

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court Of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No: 2012-CP-46-2692

Paul Sullivan as Personal Representative of the
Estate of Pauline C. Cook, ... Respondent,

v.

Park Pointe Village, Inc., a wholly owned subsidiary of
ACTS Retirement-Life Communities, Inc., Neva Lattimer,
and Marvin Lawrence, ... Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF YORK)

CASE NO. 2012-CP-46-2692

Paul Sullivan as Personal Representative
of the Estate of Pauline C. Cook,

Plaintiff,

v.

Park Pointe Village, a wholly owned
subsidiary of ACTS Retirement-Life
Communities, Inc., Neva Lattimer,
and Marvin Lawrence,

Defendants.

ORDER

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This matter came before me on October 18, 2012, upon motion of the Defendants Park Pointe Village, Inc., Neva Lattimer, and Marvin Lawrence, to dismiss the complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP"), or in the alternative to compel arbitration. Defendants filed their amended motion on September 21, 2012. Representing the Plaintiff was Richard A. Harpootlian, and representing the Defendants was Carmelo B. Sammataro. Based on the record presented, and the parties' written memoranda in support of their respective positions, I make the following findings and conclusions.

BACKGROUND

Plaintiff is the personal representative of the estate of his mother-in-law, Pauline Cook. In the original complaint, Plaintiff alleges that Mrs. Cook was a resident at an assisted living facility located in Rock Hill, South Carolina, and operated by ACTS Retirement-Life Communities, Inc. ("ACTS"). Plaintiff alleges Mrs. Cook was killed by Braquette Walton ("Walton"), an employee at the facility. He alleged that Walton stole a number of Mrs. Cook's checks, forged them and made them payable to herself. The complaint further alleges that upon learning that Mrs. Cook had reported the theft, Walton entered the facility while she was off-duty, hid in the building where Mrs. Cook lived, and after lights out, entered Mrs. Cook's room and killed her.

The complaint alleges that ACTS owned and operated the facility where Mrs. Cook was killed and that ACTS and its employees breached their duty of due care to Mrs. Cook, resulting in her death at the hands of Walton. On August 24, 2012, the originally named Defendants filed

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answers, wherein ACTS moved to be dismissed from the suit, and all Defendants moved to compel arbitration.

Plaintiff timely filed an amended complaint on September 5, 2012, alleging the same operative facts, and adding Park Pointe Village, Inc. ("PPV") as a party. ACTS was eliminated and dismissed from the action.

In response to the amended complaint, the named Defendants filed an amended motion to dismiss, or in the alternative to compel arbitration.

MOTION TO COMPEL ARBITRATION

Defendants assert that the Resident Contract, signed by Mrs. Cook and a representative of PPV on January 1, 2006, and attached as Exhibit A to Defendants' motion, requires that all matters alleged in the Amended Complaint be submitted to binding arbitration, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1, *et seq.*, and the South Carolina Uniform Arbitration Act ("SCUAA"), S.C. Code §§ 15-48-10, *et seq.* Specifically, Defendants maintain that Section 21 of the Resident Contract mandates arbitration of the Plaintiff's claims.

Plaintiff counters that the Resident Contract does not involve interstate commerce, and that therefore, the FAA is not implicated. Plaintiff further asserts that the parties to the contract expressly agreed that all aspects of the contract, including the arbitration provision, are governed by South Carolina law.

Section 21.1 of the Resident Contract provides:

Any controversy, dispute or disagreement arising out of or relating to this Contract, or concerning any rights arising under this Contract or a breach of this Contract, shall be settled by voluntary arbitration. This arbitration shall be conducted on Company's property in accordance with the American Health Lawyers Association ("AHLA") Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The decision shall be final, binding and non-appealable, and any court having proper jurisdiction may enter judgment on the award rendered by the arbitrator.

Section 23.9 of the Resident Contract provides that "[a]ll matters affecting the interpretation of this Contract and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of South Carolina."

NEXUS TO INTERSTATE COMMERCE

The FAA applies only to a "... contract evidencing a transaction involving interstate commerce." (FAA, § 2.) To invoke the FAA, the Act's language requires that the "'transaction' in fact 'involve' interstate commerce" *Allied-Bruce Terminix Companies, Inc. v. Dobson*,

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513 U.S. 265 (1995). After review, I find and conclude that nothing in the Resident Contract evidences a "transaction involving interstate commerce." Thus, the FAA does not apply.

Based upon the record presented, I find the case of *Timms v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993) to be controlling. In *Timms*, the plaintiff brought an action against a nursing home and its owner after she suffered personal injuries at the nursing home facility. The defendants moved to dismiss the complaint and compel arbitration pursuant to an arbitration agreement contained in the residential admission contract.

The Supreme Court affirmed the trial court's denial of arbitration, and offered the following reasoning:

In [plaintiff's] personal injury action, the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law. [Citation omitted.] To activate application of the Federal Act, the commerce involved in the contract must be interstate or foreign. [Citation omitted.]

In this record is an affidavit of the administrator of the Center, which avers that the Center engages in interstate commerce in that the Center 1) is a division of National HealthCorp, L.P., a Delaware Limited Partnership; 2) markets its services to persons residing outside this State; 3) hires employees from outside the State; 4) purchases a majority of its goods, equipment and supplies outside the state for use at the Center; and 5) contemplates payment in part by Medicare or Medicaid. **Although these factors could evidence the Center's involvement in interstate commerce, we find that their relationship to the agreement between the Center and the respondent is insufficient to form the basis of the contract between the parties.**

Accordingly, we hold that the purported arbitration agreement is unenforceable under Section 15-48-10 and that the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, is inapplicable.

310 S.C. at 472-73, 427 S.E.2d at 644. *Emphasis added.*

Here, the subject matter of the Resident Contract is the provision of living accommodations, described as a "Residential Unit," "together with the facilities, services and medical care" otherwise specified in the contract. (See page 1 of Exhibit A to Defendants' Motion to Dismiss or, in the Alternative, to Compel Arbitration.) The Residential Unit was located in York County, South Carolina, as were all other facilities contemplated by the contract. Moreover, as contemplated in the Resident Contract, all services were provided on site.

Further, the Resident Contract does not mention the FAA or contain any reference to

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federal arbitration. Rather, the only reference to choice of law in the Resident Contract is Section 23.9, which indicates that South Carolina law applies to all matters pertaining to the contract.

Construing the contract as a whole, I find nothing contained in it to support preemption by the FAA. Further, the Defendants have failed to support their claim that the contract necessarily involves interstate commerce with affidavits, or other competent evidence, for consideration in support of their motion.

The relationship of the parties to the contract here, like the contract in *Timms*, does not implicate any connection with the elements of interstate commerce sought to be relied upon by Defendants. Pursuant to the contract, PPV was to provide Pauline Cook a residence in South Carolina, limited medical services, security and other services as outlined in the contract. All of these services were to be provided at the facility located in South Carolina. The essence of the contractual relationship simply is not founded upon any connection with interstate commerce.

SOUTH CAROLINA UNIFORM ARBITRATION ACT

Defendants also assert that arbitration is required under the South Carolina Uniform Arbitration Act (S.C. Code Ann. § 15-48-10, *et seq.* (1976, as amended) ("SCAA"). The SCAA provides:

(a) A written agreement to submit any existing controversy to arbitration or 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.**

(b) This chapter however shall not apply to:

....

(4) Any claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract.

S.C. Code Ann. § 15-48-10 (1976, as amended) (Emphasis added).

In this case, the arbitration clause is contained on page 36 of a 40-page document. No mention of the arbitration provision is found anywhere else in the document. In particular, the requisite notice that the agreement is subject to arbitration pursuant to SCAA is not displayed on the front page of the document as required by statute. Thus, I find and conclude that the Resident Contract does not comply with the notice provision of the statute, and therefore, the



dispute alleged in the Amended Complaint is not subject to arbitration under the SCAA.

ADDITIONAL GROUNDS

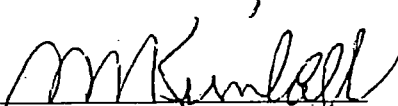
Plaintiff raises additional grounds in opposition to the motion to compel arbitration. Because of the findings and conclusions above, I need not, and do not, rule on those additional grounds.

CONCLUSION

Therefore, based on the findings and conclusions herein, it is ordered that Defendants' motion to compel arbitration be denied. Further, because Defendants have not advanced any argument in support of their Rule 12(b)(6), SCRCP, motion, other than their argument to compel arbitration, the Defendants' Rule 12(b)(6) motions are all denied.

AND IT IS SO ORDERED.

November 5, 2012


S. Jackson Kimball
Special Circuit Court Judge
York County

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CASE NO. 2012-CP-46-2692
	)	
Paul Sullivan as Personal Representative of the Estate of Pauline C. Cook,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM
	)	IN OPPOSITION TO
v.	)	DEFENDANTS' MOTION
	)	TO DISMISS OR, IN THE
Park Pointe Village, a wholly owned subsidiary of ACTS Retirement-Life Communities, Inc., Neva Lattimer, and Marvin Lawrence,	)	ALTERNATIVE, TO COMPEL
	)	ARBITRATION
	)	
Defendants.	)	
	)	

The Plaintiff, Paul Sullivan as Personal Representative of the Estate of Pauline C. Cook, files this memorandum of law in opposition to the Defendants' Motion to Dismiss or, In the Alternative, to Compel Arbitration. For the reasons set forth below, both motions should be denied.

FACTUAL/PROCEDURAL BACKGROUND

The Plaintiff filed suit after his mother-in-law, Pauline Cook, was killed at an assisted living facility in Rock Hill. Following Pauline's death, Braquette Walton was arrested and charged with Pauline's murder. Walton was also charged with forging a number of Pauline's checks prior to killing her. Walton was an employee at the assisted living facility at the time of the alleged forgery and at the time of Pauline's death.

The original complaint, filed on July 25, 2012, alleged that ACTS Retirement-Life Communities, Inc. owned and operated the facility where Pauline was killed and that ACTS and the two individually-named Defendants breached their duty of due care to Pauline and her statutory beneficiaries by providing or allowing Walton to have access to Pauline and by failing

to take those steps reasonably necessary to prevent Walton from harming Pauline. On or about August 24, 2012, all Defendants filed answers. At the same time, ACTS moved that it be dismissed from the suit¹ and all Defendants moved to compel arbitration. Plaintiff filed an amended complaint on September 5, 2012, pursuant to Rule 15(a), SCRPC (permitting an amendment "as a matter of course . . . within 30 days after a responsive pleading is served . . ."). The only substantive change made in the amended complaint is that Park Pointe Village, Inc. ("PPV") is added as a party and ACTS is deleted as a party, although Plaintiff maintains that PPV is the alter ego of ACTS. Contemporaneous with the amended complaint, Plaintiff filed a Stipulation of Dismissal pursuant to Rule 41(a), SCRPC, dismissing ACTS from the action.

MOTION TO DISMISS

Aside from a single, general reference to Rule 12 of the South Carolina Rules of Civil Procedure, Defendants' motion to dismiss fails to identify any legal basis that supports dismissal. Defendants' Motion does make the claim that "Defendant ACTS was not a party to the Resident Contract, nor was it a party in interest with Plaintiff's Decedent. In short, Defendant ACTS had no responsibility to Plaintiff's Decedent pursuant to the Resident Contract and is, therefore, entitled to an order dismissing it from these proceedings." (See page 2, Defendants' Motion to Dismiss or, In the Alternative, to Compel Arbitration). In light of the fact that the Plaintiff has filed an amended complaint that substitutes PPV as a defendant in place of ACTS and has filed a Stipulation of Dismissal dismissing ACTS, Plaintiff submits the Defendants' Motion to Dismiss is now moot.

Inasmuch as Defendants' Motion fails to state any reason that Defendants Neva Lattimer or Marvin Lawrence should be dismissed, Plaintiff opposes the motion to dismiss as to these

¹ Plaintiff assumes only ACTS moved for dismissal; the motion is silent as to any grounds that would even arguably support dismissal of Defendants Neva Lattimer or Marvin Lawrence.

Defendants and respectfully asks that he be given an opportunity to supplement this memorandum in the event Defendants Neva Lattimer or Marvin Lawrence submit any legal memoranda or otherwise offer any grounds as to why they should be dismissed.

MOTION TO COMPEL ARBITRATION

Defendants argue the Court should compel arbitration pursuant to the Resident Contract (Exhibit 1 to Defendants' Motion), signed by Pauline Cook on or about January 1, 2006. For the reasons that follow, Plaintiff submits the arbitration clause in the Resident Contract is inapplicable to the allegations set forth in the amended complaint, and asks the Court to deny Defendants' Alternative Motion to Compel Arbitration.

A. The Contract is Controlled by South Carolina Law

Defendants are correct that paragraph 21 of the Resident Contract purports to provide for arbitration of disputes arising out of the Contract. However, Defendants fail to mention that the Contract contains a clear and unequivocal choice of law provision. Paragraph 23.9 of the Contract provides that "All matters affecting the interpretation of this Contract and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of South Carolina." (See Defendants' Exhibit A, page 38, paragraph 23.9). Nowhere does the Contract make any reference to the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*, ("FAA") or otherwise provide that any law other than South Carolina law shall govern the parties' rights under the contract.

Relying on United States Supreme Court precedent, the South Carolina Supreme Court explained in Munoz v. Green Tree Financial Corp., 343 S.C. 531, 542 S.E.2d 360 (2001):

As the United States Supreme Court recognized in Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989), the parties are free to enter into a contract providing for arbitration under rules established by state law rather than under rules established

by the FAA. The FAA preempts state laws that invalidate the parties' agreement to arbitrate "[b]ut it does not follow that the FAA prevents the enforcement of agreements to arbitrate under different rules than those set forth in the [FAA] itself." *Id.* at 478, 109 S.Ct. 1248. Such a result would be inimical to the FAA's primary purpose of ensuring that arbitration agreements are enforced according to their terms. *Id.*; see also Ford v. NYLCare Health Plans of the Gulf Coast, Inc., 141 F.3d 243 (5th Cir.1998); Wolsey, Ltd. v. Foodmaker, Inc., 144 F.3d 1205 (9th Cir.1998); Ackerberg v. Johnson, 892 F.2d 1328 (8th Cir.1989).

In Soil Remediation Co. v. Nu-Way Envtl., Inc., 323 S.C. 454, 476 S.E.2d 149 (1996), we found an arbitration agreement that did not comply with the technical notice requirements of § 15-48-10(a) was nonetheless valid because the FAA included no such notice requirement. We did not address the impact of the parties' agreement that the state Arbitration Act would apply. We now clarify that the result in Soil Remediation hinged on the fact that application of state law would have rendered the arbitration agreement completely unenforceable under § 15-48-10(a) which provides that a contract failing to comply with statutory notice requirements shall not be subject to arbitration. State law was therefore preempted *to the extent it would have invalidated the arbitration agreement*. The parties to a contract are otherwise free to agree that our state Arbitration Act will apply and this agreement shall be enforceable even if interstate commerce is involved.

Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 363 (2001) (emphasis in original).

Construing the plain language of the contract, the parties intended for South Carolina law to apply. The FAA has no application here where the parties neither agreed to arbitrate pursuant to the FAA nor does the contract involve interstate commerce. The FAA provides: "A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C.A. § 2. Therefore, "in order to activate the application of the FAA, the commerce involved in the contract must be interstate or foreign." Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 730 S.E.2d 312 (2012).

