaning of the text of said sections themselves.

**ENTIRE AGREEMENT:** This Agreement contains all terms which have been agreed upon by us and you relating to the goods and services listed on the Statement of Funeral Goods and Services Selected/Purchase Agreement. This Agreement replaces all other discussions and agreements, where oral or written, relation to those goods and services. No subsequent discussion or agreement can change the terms of this Agreement unless it is written and is signed by both you and us.

**JURISDICTION:** This Agreement shall be governed by the local law of the state in which the funeral service is being performed and you agree that the jurisdiction on any suit involving this will lie in the courts in that jurisdiction.

**QUESTIONS REGARDING SERVICE:** In the event you wish to question any area of our service, you may contact us at your convenience at the address shown on Page 1.

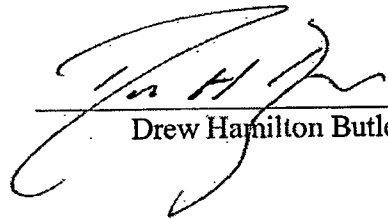
**ARBITRATION:** Seller and Purchaser hereby agree to submit to binding arbitration for any claim, dispute, or issues arising between or in any way involving, Seller and Purchaser, which in any way arise in connection with Agreement or any transaction between parties whether they be based in law or in equity. Seller and Purchaser agree to submit to arbitration pursuant to the arbitration rules of the American Arbitration Association.

**CERTIFICATE OF SERVICE**

I, Drew Hamilton Butler, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Greenlawn Memorial Park do hereby certify that I have served **Defendants' Motion to Dismiss, or in the Alternative, to Compel Arbitration**, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on April 11, 2013.

C. Canton Foster, Esquire  
Foster Law Offices, LLC  
3100 Devine Street  
Columbia, South Carolina 29205

RICHLAND COUNTY  
FILED  
2013 APR 11 AM 11:26  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

  
\_\_\_\_\_  
Drew Hamilton Butler

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Christopher Carlton as Personal Representative  
of the Estate of Helen Tucker Carlton; John  
Thomas Carlton; and Kimberly Carlton Baker

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-40-7874

**MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, TO COMPEL  
ARBITRATION IN RESPONSE TO THE  
AMENDED COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC, the undersigned as counsel for Defendant, Greenlawn Memorial Park (incorrectly identified as "Greenlawn Funeral Home"), will move before this Court for an Order dismissing the present Complaint or, in the alternative, for an Order to Compel Arbitration in Response to the Amended Complaint in accordance with South Carolina Code Annotated, § 15-48-10 et seq. In support of this Motion, the Defendants would respectfully show the following:

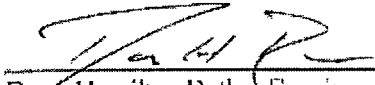
1. The Plaintiff's Complaint should be dismissed pursuant to Rule 12 (b)(1), SCRPC, as the Court of Common Pleas in Richland County lacks jurisdiction to hear this matter.
2. Furthermore, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRPC, as the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action.
3. There is a valid and enforceable arbitration agreement executed as part of the Contract between the parties.

4. All of the Claims arise out of the Contract and are subject to the Contract's Arbitration Clause; none of the Claims are included in the exceptions of S.C. Code Ann. § 15-48-10(b).
5. This arbitration agreement requires arbitration of this dispute to be held in Richland County, South Carolina pursuant to the South Carolina Uniform Arbitration Act (UAA), Section 15-48-10 et seq.
6. The Federal Arbitration Act (FAA) does not preempt the UAA because the Contract does not involve interstate commerce, as the Defendant and Plaintiffs are domiciled in and locate their principle place of business in South Carolina.

For the foregoing reasons, the Defendant respectfully request entry of an Order dismissing the present case or, in the alternative, entry of an Order Compelling Arbitration in accordance with South Carolina Code Annotated, § 15-48-10 et seq.

Respectfully submitted this the 4th day of November, 2013.

**RICHARDSON PLOWDEN & ROBINSON, P.A.**

  
Drew Hamilton Butler, Esquire  
Post Office Drawer 7788  
Columbia, South Carolina 29202  
(803) 771-4400  
[DButler@RichardsonPlowden.com](mailto:DButler@RichardsonPlowden.com)

And

40 Calhoun Street, Suite 220  
Charleston, SC 29401  
(843) 805-6550

**CERTIFICATE OF SERVICE**

I, Jennifer G. Hladek, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for Greenlaw Memorial Park do hereby certify that I have served **Defendants' Motion to Dismiss, or in the Alternative, to Compel Arbitration in Response to the Amended Complaint**, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on November 4, 2013.

C. Canton Foster, Esquire  
Foster Law Offices, LLC  
3100 Devine Street  
Columbia, South Carolina 29205

  
Jennifer G. Hladek



1 THE COURT: All right, this is Carlton versus  
2 Greenlawn.

3 MR. RISER: Yes, Your Honor.

4 THE COURT: All right. Who is the moving party.

5 MR. RISER: Your Honor, Caleb Riser here for the  
6 defendant, Greenlawn Funeral Home.

7 THE COURT: All right.

8 MR. RISER: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. RISER: Again, Caleb Riser here for Greenlawn  
11 Funeral Home, the defendant in this action. Your Honor,  
12 this is defendant's motion to dismiss from the alternative  
13 to compel arbitration. This matter involves two contracts  
14 between the Carlton Family and Greenlawn Funeral Home  
15 known as Greenlawn for purposes of the hearing today. The  
16 first contract was executed by Ms. Helen Carlton on August  
17 the 11th of 2006 for merchandise and services that  
18 included the purchase of a burial plot where she and her  
19 husband as well as the funeral expenses for her husband  
20 who has recently deceased. That contract included the  
21 purchase of side-by-side plots and a headstone, the plots  
22 would include, eventually include both the Carlton's and  
23 the headstones including both of their names. That  
24 contract which is included both with our motion to  
25 dismiss, memorandum in support. That contract included an

1 arbitration clause with notice on the first page, that any  
2 claims regarding the contract would be subject to  
3 arbitration. The second contract was a completion of the  
4 first, if you will, when Mr. Christopher Carlton, the son  
5 of Ms. Helen Carlton entered into a contract on May 10th  
6 of 2011 for the funeral services and merchandise  
7 associated with that for Ms. Helen Carlton. That  
8 agreement also included an arbitration provision stating  
9 that all disputes would be submitted to binding  
10 arbitration. This suit was filed on November 28th of 2012  
11 alleges that Ms. Carlton was buried in a plot other than  
12 the one that she purchased in 2006. The plaintiff's have  
13 not consented to arbitration pursuant to the agreements.

14 THE COURT: Well, did they not know. I mean, the  
15 husband is already dead, right, in the ground?

16 MR. RISER: Yes, Your Honor.

17 THE COURT: He is somewhere. Go right beside him,  
18 how did that happen. Your mama dies second, you go to  
19 daddy's grave, I guess that is where we are going to put  
20 her. I mean I don't understand how it didn't get put  
21 there.

22 MR. RISER: Your Honor, I believe, it is alleged that  
23 Ms. Carlton was buried about thirty-six inches away from,  
24 farther away from her husband than was intended. So, same  
25 area but five years later and just a few inches different.

1 THE COURT: Thirty-six inches. They are not going to  
2 put anybody between them, are they?

3 MR. RISER: Not to my knowledge, Your Honor.

4 THE COURT: She actually got more than what she  
5 bargained for, she bought two and a half plots. They  
6 could put a dog in there I guess. What is the problem?

7 MR. RISER: As far as, the motion today is my client  
8 wants to arbitrate the dispute pursuant to the agreements.  
9 And the plaintiff's do not agree. So we move to dismiss  
10 the lawsuit pursuant to the arbitration provision since  
11 the Court doesn't have jurisdiction. We are in, the  
12 alternative would be to dismiss it and ask for an order  
13 compelling that arbitration.

14 THE COURT: All right, let me talk with the  
15 plaintiff. Was the arbitration language not plain and  
16 visible and all of those sort of requirements that the  
17 arbitration acts require on the front of the contract or  
18 not?

19 MR. FOSTER: That is exactly correct, Your Honor.  
20 They didn't comply with the statute, it wasn't on the  
21 first page, it wasn't underlined. On the second contract  
22 it was at the very bottom of the contract, it was the very  
23 last provision. If you look at their attachments which is  
24 very plain and easy to see. On the first contract, 2006  
25 contract, it is their Exhibit A. The arbitration

1 provision is paragraph, it is on the second page, it is  
2 very hard to see, it is paragraph 22. It is in all  
3 capital letters, they complied with one part of it, all  
4 caps. It is on the second page. That is not the first  
5 page, it is not underlined. It has got to be underlined.  
6 It doesn't quote the section, it has got to quote the  
7 section. So they have got one thing out of four things  
8 they have got to do. They have got to capitalize it, that  
9 is it. Any one of these failures is a fatal failure. You  
10 have got to get all four in there to do it. On the second  
11 one, the second contract, their Exhibit B. It is the very  
12 last thing, down at the very bottom, didn't even  
13 capitalize it this time. It is not even capitalized, it  
14 is not underlined, doesn't cite the code section and  
15 certainly not on the first page. It is on the very bottom  
16 of the second page. They didn't even attempt to comply  
17 with the statute on the second one. So they did three out  
18 of the four things wrong on the first contract. And they  
19 did four out of four things wrong on the second contract.  
20 So it is very clear to me that the South Carolina Uniform  
21 Arbitration Act can't be invoked. It is very clear, the  
22 statute and I can just read it to you but you are  
23 obviously already aware of it. Notice that a contract  
24 subject to arbitration, pursuant to this chapter should be  
25 typed in underlined, capital letters or rubber stamp,

1 there are no rubber stamps anywhere, on the first page of  
2 the contract. And unless the notice is displayed thereon  
3 the contract shall not be subject, it is not a  
4 discretionary thing, it is either shall or shall not. And  
5 they didn't do three out of four things on one contract  
6 and they didn't do four out of four things on the other  
7 contract. Accordingly I think their motion to dismiss  
8 this case is incorrect, it is an error of law and it  
9 should be denied and we should proceed forward. I am not  
10 aware that it is a thirty-six inch difference. I think  
11 there is a big difference, there is also the fact that  
12 when the mother was, they were digging up another place,  
13 left the casket out there exposed to the elements for  
14 several days. There is a lot of issues going on. I can  
15 understand why they don't want to see the inside of a  
16 courtroom on this and they would rather go to arbitration.  
17 I can understand that. The problem is they didn't comply  
18 with the statute and if you don't comply with the statute  
19 you don't get the benefit of the statute.

20 THE COURT: It seems to me it is black and white,  
21 buried beside daddy or not. But the arbitration, the same  
22 thing. How is that not fatal to your request.

23 MR. RISER: Your Honor, I guess in rebuttal, first  
24 the 2006 and 2011 contracts are inextricably linked  
25 because the burial plot and grave site or the headstone

1 were purchased in 2006 pursuant to that. That contract  
2 did include a first page notice and a second page  
3 arbitration provision. That is Exhibit A to the  
4 memorandum in support. The 2011 contract included an  
5 arbitration provision even if it was on the second page,  
6 even lends just more credence to the one in 2006. But if  
7 this Court decides that the provisions in the 2006 and  
8 2011 contracts do not meet the South Carolina Uniform  
9 Arbitration Act provisions it is still the onus of the  
10 Court to see if the arbitration provisions fall in the  
11 Federal Arbitration Act. Now, when the defendant filed  
12 its motion in memorandum of law we included provisions  
13 that say, we don't think that the FAA supercedes the South  
14 Carolina provisions on the basis that the defendant's and  
15 the plaintiff's are both residents of South Carolina. But  
16 it is on the Court to examine the pleadings and the  
17 motions to decide if, in fact, interstate commerce is  
18 implicated by the claims and then it is Your Honor's, it's  
19 the defendant's position that even under, that even if the  
20 South Carolina Arbitration Act doesn't apply, that because  
21 of the strong favorability to arbitration under South  
22 Carolina and Federal law that it could very well be  
23 implied and enforceable under the Federal Arbitration Act.

24 THE COURT: This is going to be kind of hard to say,  
25 you put something in the stream of commerce and it is a

1 grave site.

2 MR. RISER: Your Honor, I would have to check the  
3 details of the actual merchandise. These contracts also  
4 include the purchase of headstones and caskets that may  
5 very well have crossed state lines. I would have to  
6 verify that, if you would like us to verify and further  
7 brief the issue will be happy to do so.

8 THE COURT: Well, let me read the brief closely. The  
9 first impression is, if it is not done by the statute it  
10 is not done by the statute. You can discern that very  
11 quickly. And just the fact that it doesn't get arbitrated  
12 doesn't mean that you automatically lose. I mean, you  
13 still got your rights, defend the case and say we did  
14 everything according to the contract. You still got all  
15 the rights from the state laws, just in a different room  
16 in the Court House. The case is not getting dismissed, it  
17 will remain in here or remain in there. Let me read your  
18 brief closely and I will let y'all know what I decide. My  
19 feeling now is that, I probably right now am leaning  
20 toward denying your motion for arbitration and let it  
21 proceed on.

22 MR. RISER: Would you like proposed orders?

23 THE COURT: Sure, that would be very helpful.

24 MR. RISER: Ten days?

25 THE COURT: Sure.

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MR. FOSTER: Thank you, Your Honor.