The South Carolina Supreme Court has previously found that a contract to provide patient-residential services did not involve interstate commerce and, therefore, the arbitration clause did not implicate the FAA. In Timms v. Greene, 310 S.C. 469, 427 S.E.2d 642 (1993), the plaintiff brought an action against a nursing home and its owner after she suffered personal injuries at the center. The defendants sought to dismiss the complaint and compel arbitration, pursuant to a broadly-worded arbitration agreement contained in the residential admission contract. Based on its conclusion that the arbitration clause did not comply with the South Carolina Uniform Arbitration Act and did not involve interstate commerce, the circuit court denied the motion to compel arbitration.

The Supreme Court affirmed the trial court, reasoning that:

In [plaintiff's] personal injury action, the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law. See Shearson Hayden Stone, Inc. v. Liang, 493 F.Supp. 104 (N.D.Ill.1980). To activate application of the Federal Act, the commerce involved in the contract must be interstate or foreign. 9 U.S.C. § 1; Varley v. Tarrytown Assoc., Inc., 477 F.2d. 208 (2d. Cir.1973).

In this record is an affidavit of the administrator of the Center, which avers that the Center engages in interstate commerce in that the Center 1) is a division of National HealthCorp, L.P., a Delaware Limited Partnership; 2) markets its services to persons residing outside this State; 3) hires employees from outside the State; 4) purchases a majority of its goods, equipment and supplies outside the state for use at the Center; and 5) contemplates payment in part by Medicare or Medicaid. Although these factors could evidence the Center's involvement in interstate commerce, we find that their relationship to the agreement between the Center and the respondent is insufficient to form the basis of the contract between the parties.

Accordingly, we hold that the purported arbitration agreement is unenforceable under Section 15-48-10 and that the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, is inapplicable.

Timms v. Greene, 310 S.C. 469, 472-73, 427 S.E.2d 642, 644 (1993).

Likewise, the contract in this case is devoid of any basis for holding it involves interstate commerce. Pursuant to the contract, PPV was to provide Plaintiff's decedent a residence, limited medical services, security and other services outlined in the contract. Nothing in the contract involves interstate commerce or implicates a connection with interstate commerce. In sum, the contract is devoid of any basis for holding that interstate commerce was involved in the transaction.

Moreover, the parties to the contract expressed their choice of law and they agreed the contract would be interpreted pursuant to the laws of South Carolina. The parties were free to choose what law governed the contract. See Munoz, supra. Here, the arbitration clause does not comply with the clear notice requirement contained at S.C. Code Ann. §15-48-10(a) (Supp. 2011) ("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.").

Further, the South Carolina Uniform Arbitration Act expressly provides that it shall not apply to "[a]ny claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract." S.C. Code Ann. § 15-48-10(b)(4) (Supp. 2011). By agreeing that South Carolina law would apply to the contract, the parties explicitly agreed that any claims for personal injury would not be subject to arbitration.

Neither the contract itself nor the claims set forth in the complaint and amended complaint involve interstate commerce in any way, shape, or form; therefore, the FAA does not apply. In addition, the contract includes a choice of law provision whereby both parties agreed that disputes concerning the contract would be governed by South Carolina law. This choice of law provision applies with equal force to the arbitration clause. Under the clear and unambiguous

terms of the South Carolina Uniform Arbitration Act, the claims alleged are not subject to arbitration. Plaintiff submits the Court should deny the Defendants' Alternative Motion to Compel Arbitration and permit the case to proceed in the Court of Common Pleas.

B. The Outrageous Conduct Alleged is Not Subject to Arbitration

The South Carolina Supreme Court has refused to apply even broadly-worded arbitration clauses to tortious conduct that rises to the level of outrage or to conduct that was unforeseen at the time the arbitration agreement was made. In Aiken v. World Finance Corp. of South Carolina, 373 S.C. 144, 644 S.E.2d 705 (2007), the plaintiff brought suit against a consumer lender after employees of the lender used the plaintiff's personal financial information, such as his date of birth and social security number, to obtain sham loans in the plaintiff's name and to embezzle the proceeds of these loans. The employees accessed this personal information from a loan application the plaintiff submitted to the lender. At the time he accepted the loan, the plaintiff agreed to arbitrate "all disputes, controversies or claims of any kind and nature between lender and borrower arising out of or in connection with the loan agreement . . . in accordance with the United States Arbitration Act." Id. at 147, 644 S.E.2d at 707.

Despite the broadly-worded arbitration clause and its explicit reference to the "United States" (Federal?) Arbitration Act, the Court held the arbitration agreement was unenforceable. Relying on "general principles of contract law," the Court pronounced it would "refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." Id. at 151, 644 S.E.2d at 709. The Court explained that its decision did not exclude all intentional torts from the scope of arbitration nor did it ignore the state and federal policies favoring arbitration. It sought only to promote, as a matter of public policy, "the procurement of arbitration in a commercially

reasonable manner. To interpret an arbitration agreement to apply to actions completely outside the expectations of the parties would be inconsistent with this goal.” Id. at 152, 644 S.E.2d at 710.

On the same day it issued Aiken, supra, the Court applied the rule in Chassereau v. Global-Sun Pools, Inc., 373 S.C. 168, 644 S.E.2d 718 (2007). Chassereau sued an above-ground pool manufacturer and one of its employees after she received threatening phone calls from the employee who was attempting to collect money due on the pool. Chassereau alleged the employee repeatedly phoned her at her workplace, disclosed private information to her friends, relatives and co-workers, and made defamatory statements about her. The Supreme Court affirmed the trial court’s refusal to compel arbitration. In so doing, the Court reaffirmed that “even the most broadly-worded arbitration agreements have limits founded in general contract principles” Id. at 172, 644 S.E.2d at 720, and that the parties’ expectations were critical to construing arbitration agreements:

[W]e believe a reasonable person would not have foreseen and would not have expected (and ought not to expect) Global-Sun employees to commit acts historically associated with the common law tort of outrage in seeking to collect an overdue debt. Our opinion in Aiken [supra] unequivocally provides that although these types of uncivilized acts often arise in the course of performance of contracts containing arbitration clauses, **South Carolina courts will not interpret arbitration clauses to apply to such acts which are outrageous and unforeseen.**

Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis. While actions taken in an arrangement such as the one entered into by these parties might have the potential to generate several legal claims and causes of action, we have no doubt that Chassereau did not intend to agree to arbitrate the claims she asserts in the instant case. Accordingly, we hold that these claims are not covered by the arbitration agreement at issue in the instant case.

Id., at 172-73, 644 S.E.2d at 720-21 (emphasis added).

The allegations here are that Walton, an employee of the contracting party, PPV, stole checks from Pauline Cook and forged those checks. After Pauline discovered the theft and contacted the police, another PPV employee, Lawrence, warned Walton that she was the subject of a police investigation. Even though PPV and its agents had every reason to know of the potential threat Walton posed to Pauline, they took absolutely no action to prevent her from gaining access to Pauline. Undeterred, Walton entered Pauline's room and beat her to death.

Tragically, Pauline Cook cannot testify to her intentions when she signed the contract containing the arbitration agreement. Surely Pauline did not foresee or even contemplate that she would be robbed and then beaten to death while PPV and its agents stood idly by and undertook no efforts to protect her. The nexus between the contract and the acts complained of is far more attenuated than the overzealous collection practices the Court in Chessereau found were not subject to arbitration. Likewise, the conduct alleged by the plaintiff in Aiken – and found not subject to arbitration – pales in comparison to those acts alleged here. It is difficult to imagine conduct more outrageous, reprehensible, and unforeseen than the acts alleged in the amended complaint. Pursuant to controlling South Carolina authority, the claims set forth therein are not covered by the arbitration clause.

C. Pauline Cook's Personal Representative Is Not a Party to the Contract

To the extent Defendants seek to compel arbitration of the wrongful death action, the motion should be denied because the wrongful death action is for the benefit of Pauline's heirs and to compensate them for the loss they have suffered as result of Pauline's death. See S.C. Code Ann. § 15-51-40. These damages include pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of Pauline's

experience, knowledge and judgment. See, e.g., Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000).

Pauline's heirs were not parties to the arbitration agreement and have never agreed with any of the Defendants to arbitrate any claims against them. "[A]rbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. [Citing Towles v. United HealthCare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999)]. . . Arbitration will be denied if a court determines no agreement to arbitrate existed." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007); see also, Lucey v. Meyer, __ S.C. __, __ S.E.2d __, 2012 WL 1020984 (Ct. App. March 28, 2012) (same).

While Plaintiff has found no South Carolina authority directly on point, in Sennett v. National Healthcare Corp., 272 S.W.3d 237 (Mo. App. 2008), the Missouri Court of Appeals addressed a nearly identical set of facts as those presented here. There, the son of a nursing home resident brought an action alleging the negligence of the nursing home and its employees caused his mother's wrongful death. The nursing home sought to compel arbitration based upon an arbitration agreement contained in the mother's admittance paperwork. The court refused to compel arbitration of the wrongful death claim, finding the beneficiaries of the action had not agreed to arbitrate the dispute. The court cited with approval language from the case of Finney v. National Healthcare Corp., 193 S.W.3d 393 (Mo. App. 2006):

There is no question that a contract did not exist between [the wrongful death beneficiary] and Appellants. To bypass the necessity of a valid contract between [the wrongful death beneficiary] and Appellants in which [the wrongful death beneficiary] agreed to arbitrate any disputes, Appellants argue that [the wrongful death beneficiary] is bound by the contract signed on [d]ecedent's behalf. In other words, Appellants claim that but for [d]ecedent's death, [the wrongful death beneficiary] would not have a cause of action and, therefore, she stands in the shoes of [d]ecedent. . . .

The wrongful death claim does not belong to the deceased or even to a decedent's estate. The wrongful death act creates a new cause of action where none existed at common law and did not revive a cause of action belonging to the deceased. A wrongful death action is not a transmitted right nor a survival right but is created and vested in the statutorily designated survivors at the moment of death. The damages under [the wrongful death statute] are different than the damages [d]ecedent would have been entitled to in a personal injury action against Appellants.

Sennett v. National Healthcare Corp., 272 S.W.3d 237, 241-42 (Mo. Ct. App. 2008) (citing Finney, supra, at 93 S.W.3d at 394-95 (internal citations omitted)). Accordingly, "a nonparty to the initial agreement containing an arbitration clause, is not bound by the clause in her independent cause of action for the wrongful death." Sennett. The Supreme Court of Alabama has likewise refused to enforce arbitration agreements signed by or on behalf of decedents against beneficiaries of wrongful death claims. See, Noland Health Services, Inc. v. Wright, 971 So. 2d 681, 690 (Ala. 2007) (a nonsignatory personal representative is not bound to arbitrate a medical-malpractice action seeking damages for wrongful death).

Here, the Defendants are attempting to do precisely what the courts in Sennett, Finney, and Noland refused to permit: they are attempting to enforce an arbitration clause signed by Pauline against the non-party beneficiaries of the wrongful death claim. South Carolina courts have made it clear that a prerequisite to arbitration is **an agreement to arbitrate**. See Towles, Simpson, and Lucey, supra. None of the beneficiaries of the wrongful death action have agreed to arbitrate any dispute with any of the Defendants. The lack of a mutually binding arbitration agreement is yet another reason the Court should deny the motion to compel arbitration.

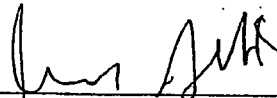
CONCLUSION

The Defendants' motion to dismiss has been mooted by the filing of the amended complaint and Stipulation of Dismissal, and therefore, that motion should be denied. Moreover, nothing in the contract involves or implicates interstate commerce and the FAA has no

application to the contract or the Defendants' motion to compel arbitration. In fact, the parties agreed to resolve any disputes arising out of the contract in accordance with South Carolina law. The contract is completely devoid of any reference to federal law or the FAA. Pursuant to South Carolina law, even the most broadly-worded arbitration agreements are limited by general contract principles, and the reasonable expectations of the consumer. No consumer could foresee the outrageous acts to which Pauline Cook was subjected and no consumer would agree to arbitrate the causes of action set forth in the amended complaint. Furthermore, the statutory beneficiaries of the wrongful death claims are not parties to a binding arbitration agreement and have never agreed to arbitrate any disputes they may have with the Defendants arising out of Pauline's death.

For all of these reasons, Plaintiffs ask the Court to deny Defendants' Motion to Compel Arbitration.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

October 18, 2012

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Paul Sullivan as Personal Representative
of the Estate of Pauline C. Cook,

Plaintiff,

vs.

Park Pointe Village, Inc., a wholly owned
subsidiary of ACTS Retirement-Life
Communities, Inc., Nèva Lattimer,
and Marvin Lawrence,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-46-2692

CERTIFICATE OF SERVICE

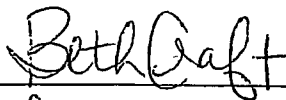
I, Beth Craft, on behalf of Richard A. Harpootlian, P.A., hereby certify that I served the following individuals, on October 18, 2012, with a copy of the following, via U.S. MAIL:

Document:

- 1) Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss or, in the Alternative, to Compel Arbitration.

Counsel:

R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Turner Padgett Graham & Laney, P.A.
Bank of America Plaza
1901 Main Street, 17th Floor
Columbia, SC 29201



Beth Craft

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2012-CP-46-02692

Paul Sullivan as Personal Representative of
the Estate of Pauline C. Cook,

Plaintiff,

vs.

Park Pointe Village, Inc., a wholly owned
subsidiary of ACTS Retirement-Life
Communities, Inc., Neva Lattimer, and
Marvin Lawrence,

Defendants.

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

FILED-RECEIVED
2012 SEP 21 AM 10:29
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, S.C.

Defendants Park Pointe Village, Inc., incorrectly identified as Park Pointe Village, Inc., a wholly owned subsidiary of ACTS Retirement-Life Communities, Inc. (hereinafter "Park Pointe"), Neva Lattimer (hereinafter "Lattimer"), and Marvin Lawrence (hereinafter "Lawrence") (hereinafter collectively referred to as "Defendants"), hereby move the Court to dismiss Plaintiff's Amended Complaint and the claims raised therein against Defendants, or in the alternative, move to compel arbitration of Plaintiff's claims. This argument is made pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, as amended; the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*; the South Carolina Uniform Arbitration Act ("SCUAA"), S.C. Code § 15-48-10, *et seq.*; and the Resident Contract, attached hereto as Exhibit A, specifically Section 21, Arbitration.

As grounds for the motion, Defendants assert the following:

1. Plaintiff filed his Amended Summons and Complaint in the Court of Common Pleas for York County on or about September 5, 2012.

2. In his Amended Complaint, Plaintiff sets forth wrongful death and survival causes of action against all Defendants, a negligent supervision cause of action against Defendant Park Pointe, and asserts a prayer for awards of actual and punitive damages.

3. As of January 1, 2006, Plaintiff's Decedent Pauline C. Cook (hereinafter "Plaintiff's Decedent") and Defendant Park Pointe entered into the Resident Contract regarding the continued residency of Plaintiff's Decedent at Park Pointe's continuing care retirement community. See attached Exhibit A.

4. As reflected in Section 21 of the Resident Contract, Plaintiff's Decedent and Park Pointe anticipated and agreed that any dispute arising out of or under the Resident Contract would be governed by arbitration.