\*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Christopher Carlton as the Personal )  
Representative of the Estate of Helen )  
Tucker Carlton; Christopher Carlton; )  
John Thomas Carlton; and Christopher )  
Carlton as the Personal Representative of )  
the Estate of Kimberly Carlton Baker, )

C/A No.: 12-CP-40-7874

Plaintiffs, )

vs. )

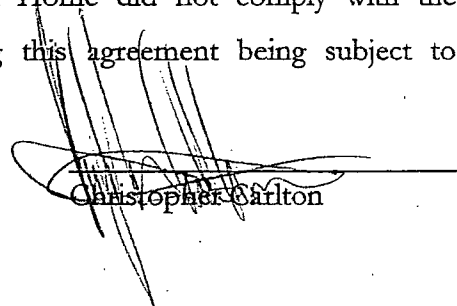
AFFIDAVIT OF CHRISTOPHER CARLTON

Greenlawn Funeral Home, )

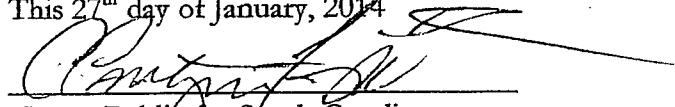
Defendant. )

PERSONALLY APPEARED BEFORE ME, Christopher Carlton, who, after being duly sworn, states as follows:

1. I am one of the Plaintiffs in the above-captioned matter.
2. On May 10, 2011, I executed an agreement with Greenlawn Funeral Home to make certain arrangements for the burial of my mother, Helen Tucker Carlton.
3. When I executed the contract, although I reviewed it for the substantive information regarding my mother's burial and the services related thereto, I did not notice the arbitration provision that was set forth on the second page, at the very bottom. The first I became actually aware of the arbitration provision in this agreement was after the commencement of this litigation.
4. I am informed and believe that Greenlawn Funeral Home did not comply with the applicable law regarding providing notice of having this agreement being subject to arbitration.

  
Christopher Carlton

Sworn to and subscribed before me  
This 27<sup>th</sup> day of January, 2014

  
Notary Public for South Carolina  
My Commission Expires: 6/14/2022

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Christopher Carlton as Personal Representative )  
of the Estate of Helen Tucker Carlton; John )  
Thomas Carlton; and Kimberly Carlton Baker, )  
Plaintiffs, )  
v. )  
Greenlawn Funeral Home, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-40-7874

**AFFIDAVIT OF  
TONYA BRAZIER**

2014 MAR 13 PM 12:20  
C.C.P. & G.O.

PERSONALLY APPEARED BEFORE ME Tonya Brazier, who being duly sworn  
deposes and states as follows:

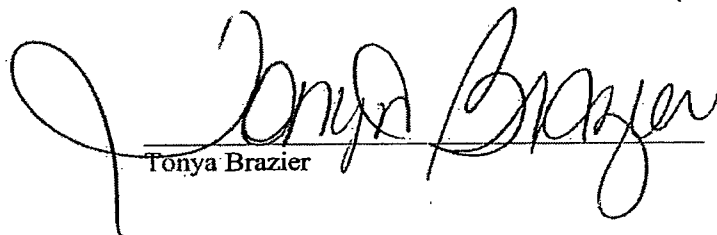
1. That I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. That I am currently employed as an Administrative Manager for Thompson Funeral Home at Greenlawn Memorial Park ("Greenlawn"), which was formally known as Greenlawn Memorial Park and Funeral Home. I have been employed by Greenlawn in that position at all times relevant to the present case.
3. That as an Administrative Manager I am familiar with the products and services offered by Greenlawn, as well as the contracts that outline and define the relationships between Greenlawn and the individuals and families it serves.
4. That I am generally familiar with the instant action and the allegations contained in the Complaint and Amended Complaint filed by the Plaintiffs.
5. That I have reviewed contract #0546-108683, dated August 11, 2006, which I signed on behalf of Greenlawn Memorial Park. The contract is attached as Exhibit A to this Affidavit.

6. That after review of Exhibit A and Greenlawn's records regarding the same, I am informed and believe that at least two of the products purchased under this contract were manufactured outside of South Carolina. Those products include the bronze marker for the bronze grave marker, which was manufactured in Pittsburgh, Pennsylvania and the granite base for the grave marker, which was manufactured in Elberton, Georgia.

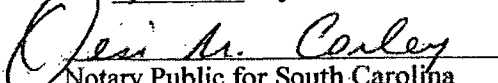
7. That I have also reviewed the Greenlawn Funeral Home contract, Service No. SCGRE11091, dated May 10, 2011. That contract is Exhibit B to this Affidavit.

8. That after review of Exhibit B and Greenlawn's records regarding the same, I am informed and believe that the casket purchased under this contract was manufactured in Batesville, Indiana.

FURTHER THE AFFIANT SAYETH NOT.

  
Tonya Brazier

SWORN to and subscribed before me  
this 12<sup>th</sup> day of March, 2014.

  
Notary Public for South Carolina  
My Commission Expires: May 21, 2021



ADDITIONAL TERMS AND CONDITIONS

- 7. Application of Payments...
8. Month Prior to Full Payment...
9. Payment on Delivery...
10. Liquidated Damages...
11. Cancellation...
12. Assignment...
13. Delivery...
14. Satisfaction...
15. Seller Personal Use Only...
16. Appraisal...
17. Construction...
18. Good Faith...
19. Limitation of Damages...
20. Merchandise and Services...
21. Personal Care Fund...
22. Notice...

INCOME TAX NOTICE: PURCHASER MAY BE SUBJECT TO INCOME TAX ON INCOME EARNED ON ANY FUNDS REQUIRED TO BE TRUSTED RELATING TO MERCHANDISE AND/OR SERVICES PURCHASED HEREUNDER.

ARBITRATION: PURCHASER AGREES THAT ANY CLAIM, HEARSAY OR CONTROVERSY REGARDING THE INTERPRETATION OF THIS AGREEMENT...
DISCLAIMER OF SELLERS WARRANTIES: THE ONLY WARRANTY ON ANY GOODS SOLD IN CONNECTION WITH THIS AGREEMENT IS THE EXPRESS WRITTEN WARRANTY, IF ANY, GRANTED BY THE MANUFACTURER...

ENTIRE AGREEMENT: THIS AGREEMENT CONTAINS ALL TERMS WHICH HAVE BEEN AGREED UPON BY THE PURCHASER AND THE SELLER RELATING TO THE GOODS AND SERVICES LISTED ON THE OTHER SIDE...
NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO...

NOTICE: WE TRUST THAT YOUR DEALINGS WITH US HAVE BEEN SATISFACTORY. IF, FOR ANY REASON, YOU ARE NOT SATISFIED, WE HOPE YOU WILL CONTACT US AND GIVE US THE OPPORTUNITY TO ADDRESS ANY PROBLEMS OR CONCERNS...

**Greenlawn Funeral Home**

845 Leesburg Road, Columbia, SC 29209 - (803) 776-1092

**STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED**

SERVICE NO. SCGRE11091

Charges are only for those items that you selected or that are required. If we are required by law or a cemetery or crematory to use any item, we will explain the reasons in writing below.

ARRANGEMENTS FOR: Helan T. Carlton

DATE OF ARRANGEMENT May 10, 2011

DATE OF DEATH May 09, 2011

**A. SERVICES, FACILITIES, AUTOMOBILE, OTHER EQUIPMENT AND SERVICES:**

Basic Professional Service of Director and Staff	\$ <u>Included</u>
Embalming	\$ <u>Included</u>
Other Preparation of the Deceased	\$ <u>Included</u>
Washing and Disinfection of Unembalmed Remains	\$ <u>-0-</u>
Dressing, Casketing & Cosmetology	\$ <u>-0-</u>
Post Autopsy Care/Post Organ Donation	\$ <u>-0-</u>
Restoration Charge	\$ <u>-0-</u>
Refrigeration	\$ <u>-0-</u>
Other Care of the Deceased	\$ <u>-0-</u>
Use of Facilities & Related Staff	\$ <u>Included</u>
Visitation	\$ <u>-0-</u>
Other Visitation	\$ <u>-0-</u>
Funeral Service	\$ <u>Included</u>
Other Funeral Service	\$ <u>-0-</u>
Memorial Service	\$ <u>-0-</u>
Graveside	\$ <u>-0-</u>
Additional facilities/ Staff	\$ <u>-0-</u>
Automotive/Transportation	\$ <u>Included</u>
Transfer of Remains to Funeral Home	\$ <u>Included</u>
Funeral Vehicle & Driver	\$ <u>Included</u>
Service Vehicle	\$ <u>-0-</u>
Other Services	\$ <u>-0-</u>
Immediate Burial	\$ <u>-0-</u>
Direct Cremation	\$ <u>-0-</u>
Forwarding Remains to Another Funeral	\$ <u>-0-</u>
Receiving Remains from Another Funeral	\$ <u>-0-</u>
Catering	\$ <u>-0-</u>
Cemetery Tent & Grave Equipment	\$ <u>-0-</u>
Guide to Creating Eulogy Labor of Love	\$ <u>Included</u>

**B. MERCHANDISE:**

Burial Casket SM10B	\$ <u>Included</u>
Outer Burial Container	\$ <u>-0-</u>
Cremation Casket/Container	\$ <u>-0-</u>
Cremation Urn	\$ <u>-0-</u>
Collection Book	\$ <u>Included</u>
Basic NOA	\$ <u>Included</u>
Video Tribute	\$ <u>Included</u>
Flower Arrangements	\$ <u>810.00</u>
Remembrance Items	\$ <u>Included</u>
Package Disc Traditional Burial	\$ <u>(485.00)</u>

**TOTAL CHARGES FOR SECTIONS A & B** \$ 10,125.00

**C. CASH ADVANCES:**

SALES TAX	\$ <u>285.26</u>
Death Certificates	\$ <u>39.00</u>
Newspaper Notice	\$ <u>385.00</u>
Clergy Honorarium	\$ <u>100.00</u>
Musicians/Vocalist	\$ <u>100.00</u>
Assistant	\$ <u>50.00</u>
Handdresser	\$ <u>55.00</u>
We charge you for our services in obtaining the fo	\$ <u>0.00</u>

**TOTAL CHARGES FOR SECTION C** \$ 1024.26

**TOTAL SERVICE, MERCHANDISE, CASH ADVANCE CHARGES (Sections A, B, C)** \$ 11,149.26

(Credits) to Account: \$ \_\_\_\_\_

**BALANCE DUE AFTER CREDITS** \$ 11,149.26

Buyer Initials HC Date 5-10-2011

Payment Option 1  Payment at the time of service by cash or check. This option saves you finance charges.  
 Payment Option 2  Credit Card - I authorize Greenlawn Funeral Home to charge my credit card for \$ \_\_\_\_\_

Card # \_\_\_\_\_ Exp. Mo \_\_\_\_\_ Yr \_\_\_\_\_ Card Type \_\_\_\_\_ Signature of Cardholder X \_\_\_\_\_

Cardholder acknowledges receipt of funeral merchandise and services in the amount shown above and agrees to perform the obligations set forth in the Cardholder's agreement with the issuer.

Payment Option 3  Third Party Credit Alternative (with approval)      Payment Option 4  Insurance Assignment (Verified assignable insurance policy)

**IF MORE THAN ONE BUYER IS EXECUTING THIS CONTRACT, EACH SUCH BUYER HEREBY ACKNOWLEDGES THAT HIS/HER OBLIGATIONS UNDER THIS CONTRACT ARE JOINT AND SEVERAL. EACH BUYER UNDER THIS CONTRACT IS OBLIGED TO PAY THIS CONTRACT EVEN IF ANOTHER PERSON OR PERSON(S) HAS ALSO AGREED TO PAY IT.**

The undersigned Buyer acknowledges that Buyer has the legal right to arrange the final services for the Deceased, and Buyer authorizes Greenlawn Funeral Home ("Funeral Home") to furnish the services, merchandise and accommodations described in this Contract, and in consideration the Buyer promises to pay FUNERAL HOME the Balance Due set forth on the attached Statement of Funeral Goods and Services Selected (the "Statement of Goods & Services") in the amount of \$ 11,149.26 and any items ordered subsequent to the execution of this Contract, on or before the date of the funeral service.

Embalming: If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Embalming Approved By Family For Viewing Purposes \_\_\_\_\_  
 If any legal, cemetery, or crematory requirement has required the purchase of any of the items listed on this agreement, we will explain the requirement below \_\_\_\_\_



Buyer acknowledges receipt of a completed copy of this Contract at the time of execution, and further acknowledges that Buyer has been given for retention the General Price List and has reviewed the Casket Price List and the Outer Burial Container Price List with certain disclosures concerning embalming, required purchase of caskets or outer burial containers and warranty disclaimer.

cc \$ 11,149.25  
Initials

IN TESTIMONY WHEREOF, Buyer has caused this Contract to be properly executed as of the date written above. By signing this Contract, Buyer authorizes and directs the disposition of the remains of Deceased, using the services and merchandise described on the attached Statement of Goods And Services and is liable for the payment of the Balance Due.

Executed on May 10, 2011

**SELLER AGREES:** We agree to furnish all services and merchandise as indicated on the Statement of Funeral Goods and Services Selected/Purchase Agreement

\_\_\_\_\_  
Funeral Home Authorized Agent  
  
\_\_\_\_\_  
Desi Montez Corley, 2065  
Funeral License No.

**CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.**

1. BUYER SIGNATURE \_\_\_\_\_  
BUYER'S ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
S.S. NUMBER (Required) \_\_\_\_\_  
2. BUYER SIGNATURE \_\_\_\_\_  
BUYER'S ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
S.S. NUMBER (Required) \_\_\_\_\_  
3. BUYER SIGNATURE \_\_\_\_\_  
BUYER'S ADDRESS \_\_\_\_\_  
\_\_\_\_\_  
S.S. NUMBER (Required) \_\_\_\_\_

**CHARGES ARE ONLY FOR ITEMS THAT ARE USED. IF THE TYPE OF FUNERAL SELECTED REQUIRES EXTRA ITEMS, WE WILL EXPLAIN THE REASONS FOR THE EXTRA ITEMS IN WRITING ON THIS CONTRACT.**

**NOTICE OF RIGHT TO MODIFY OR CANCEL**  
THIS FUNERAL HOME'S POLICY IS TO OFFER A 24-HOUR PERIOD IN WHICH OUR CUSTOMERS MAY CANCEL OR MODIFY (ALL OR PART) OF THIS TRANSACTION ON ANY SERVICE OR MERCHANDISE NOT ALREADY PERFORMED OR USED AT THE TIME OF RECESSION. WE ARE CONFIDENT WE OFFER THE BEST SERVICE AND QUALITY OF MERCHANDISE TO OUR CUSTOMER.

**ADDITIONAL TERMS AND CONDITIONS**

**ASSIGNMENT TO USE OF MONIES DUE:** You agree that any monies assigned to us in conjunction with this sale shall be paid to us within 30 days of the date of this Agreement. Upon our giving you at least five (5) days prior written notice that any monies due under any such assignment(s) have not been paid to us as promised, we can require that any such unpaid amount(s) previously credited to your account be paid by you at once.

**WAIVER OF RIGHTS:** We have not, by the execution of this Agreement with you, waived any rights we have to file a claim in the estate of the decedent named in Agreement. Any amounts collected by us from estate of the decedent, or from any other source, shall be credited against any amount owed by you under this Agreement.

**WARRANTIES WE DISCLAIM:** BY SIGNING THIS AGREEMENT YOU UNDERSTAND THAT WE, NOT BEING THE MANUFACTURER OF ANY OF THE GOODS BEING PURCHASED, EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE GOODS REMAINS WITH THE MANUFACTURER AND NOT US. SHOULD THE GOODS PROVE DEFECTIVE FOLLOWING THEIR PURCHASE, EITHER THE MANUFACTURER OR YOU, AND NOT US, WILL ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR. WE ARE SELLING THE GOODS ON AN AS IS OR WITH ALL FAULTS BASIS. YOU AGREE THAT YOU ARE NOT ENTERING INTO THIS AGREEMENT BASED ON ANY STATEMENT OF FACT OR PROMISE MADE BY US TO YOU WHICH RELATES TO THE GOODS BEING PURCHASED, ON ANY DESCRIPTION BY US OF THE GOODS, OR ON THE EXHIBITION OF ANY SAMPLE OR MODEL OF THE GOODS. YOU ALSO AGREE THAT THE FAILURE OF THE GOODS TO CONFORM TO ANY SUCH STATEMENT OF FACT, PROMISE, DESCRIPTION, SAMPLE OR MODEL, SHALL NOT GIVE YOU ANY RIGHTS AGAINST US.

**LIMITATION OF DAMAGES AND REMEDIES:** By signing this Agreement you expressly waive, and you agree that you shall not be entitled to recover, damages or losses of any kind, whether direct or consequential, based on negligence. You further acknowledge and agree that emotional distress will not be one of the claimed items of damage for any breach of contract.

**NOTICES TO YOU (THE BUYER):** Notices to you shall be sufficient if mailed to your last known address.

**DELAY IN ENFORCEMENT:** We can delay enforcing any of our rights under this Agreement without losing them and no such delay, forbearance or other action or inaction on our part will create any new Agreement or understanding with respect to the payment or other terms herein unless there is a writing signed by both parties with respect to any such new Agreement or understanding.

**PARTIAL PAYMENTS:** We can accept partial payments, even though marked to indicate payment in full or full satisfaction of debt, without losing any of our rights under this Agreement and no acceptance by us of a check for such partial payment shall be deemed a modification of this Agreement.

**COLLECTION COST AND ATTORNEY'S FEES:** This Agreement may be referred to an attorney who is not our salaried employee for collection or enforcement. In such event, you agree to pay all reasonable cost of collection to the extent permitted by law, including court cost, disbursements, and other lawful charges incurred in the collection of your indebtedness, provided, however, that each party shall pay its own attorney's fees incurred in connection with any collection effort or any other stipula of any nature relating to this Agreement and the transaction contemplated hereby. In the event of payment default, I expressly authorize or your agent to obtain a consumer report under the Fair Credit Reporting Act to be used in attempting to collect such defaulted payment(s).

**RESPONSIBILITY FOR PAYMENT:** This Agreement shall not constitute a release of liability imposed by law upon the decedent's estate, but all persons signing this Agreement will be responsible individually and together, for paying all amounts due under this Agreement. We can take action against you to collect amounts due under this Agreement, even if we do not take such action against any other person(s) signing this Agreement.

**LIMITATION OF ACTION:** You agree that to the extent allowed by law, any action against us for breach of this Agreement must be commenced by you or your representative(s) within one year after such cause of action has accrued.

**INVALID PROVISIONS:** If any part of this Agreement is unenforceable, the rest of the Agreement will stay in effect.

**TITLES AND CAPTION:** The titles and captions appearing at the beginning of the various sections of this Agreement have been inserted for Convenience of reference only and shall not in any way affect the construction, interpretation or meaning of the text of said sections themselves.

**ENTIRE AGREEMENT:** This Agreement contains all terms which have been agreed upon by us and you relating to the goods and services listed on the Statement of Funeral Goods and Services Selected/Purchase Agreement. This Agreement replaces all other discussions and agreements, where oral or written, relation to those goods and services. No subsequent discussion or agreement can change the terms of this Agreement unless it is written and is signed by both you and us.

**JURISDICTION:** This Agreement shall be governed by the local law of the state in which the funeral service is being performed and you agree that the jurisdiction on any suit involving this will lie in the courts in that jurisdiction.

**QUESTIONS REGARDING SERVICE:** In the event you wish to question any area of our service, you may contact us at your convenience at the address shown on Page 1.

**ARBITRATION:** Seller and Purchaser hereby agree to submit to binding arbitration for any claim, dispute, or issues arising between or in any way involving, Seller and Purchaser, which in any way arise in connection with Agreement or any transaction between parties whether they be based in law or in equity. Seller and Purchaser agree to submit to arbitration pursuant to the arbitration rules of the American Arbitration Association.

## Sheila Bias

---

**From:** Caleb Riser  
**Sent:** Tuesday, August 19, 2014 4:16 PM  
**To:** Sheila Bias  
**Subject:** FW: Carlton et al. vs. Greenlawn Funeral Home 12-CP-40-7874 (RE: Proposed Order from Defendant)  
**Attachments:** Judge Griffith 03.14.14 (re prop Order).pdf; Proposed Order Granting Motion to Dismiss.doc; Proposed Order Granting Motion to Dismiss.pdf; Affidavit of Tonya Brazier 031314.pdf

See below and attached

---

**From:** Caleb Riser  
**Sent:** Friday, March 14, 2014 10:02 AM  
**To:** [egriffithc@sccourts.org](mailto:egriffithc@sccourts.org); [egriffithj@sccourts.org](mailto:egriffithj@sccourts.org)  
**Cc:** [bryan@fosterlawoffice.net](mailto:bryan@fosterlawoffice.net); Drew Butler  
**Subject:** Carlton et al. vs. Greenlawn Funeral Home 12-CP-40-7874 (RE: Proposed Order from Defendant)


Dear Judge Griffith,

Please find attached a letter regarding the proposed Order granting Defendant's Motion to Dismiss for the above-referenced matter, as well as an Affidavit of Tonya Brazier and two electronic copies of the proposed Order, one in .doc and one in .pdf format. A hardcopy is being mailed to your chambers today.

Should you have any questions or need any additional information please let me know.

Thank you for your consideration.

Caleb

HOME	VCARD	LOCATION
	<b>Caleb Riser</b> Attorney at Law <a href="mailto:criser@richardsonplowden.com">criser@richardsonplowden.com</a>	<b>Richardson Plowden &amp; Robinson, P.A.</b> 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3709 Fax: 803.779.0016 <a href="http://www.RichardsonPlowden.com">www.RichardsonPlowden.com</a>

**IRS CIRCULAR 230 DISCLOSURE.** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. Any such advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent.

The information contained in this e-mail message may be attorney-client privileged, attorney work product, or strictly confidential information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (803) 771-4400 and permanently delete this e-mail.

## Sheila Bias

---

**From:** Caleb Riser  
**Sent:** Wednesday, August 20, 2014 9:05 AM  
**To:** Sheila Bias  
**Subject:** FW: Carlton et al. vs. Greenlawn Funeral Home 12-CP-40-7874 (RE: Proposed Order from Defendant)

**Importance:** High

---

**From:** Bryan D. Caskey [<mailto:bryan@fosterlawoffice.net>]  
**Sent:** Friday, March 14, 2014 2:28 PM  
**To:** Caleb Riser; [egriffithc@sccourts.org](mailto:egriffithc@sccourts.org); [egriffithj@sccourts.org](mailto:egriffithj@sccourts.org)  
**Cc:** Drew Butler; [cantzon@fosterlawoffice.net](mailto:cantzon@fosterlawoffice.net)  
**Subject:** RE: Carlton et al. vs. Greenlawn Funeral Home 12-CP-40-7874 (RE: Proposed Order from Defendant)  
**Importance:** High

All:

**I object to the Defendant offering an affidavit for the Court's consideration over a week after the hearing**, when Rule 6(d) clearly states "When a motion is to be supported by affidavit, the affidavit shall be served *with the motion*...." Accordingly, as Plaintiff's proposed order appears to hinge on this untimely (and ultimately irrelevant) affidavit, I request that the Court not consider this untimely affidavit, strike it, and deny the Defendant's motion.

Since this affidavit is untimely and should be stricken, it should not be considered. However, out of an extreme abundance of caution, it is the Plaintiff's position that this affidavit is still not persuasive, even assuming the assertions in the affidavit to be truthful.

The fact that the Defendant bought certain items from out of state is entirely irrelevant to the specific nature of the contract between the parties – namely, burial services that all took place within South Carolina. See, *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) (stating that a contract between a nursing home and patient did not involve interstate commerce, despite the fact that the nursing home was a division of a Delaware partnership, marketed its services to persons residing outside of the state, and purchased the majority of its supplies and equipment from out-of-state; the Court reasoned that the performance of the contract—the provision of patient-resident services in South Carolina—did not require any activities in interstate commerce).

The Defendant's simply purchasing supplies does not implicate interstate commerce.

Regards,

Bryan D. Caskey  
Foster Law Office, LLC  
(803) 400-1921

---

**From:** Caleb Riser [<mailto:CRiser@RichardsonPlowden.com>]  
**Sent:** Friday, March 14, 2014 10:02 AM  
**To:** [egriffithc@sccourts.org](mailto:egriffithc@sccourts.org); [egriffithj@sccourts.org](mailto:egriffithj@sccourts.org)  
**Cc:** [bryan@fosterlawoffice.net](mailto:bryan@fosterlawoffice.net); Drew Butler  
**Subject:** Carlton et al. vs. Greenlawn Funeral Home 12-CP-40-7874 (RE: Proposed Order from Defendant)


Dear Judge Griffith,

Please find attached a letter regarding the proposed Order granting Defendant's Motion to Dismiss for the above-referenced matter, as well as an Affidavit of Tonya Brazier and two electronic copies of the proposed Order, one in .doc and one in .pdf format. A hardcopy is being mailed to your chambers today.

Should you have any questions or need any additional information please let me know.

Thank you for your consideration.

Caleb

HOME	VGARD	LOCATION
	<b>Caleb Riser</b> Attorney at Law criser@richardsonplowden.com	
	<b>Richardson Plowden &amp; Robinson, P.A.</b> 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3709 Fax: 803.779.0016 www.RichardsonPlowden.com	

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Christopher Carlton as Personal Representative )  
of the Estate of Helen Tucker Carlton; John )  
Thomas Carlton; and Kimberly Carlton Baker, )  
Plaintiffs, )  
v. )  
Greenlawn Funeral Home, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
CASE NO.: 2012-CP-40-7874

**MEMORANDUM IN SUPPORT  
OF DEFENDANT'S MOTION  
TO DISMISS**

REC'D JAN 23 PM 12:41  
CLERK OF COURT  
SOUTH CAROLINA  
RICHLAND COUNTY

COMES NOW, Greenlawn Funeral Home (hereinafter "Greenlawn" or "Defendant"), by and through the undersigned counsel, and submits its Motion to Dismiss pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. For the reasons set forth below, the Defendant respectfully submits that the action filed by the Plaintiffs may not be maintained before the present Court under South Carolina law and that the Defendant's Motion to Compel Arbitration should be granted pursuant to a contract entering into by the parties as well as the provisions of the South Carolina Uniform Arbitration Act, S.C. Code § 15-48-10, et. seq. ("SC UAA").

**FACTUAL BACKGROUND**

Plaintiffs commenced this action against Greenlawn on November 28, 2012 alleging breach of contract, trespass and negligence related to burial plots, merchandise and services for the decedents Fielder and Helen Carlton. This case arises from the purchase of two burial plots and a grave marker from Greenlawn by the Plaintiff Helen Carlton for her deceased husband, Fielder Carlton, in August 2006. (Complaint, para. 4) Mrs. Helen Carlton passed away in 2011 and was buried at Greenlawn shortly thereafter. (Complaint, para. 5) The allegations in the Amended Complaint include that the decedent Mrs. Helen Carlton was buried in a plot at the cemetery other than the one she purchased in 2006. (Complaint, para. 6-9)

Greenlawn Memorial Park entered into a contract with Helen Carlton on August 11, 2006 for interment rights, merchandise and services related to the two burial plots for each of Mr. and Mrs. Carlton, and the grave marker and interment services for Mr. Fielder Carlton. (Exhibit A) The Plaintiff, Christopher Carlton, also entered into a subsequent contract with Greenlawn on May 10, 2011 for merchandise and services related to Helen Carlton's burial. (Exhibit B) Both contracts contain arbitration clauses.