5. There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App.1999).

6. The SCUAA provides that in any contract evidencing a transaction involving commerce, a written provision to settle by arbitration shall be valid, irrevocable, and enforceable. S.C. Code Ann. §15-48-10(a) (Supp. 2005). Additionally, the Federal Arbitration Act provides that a "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable. . . ." 9 U.S.C. § 2; see also *Marmet Health Care Ctr., Inc. v. Brown*, 132 S.Ct. 1201, 182 L.Ed.2d 42 (2012) (state's categorical prohibition against pre-dispute agreements to arbitrate personal injury or wrongful death claims against nursing homes held contrary to the terms and coverage of the Federal Arbitration Act).

7. Here, there is a transaction involving commerce and nothing in the arbitration provision of the Resident Contract that would render it unconscionable or otherwise unenforceable.

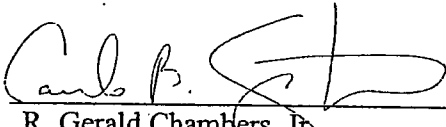
8. As such, this matter brought forth by Plaintiff is governed by the arbitration provision of the Resident Contract and should be resolved accordingly, not through this litigation.

For these reasons, Defendants move to dismiss Plaintiff's Amended Complaint, or, in the alternative, to compel arbitration in accordance with the arbitration provision of the Resident Contract. This motion is based upon the pleadings, relevant statutes and authorities, the attached Exhibit A, and any affidavits and supporting memoranda that may be hereafter submitted.

TURNER, PADGET, GRAHAM & LANEY, P.A.

September 20, 2012

By:



R. Gerald Chambers, Jr.
Carmelo B. Sammataro
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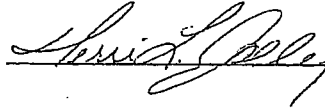
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of September 2012 a copy of AMENDED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO COMPEL ARBITRATION has been served upon other counsel of record, by mailing same, postage prepaid in the United States Mail, addressed to the following:

Richard A. Harpootlian, Esquire
Graham L. Newman, Esquire
M. David Scott, Esquire
Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, SC 29201

ATTORNEYS FOR PLAINTIFF



FILED-RECEIVED
2012 SEP 21 AM 10:29
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

EXHIBIT A



Park Pointe Village

**Resident
Contract**

PARK POINTE VILLAGE, INC.
A NOT-FOR-PROFIT CORPORATION

SC-RC001-PPV (08/05)

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SC-RC001 8/01/05

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Definitions

ADMINISTRATIVE FEE: The Administrative Fee is equal to four (4) percent of the total Entrance Fee paid to be used by Company to cover Company's administrative costs associated with Resident application and move-in.

ANCILLARY FEE SCHEDULE: The schedule of charges for services not included in the monthly rate.

APPLICATION FEE: The Application Fee is a non-refundable fee submitted with Resident's Application and Waiting List Contract.

ASSISTED LIVING SERVICES: Assistance with activities of daily living, such as eating, bathing, dressing, grooming and toileting, provided in an Assisted Living Residence.

ASSISTED LIVING RESIDENCE: A licensed assisted living residence which provides Assisted Living Services under this Contract and which may or may not be located on the campus of Retirement Community.

CONDITIONS FOR CONTINUED OCCUPANCY: The health and safety requirements, (as defined by Company's prevailing policy, which is subject to change) for continued Occupancy of the Residential Unit or other accommodation in Retirement Community.

CONDITIONS OF OCCUPANCY FOR ADMISSION: The health and safety requirements, (as defined by Company's prevailing policy which is subject to change) for admission to a Residential Unit in Retirement Community.

DAILY RATE: The daily charge for Assisted Living Services in private accommodations or Routine Nursing Care Services in shared accommodations. It does not include charges for supplemental, ancillary or miscellaneous services or supplies, for which there is or may be an additional charge.

DATE OF AVAILABILITY: The date designated by Company for the Resident to accept Occupancy, for the Entrance Fee to become due and begin payment of the Monthly Rate.

ENTRANCE FEE: A one-time fee paid to Company prior to admission to Retirement Community. The amount of the Entrance Fee is based on the model, size and location of the Residential Unit and the number of occupants of the Residential Unit.

EXTENDED DATE OF AVAILABILITY: An extension to the Date of Availability for a reasonable period of time granted by Company.

HOME CARE SERVICES: Private duty care provided by nurses, home health aides, or companions on a fee-for-service basis in the person's place of residence, including the Resident's apartment, Assisted Living Residence, or Skilled Care Center. Services vary from hourly visits to 24 hours per day and may include skilled care, assistance with activities of daily living, or companion services.

LIVING ACCOMMODATION: The Residential Unit of the Retirement Community, an assisted living room in the Assisted Living Residence or a nursing care bed in the Skilled Care Center.

MONTHLY RATE: The charge per month for Occupancy of the Living Accommodation.

OCCUPANCY: The right to reside in and use the Living Accommodation.

RESERVATION FEE: The amount paid by Resident in consideration of which Company reserves the Residential Unit designated for Occupancy by Resident. The Reservation Fee is paid at the time of signing the Resident Contract and is credited towards the payment of the Entrance Fee.

RESIDENT/CO-RESIDENT: One of two or more individuals who signs a Resident Contract to initially occupy one Residential Unit.

RESIDENTIAL UNIT: The living unit provided by Company which is designated for Occupancy under this Contract.

RETIREMENT COMMUNITY: The Company's facility identified in the Contract as the location Resident will take Occupancy of the Residential Unit.

ROUTINE NURSING CARE SERVICES: The level of nursing care services provided by Company. Company reserves the right to define the acuity level of care services it provides in exchange for the Monthly Rate. Certain higher acuity nursing care services, if available, and supplemental or ancillary services and items shall be provided at an additional charge.

SHARED OCCUPANCY: The right to reside in and use a Residential Unit vested in two or more persons.

SINGLE OCCUPANCY: The right to reside in and use a Residential Unit vested in one person.

SKILLED CARE CENTER: A licensed nursing facility which provides Routine Nursing Care Services under this Contract and which may or may not be located on the campus of the Retirement Community.

SPECIAL SERVICE FACILITY: A psychiatric institution, drug or alcohol treatment facility, renal treatment facility, rehabilitation unit, Subacute or Transitional Care provider, including other licensed nursing facilities providing specialized medical care and treatment, such as some Subacute services, not provided by Company.

SUBACUTE CARE: Short-term care (10 to 40 days) for patients who require medical care and monitoring at least weekly, skilled nursing care of approximately 4.0 hours per day, rehabilitative therapies and I.V. therapies without significant medical complications.

SURRENDER: To cease Occupancy of the Living Accommodation, to remove all possessions from Retirement Community, and to return all Company's property, including, but not limited to, keys and emergency alert equipment, if applicable.

TRANSITION PERIOD: The first one hundred twenty (120) days of Occupancy in the Residential Unit during which time the Resident has an opportunity to adjust to the Retirement Community and must demonstrate an ability to satisfy the Conditions of Occupancy for Admission of a Residential Unit.

TRANSITIONAL CARE: Short-term care (5 to 30 days) for patients who require regular medical care and monitoring, intensive skilled nursing care of approximately 5.5 to 8 hours per day, an integrated program of therapies (both rehabilitative and respiratory) including utilization of pharmaceuticals and laboratory services.

UTILIZATION REVIEW COMMITTEE: The Utilization Review Committee shall consist of members of the skilled care and administrative staff designated by Company, and shall make determinations relating to level of care transfers.

WAITING LIST DEPOSIT: A payment the applicant made at the time of submitting an Application, in consideration of which the name of the applicant is placed on a list awaiting availability of a Residential Unit. The Waiting List Deposit is credited towards the payment of the Entrance Fee.

PARK POINTE VILLAGE
RESIDENT CONTRACT

This Resident Contract made this 1st day of January 2006, is between PARK POINTE VILLAGE, INC. a not-for-profit corporation, organized and existing under the laws of the State of South Carolina, and exempt from the payment of income tax under Section 501(c)(3) of the Internal Revenue Code (hereinafter called "Company"), which operates a Retirement Community named Park Pointe Village ("Retirement Community") AND Pauline C. Cobb

(hereinafter referred to as "Resident," and where this Contract is executed by one or more individuals, they are called collectively "Resident" where the context permits and individually as "Co-Resident") who has applied for and has been conditionally approved for admission to the Retirement Community by Company. Subject to the signing of this Contract, Company and Resident, intending to be legally bound, agree to the following terms and conditions.

SECTION 1. General Statement Regarding Extent of Continuing Care

Upon execution of this Resident Contract and payment of entrance fee, and prior to the Date of Occupancy or Date of Availability, whichever is earlier, Resident is entitled to access, if necessary, the services specified in this Contract.

Beginning with the date of Occupancy of a living accommodation in the Retirement Community, or the Date of Availability, whichever is earlier, Company will provide the Residential Unit, together with the facilities, services and medical care specified in this Contract until the Resident's death or earlier termination of this Contract.

This general description of Continuing Care to be provided by Company is a summary only and the exact nature of continuing care provided by Company under this Contract is more fully set forth in the remaining sections of this Contract.

SECTION 2. Admission to Company

2.1 Financial Qualifications

Company requires that Resident have assets and income which are sufficient under foreseeable circumstances and after provision for payment of Resident's obligations hereunder to meet ordinary and customary living expenses after assuming occupancy over Resident's projected lifetime.

2.2 Change in Financial Condition Prior to Occupancy

If, after the date of accepting and signing a Resident Contract by both parties and prior to the date of occupancy of a Residential Unit, a change in Resident's financial condition occurs and Resident no longer qualifies under Section 2.1, Company reserves the right to terminate this Contract. Any portion of the Entrance Fee that has been paid shall be refunded in full no later than sixty (60) days after the effective date of termination of this Contract.

2.3 Medical Qualifications

For admission into Residential Unit, Company requires that Resident be able to meet the Conditions of Occupancy for Admission in a residential setting.

2.4 Change in Medical Condition Prior to Occupancy

Once a Resident Contract is accepted and signed by both parties, Resident is accepted at Retirement Community regardless of a change in medical condition. If there is a change in medical condition Company reserves the right to determine the appropriate level of care.

SECTION 3. The Designation of the Residential Unit and Consideration to be Paid

The Residential Unit provided by Company is:

Type of Unit 1 BR w/den; Unit Number 207; Date of Availability N/A
Consideration to be Paid:

Entrance Fee

Gross Entrance Fee \$ 78400⁰⁰

Adjustments (defined below) \$ 00

Net Entrance Fee \$ 78400⁰⁰

Deposits

Waiting List Deposit \$ /

Reservation Fee \$ /

Final Payment \$ /

Current Monthly Rate (as of the date of the signing of this Contract) \$ 1313⁰⁰

Price Plan: Caroline Village conversion to LifeCare Contract Option 2
Adjustment explanation: please see attached letter

SECTION 4. Living Accommodation and Common Areas

4.1 Living Accommodation

From and after the Date of Availability, Resident has the right to occupy and use, in accordance with this Contract, the Residential Unit designated in Section 3, and accommodations in Assisted Living Residence and Skilled Care Center as defined in Section 11 of this Contract.

4.2 Furnishings

Company will furnish wall to wall carpeting, stove, refrigerator, window treatment, microwave oven and fixtures in the Residential Unit in accordance with Company's prevailing standard. Resident may upgrade, change or replace the furnishings provided by Company at Resident's cost. These furnishings, even if up-graded, changed or replaced at Resident's cost, shall become the permanent property of Company unless otherwise agreed to in writing by both parties. All other furnishings shall be furnished by Resident, subject to supervision of, and approval by, Company, and shall remain as Resident's personal property, except as set forth in Subsections 5.6 and 5.9.

4.3 Optional Furnishings or Appliances

Company may provide at the Resident's request optional furnishings, fixtures or appliances identified and approved by Company. The cost for optional items is not included in the Entrance Fee or the Monthly Rate and is an additional charge established by Company. The costs for any optional items requested by Resident shall be paid prior to the beginning of the work or before the time of installation. Upon installation, all additional furnishings, fixtures or appliances immediately become the property of Company and shall remain in the Residential Unit after termination of this Contract. Resident shall sign an addendum to this Contract reflecting all optional furnishings or fixtures and their cost.

4.4 Common Areas

Subject to scheduling requirements and availability as established by Company and as part of the services included in the Monthly Rate, Resident may use, in common with all other residents, the dining room, lobby or lobbies, auditorium, social and recreational rooms, and other common areas furnished by Company. Resident and guests shall refrain from smoking or drinking alcoholic beverages in all common areas.

4.5 Assisted Living Residence

Company shall provide Assisted Living Services in a licensed Assisted Living Residence at either the Retirement Community, another affiliated Retirement Community or an outside provider which may not be located on the campus of the Retirement Community.

4.6 Skilled Care Center

Company shall provide Routine Nursing Care Services in a licensed Skilled Care Center, at either the Retirement Community, another affiliated Retirement Community or an outside provider which may not be located on the campus of the Retirement Community, for the delivery of Routine Nursing Care Services.

4.7 Date of Availability

Resident shall take possession of the Residential unit as of the Date of Availability. If the Residential Unit is available for Occupancy before the Date of Availability, Resident may take possession on the first available date. The obligation to pay the Monthly Rate shall begin on the Date of Availability or upon Occupancy, whichever is earlier, and the Entrance Fee must be paid in full prior to or at the time of Occupancy. In the event that Resident fails to take possession or pay the Monthly Rate on the Date of Availability, and the

Residential Unit is available for Occupancy, then Company, in its sole and absolute discretion may elect to terminate this Contract.

The Date of Availability may be extended by Company for a reasonable period (i.e. the "Extended Date of Availability"). Company shall provide notice of any extension of the Date of Availability by certified mail, addressed to Resident in accordance with Section 18. If, however, the Residential Unit is not ready for Occupancy by the Date of Availability or Extended Date of Availability, and such delay is due to labor strikes, fire, an act of God or any other cause beyond the control of Company, then, Company, in its sole discretion, may further extend the date of Occupancy for a reasonable period of time. In the event that Resident fails to take possession on the Extended Date of Availability, then Company, in its sole and absolute discretion, may elect to terminate this Contract in accordance with the termination and refund provisions.

SECTION 5. Services Provided by Company to Resident and Resident's Responsibilities

5.1 Utilities and Taxes

As part of the services included in the Monthly Rate, Company will furnish water, light, heat, electricity and air-conditioning. Payment of the Monthly Rate does not give the Resident any interest in the land, improvements, or real estate of Company and the Retirement Community. Resident shall participate in and assign all rights to any real estate, property tax or utility credit program.

5.2 Telephone

Resident is required to have a telephone, or an alternative communication device which is approved by Company, in the Residential Unit, at Resident's expense. All telephone service charges, including connection charges are the responsibility of, and shall be paid by, the Resident, and are not included in the Monthly Rate. Company shall provide a Retirement Community directory of telephone numbers for access to Company personnel.

5.3 Television

Company shall provide each Residential Unit with connection(s) for television signal access through either an external antenna or cable system. Costs for cable television service, which are not included in the Monthly Rate, shall be paid by Resident.

5.4 Housekeeping

Resident shall maintain the Residential Unit in a clean, sanitary and orderly condition, and is responsible for all usual light housekeeping tasks. Company will, at least once each year, provide such heavier cleaning services as it deems necessary. Company reserves the right to inspect the Residential Unit periodically for cleanliness and safety. If Resident fails to maintain the Residential Unit in a clean, sanitary and orderly condition as determined by Company, then Company reserves the right to clean the Residential Unit and, Resident shall pay the charges assessed by Company for cleaning the Residential Unit.