### LEGAL STANDARD

"There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010). "A motion to compel arbitration pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118-119 (2001). "Any doubts covering the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 597, 553 S.E.2d at 118.

The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.' Such a presumption is strengthened when an arbitration clause is broadly written. Therefore, unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute[,] arbitration must generally be ordered.

*Landers v. Federal Deposit Ins. Corp.*, 402 S.C. 100, 739 S.E.2d 209 (2013) (citing *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88 (4th Cir.1996); *AT & T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 106 S. Ct. 1415 (1986); *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 119).

If there is no valid claim for relief in the Complaint, viewing the facts in the light most favorable to the Plaintiff, a motion to dismiss should be granted. *Grazia v. S.C. Plastering, LLC*,

---S.E.2d---, 2010 WL 4008527 (October 4, 2010) (citing *McCormick v. England*, 328 S.C. 627, 632-3, 494 S.E.2d 431, 433 (Ct. App. 1997).

## ANALYSIS

### I. Arbitration should be compelled as required under the terms of the contract.

“Arbitration is a matter of contract....” *Carlson v. South Carolina State Plastering, LLC*, ---S.C.---, 743 S.E.2d 868, 874 (Ct. App. 2013) (citing *New Hope Missionary Baptist Church*, 379 S.C. at 627, 667 S.E.2d at 4. “A clause which provides for arbitration of all disputes ‘arising out of or relating to’ the contract is construed broadly.” *Carlson* at 874 (citing *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 213–14 (2013).

The arbitration agreement in the contracts for the burial services and merchandise of Mr. and Mrs. Carlton each provide arbitration agreements which are valid and enforceable under the South Carolina UAA. The relationship between the Plaintiffs and Defendant arises from a contractual agreement for merchandise and services. The contract dated August 11, 2006 (Exhibit A) provides the following arbitration clause:

**ARBITRATION: PURCHASER AGREES THAT ANY CLAIM HE/SHE MAY HAVE RELATING TO THE TRANSATION CONTEMPLATED BY THIS AGREEMENT (INCLUDING ANY CLAIM OR CONTROVERSY REGARDING THE INTERPRETATION OF THIS ARBITRATION CLAUSE) SHALL BE SUBMITTED TO AND FINALLY RESOLVED BY MANDATORY AND BINDING ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”); PROVIDED, HOWEVER, THAT THE FOREGOING REFERENCE TO THE AAA RULES SHALL NOT BE DEEMED TO REQUIRE ANY FILING WITH THAT ORGANIZATION, NOR DIRECT INVOLVEMENT OF THAT ORGANIZATIONS. ... THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY CLAIM TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT....**

The contract dated May 10, 2011 (Exhibit B) contains the following arbitration clause:

**ARBITRATION:** Seller and Purchaser hereby agree to submit to binding arbitration for any claim, dispute, or issues arising between or in any way

involving, Seller and Purchaser, which in any way arise in connection with Agreement or any transaction between parties whether they be based in law or in equity. Seller and Purchaser agree to submit to arbitration pursuant to the arbitration rules of the American Arbitration Association.

The parties to a contract are free to agree that the SC UAA will apply, even if interstate commerce is involved. *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 538, n.2, 542 S.E.2d 360, 363, n.2 (2001). The SC UAA provides:

“[A] provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.”

S.C. Code § 15-48-10(a) (emphasis added). The arbitration notice for the contract dated August 11, 2006 clearly meets the requirements of S.C. Code § 15-48-10(a). The matter is only strengthened by the fact that the named Plaintiff executed a subsequent contract with the Defendant containing yet another Arbitration provision.

The SC UAA specifically contemplates a scenario in which the parties disagree about the applicability of an Arbitration clause while a current lawsuit is pending before a Court and provides:

(a) On application of a party showing an agreement described in § 15-48-10, and the opposing party’s refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

...

(c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application may be made in any court of competent jurisdiction.

(d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

S.C. Code § 15-48-20(a), (c), and (d) (emphasis added).

Here, the Plaintiffs have refused Defendant's request to arbitrate and continue to prosecute the present action in the Court of Common Pleas. The parties' contractual agreement subjects all disputes related to Greenlawn's services and products to arbitration. The arbitration clauses contained in the contracts are valid and enforceable under the SC UAA requirements. Further, no interstate commerce is involved, and thus, the SC UAA applies rather than the Federal Arbitration Act ("FAA").

If the Court finds that the SC UAA requirements are not met, then the FAA applies. Our Courts have found that if the arbitration agreement in question cannot be enforced under state law, then the FAA applies. *Soil Remediation Co. v. Nu-Way Environmental, Inc.*, 323 S.C. 454, 459-460, 476 S.E.2d 149, 151-152 (1996). If "an application of the South Carolina law would have rendered the parties' arbitration agreement completely unenforceable, consideration of the applicability of the FAA is required. The FAA is intended to ensure that arbitration will proceed in the event a state law would have preclusive effect on an otherwise valid arbitration agreement." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012) (citing *Marmet Health Care Ctr., Inc. v. Brown*, — U.S. —, 132 S.Ct. 1201, 1203 (2012)). If the Court finds that the requirements under S.C. Code § 15-48-10 are not met with regards to the arbitration clauses in the contracts, then the regulations under the FAA apply and arbitration should be compelled under the FAA.

As a result of the above, the court should compel arbitration and dismiss the present action due to lack of jurisdiction.

**II. All causes of action asserted in the Complaint are subject to arbitration.**

“A clause which provides for arbitration of all disputes ‘arising out of or relating to’ the contract is construed broadly.” *Carlson*, 743 S.E.2d at 874 (citing *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 213–14 (2013)). “Courts have held that such broad clauses ‘appl[y] to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained.’” *Carlson* at 874 (citing *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 214 (2013)). “Thus, the scope of the clause does not limit arbitration to the literal interpretation or performance of the contract, but embraces every dispute between the parties having a significant relationship to the contract.” *Carlson* at 875 (citing *Landers v. FDIC*, 402 S.C. at 109). “Accordingly, the ‘court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.’” *Id.* (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. at 597). The court in *Carlson* held that “the factual allegations underlying the [plaintiffs’] claims have a significant relationship between the purchase agreement, such that the arbitration clause should be read to encompass the [plaintiffs’] tort claims.”

Both the Fourth Circuit Court of Appeals and this Court have held that the sweeping language of broad arbitration clauses applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained. Thus, **the scope of the clause does “not limit arbitration to the literal interpretation or performance of the contract [, but] embraces every dispute between the parties having a significant relationship to the contract.**

*Landers* at 109-110 (citing *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 319 (4th Cir. 1988); *Zabinski*, 346 S.C. at 598) (emphasis added).

Here, both the trespass and negligence claims relate directly to the services provided by Greenlawn for the burial of Mr. and Mrs. Carlton. The arbitration clauses in each of the two contracts provide that *any* controversy or claim relating to the burial services and merchandise is subject to arbitration. Specifically, the August 2006 contract's arbitration clause provides as follows:

**PURCHASER AGREES THAT ANY CLAIM HE/SHE MAY HAVE RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT (INCLUDING ANY CLAIM OR CONTROVERSY REGARDING THE INTERPRETATION OF THIS ARBITRATION CLAUSE) SHALL BE SUBMITTED TO AND FINALLY RESOLVED BY MANDATORY AND BINDING ARBITRATION**

The May 2011 contract's arbitration clause provides as follows:

Seller and Purchaser hereby agree to submit to binding arbitration for any claim, dispute, or issues arising between or in any way involving, Seller and Purchaser, which in any way arise in connection with Agreement or any transaction between parties whether they be based in law or in equity.

Each arbitration clause provides that all controversies surrounding Greenlawn's services and merchandise are subject to arbitration.

Further, the facts as outlined in the Amended Complaint are identical for each of the causes of action. To the extent that the negligence and trespass causes of action have any validity, they stem from the contractual relationship outlining the contractual obligations of Greenlawn, the alleged breach of which is the subject of the breach of contract cause of action. As a result of all of claims emanating from the same facts, as in the *Carlson* and *Landers* cases discussed above, all issues are subject to the arbitration clauses contained in the contracts and should be resolved in arbitration.

**III. Dismissal with prejudice of the current legal action is appropriate after compelling arbitration.**

Dismissal is an appropriate remedy when the issues are subject to arbitration, as they are here. *Choice Hotels Int'l, Inc. v. BSR Tropicana Resort*, 252 F.3d 707, 709-710 (4th Cir. 2001). The nature of the relationship between the parties arises solely from a contractual agreement for the burial services and related merchandise for both Mr. and Mrs. Carlton. The allegations contained in the Complaint surround the contract for the burial of each of Helen Carlton and Fielder Carlton. “[R]etaining jurisdiction and staying the action will serve no purpose [because] any post arbitration remedies sought by parties will not entail renewed consideration and adjudication on the merits of the controversy but would be circumscribed to a judicial review of the arbitrator’s award in the limited manner prescribed by law.” *Alford*, 975 at 1164.

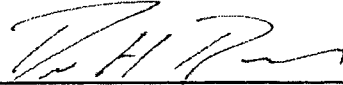
The present lawsuit will serve no purpose upon reference to arbitration. Jurisdiction over the merits of the controversy should not be retained by this Court while the matter is referred to arbitration.

**CONCLUSION**

For the foregoing reasons, Defendants’ Motion to Dismiss should be GRANTED and arbitration should be compelled.

[Signature block on following page]

**RICHARDSON PLOWDEN & ROBINSON, P.A.**



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and


40 Calhoun Street, Suite 220  
Charleston, SC 29401  
(843) 805-6550

January 21, 2014

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 21, 2014, a copy of the within pleading was served upon opposing counsel of record by mailing a copy properly addressed with sufficient postage affixed thereto, or via e-mail as agreed, as follows:

By:   
Legal Secretary

GREENLAWN MEMORIAL PARK 70543  
843 Leesburg Rd., Columbia, SC 29209-2103  
(803) 774-1292

WOODRIDGE MEMORIAL PARK 70547  
138 Carley Hill Rd., Lexington, SC 29072  
(803) 937-7257

GREENLAWN MEMORIAL PARK NE 70549  
11020 Two Notch Rd., Egan, SC 29043  
(803) 774-1292

No 710670 ✓

**CEMETERY INTERMENT RIGHTS, MERCHANDISE AND SERVICES PURCHASE/SECURITY AGREEMENT**  
THIS AGREEMENT PROVIDES FOR PERPETUAL CARE

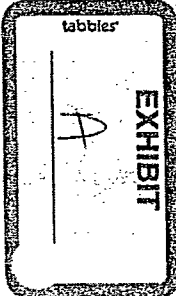
This Agreement is made this 11<sup>th</sup> day of August, 2006, by and between the undersigned "Seller" and Helen A. Carlton hereinafter called the "Purchaser" Address: 348 Cherry Blossom Rd. Gaston SC 29053 Residence Telephone No. 803-765-0963 Day Telephone No. \_\_\_\_\_

WITNESSETH THAT: The Seller agrees to sell and Purchaser agrees to buy the following described Interment Rights, Merchandise and Services.  
 Developed  Predeveloped  Lot  Lawn Crypt  Mausoleum  Niche  Other \_\_\_\_\_

No	DESCRIPTION	PRICE	LEAS
1	Interment Rights Inc. \$ <u>220</u> P.C.F.I. \$ <u>519.0</u> Leas: _____		
1	Merchandise-Type <u>CR 1013</u> <u>CR 1013</u> Down Payment Cash _____	<u>995</u>	<u>(3822.62)</u>
1	Merchandise-Type <u>CR 1013</u> <u>CR 1013</u> Credit Card _____	<u>350</u>	<u>(3822.62)</u>
1	Merchandise-Type <u>CR 1013</u> <u>CR 1013</u> Total Down Payment <u>PAID</u> _____	<u>75</u>	<u>(3822.62)</u>
1	Merchandise-Type <u>CR 1013</u> <u>CR 1013</u> Unpaid Balance of <u>PAID</u> _____	<u>623</u>	<u>(3822.62)</u>
	Merchandise-Type <u>CR 1013</u> <u>CR 1013</u> Amount Financed <u>PAID</u> _____		<u>(3822.62)</u>
	Outer Burial Container _____		
	Category I* _____		
	Category II** _____		
	Interment and Recording Fee _____	<u>179.0</u>	
	Processing Fee _____	<u>25</u>	
	Other <u>PAID</u> _____	<u>260</u>	
	Other <u>PAID</u> _____	<u>300</u>	
	Other <u>PAID</u> _____	<u>1150</u>	
	Merchandise Discount _____	<u>170</u>	
	Sales Tax _____	<u>170</u>	
	(a) Total Cash Price (including Sales Tax) _____	<u>10142.54</u>	

\* Definition: Category I is an outer burial container designed to resist the entrance of water or any other ground elements. No representations are made to the effect that a Category I outer burial container is airtight or waterproof or would protect the body from pervasive substances for an indefinite time.  
\*\* Definition: Category II is a nonsealing outer burial container. The only representations or warranties regarding outer burial containers are those extended by the manufacturer. See the reverse side of this Agreement for details.

ITEMIZATION OF AMOUNT FINANCED OF \$ 6319.92 shall be credited to your account with Seller. Amount paid to others on your behalf \$ 16.54 to public officials.



ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
<u>0</u> %	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of \$ <u>3822.62</u> (b) (a+d) <u>10142.54</u>
		<u>(6319.92)</u>	<u>(6319.92)</u>	

Your payment schedule will be:  

Number of Payments	Amount of Payments	When Payments Are Due
<u>59</u>	<u>\$105.33</u>	<u>Sept. 25, 2006</u> Beginning
<u>One</u>	<u>\$105.45</u>	

Prepayment: If you pay off early, you will be entitled to a rebate of all or part of the Finance Charge.  
 Security: You are giving a security interest in the goods and property being purchased.  
 Late Charges: If full payment is not made within 10 days after it is due, you will be charged \$5.00 or 5% of such payment, whichever is less.  
 Other Provisions: See this Agreement for any additional information about nonpayment, default, any required repayment in full (exclusive of unearned finance charges) before the scheduled date, and prepayment rebates and penalties.

1. The Annual Percentage Rate is imposed only on the portion of the Amount Financed that is subject to Finance Charge.  
 2. Finance Charges are computed on all items excluding the Interment and Recording Fee.  
 3. If accepted by Seller, the parties hereto agree to the following terms and conditions:  
 1. Agreement to Pay. Having first been quoted both a Total Cash Price and a Total Sale Price for the items described above, and for value received, the undersigned Purchaser, jointly and severally, if more than one, promises to pay to the order of Seller, at its address shown above, the amount identified above as the Total of Payments in accordance with the payment schedule dates set out above.  
 2. Title. Seller will retain title to said Interment Rights and Merchandise until the Total Sale Price has been paid by Purchaser to Seller.  
 3. Cemetery Rules and Regulations. Purchaser agrees that all rights conveyed under this Agreement are subject to, and Purchaser agrees to at all times comply with, the present (and as may be hereinafter adopted, amended or altered) rules and regulations of Seller, which are available for examination in Seller's office.  
 4. Prepayment. Upon prepayment in full, whether voluntarily or upon acceleration by reason of Purchaser's default, and payment in full or judgment being entered against Purchaser for the unpaid balance, Purchaser shall receive a rebate of any unearned Finance Charge computed in accordance with the Actuarial method. If (i) the need for interment arises within 120 days of the date of this Agreement and the Agreement is paid in full or (ii) this Agreement provides only for the purchase of memorialization and its installation and is paid in full within 120 days of the date of this Agreement, Purchaser will be entitled to a full rebate of all Finance Charges previously paid.  
 5. Interment and Recording Fee. Unless otherwise specifically provided herein, a charge for opening and closing the interment space and applicable cemetery document recording (herein referred to as "Interment and Recording Fee"), is not included in the Total Cash Price set forth herein, and there will be an added charge for this service at the time of need. If the Interment and Recording Fee is purchased hereunder, the price set forth herein reflects normal work hour rates. There will be an additional charge if the interment service is provided on a weekend, holiday, or after normal work hours.  
 6. Issuance of Certificate of Interment Rights. Upon payment of the Total Sale Price by the Purchaser, the Seller agrees to convey the above-described Interment Rights by issuance of a Certificate of Interment Rights to the Person(s) designated below.

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_  
 NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_  
 NEXT OF KIN: \_\_\_\_\_

NOTICE: BY SIGNING THIS AGREEMENT, PURCHASER IS AGREEING THAT ANY CLAIM PURCHASER MAY HAVE AGAINST THE SELLER SHALL BE RESOLVED BY ARBITRATION AND PURCHASER IS GIVING UP HIS/HER RIGHT TO A COURT OR JURY TRIAL AS WELL AS HIS/HER RIGHT OF APPEAL.  
 BY SIGNING THIS AGREEMENT, THE PURCHASER CONFIRMS HAVING BEEN MADE AWARE THAT THE PURCHASER HAS THE RIGHT TO SELECT ONLY THOSE ITEMS, SERVICES AND MERCHANDISE THAT THE PURCHASER DESIRES.  
 NOTICE TO PURCHASER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law. Purchaser also hereby acknowledges that this Agreement was completed as to all essential provisions hereof at the time this Agreement was signed.

Date 11:30 AM  PM  Source PN Seller (Creditor):  
 GREENLAWN MEMORIAL PARK  
 WOODRIDGE MEMORIAL PARK  
 GREENLAWN MEMORIAL PARK NE  
 Signed this 11<sup>th</sup> day of August, 2006.  
 The Internal Revenue Service does not require your consent to any provision of this document that purports to be a security agreement without filing.  
 Purchaser: Helen A. Carlton 11/23/19  
 S.S.N. 950-90-7690  Title \_\_\_\_\_  
 Co-Purchaser: \_\_\_\_\_ Counselor: Mr. Brainerd 8/11/06

\* Under penalty of perjury, the Purchaser represents and warrants that the Social Security number shown on this Agreement is his or her correct identification number and that he or she is not a minor. If the Internal Revenue Service does not require your consent to any provision of this document that purports to be a security agreement without filing.  
 IF THIS SELLER SELLER A OF YOUR AGREEMENT TO PURCHASE IS MADE AT A PLACE OTHER THAN THE SELLER'S PLACE OF BUSINESS, YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION.

**ADDITIONAL TERMS AND CONDITIONS**

7. **Application of Payments.** In the event of a death of either Purchaser or Care Fund or prior to payment in full, all payments made by Purchaser shall be applied to the Payment Right herein used in the following order: First, to the Finance Charge, if any, due to the Interment Rights; then to the Payment of Care Fund, and finally to Merchandise and Services. All payments by Purchaser shall be applied in the same order as listed above even where such a death has not occurred. All provisions will be applied to the next installment thereafter.
8. **Death Prior to Full Payment.** Should the need for interment occur before full payment of the Total Sale Price set forth herein, the Purchaser shall have the right to enter the deceased in the interment space selected, provided the proportionate part of said Total Sale Price applicable to a Interment Right, Merchandise or Service to be used shall have first been paid.
9. **Default or Cancellation.** Failure to make a payment within ten (10) days of the time required shall be a default. Upon the minimum applicable legal period to cure the default or failure by the Purchaser or comply with the provisions hereunder or upon receipt of Purchaser's written request to cancel this Agreement, or in the event of a proceeding proceeding or insolvency initiated by or against Purchaser, Seller shall have the right to cancel all or any part of this Agreement, as related to any unmet Interment Rights, and to retain all monies paid as liquidated damages and not as a penalty. No refund will be made of any monies paid for Interment Rights by Purchaser hereunder except as expressly provided herein. Upon cancellation, at Seller's discretion, Seller may issue a Certificate of Interment Rights of the Seller's selection, provided the Purchaser's Net Equity (total amount paid less earned Finance Charge) is equal to or greater than the selling price of said Interment Rights. If Seller elects to cancel this Agreement, it shall be relieved of all further obligations hereunder.  
 If this Agreement includes the purchase of cemetery Merchandise and Seller is unable to deliver the Merchandise within a reasonable time after the selling price of the Merchandise has been fully paid, and after a written request for delivery has been made by Purchaser, Purchaser shall be entitled to a refund of the entire amount paid for said Merchandise together with any income earned thereon. After payment in full and before delivery of Merchandise, Purchaser may make written demand for a refund of the amount deposited in the Merchandise and Services Trust Fund to the credit of Purchaser, and within ninety (90) days of receipt of the written demand, Seller shall deliver the Merchandise or refund to Purchaser the amount on deposit to his/her credit, less any service fees charged by the administering financial institution. Upon the refund or delivery of Merchandise, the Seller is relieved from further liability for the Merchandise.
10. **Liquidated Damages.** The actual price that is impractical and extremely difficult to fix the actual damages, if any, which may result from the breach or cancellation of this Agreement by Purchaser. If this Agreement is cancelled, Seller may retain as liquidated damages all monies paid hereunder to Seller allocable to the Interment Rights, which shall be Seller's exclusive remedy against Purchaser. Upon such cancellation, all rights, title and interests of Purchaser under or by virtue of this Agreement shall terminate.
11. **Collection Costs.** If the liquidated damages provision herein is held to be unenforceable, Seller's remedies shall be limited to compensatory damages measured by the difference between the Total Sale Price and the amount at which Seller could resell the Interment Rights, increased by any collection and resale expenses borne by Seller and decreased (but not below zero) by all monies paid hereunder and allocable to the Interment Rights. It is further agreed that the waiver by the Seller of any breach of the covenants contained herein shall not be construed as a waiver of the covenant itself or any subsequent breach thereof.
12. **Assignment.** Purchaser's rights under this Agreement may not be assigned without the prior written consent of the Seller. This Agreement shall be binding on the heirs, executor, administrators, successors and assigns of the Purchaser. Purchaser further agrees that Seller may assign its rights under this Agreement and that this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Seller.
13. **Conveyance of Title and Delivery.** Notwithstanding any other provision to the contrary in this Agreement, the parties hereto agree that delivery of the good(s) and performance of the Service(s) purchased hereunder commences upon the date the Purchaser approves and authorizes the manufacture, installation and performance of the same. Upon payment in full of the Total Sale Price to Seller or Seller's assignee, Seller will, upon Purchaser's request, complete delivery of within-described goods and performance of within-described Services. Upon payment in full of the Total Sale Price to Seller or Seller's assignee, Seller will convey to Purchaser all rights, title or interests in the within-described Interment Rights and will deliver, upon Purchaser's request, the within-described Merchandise.
14. **Substitution of Merchandise.** Purchaser and Seller acknowledge and agree that this Agreement does not call for the sale of any specific brand or make of outer burial container. If the outer burial container purchased pursuant to this Agreement is not available at the time of need, Seller shall make available to Purchaser or his/her representative an outer burial container of equal or greater value. Purchaser or his/her representative is entitled to approve any substitutions.
15. **Sale for Personal/Family Use Only.** Purchaser agrees that the Interment Rights purchased hereunder are being purchased for personal or family interment purposes only and not for speculation, and neither Seller, its agents nor sales persons, in any way represent or guarantee a resale thereof.
16. **Acceptance by Seller.** This Agreement will be of no force or effect until countersigned by a duly authorized representative of Seller.
17. **Preconstruction Sales.** In the event this Agreement includes Interment Rights in a section of a preconstructed mausoleum or belowground crypts, Seller agrees to commence construction within thirty-six (36) months after the date of the first sale of Interment Rights therein, and to complete construction within sixty (60) months after the date of such first sale of Interment Rights therein. If construction is not commenced within 36 months of the date of such first sale, all monies paid by the Purchaser hereunder for such Interment Rights shall be refunded to Purchaser upon Purchaser's request and neither party shall have any further obligation to the other hereunder. Extensions for completion, not to exceed one year, may be granted by the South Carolina Perpetual Care Cemetery Board.
18. **Need for Interment Prior to Development.** In the event the need for interment occurs prior to the development or completion of the interment property described herein, Seller may, with the consent of Purchaser, and at no increase in price, permanently transfer Purchaser's Interment Rights to other reasonably comparable developed interment property, or temporarily transfer Purchaser's rights to other reasonably comparable interment property, until such time that construction is completed. It is further agreed that Seller retains the right and authority of interment and disinterment and there shall be no additional charge to the Purchaser for this service. The need for interment means that a death has occurred in the family after the date of purchase of pre-developed cemetery property.
19. **Limitation of Damages.** It is impractical and extremely difficult to fix the actual damage, if any, which may proximately result from a breach of this Agreement by Seller or any error or mistake in connection with the Interment Rights provided hereunder, or any other breach of the Agreement and in the event of a resulting loss, Seller's liability by hereunder shall be limited to amounts theretofore paid to Seller by Purchaser plus a maximum of \$100.00 as liquidated damages, not as a penalty, and this remedy shall be exclusive.
20. **Merchandise and Services Trust Fund.** Any amounts paid hereunder for the purchase of cemetery Merchandise and Services shall be deposited by Seller in a Merchandise and Services Trust Fund in accordance with applicable state law.
21. **Perpetual Care Fund (hereinafter referred to as "Care and Maintenance Trust Fund").** Seller hereby binds itself to maintain in the interment spaces or other interment facilities described herein, and to deposit from payments received hereunder the amounts required by law to a Care and Maintenance Trust Fund created for the continual maintenance of all developed cemetery property without further assessment to Purchaser. Such deposit to the Care and Maintenance Trust Fund shall be in trust with an established State or National bank or savings and loan association licensed in this State as Trustee and in accordance with the applicable law governing such Care and Maintenance Trust Fund. The net income from the Care and Maintenance Trust Fund shall be used solely for the continuing care and maintenance of the developed cemetery and to pay such costs as may be reasonably necessary for the administration of the Care and Maintenance Trust Fund.
22. **Notice.** Notices to the Purchaser shall be sufficient if mailed to the Purchaser's last known address, as reflected in Seller's records.

**INCOME TAX NOTICE:** PURCHASER MAY BE SUBJECT TO INCOME TAX ON INCOME EARNED ON ANY FUNDS REQUIRED TO BE TRUSTED RELATING TO MERCHANDISE AND/OR SERVICES PURCHASED HEREUNDER.

**ARBITRATION:** PURCHASER AGREES THAT ANY CLAIM HE/SHE MAY HAVE RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT (INCLUDING ANY CLAIM OR CONTROVERSY REGARDING THE INTERPRETATION OF THIS ARBITRATION CLAUSE) SHALL BE SUBMITTED TO AND FINALLY RESOLVED BY MANDATORY AND BINDING ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); PROVIDED, HOWEVER, THAT THE FOREGOING REFERENCE TO THE AAA RULES SHALL NOT BE DENIED TO REQUIRE ANY FILING WITH THAT ORGANIZATION, NOR DIRECT INVOLVEMENT OF THAT ORGANIZATION. THE ARBITRATOR SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES FAIL TO OR ARE UNABLE TO AGREE ON THE SELECTION OF AN APPROPRIATE ARBITRATOR, THE AAA SHALL SELECT THE ARBITRATOR PURSUANT TO ITS RULES AND PROCEDURES UPON THE APPLICATION OF ONE OR BOTH PARTIES. THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY CLAIM OR DISPUTE BETWEEN OR AMONG THE SELLER, YOU AS THE PURCHASER, ANY PERSON WHO CLAIMS TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT, ANY OF THE SELLER'S EMPLOYEES OR AGENTS, ANY OF THE SELLER'S PARENT, SUBSIDIARY, OR AFFILIATE CORPORATIONS, AND ANY OF THE EMPLOYEES OR AGENTS OF THOSE PARENT, SUBSIDIARY OR AFFILIATE CORPORATIONS. EXCEPT AS MAY BE REQUIRED BY LAW, NEITHER PARTY NOR AN ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF BOTH PARTIES.