5.5 Maintenance and Repairs

Necessary repairs, maintenance and replacement of property and equipment owned by Company will be performed and provided at the discretion of Company. Repairs, maintenance, and replacement of property of Resident will be the responsibility of Resident.

5.6 Structural Changes

All structural or physical changes of any kind within or about the Residential Unit (i.e. shelves, framework, awnings, etc.) will be made only upon first being approved by Company in writing and thereafter being subject to the supervision of Company. The cost of any such change requested by Resident shall be borne by Resident and paid for before work begins, unless otherwise agreed to in writing by both parties, and all such changes shall immediately become and remain the permanent property of Company.

5.7 Laundry

Automatic washers and dryers for personal laundry are located within Retirement Community and are available to all Residents. Cottage/duplex units have washer/dryer connections available and Resident may supply own washer and dryer. Linen service is included in Monthly Rate for Residents residing in Assisted Living Residence or Skilled Care Center.

5.8 Storage

For each Residential Unit, Company shall provide storage in a designated area. Use of storage facilities shall be subject to direction and supervision of Company. Resident is responsible for the risk of loss for all items stored in the storage units.

5.9 Grounds

Company will provide basic grounds keeping care including lawn service. Resident, at his/her own expense may plant and maintain the area adjacent to his/her Residential Unit, subject to the approval of Company. All plants, trees and shrubs so planted shall immediately become and remain the permanent property of Company.

5.10 Transportation

Company will provide transportation services on a scheduled basis, for purposes such as shopping and other special functions, as defined by Company. Specific transportation services arranged by Resident are not included in the Monthly Rate, and shall be paid for by Resident at Company's prevailing rate.

5.11 Food and Meals

(a) Dining Room Service

Company will, as part of the services included in the Monthly Rate, provide to Resident, in a designated dining area, one or two different meals a day, with the total number of meals in a month not exceeding the number of days in the month. Special dietary needs may be provided on request and subject to availability and Company's policies and procedures. In addition, Company will make available, in accordance with its scheduling policies, a private dining room for family gatherings or other special occasions of the Resident. For these occasions, in accordance with Company's policies and procedures, the Resident may supply food from outside sources or use catering services provided by the Retirement Community on a fee-for-service basis.

(b) Tray Service

Company will, as part of the services included in the Monthly Rate, provide to Resident tray service if ordered by Company's Medical Director or persons authorized by Company. Tray service shall be on a temporary basis, not to exceed fourteen (14) days. Any Resident requesting further tray service shall be evaluated by Company's Medical Director and/or Resident's physician to determine whether Routine Nursing Care is required. In the event that tray service is authorized by Company's Medical Director to extend beyond the fourteen (14) day limit, Company may charge Resident for tray service meals in an amount determined by Company.

(c) Meal Allowance

If Resident is away from Company for a period of fourteen (14) consecutive days or more, he/she may qualify for a limited meal allowance in accordance with Company's prevailing policy which is subject to change. If the Resident qualifies, the meal allowance will be credited on the monthly statement. Arrangements for this allowance must be made in advance and in writing, and is applicable only when Resident is away from his/her Residential Unit.

(d) Guest Use of Dining Room

Company will serve meals to Resident's guests in the dining room at an extra charge. Charges for guest meals will be included in Resident's monthly statement. Resident is requested to provide Company with advance notice of any anticipated guests.

(e) Guest Meal Charges

Amounts charged to Resident's monthly statement for guest meals will be made according to the currently established rates as set and periodically adjusted by Company.

(f) Dining Room Dress Code

In the designated dining area, Resident shall comply with Company's prevailing dress code policy which is subject to change from time to time.

5.12 Response System

Resident may contact Company personnel (i.e. security personnel or administrative staff) who will be available to respond twenty-four (24) hours a day. Company personnel will contact emergency response personnel provided by county or city governments, or by various health care providers unaffiliated with Company. Company does not provide Emergency Medical Services ("EMS") or Emergency Medical Technicians ("EMT"). While the response system may be used to inform Company personnel of a medical emergency or a security concern, Company disclaims any and all responsibility or liability for responding to medical emergencies or security concerns. Any costs associated with external emergency response personnel shall be payable by Resident directly to the emergency response organization.

5.13 Security

Company will, as part of the services included in the Monthly Rate, provide certain security services at the Retirement Community in accordance with Company's prevailing policy which is subject to change from time to time.

5.14 Parking

If Resident owns and operates a registered motor vehicle, Company shall provide a minimum of one uncovered parking space for each Residential Unit, which is included in the Monthly Rate. Any assignment of parking spaces will be made in accordance with Company's parking policy which is subject to change from time to time. Guest parking is available in designated areas.

5.15 Property Insurance

Company shall maintain insurance for Company's property only, which is included in the Monthly Rate. Resident is required to purchase and maintain personal property and liability insurance in an amount acceptable to Company as may be determined from time to time by Company.

5.16 Administration

Company shall provide administrative support services to implement the provisions of this Contract, which services are included in the Monthly Rate.

5.17 Additional Miscellaneous Services

Other miscellaneous services, as may become available, will be at an additional charge and are not included in the Monthly Rate.

5.18 Changes in the Scope of Services and Ancillary Fee Schedule

The scope of services and related fees as reflected in Ancillary Fee Schedule described in Section 5 are subject to change and may be modified by Company from time to time with sixty (60) days advance written notice of any changes, except for changes required by State or Federal assistance programs.

SECTION 6. General Medical, Nursing and Assisted Living

6.1. Outpatient Nursing Services

Outpatient nursing services are made available to Resident in the Retirement Community during regular office hours in accordance with Company's policy which is subject to change from time to time. Certain outpatient nursing

services including routine nursing consultations, weight checks and blood pressure readings are included in the Monthly Rate. Other services may be provided at a fee published in the nurse's office. Company reserves the right to limit the outpatient nursing services which are included in the Monthly Rate.

6.2. Assisted Living and Routine Nursing Care Services

As part of the Monthly Rate, Company shall provide, or make available, Assisted Living Services in private accommodations and Routine Nursing Care Services in shared accommodations. In the event that those services are provided on the campus of Retirement Community, Resident shall sign an admission contract upon transfer to either the Assisted Living Residence or Skilled Care Center, which contract(s) will supplement the terms of this Contract. In the event that any payment provision of the admission contracts in the Assisted Living Residence or Skilled Care Center are in conflict or inconsistent with any terms or provisions of this Contract, then this Resident Contract shall control and govern the relationship between Resident and Company.

6.3. Home Care Services

Home Care Services may be available on a fee-for-service basis. Resident is not obligated to use the home care program offered by Company.

6.4. Costs in Skilled Care Center or Assisted Living Residence Prior to Occupancy

(a) Temporary Admission Prior to Occupancy

(i) Single Occupancy. If Resident is admitted to either the Skilled Care Center or Assisted Living Residence on a temporary basis prior to Occupancy, the Entrance Fee immediately shall become due, and Resident shall pay the Monthly Rate for the Residential Unit designated in this Contract. All miscellaneous charges and fees for ancillary services shall be charged in accordance with Subsection 6.5. Company reserves the right to determine, at any time, if admission to the Skilled Care Center or Assisted Living Residence is permanent.

(ii) Shared Occupancy. In the event that one or more Co-Residents are admitted to either the Skilled Care Center or Assisted Living Residence on a temporary basis prior to Occupancy, the Entrance Fee immediately shall become due. Upon Admission, the Co-Resident shall pay the Monthly Rate for Single Occupancy of the Residential Unit designated in this Contract until the Date of Availability or upon Occupancy by any Co-Resident of any Living Accommodation, whichever is earlier, at which time the Monthly Rate for Shared Occupancy shall become due. All miscellaneous

charges and fees for ancillary services not covered or included in the Daily Rate are an additional charge and shall be paid by the Co-Resident. Company reserves the right to determine, at any time, if admission to the Skilled Care Center or Assisted Living Residence is permanent.

(b) Permanent Admission Prior to Occupancy

- (i) Single Occupancy. If Resident is admitted to either the Skilled Care Center or Assisted Living Residence on a permanent basis prior to Occupancy, the Entrance Fee immediately shall become due, and Resident shall pay the Monthly Rate for the Residential Unit designated in this Contract. All miscellaneous charges and fees for ancillary services shall be charged in accordance with Subsection 6.5. Company reserves the right to determine, at any time, if admission to the Skilled Care Center or Assisted Living Residence is permanent.
- (ii) Shared Occupancy. In the event that one or more Co-Residents are admitted to either the Skilled Care Center or Assisted Living Residence on a permanent basis prior to Occupancy, the Entrance Fee immediately shall become due. Upon Admission, the Co-Resident shall pay the Monthly Rate for Single Occupancy of the Residential Unit designated in this Contract until the Date of Availability or upon Occupancy by any Co-Resident of any Living Accommodation, whichever is earlier, at which time the Monthly Rate for Shared Occupancy shall become due. All miscellaneous charges and fees for ancillary services not covered or included in the Daily Rate are an additional charge and shall be paid by the Co-Resident. Company reserves the right to determine, at any time, if the admission to the Skilled Care Center or Assisted Living Residence is permanent.

6.5 Costs in Skilled Care Center or Assisted Living Residence After Occupancy

(a) Routine Nursing Care Services

- (i) Temporary Transfer. Upon temporary transfer to the Skilled Care Center or other facility providing Routine Nursing Care under this Contract, Resident shall continue to pay the applicable Monthly Rate for the Residential Unit, which is subject to periodic increases. The Monthly Rate shall cover only the cost of services included in the Daily Rate. All miscellaneous charges and fees for ancillary services not covered or included in the Daily Rate are reflected on Company's Ancillary Fee Schedule and are an additional charge which shall be paid by Resident.

- (ii) Permanent Transfer. In the event that Company determines that Resident's stay in the Skilled Care Center, or other facility providing Routine Nursing Care under this Contract, is permanent, Resident shall continue to pay the applicable Monthly Rate for the Residential Unit, which is subject to periodic increases. The Monthly Rate shall cover only the cost of services and supplies included in the Daily Rate and ancillary medical supplies. All miscellaneous charges and fees for ancillary services not covered or included in the Daily Rate are reflected on Company's Ancillary Fee Schedule and are an additional charge which shall be paid by Resident.

(b) Assisted Living Services

Upon transfer to the Assisted Living Residence or other facility providing Assisted Living Services under this Contract, Resident shall continue to pay the applicable Monthly Rate for the Residential Unit, which is subject to periodic increases. The Monthly Rate shall cover only the cost of services included in the Daily Rate. All miscellaneous charges and fees for ancillary services and supplies not covered or included in the Daily Rate are reflected on Company's Ancillary Fee Schedule and are an additional charge which shall be paid by Resident.

(c) Intra-Community Transfer and the Monthly Rate

In the event that Resident has moved from the Residential Unit to a Residential Unit with a lower Monthly Rate within one year prior to permanent transfer of Resident (or remaining Co-Resident) to the Skilled Care Center or Assisted Living Residence, Resident shall pay the higher Monthly Rate for the vacated Residential Unit while remaining in the Skilled Care Center or Assisted Living Residence.

6.6 Exclusions (Items and Services Not Covered by the Monthly Rate)

The Monthly Rate does not cover those medical, health and ancillary services not included in the Assisted Living Services and Routine Nursing Care Services described in Subsection 6.2 covered by the Daily Rate. Resident shall be responsible to pay the additional charges for those services. Medical, health and ancillary services not included in or covered by the Monthly Rate include, but are not limited to, the cost of hospitalization, ambulance service, therapist or rehabilitation services, psychotherapy and psychiatric consultations or services, physician services, diagnostic services, private duty nurses, nursing assistants or companions, including temporary nursing or assistive services in the Residential Unit, specialized treatment, refractions, eyeglasses, contact lenses, hearing aids, podiatry, dentistry, dentures, inlays, orthopedic devices

and appliances such as walkers, braces, wheelchairs, special beds or chairs, incontinence supplies, personal care supplies such as disposable underpads, toiletries, digestive aids and pharmacy medications, drugs, including prescription and over-the-counter medications, medical equipment and supplies such as syringes, respirators, ventilators, oxygen tanks, intravenous items, catheterization materials, specialized treatment including ventilator dependent treatment, dialysis, and higher acuity nursing care services such as Subacute Care, Transitional Care or special rehabilitation services. Company, in its discretion, may provide any or all of the services not covered by the Monthly Rate at an additional charge, or refer the Resident to another provider capable of providing higher-acuity care services.

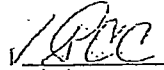
6.7 Hospital, Medical and Nursing Insurance to Be Maintained by Resident

(a) Required Insurance

As a condition precedent to Company's obligation under Section 5 to provide skilled care services, Resident will, prior to the Date of Availability, enroll in Part A of the Medicare Program and subscribe to and pay for coverage under Part B of the Medicare Program and pay for any Medicare Part B deductibles as defined by the Medicare Program. If not eligible for Medicare, Resident will enroll in some other insurance program providing equivalent benefits as approved in writing by Company. Additionally, Resident will subscribe to and pay for Medicare supplemental coverage (commonly referred to as "medigap insurance", covering days 21 through 100 of skilled care services), as approved by Company. Throughout the duration of this Contract, Resident shall maintain, at Resident's expense, the required insurance coverage. Should Resident fail to maintain required medical insurance coverage, as stated above, resident will be responsible for all charges that otherwise would have been reimbursed through these required insurance programs and demonstrate adequate financial reserve for such coverage to Company upon request. If adequate insurance or reserve as herein specified is not demonstrated to Company's satisfaction, Company will have the option to terminate this agreement. Proof of required insurance coverage must be provided to Company prior to the signing of the Resident Contract. Company may require Resident to provide proof of required insurance from time to time after Occupancy.

Medicare Part A co-insurance for skilled days 21 through 100, and Medicare Part B annual deductible and co-insurance is the responsibility of Resident. Any amounts not paid through the coverage of "medigap

Insurance" will be paid by Resident.


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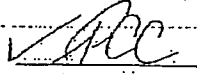
(b) Assignment of Required Insurance and Third Party Payments

Resident assigns and transfers over to Company all rights of Resident to required public and private insurance and benefits to the extent necessary to pay Company for services provided to Resident under this Contract. If Resident becomes eligible to receive payment from any third party for services provided under this Contract by Company, Resident shall at all times cooperate fully with Company and each third party payor so that Company may make claim for and receive any applicable third party payments. Resident authorizes Company to make any and all claims for such insurance and benefits and agrees to execute all documents necessary to enable Company to collect or enforce such claims. If for any reason Company cannot apply directly for such benefits, Resident shall from time to time apply for the payments for services provided by Company to which Resident is entitled under applicable insurance benefit programs, and pay to Company the benefits received within ten (10) days of payment by the third party payor.