**DISCLAIMER OF SELLER'S WARRANTIES:** THE ONLY WARRANTY ON ANY GOODS SOLD IN CONNECTION WITH THIS AGREEMENT IS THE EXPRESS WRITTEN WARRANTY, IF ANY, GRANTED BY THE MANUFACTURER. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WITH RESPECT TO THE GOODS SO DESCRIBED. WITH RESPECT TO MAUSOLEUM CRYPTS, LAWN CRYPTS, OR NICHES SOLD HEREUNDER, THE ONLY WARRANTIES RELATING TO SUCH ITEMS SHALL BE THOSE IMPLIED WARRANTIES PROVIDED BY LAW AND SELLER MAKES NO EXPRESS WARRANTIES WITH RESPECT TO SAID ITEMS.

**ENTIRE AGREEMENT:** THIS AGREEMENT CONTAINS ALL TERMS WHICH HAVE BEEN AGREED UPON BY THE PURCHASER AND THE SELLER RELATING TO THE GOODS AND SERVICES LISTED ON THE OTHER SIDE. THIS CONTRACT REPLACES ALL OTHER DISCUSSIONS AND AGREEMENTS, WHETHER ORAL OR WRITTEN, RELATING TO THOSE GOODS AND SERVICES. NO SUBSEQUENT DISCUSSION OR AGREEMENT CAN CHANGE THE TERMS OF THIS CONTRACT UNLESS IT IS WRITTEN AND IS SIGNED BY BOTH THE PURCHASER AND THE SELLER (OR THE SELLER'S ASSIGNEE).

**NOTICE:** ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

**NOTICE:** WE TRUST THAT YOUR DEALINGS WITH US HAVE BEEN SATISFACTORY. IF, FOR ANY REASON, YOU ARE NOT SATISFIED, WE HOPE YOU WILL CONTACT US AND GIVE US THE OPPORTUNITY TO ADDRESS ANY PROBLEMS OR CONCERNS. WE ARE CONFIDENT THAT, IF GIVEN THE OPPORTUNITY, WE WILL BE ABLE TO RESOLVE YOUR CONCERNS. ALTERNATIVELY, YOU SHOULD FEEL FREE TO CONTACT THE CEMETERY CONSUMER SERVICE COUNCIL, WHICH IS AN INDUSTRY-SPONSORED CONSUMER ASSISTANCE ORGANIZATION WHOSE PURPOSE IS TO ANSWER CONSUMER PROBLEMS AND TO INFORMALLY HELP RESOLVE COMPLAINTS. THE COUNCIL CAN BE CONTACTED AT 1-800-368-5888, EXTENSION 3428, OR WWW.CEMETERYCOUNCIL.ORG.

**Greenlawn Funeral Home**

845 Leesburg Road, Columbia, SC 29209 - (803) 776-1092

**STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED**

SERVICE NO. SCGR11091

Charges are only for those items that you selected or that are required if we are required by law or a cemetery or crematory to use any item, we will explain the reasons in writing below.

ARRANGEMENTS FOR: Helen T. Carlton DATE OF ARRANGEMENT May 10, 2011  
 DATE OF DEATH May 09, 2011

<b>A. SERVICES, FACILITIES, AUTOMOBILE, OTHER EQUIPMENT AND SERVICES:</b>		<b>B. MERCHANDISE:</b>	
Basic Professional Service of Director and Staff	\$ <u>Included</u>	Burial Casket SM10B	\$ <u>Included</u>
Embalming	\$ <u>Included</u>	Outer Burial Container	\$ <u>-0-</u>
Other Preparation of the Deceased	\$ <u>Included</u>	Cremation Casket/Container	\$ <u>-0-</u>
Washing and Disinfection of Unembalmed Remains	\$ <u>-0-</u>	Cremation Urn	\$ <u>-0-</u>
Dressing, Casketing & Cosmetology	\$ <u>-0-</u>		\$ <u>-0-</u>
Post Autopsy Care/Post Organ Donation	\$ <u>-0-</u>	Collection Book	\$ <u>Included</u>
Restoration Charge	\$ <u>-0-</u>		\$ <u>-0-</u>
Refrigeration	\$ <u>-0-</u>		\$ <u>-0-</u>
Other Care of the Deceased	\$ <u>-0-</u>		\$ <u>-0-</u>
	\$ <u>-0-</u>		\$ <u>-0-</u>
	\$ <u>-0-</u>		\$ <u>-0-</u>
<b>Use of Facilities &amp; Related Staff</b>	\$ <u>Included</u>	Basic NOA	\$ <u>Included</u>
Visitation	\$ <u>-0-</u>	Video Tribute	\$ <u>Included</u>
Other Visitation	\$ <u>-0-</u>	Flower Arrangements	\$ <u>840.00</u>
Funeral Service	\$ <u>Included</u>		\$ <u>-0-</u>
Other Funeral Service	\$ <u>-0-</u>	Remembrance Items	\$ <u>Included</u>
Memorial Service	\$ <u>-0-</u>		\$ <u>-0-</u>
Graveside	\$ <u>-0-</u>		\$ <u>-0-</u>
Additional facilities/ Staff	\$ <u>-0-</u>	Package Disc Traditional Burial	\$ <u>(495.00)</u>
	\$ <u>-0-</u>		
Automotive/Transportation	\$ <u>-0-</u>	<b>TOTAL CHARGES FOR SECTIONS A &amp; B</b>	\$ <u>10,125.00</u>
Transfer of Remains to Funeral Home	\$ <u>Included</u>	<b>C. CASH ADVANCES:</b>	
Funeral Vehicle & Driver	\$ <u>Included</u>	SALES TAX	\$ <u>285.75</u>
Service Vehicle	\$ <u>-0-</u>	Death Certificates	\$ <u>30.00</u>
	\$ <u>-0-</u>		\$ <u>0.00</u>
	\$ <u>-0-</u>	Newspaper Notice	\$ <u>295.00</u>
	\$ <u>-0-</u>	Clergy Honorarium	\$ <u>100.00</u>
	\$ <u>-0-</u>		\$ <u>0.00</u>
	\$ <u>-0-</u>	Musicians/Vocalist	\$ <u>100.00</u>
	\$ <u>-0-</u>		\$ <u>0.00</u>
	\$ <u>-0-</u>	escort	\$ <u>50.00</u>
	\$ <u>-0-</u>	Hairdresser	\$ <u>55.00</u>
<b>Other Services</b>		We charge you for our services in obtaining the fo	\$ <u>0.00</u>
Immediate Burial	\$ <u>-0-</u>		\$ <u>0.00</u>
Direct Cremation	\$ <u>-0-</u>		\$ <u>0.00</u>
Forwarding Remains to Another Funeral	\$ <u>-0-</u>	<b>TOTAL CHARGES FOR SECTION C</b>	\$ <u>1024.25</u>
Receiving Remains from Another Funeral	\$ <u>-0-</u>	<b>TOTAL SERVICE, MERCHANDISE, CASH ADVANCE CHARGES (Sections A, B, C)</b>	\$ <u>11,149.25</u>
Coloring	\$ <u>-0-</u>	(Credits) to Account	\$ _____
Cemetery Tent & Grave Equipment	\$ <u>-0-</u>		\$ _____
	\$ <u>-0-</u>		\$ _____
	\$ <u>-0-</u>		\$ _____
Guide to Creating Eulogy Letter of Love	\$ <u>Included</u>		\$ _____
	\$ <u>-0-</u>		\$ _____

XCC 5-10-2011  
 Buyer Initials Date

Payment Option 1  Payment at the time of service by cash or check. This option saves you finance charges.  
 Payment Option 2  Credit Card - I authorize Greenlawn Funeral Home to charge my credit card for \$ \_\_\_\_\_  
 Card # \_\_\_\_\_ Exp. Mo \_\_\_\_\_ Yr \_\_\_\_\_ Card Type \_\_\_\_\_ Signature of Cardholder X \_\_\_\_\_

Cardholder acknowledges receipt of funeral merchandise and services in the amount shown above and agrees to perform the obligations set forth in the Cardholder's agreement with the issuer.  
 Payment Option 3  Third Party Credit Alternative (with approval) Payment Option 4  Insurance Assignment (Verified assignable insurance policy)

**IF MORE THAN ONE BUYER IS EXECUTING THIS CONTRACT, EACH SUCH BUYER HEREBY ACKNOWLEDGES THAT HIS/HER OBLIGATIONS UNDER THIS CONTRACT ARE JOINT AND SEVERAL. EACH BUYER UNDER THIS CONTRACT IS OBLIGED TO PAY THE CONTRACT EVEN IF ANOTHER PERSON OR PERSON(S) HAS ALSO AGREED TO PAY IT.**

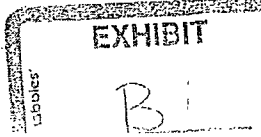
The undersigned Buyer acknowledges that Buyer has the legal right to arrange the final services for the Deceased, and Buyer authorizes Greenlawn Funeral Home ("Funeral Home") to furnish the services, merchandise and accommodations described in this Contract, and in consideration the Buyer promises to pay FUNERAL HOME the Balance Due set forth on the attached Statement of Funeral Costs and Services Selected (the "Statement of Costs & Services") in the amount of \$ 11,149.25 and any items ordered subsequent to the execution of this Contract, on or before the date of the funeral service.

Embalming If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

Embalming Approved By Family For Viewing Purposes \_\_\_\_\_

If any legal, cemetery, or crematory requirement has required us to perform any of the above items for this service, we will explain why below.

**EXHIBIT**



Buyer acknowledges receipt of a completed copy of this Contract at the time of execution, and further acknowledges that Buyer has been given for retention the General Price List and has reviewed the Casket Price List and the Outer Burial Container Price List with certain disclosures concerning embalming, required purchase of caskets or outer burial containers and warranty disclaimer.

11.149.25  
Initials

IN TESTIMONY WHEREOF, Buyer has caused this Contract to be properly executed as of the date written above. By signing this Contract, Buyer authorizes and directs the disposition of the remains of Deceased, using the services and merchandise described on the attached Statement of Goods And Services and is liable for the payment of the Balance Due.

Executed on May 10, 2011

SELLER AGREES: We agree to furnish all services and merchandise as indicated on the Statement of Funeral Goods and Services Selected/Purchase Agreement.

Funeral Home Authorized Agent  
  
Dasi Montez Coiley, 2655  
Funeral License No.

CAUTION - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

1. BUYER SIGNATURE BUYER'S ADDRESS  
S.S. NUMBER (Required)  
2. BUYER SIGNATURE BUYER'S ADDRESS  
S.S. NUMBER (Required)  
3. BUYER SIGNATURE BUYER'S ADDRESS  
S.S. NUMBER (Required)

CHARGES ARE ONLY FOR ITEMS THAT ARE USED. IF THE TYPE OF FUNERAL SELECTED REQUIRES EXTRA ITEMS, WE WILL EXPLAIN THE REASONS FOR THE EXTRA ITEMS IN WRITING ON THIS CONTRACT.

NOTICE OF RIGHT TO MODIFY OR CANCEL  
THIS FUNERAL HOME'S POLICY IS TO OFFER A 14-HOUR PERIOD IN WHICH OUR CUSTOMERS MAY CANCEL OR MODIFY (ALL OR PART) OF THIS TRANSACTION ON ANY SERVICE OR MERCHANDISE NOT ALREADY PERFORMED OR USED AT THE TIME OF RECESSION. WE ARE CONFIDENT WE OFFER THE BEST SERVICE AND QUALITY OF MERCHANDISE TO OUR CUSTOMER.

ADDITIONAL TERMS AND CONDITIONS

ASSIGNMENT TO USE OF MONIES DUE: You agree that any monies assigned to us in conjunction with this sale shall be paid to us within 30 days of the date of this Agreement. Upon our giving you at least five (5) days prior written notice that any monies due under any such assignment(s) have not been paid to us as provided, we can require that any such unpaid amount(s) previously credited to your account be paid by you at once.

WAIVER OF RIGHTS: We have not, by the execution of this Agreement with you, waived any rights we have to file a claim in the estate of the decedent named in Agreement. Any amounts collected by us from assets of the decedent, or from any other source, shall be credited against any amount owed by you under this Agreement.

WARRANTIES WE DISCLAIM: BY SIGNING THIS AGREEMENT YOU UNDERSTAND THAT WE, NOT BEING THE MANUFACTURER OF ANY OF THE GOODS BEING PURCHASED, EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESSED OR IMPLIED, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE GOODS REMAINS WITH THE MANUFACTURER AND NOT US. SHOULD THE GOODS PROVE DEFECTIVE FOLLOWING THEIR PURCHASE, EITHER THE MANUFACTURER OR YOU, AND NOT US, WILL ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR. WE ARE SELLING THE GOODS ON AN AS IS OR WITH ALL FAULTS BASIS. YOU AGREE THAT YOU ARE NOT ENTERING INTO THIS AGREEMENT BASED ON ANY STATEMENT OF FACT OR PROMISE MADE BY US TO YOU WHICH RELATES TO THE GOODS BEING PURCHASED, ON ANY DESCRIPTION BY US OF THE GOODS, OR ON THE EXHIBITION OF ANY SAMPLE OR MODEL OF THE GOODS. YOU ALSO AGREE THAT THE FAILURE OF THE GOODS TO CONFORM TO ANY SUCH STATEMENT OF FACT, PROMISE, DESCRIPTION, SAMPLE OR MODEL SHALL NOT GIVE YOU ANY RIGHTS AGAINST US.

LIMITATION OF DAMAGES AND REMEDIES: By signing this Agreement you expressly waive, and you agree that you shall not be entitled to recover, damages or losses of any kind, whether direct or consequential, based on negligence. You further acknowledge and agree that emotional distress will not be one of the claimed items of damage for any breach of contract.

NOTICES TO YOU (THE BUYER): Notices to you shall be sufficient if mailed to your last known address.

DELAY IN ENFORCEMENT: We can delay enforcing any of our rights under this Agreement without losing them and no such delay, forbearance or other action or inaction on our part will create any new Agreement or understanding with respect to the payment or other terms herein unless there is a writing signed by both parties with respect to any such new Agreement or understanding.

PARTIAL PAYMENTS: We can accept partial payments, even though marked to indicate payment in full or full satisfaction of debt, without losing any of our rights under this Agreement and no acceptance by us of a check for such partial payment shall be deemed a modification of this Agreement.

COLLECTION COST AND ATTORNEY'S FEES: This Agreement may be referred to an attorney who is not our salaried employee for collection or enforcement. In such event, you agree to pay all reasonable cost of collection to the extent permitted by law, including court cost, disbursements, and other lawful charges incurred in the collection of your indebtedness, provided, however, that each party shall pay its own attorney's fees incurred in connection with any collection effort or any other disputes of any nature relating to this Agreement and the transaction contemplated hereby. In the event of payment default, I expressly authorize of your agent to obtain a consumer report under the Fair Credit Reporting Act to be used in attempting to collect such defaulted payment(s).

RESPONSIBILITY FOR PAYMENT: This Agreement shall not constitute a release of liability imposed by law upon the decedent's estate, but all persons signing this Agreement will be responsible individually and together, for paying all amounts due under this Agreement. We can take action against you to collect amounts due under this Agreement, even if we do not take such action against any other person(s) signing this Agreement.

LIMITATION OF ACTION: You agree that to the extent allowed by law, any action against us for breach of this Agreement must be commenced by you or your representative(s) within one year after such cause of action has accrued.

INVALID PROVISIONS: If any part of this Agreement is unenforceable, the rest of the Agreement will stay in effect.

TITLES AND CAPTION: The titles and captions appearing at the beginning of the various sections of this Agreement have been inserted for convenience of reference only and shall not in any way affect the construction, interpretation or meaning of the text of said sections themselves.

ENTIRE AGREEMENT: This Agreement contains all terms which have been agreed upon by us and you relating to the goods and services listed on the Statement of Funeral Goods and Services Selected/Purchase Agreement. This Agreement replaces all other discussions and agreements, where oral or written, relative to those goods and services. No subsequent discussion or agreement can change the terms of this Agreement unless it is written and is signed by both you and us.

JURISDICTION: This Agreement shall be governed by the local law of the state in which the funeral service is being performed and you agree that the jurisdiction in any suit involving this will lie in the courts in that jurisdiction.

QUESTIONS REGARDING SERVICE: In the event you wish to question any area of our service, you may contact us at your convenience at the address shown on Page 1.

ARBITRATION: Seller and Purchaser hereby agree to submit to binding arbitration for any dispute, dispute, or losses arising between or in any way involving Seller and Purchaser, which in any way arises in connection with Agreement or any transaction between parties whether they be legal in fact or in equity. Seller and Purchaser agree to submit to all dispute payments to the arbitration only of the American Arbitration Association.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Christopher Carlton as the Personal )  
Representative of the Estate of Helen )  
Tucker Carlton; Christopher Carlton; )  
John Thomas Carlton; and Christopher )  
Carlton as the Personal Representative of )  
the Estate of Kimberly Carlton Baker, )  
Plaintiffs, )  
vs. )  
Greenlawn Funeral Home, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
C/A No.: 12-CP-40-7874

**RETURN AND MEMORANDUM OF LAW IN OPPOSITION TO THE  
DEFENDANT’S MOTION TO DISMISS OR IN THE ALTERNATIVE TO COMPEL  
ARBITRATION**

The Plaintiffs, by and through their undersigned counsel, hereby submit this return and memorandum in opposition to the Defendant’s Motion to Dismiss, or in the Alternative to Compel Arbitration as follows:

**PROCEDURAL POSTURE/BACKGROUND**

The Plaintiffs filed this action on November 28, 2012, alleging facts that related to the Defendant’s acts of burying Helen Carlton (“Helen”) in a cemetery plot other than the one that she purchased in 2006, and also not providing the services purchased by Christopher Carlton (“Christopher”) in 2011 upon Helen’s death. As a result of the Defendant’s failure to correctly bury Helen, the Plaintiffs have suffered mental anguish, mental injury, humiliation, and other damages to the Plaintiffs.

The Defendant was served with the Summons and Complaint on February 15, 2013, as evidenced by an Affidavit of Service, filed with the Court on February 19, 2013. Thereafter, on April 11, 2013, the Defendant filed a Motion to Dismiss or in the Alternative Compel Arbitration.

On November 22, 2013, prior to a hearing on such the Defendant's motion to dismiss, with the consent of all parties, the Court entered a Consent Order authorizing the Plaintiffs to amend their Complaint and authorizing substitution of parties, which amended the caption of the case, due to the death of one of the Plaintiffs and allowed the Plaintiffs to file an Amended Complaint on the issue of "bodily injury, mental anguish, mental injury, shock, fright, humiliation, all of which have physically manifested themselves in the Plaintiffs in an amount to be proven at trial". (Amended Complaint, para. 17).

The Defendant accepted service of the Amended Summons and Amended Complaint on October 21, 2013. In response, the Defendant filed and served the pending motion to dismiss, or alternatively compel arbitration which is now before the Court. By this motion, the Defendant seeks to compel arbitration pursuant to the South Carolina Uniform Arbitration Act and have this Court refuse to exercise jurisdiction.

The Federal Arbitration Act is not applicable in this matter, which Defendant's own motion concedes: "The Federal Arbitration Act (FAA) does not preempt the UAA because the Contract does not involve interstate commerce, as the Defendant and Plaintiffs are domiciled in and locate their principle [sic] place of business in South Carolina". (Defendant's Motion to Dismiss, paragraph 6.)

#### LAW/ANALYSIS

##### I. Since there is no agreement for the FAA to apply, and interstate commerce is not involved, the FAA does not apply.

For the Federal Arbitration Act (the "FAA") to apply, the parties must either agree for it to apply, or an agreement must "evidenc[e] a transaction involving commerce," specifically interstate commerce. [2] 9 U.S.C.A. § 2 (1999); *see also* *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454, 460, 476 S.E.2d 149, 152 (1996). The terms "involving commerce" amount to the functional equivalent of "affecting commerce" and signal "an intent to exercise Congress' commerce clause



power to the full.” *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 277, 115 S. Ct. 834, 130 L.Ed.2d 753 (1995); see also *Mathews v. Fluor Corp.*, 312 S.C. 404, 407, 440 S.E.2d 880, 881 (1994) (“The requirement that the underlying transaction involve commerce is to be broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause.”). The phrase “evidencing a transaction” requires “that the transaction in fact involve interstate commerce...” *Allied-Bruce Terminix Co.*, 513 U.S. at 277-81, 115 S.Ct. 834.

To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts. *Soil Remediation Co.*, 323 S.C. at 460, 476 S.E.2d at 152. In this instance neither contract at issue involves interstate commerce. Further, all parties are located in South Carolina and all acts under the contracts occurred in South Carolina.

Moreover, the Defendant admits that the FAA does not apply in its motion presently before the Court. “The Federal Arbitration Act (FAA) does not preempt the UAA because the Contract does not involve interstate commerce, as the Defendant and Plaintiffs are domiciled in and locate their principle [sic] place of business in South Carolina”. (Defendant’s Motion to Dismiss, paragraph 6.).

Accordingly, it is clear that this matter does not involve interstate commerce, the only analysis of whether this matter should go to arbitration falls under the South Carolina Uniform Arbitration Act, as set forth in S.C. Code Ann § 15-48-10, *et seq.*

II. The Defendant has not complied with the required provisions of the UAA, and therefore, this matter is not eligible for arbitration.

The South Carolina Uniform Arbitration Act as set forth in S.C. Code Ann § 15-48-10, *et seq* (hereinafter the "UAA") provides specific requirements in order to apply. If all requirements are not met, the statute is clear that the contract shall not be subject to arbitration. These requirements are mandatory and are as follows:

Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

S.C. Code Ann. §15-48-10(a)

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The words of a statute "must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

Looking to the language of the UAA, it is clear that the legislature intended for the courts to require specific elements be complied with if a party attempted to invoke the statute and require arbitration. There are four elements that must be met in order for a dispute to be subject to the UAA. The four elements are:

- (1) Notice that the contract is subject to arbitration pursuant to S.C. Code § 15-48-10;
- (2) The notice must be in all capital letters;
- (3) The notice must be underlined; and,
- (4) The notice must be on the first page of the contract.

The lack of any one of these four elements is fatal to the application of the UAA to a contract, and the formal requirements of the UAA must be met before a dispute can be subject to

arbitration. *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 434 S.E.2d 281 (1993); see also *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) (affirming trial court's finding that the UAA requirements had not been satisfied because the contract did not contain the arbitration provision on the first page); see also, *Circle S. Enters., Inc. v. Stanley Smith & Sons*, 288 S.C. 428, 343 S.E.2d 45 (Ct. App. 1986) (finding a provision of a contract requiring arbitration is not enforceable under state law because notice the contract is subject to arbitration does not appear on its first page as required by section 15-48-10(a)).

Our supreme court has held that the terms of the UAA are "clear" and "the court must apply those terms according to their literal meaning." *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454, 457, 476 S.E.2d 149, 151 (1996). See also, *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001) ("The notice provision must be typed in underlined capital letters ... on the first page of the contract. **No other variation is acceptable.**") (emphasis added).

Our courts have consistently enforced the literal meaning of the UAA, and have not permitted any variation. In *Richland Horizontal Property Regime Homeowners Ass'n, Inc. v. Sky Green Holdings, Inc.*, the party attempting to enforce arbitration under the UAA argued that the parties had defined the first page of the document to be a page other than the page preceding all others for purposes of complying with the statute. The Court held that the parties could not agree that the first page was other than the page preceding all others, even though it was a "cover-page". *Richland Horizontal Property Regime Homeowners Ass'n, Inc. v. Sky Green Holdings, Inc.*, 708 S.E.2d 225, 392 S.C. 194 (Ct. App. 2011).

In the case at bar, there are two contracts at issue. Neither contract meets the four requirements of the UAA, and accordingly, this dispute is not subject to the UAA.

In examining the 2006 contract executed between Helen and Greenlawn, the provision regarding arbitration is the second full paragraph following numbered paragraph 22 on the second page of the contract and appears as follows (though in much smaller font than here):

**ARBITRATION:** PURCHASER AGREES THAT ANY CLAIM HE/SHE MAY HAVE RELATING TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT (INCLUDING ANY CLAIM OR CONTROVERSY REGARDING THE INTERPRETATION OF THIS ARBITRATION CLAUSE) SHALL BE SUBMITTED TO AND FINALLY RESOLVED BY MANDATORY AND BINDING ARBITRATION IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); PROVIDED, HOWEVER, THAT THE FOREGOING REFERENCE TO THE AAA RULES SHALL NOT BE DEEMED TO REQUIRE ANY FILING WITH THAT ORGANIZATION, NOR DIRECT INVOLVEMENT OF THAT ORGANIZATION. THE ARBITRATOR SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES FAIL TO OR ARE UNABLE TO AGREE ON THE SELECTION OF AN ARBITRATOR PURSUANT TO TITS RULE SAND PROCEDURES UPON THE APPLICATION OF ONE OR BOTH PARTIES. THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY CLAIM OR DISPUTE BETWEEN OR AMONG THE SELLER, YOU AS THE PURCHASER, ANY PERSON WHO CLAIMS TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT, ANY OF THE SELLER'S EMPLOYEES OR AGENTS, ANY OF THE SELLER'S PARENT SUBSIDIARY OR AFFILIATE CORPORATIONS, AND ANY OF THE EMPLOYEES OR AGENTS OF THE SELLER'S PARENT, SUBSIDIARY, OR AFFILIATE CORPORATIONS. EXCEPT AS MAY BE REQUIRED BY LAW, NEITHER PARTY, NOR AN ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT, OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF BOTH PARTIES.

-See, page 2, Defendant's Exhibit A.

This arbitration notice is on the second page of the contract. It is not underlined. It does not reference the UAA code section. However, it is capitalized. Accordingly, this notice fails to meet three out of the four requirements set forth by the UAA. As a result, this Court should find this arbitration clause does not comply with the UAA's requirements and deny the Defendant's motion as to dismiss and compel arbitration.

Turning to the 2011 contract between Christopher and Greenlawn, it is readily apparent that zero of the four elements are met. The arbitration notice provision is as follows:

**ARBITRATION:** Seller and Purchaser agree to submit to binding arbitration for any claim, dispute, or issues arising between or in any way involving Seller and

Purchaser, which in any way arise in connection with Agreement or any transaction between parties whether they be based in law or in equity. Seller and purchaser agree to submit to arbitration rules of the American Arbitration Association.