(c) Enrollment in a Health Maintenance Organization ("HMO") or Other Managed Care Plan

Resident may only enroll in a health maintenance organization ("HMO") or other managed care plan for which Company is a network or participating provider, unless Company provides prior written consent. Prior to enrolling in any HMO or managed care plan, Resident shall sign an addendum identifying the plan and reflecting Company's approval or disapproval. In the event that Resident subscribes to an HMO or other managed care plan, including a managed care plan that provides Medicare benefits, and Company is not a participating provider in Resident's managed care plan, Company may elect, at its option, to attempt to negotiate a contract with and obtain payment from Resident's managed care plan for covered services to be provided by Company. If Company is or becomes a network provider in Resident's managed care plan, Company reserves the right to withdraw from participation as a network provider. If Resident's managed care plan and Company do not reach an agreement on the terms under which services would be provided, or if the Resident's managed care plan does not agree to provide payment for covered services provided by Company or if Company withdraws from participation in Resident's managed care plan, Resident shall either transfer to and receive services from a participating provider in Resident's managed care plan or shall pay Company, in addition to the Monthly Rate, the Daily Rate for Routine Nursing Care Services which would have been covered by Medicare indemnity

coverage, but only for the limited period of time during which Medicare or other required insurance coverage would have been available. In the event that Resident is transferred to a provider participating in Resident's managed care plan, Resident shall continue to pay the Monthly Rate and additionally all costs and charges related to the transfer to and occupancy of the participating provider. There will be no reduction in the Monthly Rate as a result of Resident's participation in any health insurance program or managed care plans which provide for payment for services rendered or made available by Company. Any co-insurance required by the HMO or managed care plan shall be paid by Resident.


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(d) Long Term Care Insurance

Company does not require Resident to maintain a Long Term Care Insurance Policy. However, if Resident maintains such a policy, Company will assist Resident in making claims for such insurance benefits in accordance with Company's prevailing policy and procedures. If insurance benefits are received directly by Company, Company will apply proceeds to Resident's future Monthly Rate and ancillary charges. After all such charges have been paid to Company, the balance of any insurance benefits will be refunded to Resident or Resident's estate.

6.8. Transfer to Hospital or Other Specialized Service Facility

Company does not provide hospital care, acute care, Transitional Care or Subacute Care. Company shall have the right to transfer Resident to a hospital or other appropriate Special Service Facility. Ambulance, acute, Transitional or Subacute Care and hospital charges shall be paid by Resident.

6.9. Illness or Accident Away from Retirement Community

If Resident suffers an accident or illness while away from Retirement Community, Company will have no responsibility to pay for Resident's medical, surgical, hospital or nursing care obtained offsite; however, after Resident returns to Retirement Community, Company shall assume its responsibility to provide those services as specified in this Contract that are deemed necessary by Company.

6.10. Accident or Illness Caused by Others

In the event Resident is physically injured by an individual or entity not a party to this Contract, Resident grants to Company a right of subrogation, and authorizes Company to bring such demands, claims or legal proceedings in the name of or on behalf of Resident for purposes of recovering from any third party or third party's insurer responsible for Resident's injury, the dollar value of all care provided by Company to Resident as a result of any such injury. Resident shall cooperate and sign any documents necessary to facilitate Company's ability to exercise its subrogation right. After all costs and expenses incurred by Company (including legal fees and cost of care furnished to Resident by Company because of such injury) have been reimbursed to Company through subrogation, the balance of any recovery, will be refunded to Resident or Resident's estate.

6.11 Limitations on Care

Company is not designed to care for persons who abuse alcohol or drugs or who require specialized psychiatric care or service not authorized or permitted under the skilled care or assisted living licensing regulations. If Company determines that Resident's continued presence in Company is either dangerous or detrimental to the health, safety or peace of Resident or other residents, then Company may temporarily transfer Resident to an appropriate institution of Company's choosing and Resident shall continue to pay the Monthly Rate directly to Company. Company will then be responsible to pay to the institution an amount that shall not exceed the current Monthly Rate paid by Resident.

6.12 Responsibility of Company for Services Included in Monthly Rate

Resident shall not be liable to any health care provider for the cost of any services which are covered by Company under this Contract and which are paid for by Resident through payment of the Monthly Rate. In the event that Company authorizes any health care provider to provide services, which Company is required to provide under this Contract, Company shall assume responsibility for the payment of those health care services.

6.13 Privately Employed Private Duty Contractors

Subject to the approval of Company, Resident may utilize the services of privately employed private duty contractors, or other licensed agencies unrelated to Company, who provide personal or health care services in the Residential Unit. Such services are subject to Company's prevailing policy and requirements, which are subject to change, and must be approved in advance and in writing by Company. Resident is responsible to pay for all such services. In exchange for Company's approval of Resident's utilization of a private duty contractor or other licensed agencies unrelated to Company, Resident releases Company from any liability for the acts or omissions of any individual or agency providing services to Resident in the Residential Unit.

6.14 Change in Ancillary Fee Schedule

The Ancillary Fee Schedule associated with services described in Section 6 may be modified by Company from time to time with sixty (60) days advance written notice of any changes, except for changes required by State or Federal assistance programs.

SECTION 7. Application Fee and Waiting List Deposit

7.1 Application Fee

Resident has paid to Company a non-refundable Application Fee at the time of submitting the Waiting List Contract. The Application Fee is not applied to the Entrance Fee.

7.2 Waiting List Deposit

Resident has paid to Company a Waiting List Deposit at the time of submitting the Waiting List Contract. Payment of the Waiting List Deposit, along with the submission of the Waiting List Contract places the Resident on the Waiting List. The Waiting List Deposit will be credited toward the Reservation Fee.

SECTION 8. Entrance Fee

8.1 Purpose and Use

Company may use and apply the Entrance Fee to any corporate purpose. No portion of the Entrance Fee shall be held in Trust for Resident and Company assumes no fiduciary obligations to Resident with respect to any amounts paid for admission to or continued Occupancy in the Retirement Community.

8.2 Payment Schedule

(a) Reservation Fee

Upon execution of this Resident Contract, Resident shall pay a Reservation Fee. The Reservation Fee is equal to one-third (1/3) of the Entrance Fee, less the Waiting List Deposit.

(b) Final Payment

Upon the Date of Availability or Occupancy, whichever is earlier, Resident shall pay the remaining balance of two-thirds (2/3) of the Entrance Fee.

8.3 Right to Establish Entrance Fee

Company reserves the right to establish Entrance Fee rates and Monthly Rates (as described below) of a different amount for persons being admitted to residency after the date hereof, and the rates charged such other persons need not be uniform with or proportional to those charged to Resident under this Contract. The Entrance Fee amount, as defined in this Contract, shall not be increased or changed during the duration of the agreed upon care, except for changes required by State or Federal assistance programs or regulations, or if Resident changes from one Residential Unit to another Residential Unit (as described in Section 11).

8.4 Administrative Fee and Amortization of Entrance Fee

(a) Administrative Fee

An Administrative Fee in an amount equal to four (4) percent of the total Entrance Fee paid will be retained by Company to cover Company's administrative costs associated with Resident application and move-in. The Administrative Fee is non-refundable after the one hundred twenty (120) day Transition Period.

(b) Amortization of Entrance Fee

The net Entrance Fee shall be amortized by Company in the amount of one percent (1%) of the net Entrance Fee per month for a period of one hundred (100) months from the date of Occupancy or Date of Availability, whichever is earlier. After the one hundred (100) month period, there will be no refund.

SECTION 9. Monthly Rate and Ancillary Charges

9.1 Standard Monthly Rate

In addition to the other amounts paid by Resident to Company under this Contract, Resident will pay to Company the standard Monthly Rate established for the size of the unit selected.

9.2 Adjustments in the Monthly Rate

The Monthly Rate may be adjusted from time to time. Company shall provide at least sixty (60) days written notice of such change unless such change is required by State or Federal assistance programs or regulations.

9.3 Change in Ancillary Fee Schedule

The Ancillary Fee Schedule associated with ancillary services described in this Contract may be modified by Company from time to time with sixty (60) days advance written notice of any changes, except for changes required by State or Federal assistance programs or regulations.

9.4 Payment and Due Date

The Monthly Rate shall be due and payable within five (5) days of the date of Resident's monthly statement. The obligation to pay the Monthly Rate shall commence on the earlier to occur (i) the date Resident occupies the Residential Unit or (ii) the Date of Availability, whether or not Resident moves in at the time. The Resident shall be billed on a monthly basis for all other charges, including but not limited to miscellaneous and ancillary charges or other services. Payment for all other charges shall be due with the Monthly Rate.

9.5 Service Charge for Late Payment

A service charge of one and one-half percent (1.5%) per month will be added to amounts past due in accordance with Company's prevailing policy. Resident is obligated to pay all reasonable attorneys fees and costs incurred relative to the collection of any amount past due.

SECTION 10. Co-Resident

10.1 Co-Resident's Fee Responsibility

In situations of Shared Occupancy, each Co-Resident shall be jointly and severally liable for all payments due under this Contract. Upon the death of one or more Co-Residents, or should one or more Co-Residents leave the Retirement Community, any remaining Co-Resident(s) shall be responsible for payment of the applicable Monthly Rate and any other past or future charges.

10.2 Marriages/Additional Occupant

If Resident decides to marry/reside with a non-resident while occupying the living accommodation and desires that the new spouse/additional occupant share the living accommodation, the spouse/additional occupant must comply with the entrance procedure outlined in this Contract and shall execute a then current version of the Resident Contract. The spouse/additional occupant shall

pay an entrance fee equal to the then current charge for the smallest apartment in the Retirement Community at the time the spouse/additional occupant takes occupancy. The prevailing Monthly Rate for double occupancy will commence on the day the spouse/additional occupant moves into the apartment. In the event the spouse/additional occupant is not accepted as a new Resident, Resident may terminate the Contract pursuant to Section 13 and receive any refund as set forth in Section 14.

SECTION 11. Relocation to a Different Accommodation

11.1 From One Residential Unit to Another

Upon Resident's written request and written approval of Company, the Resident may exercise a limited option to move from one Residential Unit to another in accordance with the prevailing policy. Resident must notify Company in writing of the type of Residential Unit desired. Company reserves the right in its sole discretion to approve or deny requests to move. In the event Resident receives approval from Company to move to another Residential Unit, Resident shall sign an addendum to this Contract reflecting all costs and charges related to exercising the option to move, including the Entrance Fee and Monthly Rate for the selected Residential Unit.

11.2 Entrance Fee Adjustment for Relocation From One Residential Unit to Another

(a) Relocation to a Larger Sized Residential Unit

On the Date of Availability of the larger sized Residential Unit, an additional Entrance Fee will be paid. The additional Entrance Fee is equal to the difference between the Entrance Fee of the larger Residential Unit as of the time Resident first took occupancy and paid the Entrance Fee for the smaller Residential Unit.

(b) Relocation to Smaller Sized Residential Unit

Any refund of the Entrance Fee as a result of relocation to a smaller sized Residential Unit is provided in Subsection 14.5 of this Contract.

11.3 Transfer to Skilled Care Center, Assisted Living Residence or Outside Facility

(a) Conditions of Continued Occupancy

Resident shall have the right to occupy the Residential Unit for so long as Resident satisfies the health and other Conditions of Continued Occupancy.

(b) Decision to Transfer

(i) Authority to Transfer

Company may transfer Resident from and between the Residential Unit and Skilled Care Center or Assisted Living Residence, or any other appropriate care facility, if it determines that such a move should be made because of the health and/or welfare of the Resident, for the proper operation of the Retirement Community, to comply with regulations of the South Carolina Department of Consumer Affairs, the South Carolina Department of Health and Environmental Control, local regulations of the Fire Department, or any other duly constituted authority or agency, or to otherwise meet the requirements of law. If Resident is transferred permanently to a Skilled Care Center or Assisted Living Residence, or to any other appropriate facility authorized under this Contract, Company may declare Resident's Residential Unit vacant and reassign the Residential Unit to another Resident. The decision as to whether a transfer shall be deemed temporary or permanent shall be made by Company's Utilization Review Committee. The Utilization Review Committee shall consider the opinion of Resident and the advice of a family representative, if available, and, if requested and at the Resident's expense, a private physician. The opinion of Resident and the advice of family and Resident's physician is advisory only and shall not be binding on Company. The Utilization Review Committee's decision regarding the temporary or permanent nature of any transfer may be made at any time.

(ii) Role of Company's Utilization Review Committee

Upon a determination by Company's Utilization Review Committee that Resident is no longer capable of meeting the health or other requirements for Occupancy of the Residential Unit, Resident or Resident's next of kin, legal representative or agent acting on Resident's behalf, will be notified by Company that arrangements will be made for Resident's immediate transfer to a Skilled Care Center or Assisted Living Residence, or other appropriate care facility.

(c) From Living Accommodation Unit to Outside Facility

If it is determined by Company's Medical Director and/or Company's Utilization Review Committee that Resident cannot be cared for within the scope of the services Company provides in the Retirement Community, or Resident cannot otherwise meet the Conditions of Continued Occupancy, and if there is no Co-Resident in the Residential Unit, Company may declare the transfer permanent and the Residential Unit vacant, and may accept an Entrance Fee and execute a Contract with a new Resident for that Residential Unit designated under this Contract. Resident will, within a thirty (30) day period from the date the decision is made, Surrender the Residential Unit and have all personal possessions removed from it.

In the event removal of Resident's personal possessions is not accomplished within thirty (30) days, Company has the right to continue charging the Monthly Rate or charge for storage of Resident's personal possessions until such possessions have been removed from the Living Accommodation.

(d) Costs Related to Transfer to an Outside Facility

- (i) Temporary Transfer. During any temporary transfer to a hospital or outside facility, Resident shall continue to pay the Monthly Rate and shall be responsible for all costs and charges related to the transfer to and occupancy of the outside facility or hospital except as provided in Subsection 6.12.
- (ii) Permanent Transfer. Upon permanent transfer to an outside facility, and after Surrender of the Residential Unit, the obligation to pay the Monthly Rate shall end and this Contract shall terminate. Any refund due shall be paid in accordance with the refund provisions of this Contract. In the event of Shared Occupancy, this Contract shall not terminate and Co-Resident shall pay the Monthly Rate until the permanent transfer or discharge of all Co-Residents from the Retirement Community and Surrender of the Residential Unit. Resident is obligated to pay all costs and charges related to the transfer to and occupancy of any outside facility or hospital except when Resident is transferred to an outside assisted living or skilled care provider because of the unavailability of a bed or room in Retirement Community and except as provided in Subsection 6.12.

(e) From Residential Unit to Assisted Living Residence or Other Facility Providing Assisted Living Services under This Contract

When Resident is in need of Assisted Living Services as determined by Company's Medical Director and/or the Utilization Review Committee and does not need Routine Nursing Care, Resident may be transferred permanently to the Assisted Living Residence, if available, or other facility providing Assisted Living Services. If there is no Co-Resident in the Residential Unit, Resident will, within thirty (30) days, Surrender the Residential Unit and have all personal possessions removed from it. The Residential Unit then occupied by such Resident shall be declared vacant and Company may accept an Entrance Fee and execute a Contract with a new Resident for the Residential Unit.

In the event removal of Resident's personal possessions is not accomplished within thirty (30) days, Company has the right to continue charging the Monthly Rate or charge for storage of Resident's personal possessions until such possessions have been removed from the Living Accommodation.