-See, page 2, Defendant's Exhibit B.

As before, this notice provision is on the second page. In fact, the arbitration provision is the *very last provision of the contract and is located at the absolute bottom of the entire contract*. As with the 2006 contract, the notice provision is not underlined. As with the 2006 contract, the notice provision does not reference the UAA code section. However, unlike the 2006 contract, the arbitration provision isn't even capitalized. *Accordingly, the 2011 contract does not meet any of requirements required by the UAA.* Therefore, this Court should find that the 2011 contract does not comply with the UAA's requirements and deny the Defendant's motion as to dismiss and compel arbitration.

III. Due to the failure of the contracts to fully and properly comply with the UAA, it would be error to dismiss this action and compel arbitration.

Although dismissal may be appropriate when issues are subject to mandatory arbitration, this matter is not subject to mandatory arbitration. The Defendant has conceded that the FAA does not apply, and the facts also bear this out.

In analyzing the strict requirements of the UAA under South Carolina law, it is clear that the Defendant's contracts do not comply with the UAA's requirements. As a result, the Defendant cannot seek to gain the benefit of the statute and compel arbitration of this matter.

#### PRAYER FOR RELIEF

Having fully responded to the Defendant's Motion, the Plaintiffs pray for an Order of the Court as follows:

- A. Finding the Federal Arbitration Act ("FAA") is not applicable to either contract in this matter;
- B. Finding the South Carolina Uniform Arbitration Act ("UAA") applies to both contracts in this matter;



- C. Finding that neither contract complies with the clear statutory elements of the UAA, and that accordingly, the UAA does not apply in this matter;
- D. Denying the Defendant's motion to dismiss or alternatively compel arbitration;
- E. Ordering that this matter should proceed to the discovery phase of litigation in preparation for trial by jury; and,
- F. Ordering such other and further relief as this Court deems just and proper.

Respectfully Submitted,

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**COUNSEL FOR THE PLAINTIFFS**

January 22, 2014  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Christopher Carlton as Personal Representative  
of the Estate of Helen Tucker Carlton,  
Christopher Carlton John Thomas Carlton and  
Christopher Carlton as the Personal  
Representative of the Estate of Kimberly  
Carlton Baker,

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-40-7874

**DEFENDANT'S MOTION FOR  
RECONSIDERATION PURSUANT TO  
RULES 52 and 59(e), SCRPC.**

Defendant Greenlawn Funeral Home ("Greenlawn") by and through its undersigned counsel hereby moves, pursuant to Rules 52 and 59(e), SCRPC, for reconsideration of this Court's March 17th, 2014, Order denying Greenlawn's Motion to Compel Arbitration. Respectfully, Greenlawn requests that the Court reconsider its findings that (1) the Federal Arbitration Act ("FAA") did not apply to the contracts between the parties; (2) that the 2006 Contract between Helen Carlton and Greenlawn was not subject to arbitration; and (3) that the 2011 contract between Christopher Carlton and Greenlawn was not subject to arbitration. Greenlawn requests that this Court reconsider its decision and find that the arbitration clauses in the contracts are enforceable and that this matter must be arbitrated.

**FACTS/PROCEDURAL HISTORY**

Plaintiffs filed an Amended Summons and Complaint in this matter on October 14, 2013. The Amended Complaint alleged that Plaintiffs' decedent, Helen Carlton, purchased two adjacent cemetery burial plots and a grave marker from Greenlawn after her husband, Fielder Carlton, died in August of 2006 ("2006 Contract"). [Complaint ¶ 4]. It was Helen's desire to

have her husband buried in one plot and at the time of her demise that she would be buried next to him. [Id. at ¶¶ 4-6]. Helen died in 2011. [Id.].

Following her death, Plaintiff Christopher Carlton, personally, on behalf of Helen's family, and on behalf of Helen's estate contracted with Greenlawn to purchase funeral services and items necessary for Helen's interment ("2011 contract"). [Id. ¶¶ 7-8]. The contract provided that Helen was to be buried in the grave site next to her husband and with a burial marker to be placed on their final resting place. [Id.]. According to Plaintiffs, Helen was not buried in her pre-purchased plot, but was buried in an unknown location. [Id. ¶ 11]. Plaintiffs aver Greenlawn discovered they had misplaced a casket, excavated the casket to determine its true ownership and location, ultimately determined that it belonged to Helen, and eventually removed a headstone marker from their father's burial site resulting in an unmarked grave. [Id. ¶¶ 13-15]. Plaintiffs' raised claims of trespass, breach of contract, and negligence against Greenlawn related to the aforementioned pled facts.

In lieu of an Answer, Greenlawn filed a Motion to Dismiss or in the alternative a Motion to Compel Arbitration. The basis of the motion was that the 2006 and 2011 contracts contained arbitration clauses requiring this matter to proceed via arbitration and not litigation. Greenlawn presented evidence of the contracts' adherence to the Uniform Arbitration Act<sup>1</sup> ("UAA") and Federal Arbitration Act<sup>2</sup> ("FAA") to compel arbitration. Specifically, Greenlawn presented the Court with a Memorandum of Law outlining the applicability of the UAA and FAA as well as the affidavit of Tonya Brazier establishing the contract implicated interstate commerce. However, this Court's Order ultimately found that the arbitration clauses in the contracts were not enforceable because the FAA did not apply and the arbitration notices did not comply with

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<sup>1</sup> Codified at S.C. Code Ann. § 15-48-10 *et. seq.*

<sup>2</sup> Codified at 9 U.S.C.A. § 1 *et. seq.*

South Carolina's statutory requirements for arbitration clauses.

### ARGUMENT

#### **I. The Federal Arbitration Act applies to the 2006 and 2011 contracts.**

Respectfully, this Court erred in finding that “no facts implicate federal law through interstate commerce.” This Court acknowledged reviewing the “pleadings of record, the [memoranda] of law provided by counsel, the exhibits attached thereto, the affidavit of the Plaintiff,” and the arguments of counsel.” However, the Court omitted consideration of the affidavit of Tonya Brazier, Administrative Manager for Thompson Funeral Home at Greenlawn Memorial Home. Ms. Brazier’s affidavit establishes that under the terms of the 2006 contract Greenlawn provided, and Plaintiffs’ decedents purchased, items manufactured outside of South Carolina. Specifically, a bronze grave marker was manufactured in Pittsburg, Pennsylvania and the granite base for the grave marker was manufactured in Elberton, Georgia. Additionally, Ms. Brazier’s affidavit establishes the casket contracted for by Plaintiffs and provided by Greenlawn pursuant to the 2011 contract was manufactured in Batesville, Indiana.

“Unless the parties have otherwise contracted, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that involves interstate commerce.” Lucey v. Meyer, 401 S.C. 122, 133, 736 S.E.2d 274, 280 (Ct. App. 2012). “The words ‘involving commerce’ have been interpreted by the United States Supreme Court as being the functional equivalent of ‘affecting commerce’—words signaling ‘an intent to exercise Congress’ commerce power to the full.’” Id. (citing Thornton v. Trident Med. Ctr. L.L.C., 357 S.C. 91, 95, 592 S.E.2d 50, 52 (Ct. App. 2003)); see also Citizens Bank of Alafabco, 539 U.S. 52, 57 (2003) (“We have interpreted the term ‘involving commerce’ in the FAA as the functional equivalent of the more familiar term ‘affecting commerce’—words of art that ordinarily signal the broadest permissible

exercise of Congress' Commerce Clause power.”). Accordingly, “[b]ecause the statute provides for the enforcement of arbitration agreements within the full reach of the Commerce Clause, it is perfectly clear that the FAA encompasses a wider-range of transactions than those actually in commerce—that is, within the flow of interstate commerce.” Id.

This court erred in not considering “the essential character of the contract”—provisions for perpetual care, internment merchandise, and funeral goods and services—in determining whether the FAA applied. See Thornton, at 96, 592 S.E.2d at 52 (finding our courts consistently look to the essential character of the contract when applying the FAA and it is proper to “focus upon what the terms of the contract specifically require for performance in determining whether interstate commerce [is] involved.”). The 2006 and 2011 contracts at issue not only involved burial plots but also the purchase of several items attendant to Plaintiffs’ decedents’ perpetual care. Specific performance of this contract involved Greenlawn’s use of a casket, grave marker, and other materials manufactured in other states—specifically, Georgia, Indiana, and Pennsylvania—thereby implicating interstate commerce. Given the evidence presented in Ms. Brazier’s affidavit, it is clear the transactions involved interstate commerce. See Muñoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360 (2001) (finding interstate commerce involved in a construction contract where a builder was domiciled in South Carolina, but under the contract, had assigned rights to a Delaware creditor); Soil Remediation Co. v. Nu-Way Env’tl., Inc., 323 S.C. 454, 476 S.E.2d 149 (1996) (holding interstate commerce was involved in a contract requiring removal of water and sludge from property in South Carolina to a facility in North Carolina); Episcopal Hous. Corp. v. Federal Ins. Co., 269 S.C. 631, 239 S.E.2d 647 (1977) (concluding performance required under a contract for the construction of an eighteen-story building involved interstate commerce because it would be virtually impossible to construct a

building of that size with materials, equipment, and supplies all produced and manufactured solely within South Carolina); Blanton v. Stathos, 351 S.C. 534, 541, 570 S.E.2d 565, 569 (Ct. App. 2002) (determining that a contract for design and architectural services in the construction of a restaurant in South Carolina involved interstate commerce because the contract contemplated the use of materials manufactured outside the state, but also realistically could not have been completed without the use of interstate commerce).

This Court erred in finding the FAA did not apply. Giving proper consideration to the affidavit of Ms. Brazier, there are facts which establish the terms of the 2006 and 2011 contracts implicated interstate commerce. Because the contracts implicate interstate commerce, the FAA applies to both contracts and this matter must be arbitrated. See Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered”); Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) (“A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.”).

**II. This Court’s findings with regard to the contracts’ compliance with the Uniform Arbitration Act (“UAA”) should be reconsidered.**

S.C. Code Ann. § 15-48-10 sets forth requirements for valid arbitration agreements. Section 15-48-10 requires that notice of arbitration pursuant to the chapter “shall be typed in underlined capital letters . . . on the first page of the contract.” This Court found the 2006 contract was deficient in that it did not reference the code section of the UAA, the notice was not underlined, and the notice of arbitration was not on the first page. With regard to the 2011 contract, this Court found the contract was deficient in that it did not reference the code section

of the UAA, the notice was not capitalized or underlined, and the notice was not on the first page. For clarification purposes, the 2006 contract does contain a capitalized notice of arbitration on the first and second pages of the contract.

Unless the notice requirements of § 15-48-10 are properly displayed on the contract, the contract, “shall not be subject to arbitration.” Nevertheless, compliance with section 15-48-10 can be preempted by the FAA. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360 (2001); see also Pearson v. Hilton Head Hosp., at 289, 733 S.E.2d at 601 (“[The FAA] constitutes a congressional declaration of liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural polices to the contrary.”). Although “[g]eneral contract principles of state law apply to arbitration clauses governed by the FAA,” “[a] state law that places arbitration clauses on an unequal footing with contracts generally, however, is preempted if the FAA applies.” Id. (citing Doctor’s Assoc., Inc. v. Casarotto, 517 U.S. 681, 685 (1996); Allied Bruce Terminix Co., Inv. V. Dobson, 513 U.S. 265, 281 (1995)). Thus, a lack of strict compliance with the UAA is not dispositive of this issue.

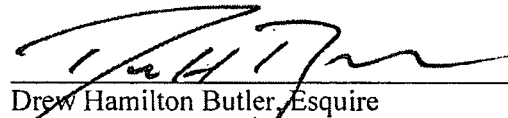
As discussed above, the 2006 and 2011 contracts involve interstate commerce, thus the FAA applies. Accordingly, as here, section 15-48-10 places the arbitration clauses on an “unequal footing with contracts generally” by requiring additional provisions for enforceability; therefore, section 15-48-10 is preempted by the FAA. See Munoz at 540, 542 S.E.2d 360 (finding the trial court erred in determining the arbitration clause was not enforceable because it did not comply with the statutory provisions of § 15-48-10 when the contract involved interstate commerce thereby allowing § 15-48-10 to be preempted by the FAA). Because the FAA preempts § 15-48-10, this Court erred in finding the 2006 and 2011 contracts were not subject to arbitration.

**CONCLUSION**

Based on the foregoing, Greenlawn respectfully requests this Court reconsider its March 17th, 2014 Order in this matter and enter an order compelling arbitration.

Respectfully submitted,

**RICHARDSON PLOWDEN & ROBINSON, P.A.**



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April 2, 2014

Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**RECEIVED**

NOV 21 2014

Eugene C. Griffith, Jr., Circuit Court Judge

**SC Court of Appeals**

Civil Action No.: 2012-CP-40-7874  
Appellate Case No.: 2014-001625

Christopher Carlton as the Personal Representative of the Estate of Helen Tucker Carlton;  
Christopher Carlton; John Thomas Carlton; and Christopher Carlton as the Personal  
Representative of the Estate of Kimberly Carlton Baker,.....Respondents,

v.

Greenlawn Funeral Home .....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material  
proposed to be included by any of the parties and not any other material.

November 21, 2014



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IN THE STATE OF SOUTH CAROLINA  
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APPEAL FROM RICHLAND COUNTY  
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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A.,  
attorneys for Greenlawn Funeral Home, do hereby certify that I have this date served the  
foregoing **Record on Appeal** by personally depositing a copy of the same in a United  
States Postal Service Mailbox, postage prepaid, addressed to the following:

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November 21, 2014