(f) From Residential Unit to Skilled Care Center or Other Facility Providing Routine Nursing Care under This Contract

When Resident is in need of Routine Nursing Care as determined by Company's Medical Director and/or the Utilization Review Committee, Resident will be moved from his/her Residential Unit to a shared accommodation in the Skilled Care Center or other facility providing Routine Nursing Care under this Contract. (Upon request, Resident may have access to a private room, if available, in Company's Skilled Care Center at an additional charge.) If, after continued evaluation, it is determined by Company that Resident cannot return to his/her Residential Unit, and if there is no Co-Resident in said accommodation, Company may declare the Residential Unit vacant, and may accept an Entrance Fee and execute a Contract with a new Resident for the Residential Unit. Resident will, within a thirty (30) day period after such decision has been made, Surrender the Residential Unit and have all personal possessions removed from it.

In the event removal of Resident's personal possessions is not accomplished within thirty (30) days, Company has the right to continue charging the Monthly Rate or charge for storage of Resident's personal possessions until such possessions have been removed from the Living Accommodation.

(g) Release of or Return to Residential Unit After Transfer

- (i) Temporary Transfer. If Resident is admitted temporarily to Company's Skilled Care Center, Assisted Living Residence, or a hospital or other outside facility, with a medical prognosis of recovery and return to health consistent with the Conditions of Continued Occupancy, then Resident shall retain Occupancy of the Residential Unit for the purpose of resuming residency. During any period of temporary transfer, Resident shall continue to pay the applicable Monthly Rate for the Residential Unit. Resident may return to the Residential Unit which has been retained in accordance with the terms of this provision at such time as Company determines that Resident can satisfy the Conditions of Continued Occupancy.
- (ii) Permanent Transfer. If Resident is permanently transferred to Company's Skilled Care Center, Assisted Living Residence, or a hospital or other appropriate outside facility, Resident shall Surrender and vacate the Residential Unit within thirty (30) days of written notice of Company's decision to permanently transfer Resident. If Company, with the advice of Company's Medical Director, determines that Resident subsequently has recovered sufficiently to satisfy the Conditions of Continued Occupancy of a Residential Unit, Resident, upon request, shall be eligible for consideration to receive the next available Residential Unit with a floor plan comparable to the one relinquished, provided Resident repays Company any amounts refunded to Resident under the Contract and pays the applicable Monthly Rate.

11.4 Residential Unit Transfer As Required

Company reserves the right to make all necessary arrangements and adjustments regarding residence not otherwise specifically provided in this Contract. Company may relocate Resident to a different Residential Unit in the Retirement Community, substantially similar to that selected by Resident, if it determines that such a move should be made for the benefit of Resident or for the proper operation of Company, as determined by the Medical Director and/or Executive Director. In the event Resident is directed to relocate, Company shall be responsible for all reasonable moving and relocation expenses. Resident shall execute an addendum which shall modify the terms of this Contract to reflect all costs and charges related to the transfer, and any refunds or changes in the Monthly Rate.

SECTION 12. Company's Policy Concerning Financial Difficulty

It is the policy of Company that Resident shall not be dismissed nor his/her Contract terminated solely because of Resident's financial inability to continue to pay all or part of the Monthly Rate. However, Resident's acceptance into Company has been based on the accuracy of facts recorded on Resident's financial statement and medical records, by which facts Company determined that Resident was able to meet all the financial obligations specified within this Contract. If, in the opinion of Company, Resident either has misrepresented information on the financial statement or medical records or in any way weakens, through omission or commission, his/her ability or the ability of his/her personal estate to satisfy his/her financial obligations under this Contract, because Resident has made gifts of real or personal property or any imprudent financial transactions after submitting the financial statement and/or after acceptance into Company, Company reserves the right to terminate this Contract.

12.1 Failure to Make Payments

If Resident fails to make any of the Monthly Rate payments at the required time, or to pay any other amounts shown on the monthly statement within thirty (30) days after the first day of the month, then Company may give written notice to Resident to pay all such amounts. If Resident fails to comply with such notice, Company may terminate this Contract, and shall provide Resident with the refund, if any, set forth in Section 14, less any outstanding balances or financial obligations.

12.2 Subsidy by Company

Should Company subsidize Resident's Monthly Rate, Resident agrees that any property which was his/hers at, or subsequent to his/her entry to Company, and remaining in his/her possession at death, is to be transferred to Company for the purpose of repaying (at least to the extent of the value of such property) an amount equal to the aggregate amount of subsidy furnished Resident by Company during the period of residency. If the value of Resident's possessions/property exceeds the aggregate amount of subsidy furnished by Company, all excess proceeds will be returned to Resident's estate. This Contract shall operate as a grant, assignment, transfer and conveyance to Company of such property, and Resident hereby grants to Company a security interest in such property, all of which may be enforced as a claim against Resident's estate, and to effect such assignment and to enable Company to enforce such claim, Resident shall execute such further documents, instruments or contracts, such as stock powers, Uniform Commercial Code financing statements, deeds, bills of sale and the like, as Company shall deem necessary or appropriate to protect or perfect its rights, interest and claims granted in this subsection. Company may, from time to time, request financial statements from any Resident whose Monthly Rate is subsidized by Company. This subsection shall apply whether or not Resident is in residence at Retirement Community at time of death.

12.3 Special Consideration

Without in any way qualifying the right of Company to terminate this Contract, if the sole reason for non-payment is insufficient funds, beyond the control of Resident, the matter will be reviewed by Company with Resident. If Resident presents facts which justify special financial consideration, Company may solely at its discretion, partly subsidize Resident's Monthly Rate provided that such subsidy can be granted without impairing the ability of Company to meet and continue its objectives while operating on a sound financial basis. All determinations made by Company shall be regarded as a confidential transaction between Company and Resident except for reports required by regulatory or other government bodies.

12.4 Reduction of Income

Resident believes that his/her sources of income are adequate to meet his/her financial responsibility to Company and to meet and pay any additional costs to Resident, and to pay personal and incidental expenses during the period of residency. If Resident's sources of income do not meet these requirements, Resident may be required to relocate to a smaller unit in Retirement Community at discretion of Company, and Resident will make every reasonable effort to obtain assistance from family or other available means, and from public benefits, to the extent that Resident is eligible to receive them, including, but not limited to federal, state or county aid or assistance, Aid to the Blind, Veterans' Pension, etc. Resident agrees that he/she will apply for and diligently seek such benefits. If Resident fails to make such application, Company has the right to terminate this Contract as provided herein.

SECTION 13. Termination of Contract

13.1 Prior to Occupancy

(a) Termination by Resident

If Resident dies before the Date of Availability, or if, through illness, injury, or incapacity, Resident is precluded from taking Occupancy and becoming a Resident under the terms of this Contract, the Contract shall be automatically rescinded. The Resident or his/her representative shall at their request receive a full refund, in accordance with Section 14 of this Contract, of all monies paid on behalf of Resident to Company except those costs specifically incurred by Company at the specific request of Resident to the extent those charges were not paid. If Resident or the person(s) providing Resident's Entrance Fee notifies Company in writing of his/her election to withdraw or terminate this

Contract before Resident has moved in and occupies his/her Residential Unit, this Contract with said Resident shall automatically be terminated.

(b) Termination by Company

Company, at its discretion, likewise may terminate this Contract prior to Occupancy by providing Resident with at least thirty (30) days written notice. Resident, Resident's estate or legal representative shall be paid a full refund of any money deposited with Company, in accordance with Section 14 of this Contract, except those costs specifically incurred by Company at the request of Resident, to the extent those charges were not paid by Resident.

13.2 Termination During One Hundred Twenty (120) Day Transition Period

(a) Termination by Resident

Resident may terminate this Contract within thirty (30) days of execution of this Contract by signing the attached Notice of Right to Rescind and delivering it to Company. After the lapse of the thirty (30) day rescission period and before the lapse of the one hundred twenty (120) day period (the "Transition Period") commencing on the earlier to occur (i) the date Resident occupies the Residential Unit or (ii) the Date of Availability of Residential Unit, Resident, or the person providing Resident's Entrance Fee, may terminate this Contract by giving written and personally signed notice of termination to Company. Resident shall move from and Surrender the Residential Unit within a period of thirty (30) days from the date on which such notice is received by Company. The Contract shall terminate on the date of Surrender.

(b) Termination by Company

Within the one hundred twenty (120) day Transition Period, Company, at its discretion, may terminate this Contract by providing Resident with written notice of such termination. Unless Company determines Resident to be a danger to himself/herself or others, the notice of termination will cancel this Contract in no less than thirty (30) days. If such action is taken by Company, Resident will have a maximum of sixty (60) days from the date of Company's notice to Surrender his/her Residential Unit. Resident shall be entitled to a refund, as provided in Section 14 of this Contract. The Contract shall terminate on the date of Surrender.

In situations where continued Occupancy threatens the life, health, safety or peaceful enjoyment of Resident or other residents, only such notice as is reasonably practicable under the circumstances will be

provided to Resident or Resident's representative, and termination may be effective immediately. On or before the termination date, Resident shall move from and Surrender his/her Living Accommodation. After Surrender, Resident's obligation to continue Monthly Rate payments shall cease and Resident shall be entitled to receive a refund, if any, as provided in Section 14 of this Contract.

13.3 Termination After the One Hundred Twenty (120) Day Transition Period

(a) Termination By Resident

Resident has the right, at any time, to terminate this Contract by delivery to Company of written notice of his/her intent to do so. The written notice need not cite a specific reason for the termination but it shall state a date, of not less than thirty (30) days, when the termination is to become effective, and on or prior to such date Resident shall move from Company and Surrender the Living Accommodation. If the date is less than thirty (30) days after the date of written notice, it must be approved in writing by Company, and if such earlier date is not so approved, then the termination shall be effective one hundred twenty (120) days after the date of notice. On the effective date of such termination, and contingent upon Surrender of the Living Accommodation, Resident's obligation to continue Monthly Rate payments shall cease and Resident shall be entitled to a refund, if any, as provided in Section 14 of this Contract.

(b) Termination By Company

Company reserves the right to terminate this Contract for "just cause" (as described below), based on the judgment of Company by serving upon Resident written notice of termination specified to be effective on a date not less than thirty (30) days nor later than one hundred twenty (120) days after the date of notice. Just cause shall include, but not be limited to, a default in payment, (a default in payment occurs when monthly payments are not received in accordance with Section 9), the submission of any material false information in the application documents, the failure of the Resident to abide by Company's rules, regulations, policies and procedures, the breach of any of the other terms of this Contract, or a good faith determination in writing by Company that continued Occupancy in the Living Accommodation by Resident creates a serious threat or danger to the life, health, safety or peaceful enjoyment of Resident or other residents or persons in Company.

In situations where continued Occupancy threatens the life, health, safety or peaceful enjoyment of the Resident or other residents, only such notice as is reasonably practicable under the circumstances will be provided to Resident or Resident's representative, and termination may

be effective immediately. On or before the termination date, Resident shall move from and Surrender his/her Living Accommodation. After Surrender, Resident's obligation to continue Monthly Rate payments shall cease and Resident shall be entitled to receive a refund, if any, as provided in Section 14 of this Contract.

(c) By Death of Resident

Unless sooner terminated by its own provisions, this Contract shall terminate at death of Resident, whereupon all obligations of Company under this Contract, other than those relating to the removal of Resident's personal property, shall cease. At the death of Resident, Resident shall have no further rights in the Living Accommodation, and the Company shall have immediate access to the Living Accommodation. The removal of any personal effects of Resident in the Living Accommodation, or from storage shall be the responsibility of Resident's Executor, Administrator, or Personal Representative, or of other persons entitled by law to receive them. Company will hold such personal effects for a period not to exceed thirty (30) days, but Company is not responsible for loss or damage to personal property in its possession. At the death of Resident, all Entrance Fees, Monthly Rate payments prorated daily from the death of Resident to the date of Surrender, and any other funds deposited with Company under this Contract shall immediately become the permanent property of Company without any right of refund.

In the event removal of Resident's personal possessions is not accomplished within thirty (30) days, Company has the right to continue charging the Monthly Rate or charge for storage of Resident's personal possessions until such possessions have been removed from the Living Accommodation.

13.4 Limitations on Termination for Shared Occupancy

If any Co-Resident is precluded from taking Occupancy of the Residential Unit because of death, illness, injury or incapacity, this Contract shall remain in full force and effect as to the other Co-Resident(s). The remaining Co-Resident(s) shall sign an addendum which changes the terms of this Contract from Shared to Single Occupancy, if applicable, and which reflects changes in the Entrance Fee and/or the Monthly Rate. After Occupancy, as long as Resident or in the case of Shared Occupancy, a Co-Resident, continues to occupy any Living Accommodation within Retirement Community, including accommodations in the Skilled Care Center, the Contract shall not terminate until the death, permanent transfer, discharge or voluntary departure of Resident from Retirement Community, or in situations of Shared Occupancy, both Co-Residents from Retirement Community.

13.5 Misrepresentation

Resident's age, application forms, financial statement, medical record and entrance interview are a part of this Contract, and any misrepresentations or material omissions made by Resident in any of those documents shall terminate this Contract at the option of Company.

13.6 Surrender

The obligation to pay the Monthly Rate shall continue until the Living Accommodation has been Surrendered by Resident or by the estate or family of Resident in the case of death. The Monthly Rate shall be prorated for the month of Surrender. Surrender of the Living Accommodation shall be complete when Resident has ceased to occupy it, has removed all possessions from Company, and has turned over to Company all property of Retirement Community including but not limited to keys and emergency alert equipment.

SECTION 14. Refunds of Entrance Fee

The refunds, if any, payable to Resident, if this Contract is terminated in accordance with its terms, or if the Residential Unit is changed prior to Resident's death, are as follows:

14.1 Notice of Termination Prior to or During the One Hundred Twenty (120) Day Transition Period

The Entrance Fee will be refunded in full if the Resident rescinds this Contract within the thirty (30) day rescission period. In the event that Resident does not rescind the Contract during the thirty (30) day rescission period, and Resident or Company receives notice of termination of this Contract before the date of Occupancy of the Residential Unit or during the one hundred twenty (120) day Transition Period, Resident will receive a refund of the Entrance Fee paid, except for those costs specifically incurred by Company at the request of Resident to the extent those charges were not paid by Resident.

14.2 Notice of Termination After One Hundred Twenty (120) Day Transition Period

In the event Resident or Company receives notice of termination of this Contract after the one hundred twenty (120) day Transition Period and prior to death, Resident is entitled to a refund of the Entrance Fee paid less the Administrative Fee and, less a sum equal to one percent (1%) per month, or fraction thereof, of the amount of the Entrance Fee net of the Administrative Fee for each month this Contract has been in force, starting on the first day of the month after the earlier of the Move in Date or Date of Availability of the

Residential Unit. The effective date of termination of this Contract shall be the date of Surrender.

14.3 Termination by Death of Resident

(a) Prior to Occupancy and During One Hundred Twenty (120) Day Transition Period

In the event of the death of Resident before Occupancy or during the one hundred twenty (120) day Transition Period, the Entrance Fee less those costs specifically incurred by Company at the request of Resident, (to the extent those charges were not paid by Resident), will be refunded to Resident's estate.

(b) After One Hundred Twenty (120) Day Transition Period

If death should occur after the one hundred twenty (120) day Transition Period, the Entrance Fee is not refundable and shall automatically become the exclusive property of Company upon the death of the Resident.

(c) Shared Occupancy

In situations of Shared Occupancy, the net amount of the Entrance Fee less the Administrative Fee shall be allocated equally to each Co-Resident in the event of the death of a Co-Resident. The deceased Co-Resident's allocated share is not refundable and shall automatically become the exclusive property of Company upon the death of the Co-Resident. The allocated share(s) of the remaining Co-Resident(s) shall be governed and subject to the terms of this Contract as provided in Subsection 8.4.

14.4 Termination by Company

In the event that Company terminates this Contract for "just cause" (as described in Subsection 13.3(b), interference with the safety or peaceful enjoyment of Resident or other residents or persons in Company, Resident shall be entitled to receive a refund, if any, for some or all of the Entrance Fee as provided in Subsection 14.2 of this Contract, except those costs specifically incurred by Company at the request of Resident.

14.5 Change of Residential Unit

If Resident is authorized by Company to change and move to a different Residential Unit, Resident is entitled to a refund of the difference, if any between:

(a) Present Residential Unit

The current Entrance Fee, less a sum equal to one percent (1%) per month, or fraction thereof, of the amount of such Entrance Fee for each month this Contract has been in force, commencing from the Date of Availability, and

(b) Proposed Residential Unit

The current Entrance Fee of the proposed Residential Unit, less a sum equal to one percent (1%) per month, or fraction thereof, of the amount of such Entrance Fee for each month this Contract has been in force, commencing from the Date of Availability. This refund is payable pursuant to Subsection 14.6 below.

14.6 Timing of Refund Payments

Prior to Occupancy, any refunds of the Entrance Fee shall be made no later than sixty (60) days after the effective date of termination of this Contract. After Occupancy, any refund of the Entrance Fee shall be made within one hundred twenty (120) days of the effective date of termination of this Contract.

14.7 Release of Obligation

Upon termination of this Contract, Company is released from any further obligations to Resident except for the payment of any refund which may be due under this section. Resident is released from any further obligations except for the payment of any amounts due Company, including the repayment of any financial assistance, the payment of the Monthly Rate until Surrender and the recovery of all personal property.

SECTION 15. Rights and Obligations of Resident as to Property

The rights and obligations of Resident as to property are as follows:

15.1 Right to Real Property

The rights and privileges of Resident do not include any rights, title or interest whether legal, equitable, beneficial or otherwise, in or to any part of the real property, including land, buildings and improvements owned or administered by Company, except the right granted to Resident to occupy the Residential Unit in accordance with the terms of this Contract. Resident shall have no

interest in the real property of the Company. Resident's rights are primarily for services, and this Contract does not create the relationship of Landlord and Tenant and it does not confer any legal or equitable ownership or other interest in the real property or in Company itself. Any rights, privileges or benefits arising under or related to this Contract shall be subordinate and inferior to all mortgages or deeds of trust on any of the premises or real properties of Company, previously or subsequently given, to secure any loans or advances made to Company or its successors, now outstanding or made in the future, and subordinate and inferior to all amendments, modifications, replacements, or refundings. Resident agrees that, upon request of Company, or the holder of any such instrument, he/she will execute and deliver any document which is alleged to be necessary or required to effect or evidence such subordination.

15.2 Right to Personal Property of Company

As in the case of real property, Resident has no right, title or interest, legal, equitable, beneficial or otherwise in or to any part of the personal property owned by Company, and this includes carpets, window treatments, appliances, kitchen cabinets, and fixtures in the Residential Unit, even if upgraded at Resident's cost and, also, all furniture, furnishings and fixtures in all common areas and facilities.

15.3 Responsibility for Damages

Any loss or damage to real or personal property of Company, caused by the negligence of Resident, Resident's guests or Resident's pet, shall be charged to and paid for by Resident. Similarly, if any negligence of any of the above-mentioned results in injury, illness or damage to any other resident, Company assumes no responsibility and Resident hereby releases and discharges Company from any injury to Resident or damage to Resident's personal property caused by the fault or negligence of other residents of Company or of their guests or pets.

15.4 Responsibility for Protection of Resident's Property

Company shall not be responsible for the loss of any personal property belonging to Resident due to theft, fire, or any cause, unless said property is specifically entrusted in writing to the care and control of Company, and then only for lack of ordinary care to safeguard, and account for, such property. Company is not responsible for personal injury to other Residents or guests within Resident's Residential Unit. Resident shall have the responsibility, at his/her own expense, of providing and maintaining a standard property and liability insurance policy as deemed necessary by Company, and to file a copy of said policy detailing the coverages with Company's administrative office.

If Resident is no longer able to occupy the Residential Unit, or has died, the contents of the Residential Unit must be removed within thirty (30) days. After the thirty (30) day period, Company shall have the right, at Resident's expense, to remove all personal property of Resident from his/her Residential Unit, and store the same, at Resident's expense and risk. If the property is stored in a commercial storage warehouse or commercial storage facility, Company shall have no responsibility for such property during transfer or after it has been placed in storage, and Resident, or Resident's estate, shall be liable for all moving and storage fees incurred.

SECTION 16. Arrangement for Guardianship, Resident's Estate and Burial

16.1 Advance Directives and Power of Attorney Requirements

Resident, no later than the Date of Availability shall inform Company of his/her decision regarding advance directives stating Resident's wishes concerning the type and extent of medical care he/she receives if he/she is unable to make wishes known. Resident who has executed advance directives shall provide to Company a copy of such document no later than Date of Availability.

Likewise, Resident, no later than the Date of Availability, shall appoint a power of attorney to act on Resident's behalf in the event Resident is unable to represent him/herself. A copy of the Power of Attorney will be provided to Company no later than the Date of Availability.

16.2 Legal Guardian

If Resident becomes incapacitated or unable to properly care for self or property, and no representative has been lawfully designated to act on behalf of Resident or no lawfully designated representative is available or willing and able to act on behalf of Resident, then Company may institute legal proceedings to adjudge Resident incapacitated and have a guardian appointed for Resident's estate and person or both. Resident authorizes Company to nominate a legal guardian to serve subject to court approval, and Resident releases Company from any liability related to the nomination. All costs of such legal proceedings, including counsel fees, shall be paid by Resident or the legally appointed guardian of Resident's estate.

16.3 Burial Plans

Company does not provide any burial or funeral benefits or services. Resident agrees to arrange for and take care of all such plans and costs.

SECTION 17. Non-Transferable

The rights and privileges of Resident under this Contract to a Living Accommodation, facilities, services and medical care are personal to Resident and cannot be transferred or assigned by act of Resident, or by any proceeding at law, or otherwise. If any person, other than the person(s) who have/has signed this Contract, commence(s) to live in Resident's Living Accommodation without following the proper procedure established by Company, then, Company may immediately terminate this Contract.

SECTION 18. Notice

All notices to be given in accordance with this Contract shall be deemed to have been properly given if and when delivered personally or sent by mail as follows:

To Company:

Park Pointe Village
3025 Chisholm Blvd
Rock Hill SC 29732

To Resident (before taking occupancy):

Mrs. Pauline Cook
Rock Hill SC 29732

SECTION 19. Right of Self-Organization

All residents living in the Retirement Community shall have the right of self-organization and the Board of Directors or a designated representative shall meet quarterly with the residents of the Retirement Community for the purpose of free discussion of subjects which may include, but are not limited to income, expenditures and financial matters as they apply to Company and the Retirement Community and proposed changes in policies and services. Company shall provide residents with at least seven (7) days notice of each quarterly meeting.

SECTION 20. Waiver

No act, agreement, or statement of any Resident, or other individual purchasing care for a Resident under this Contract or under any Contract to furnish care to the Resident shall constitute a valid waiver of any provision of any South Carolina Statute enacted and intended to benefit or protect the residents of the Retirement Community, or any individual purchasing care for such residents.

SECTION 21. Arbitration

21.1 Procedural Rules

Any controversy, dispute or disagreement arising out of or relating to this Contract, or concerning any rights arising under this Contract or a breach of this Contract, shall be settled by voluntary arbitration. This arbitration shall be conducted on Company's property in accordance with the American Health Lawyers Association ("AHLA") Alternative Dispute Resolution Service Rules of Procedure for Arbitration. The decision shall be final, binding and non-appealable, and any court having proper jurisdiction may enter judgment on the award rendered by the arbitrator.

21.2 Time Limit for Arbitration

Any request for arbitration of a dispute must be requested and submitted to AHLA or an alternate neutral arbitration service selected by Company if AHLA is unable or unwilling to serve, prior to the lapse of two (2) years from the date on which the event giving rise to the dispute occurred. In the event AHLA is unable or unwilling to serve, then the request for arbitration must be submitted to Company within thirty (30) days of receipt of notice of AHLA's unwillingness or inability to serve as a neutral arbitrator. Company shall select an alternative neutral arbitration service within thirty (30) days thereafter and the selected arbitration agency's procedural rules shall apply to the arbitration proceeding. The failure to submit a request for Arbitration to AHLA or an alternate neutral arbitration service selected by Company within the designated time (i.e., two (2) years) shall operate as a bar to any subsequent request for arbitration, or for any claim for relief or a remedy, or to any action or legal proceeding of any kind or nature, and the parties will be forever barred from arbitrating or litigating a resolution to any such dispute.

SECTION 22. Uncontrollable Interruption of Services

In the event that Company is unable to fulfill any of its obligations under the Resident Contract resulting from an interruption of, or failure to provide, contracted services due to an act of God or other cause beyond the reasonable control of Company, specifically including labor strikes or other forms of labor disturbances, and/or embargoes, fire, flood, earthquakes, inclement weather or acts of the Resident, then Company shall not be liable or responsible for any personal injury to Resident or damage to Resident's property arising from any such event. Company will make every effort to provide the usual services in such event.

SECTION 23. Miscellaneous

23.1 Entire Contract

This Contract, together with the application form, financial statement and medical records, including applicable signed amendments, constitute the entire Contract between Company and Resident. Resident warrants that all representations are true and correct. Company is not liable and shall not be bound by any statements, representations or promises made by any person representing or purporting to represent Company, unless such statements, representations or promises are set forth in this Contract.

23.2 Policies, Procedures, Rules and Regulations

Resident will observe all policies, procedures, rules and regulations which Company shall adopt for the convenience, comfort, safety and well-being of all Residents and the Retirement Community, which are subject to change from time to time.

23.3 No Waiver

Any failure by Company to exercise any right or remedy under this Contract shall not be construed as a waiver of the right to exercise the same or any other right at any time, or from time to time thereafter.

23.4 Invalidity, Unenforceability

If any portion of this Contract shall, for any reason, be held to be invalid or unenforceable in any jurisdiction in which it is sought to be enforced, such invalidity and unenforceability shall not affect any other provision of this Contract, and it shall be construed as if such invalid or unenforceable provision were omitted.

23.5 Amendments

This Contract may be amended only in writing executed by both Resident and Company's Corporate Officers.

23.6 Section Headings

Section headings are for reference purposes only.

23.7 Binding Effect

This Contract shall be binding upon, and inure to, the benefit of Company and Resident, and their respective successors, permitted assigns and personal representatives.

23.8 Counterparts

This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one Contract.

23.9 South Carolina Law

All matters affecting the interpretation of this Contract and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of South Carolina.

23.10 South Carolina Regulation of Continuing Care Facilities

A LICENSE ISSUED BY THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS IS NOT AN ENDORSEMENT OR GUARANTEE OF THIS FACILITY BY THE STATE OF SOUTH CAROLINA. THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS URGES YOU TO CONSULT WITH AN ATTORNEY AND A SUITABLE FINANCIAL ADVISOR BEFORE SIGNING ANY DOCUMENTS.

23.11 Receipt of Copy of this Contract

Resident acknowledges that prior to the payment of any funds to Company he/she has received and read a copy of this Contract and the Continuing Care Disclosure Statement and understands the contents of both documents.

IN WITNESS WHEREOF, Company, by its duly authorized representatives and Resident have executed this Contract the day and year first above written.

PARK POINTE VILLAGE, INC:

By Donna G. G. G.
Park Pointe Village, Inc.
Authorized Representative

Resident

Social Security #

Resident

Social Security #

Resident

Social Security #

Witness

EXHIBIT "A"

RESIDENT'S RIGHT TO CANCEL

Date cancellation period begins 1/1/06

You may cancel this contract by sending notice of your wish to cancel to the continuing care community before midnight to the thirtieth (30th) day after you sign a contract. This notice must be sent in writing to the following:

Park Pointe Village, Inc.
3025 Cheshbrough Boulevard
Rock Hill, SC 29732

If you cancel within thirty days, all money or property paid or transferred by you must be refunded fully, less those reasonable costs incurred by the community. If the living unit was available for occupancy, the community may charge a daily rate based on the usual monthly charge for that unit beginning on the eighth (8th) day after signing and ending on the day notice of cancellation is given to the community. Within thirty days of receipt of the cancellation notice, the community must return any payments made and return any note or evidence of indebtedness.

Not later than midnight of 2/1/06 (last day for cancellation).

Pursuant to this notice, I hereby cancel my Resident Contract.

Date: _____

PROSPECTIVE RESIDENT'S SIGNATURE

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2012-CP-46-02692

Paul Sullivan as Personal Representative of
the Estate of Pauline C. Cook,

Plaintiff,

vs.

Park Pointe Village, Inc., a wholly owned
subsidiary of ACTS Retirement-Life
Communities, Inc., Neva Lattimer, and
Marvin Lawrence,

Defendants.

**ANSWER OF DEFENDANT
PARK POINTE VILLAGE, INC. TO
AMENDED COMPLAINT**

(Jury Trial Demand)

FILED-RECEIVED
2012 SEP 21 AM 11:58
DAVID PRAMILTON
C.C.P. & ES.
YORK COUNTY, SC

Defendant Park Pointe Village, Inc. ("Park Pointe"), hereby answers Plaintiff's Amended Complaint as follows. Each and every allegation not hereinafter specifically admitted, qualified, or explained, is expressly denied.

FOR A FIRST DEFENSE

1. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Amended Complaint, and, therefore, denies the allegations.

2. Park Pointe admits only so much of the allegations of Paragraph 2 of the Amended Complaint that allege or can be construed to allege that Park Pointe is a nonprofit corporation which qualifies as an organization described in Section 501(C)(3) of the Internal Revenue Code of 1986 and that its principal place of business is located in this state. The remaining allegations of Paragraph 2 are directed towards a third party and/or contain legal

conclusions and, as such, no response by Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

3. Park Pointe admits only so much of the allegations of Paragraph 3 of the Amended Complaint that allege or can be construed to allege that Defendant Neva Lattimer was formerly the Director of Resident Nursing at Park Pointe. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 3 of the Amended Complaint and, therefore, denies the allegations.

4. Park Pointe admits only so much of the allegations of Paragraph 4 of the Amended Complaint that allege or can be construed to allege that Defendant Marvin Lawrence is a cook at Park Pointe. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 4 of the Amended Complaint and, therefore, denies the allegations.

5. Answering Paragraph 5, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

6. Answering Paragraph 6, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

7. Park Pointe admits the allegations of Paragraph 7 of the Amended Complaint.

8. Park Pointe admits only so much of the allegations of Paragraph 8 of the Amended Complaint that allege or can be construed to allege that Park Pointe owns and operates

a retirement community that provides services as described in its resident contract, the terms and conditions of which are hereby incorporated by reference. Any allegations in addition to or inconsistent with the above response are denied.

9. Park Pointe denies the allegations of Paragraph 9 of the Amended Complaint.

10. Park Pointe admits only so much of the allegations of Paragraph 10 that allege or can be construed to allege that Pauline Cook was a resident at all times relevant at Park Pointe. Further responding, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 10 of the Amended Complaint, and, therefore, denies the allegations.

11. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Amended Complaint, and, therefore, denies the allegations.

12. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Amended Complaint and, therefore, denies the allegations.

13. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Amended Complaint and, therefore, denies the allegations.

14. Park Pointe admits only so much of the allegations of Paragraph 14 of the Amended Complaint that allege or can be construed to allege that Defendant Neva Lattimer was formerly the Director of Resident Nursing at Park Pointe. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Park Pointe is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 14 of the Amended Complaint and, therefore, denies the allegations.

15. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Amended Complaint, and, therefore, denies the allegations.

16. Park Pointe admits only so much of the allegations of Paragraph 16 of the Amended Complaint that allege or can be construed to allege that Pauline Cook and Defendant Neva Lattimer contacted law enforcement. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 16 of the Amended Complaint and, therefore, denies the allegations.

17. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Amended Complaint, and, therefore, denies the allegations.

18. Park Pointe submits that the allegations of Paragraph 18 of the Amended Complaint are directed toward a defendant other than Park Pointe. To the extent the Court may deem a response is required, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 and, therefore, denies the allegations.

19. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Amended Complaint, and, therefore, denies the allegations.

20. Park Pointe admits only so much of the allegations of Paragraph 20 of the Amended Complaint that allege or can be construed to allege that Walton entered the building on

November 12, 2011. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 20 of the Amended Complaint and, therefore, denies the allegations.

21. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Amended Complaint, and, therefore, denies the allegations.

22. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Amended Complaint, and, therefore, denies the allegations.

23. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Amended Complaint, and, therefore, denies the allegations.

24. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Amended Complaint, and, therefore, denies the allegations.

25. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Amended Complaint, and, therefore, denies the allegations.

26. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Amended Complaint, and, therefore, denies the allegations.

27. Park Pointe admits only so much of the allegations of Paragraph 27 of the Amended Complaint that allege or can be construed to allege that Linda Roach was an employee at Park Pointe and discovered Ms. Cook on November 13, 2011. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 27 of the Amended Complaint, and, therefore, denies the allegations.

28. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Amended Complaint, and, therefore, denies the allegations.

29. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Amended Complaint, and, therefore, denies the allegations.

**FOR A FIRST DEFENSE TO THE
FIRST CAUSE OF ACTION AGAINST DEFENDANTS PPV
(Negligence – Wrongful Death)**

30. Answering Paragraph 30 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 29 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

31. Park Pointe admits the allegations of Paragraph 31 of the Amended Complaint.

32. Answering Paragraph 32, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations. Further responding, Park Pointe craves reference to the Resident Contract for its terms and conditions.

33. Answering Paragraph 33, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

34. Park Pointe denies the allegations directed against it in Paragraph 34 of the Amended Complaint, including all subparts.

35. Answering Paragraph 35, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations directed against it in Paragraph 35 of the Amended Complaint.

36. Answering Paragraph 36, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations directed against it in Paragraph 36 of the Amended Complaint.

37. Park Pointe denies the allegations of Paragraph 37 of the Amended Complaint.

38. Park Pointe denies the allegations directed against it in Paragraph 38 of the Amended Complaint.

39. Park Pointe denies the allegations directed against it in Paragraph 39 of the Amended Complaint, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
SECOND CAUSE OF ACTION AGAINST DEFENDANTS PPV
(Negligence – Survival)**

40. Answering Paragraph 40 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 39 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

41. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Amended Complaint, and, therefore, denies the allegations.

42. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42 of the Amended Complaint, and, therefore, denies the allegations.

43. Park Pointe denies the allegations of Paragraph 43 of the Amended Complaint.

44. Park Pointe denies the allegations of Paragraph 44 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
THIRD CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence Supervision – Wrongful Death)**

45. Answering Paragraph 45 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 44 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

46. Answering Paragraph 46, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

47. Park Pointe admits only so much of the allegations of Paragraph 47 of the Amended Complaint that allege or can be construed to allege that Walton was on the premises. Any allegations in addition to or inconsistent with the above response are denied.

48. Answering Paragraph 48, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

49. Answering Paragraph 49, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

50. Answering Paragraph 50, Park Pointe responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

51. Park Pointe denies the allegations of Paragraph 51 of the Amended Complaint.

52. Park Pointe denies the allegations directed against it in Paragraph 52 of the Amended Complaint, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
FOURTH CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence Supervision - Survival)**

53. Answering Paragraph 53 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 52 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

54. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 54 of the Amended Complaint regarding conscious pain and suffering and mental distress, therefore, denies the allegations. Park Pointe denies the remaining allegations of Paragraph 54.

55. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55 of the Amended Complaint, and, therefore, denies the allegations.

56. Park Pointe denies the allegations of Paragraph 56 of the Amended Complaint.

57. Park Pointe denies the allegations of Paragraph 57 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
FIFTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Wrongful Death)**

58. Answering Paragraph 58 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 57 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

59. Park Pointe admits only so much of the allegations of Paragraph 59 of the Amended Complaint that allege or can be construed to allege that Defendant Neva Lattimer was formerly the Director of Resident Nursing at Park Pointe. Any allegations in addition to or inconsistent with the above response are denied. Further responding, the remaining allegations of Paragraph 59 constitute a legal conclusion to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

60. Park Pointe submits that the allegations of Paragraph 60 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations, including all subparts.

61. Park Pointe submits that the allegations of Paragraph 61 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

62. Park Pointe submits that the allegations of Paragraph 62 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
SIXTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Survival)**

63. Answering Paragraph 63 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 62 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

64. Park Pointe submits that the allegations of Paragraph 64 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

65. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 of the Amended Complaint, and, therefore, denies the allegations.

66. Park Pointe submits that the allegations of Paragraph 66 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

67. Park Pointe denies the allegations of Paragraph 67 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
SEVENTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Wrongful Death)**

68. Answering Paragraph 68 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 67 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

69. Park Pointe submits that the allegations of Paragraph 69 of the Amended Complaint are directed toward a defendant other than Park Pointe and constitute legal conclusions to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

70. Park Pointe submits that the allegations of Paragraph 70 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. Further responding, the remaining allegations set forth in Paragraph 70 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

71. Park Pointe submits that the allegations of Paragraph 71 of the Amended Complaint are directed toward a defendant other than Park Pointe to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

72. Park Pointe submits that the allegations of Paragraph 72 of the Amended Complaint are directed toward a defendant other than Park Pointe and constitute legal conclusions to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

73. Park Pointe submits that the allegations of Paragraph 73 of the Amended Complaint are directed toward a defendant other than Park Pointe and constitute legal conclusions to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

74. Park Pointe submits that the allegations of Paragraph 74 of the Amended Complaint are directed toward a defendant other than Park Pointe and constitute legal

conclusions to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

75. Park Pointe denies the allegations of Paragraph 75 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
EIGHTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Survival)**

76. Answering Paragraph 76 of the Amended Complaint, Park Pointe incorporates by reference its responses to Paragraphs 1 through 75 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

77. Park Pointe submits that the allegations of Paragraph 77 of the Amended Complaint are directed toward a defendant other than Park Pointe and constitute legal conclusions to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

78. Park Pointe is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 of the Amended Complaint, and, therefore, denies the allegations.

79. Park Pointe submits that the allegations of Paragraph 79 of the Amended Complaint are directed toward a defendant other than Park Pointe and constitute legal conclusions to which no response of Park Pointe is required. To the extent the Court may deem a response is required, Park Pointe denies the allegations.

80. Park Pointe denies the allegations directed against it of Paragraph 80 of the Amended Complaint.

FOR A SECOND DEFENSE

81. Park Pointe submits that Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

82. Park Pointe affirmatively pleads the provisions of the Federal Arbitration Act, 9 U.S.C.S. § 1, et seq., and the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., as well as all pertinent state and federal precedent construing and applying applicable provisions thereof.

FOR A FOURTH DEFENSE

83. Park Pointe affirmatively pleads, and incorporates herein by reference in their entirety, the terms and conditions set forth in the Resident Contract.

FOR A FIFTH DEFENSE

84. Park Pointe alleges that any and all causes of action against it are barred by the applicable statutes of limitation.

FOR A SIXTH DEFENSE

85. Park Pointe pleads insufficiency of service of process, and, therefore, this Court lacks jurisdiction over it pursuant to Rules 12(b)(2) and 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

86. Park Pointe alleges that this Court lacks subject matter jurisdiction over this lawsuit and accordingly should dismiss it.

FOR AN EIGHTH DEFENSE

87. Park Pointe submits that Plaintiff's Amended Complaint fails for improper venue pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and the rule of law established in *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 609 S.E.2d 286 (2005) and S.C. Code Ann. § 15-7-30, as amended by the Economic Development, Citizens and Small Business Protection Act of 2005, effective to causes of action arising on or after July 1, 2005.

FOR A NINTH DEFENSE

88. Park Pointe alleges that any injury or damage sustained by Plaintiff's decedent were due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom Park Pointe had or has no authority or control. Therefore, Park Pointe is not liable to Plaintiff in any amount.

FOR A TENTH DEFENSE

89. Park Pointe pleads that its actions were based on reasonable cause, and any investigation was conducted in a reasonable manner and time, and, accordingly, Park Pointe pleads S.C. Code Ann. § 16-13-140 as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

90. Park Pointe alleges that any statements or actions by Park Pointe's employees are subject to an absolute or a qualified privilege under South Carolina law, for which reason Park Pointe is not liable to Plaintiff.

FOR A TWELFTH DEFENSE

91. Park Pointe submits that it is entitled to a set-off or credit for any amount paid to Plaintiff by any third party as compensation for the injuries and damages for which Plaintiff seeks recovery.

FOR A THIRTEENTH DEFENSE

92. Park Pointe alleges, upon information and belief, that any damages alleged to have been caused by Park Pointe, which are specifically denied, must be apportioned between Park Pointe and other tortfeasors pursuant to S.C. Code Ann. § 15-78-100(c).

FOR A FOURTEENTH DEFENSE

93. Park Pointe pleads applicability of the 2005 Tort Reform Statutes, S.C. Code Ann. §§ 15-38-15, 15-7-30, 15-7-100, 36-2-803(B), and other pertinent statutory sections.

FOR A FIFTEENTH DEFENSE

94. Park Pointe alleges that if it is determined that Park Pointe is liable to Plaintiff, then recovery against Park Pointe may not exceed the limitations provided by S.C. Code Ann. §§ 15-78-20 and 15-78-120.

FOR A SIXTEENTH DEFENSE

95. Park Pointe alleges that any claims brought against it for punitive damages are barred pursuant to S.C. Code Ann. § 15-78-120(b).

FOR A SEVENTEENTH DEFENSE

96. Park Pointe denies any and all liability, but in the alternative, pleads that at all times Park Pointe's actions were in good faith and there existed a reasonable basis for these actions, such actions being for a proper purpose and by a proper method.

FOR AN EIGHTEENTH DEFENSE

97. Park Pointe is not liable for any alleged action based on the Business Judgment Rule, S.C. Code Ann. § 33-8-300 and S.C. Code Ann. § 33-31-830.

FOR A NINETEENTH DEFENSE

98. Park Pointe pleads that it is immune from suit, including but not limited to the immunity provided by S.C. Code Ann. § 33-31-834.

FOR A TWENTIETH DEFENSE

99. Park Pointe pleads applicability of the Economic Development, Citizens and Small Business Protection Act of 2005, effective July 1, 2005, which amended S.C. Code Ann. §§ 15-38-15 [joint and several liability], 15-7-30 [venue], 15-7-100 [venue], 36-2-803(B) [jurisdiction], and other pertinent statutory sections, and invokes the remedies and procedures provided therein.

FOR A TWENTY-FIRST DEFENSE

100. Park Pointe submits that Plaintiff's Amended Complaint fails, in whole or in part, because the Plaintiff, as named in the Amended Complaint, lacks standing to prosecute this action.

FOR A TWENTY-SECOND DEFENSE

101. Park Pointe pleads the terms of the South Carolina Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-15, as a limit to any amount potentially owed to Plaintiff and the right to apportion liability among all parties.

FOR A TWENTY-THIRD DEFENSE

102. Park Pointe denies Plaintiff's claim for punitive damages. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;

- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth or corporate status of Park Pointe violates due process guarantees;
- d. The juror's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;
- f. Plaintiff's claims for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Park Pointe; and
- g. Any award of punitive damages for conduct or activity of Park Pointe outside the State of South Carolina is inconsistent with the interest of federalism.

Plaintiff's claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government, which invades the province of the legislative branch of government.

FOR A TWENTY-FOURTH DEFENSE

103. Park Pointe submits that it has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Park Pointe intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported damage as alleged in Plaintiff's Amended Complaint, and give notice of its intent to assert any further defenses that its information gathering process may indicate are supported by fact and law. These defenses may include, but are not limited to, a defense that the action is barred in whole or in part by any applicable statute,

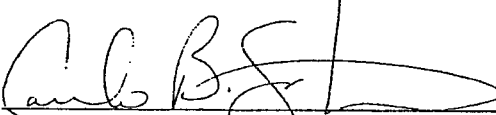
contract, release, covenant, and the doctrine of laches. Park Pointe thus reserves the right to amend this Answer and assert additional defenses.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Park Pointe prays that the Amended Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

TURNER, PADGET, GRAHAM & LANEY, P.A.

September 20, 2012

By:



R. Gerald Chambers, Jr.

Carmelo B. Sammataro

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

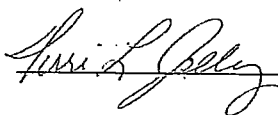
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of September 2012 a copy of the foregoing **ANSWER OF DEFENDANT PARK POINTE VILLAGE, INC. TO AMENDED COMPLAINT** has been served upon other counsel of record, by mailing same, postage prepaid in the United States Mail, addressed to the following:

Richard A. Harpootlian, Esquire
Graham L. Newman, Esquire
M. David Scott, Esquire
Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, SC 29201

ATTORNEYS FOR PLAINTIFF



FILED-RECEIVED
2012-SEP-21 AM 11:58
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) Civil Action No.: 2012-CP-46-02692

Paul Sullivan as Personal Representative of
the Estate of Pauline C. Cook,

Plaintiff,

vs.

Park Pointe Village, Inc., a wholly owned
subsidiary of ACTS Retirement-Life
Communities, Inc., Neva Lattimer, and
Marvin Lawrence,

Defendants.

**ANSWER OF DEFENDANT
MARVIN LAWRENCE TO
AMENDED COMPLAINT**

(Jury Trial Demanded)

FILED-RECEIVED
2012 SEP 21 AM 11:59
DAVID H. HARRISON
S.C.C.P. & GS
YORK COUNTY, SC

Defendant Marvin Lawrence ("Lawrence") hereby answers Plaintiff's Amended Complaint as follows. Each and every allegation not hereinafter specifically admitted, qualified, or explained, is expressly denied.

FOR A FIRST DEFENSE

1. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Amended Complaint, and, therefore, denies the allegations.

2. Lawrence submits that the allegations of Paragraph 2 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and, therefore, denies the allegations.

3. Lawrence submits that the allegations of Paragraph 3 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a

response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and, therefore, denies the allegations.

4. Lawrence admits only so much of the allegations of Paragraph 4 of the Amended Complaint that allege or can be construed to allege that Lawrence resides in York County, South Carolina. Any allegations in addition to or inconsistent with the above response are denied. Further responding, the remaining allegations set forth in Paragraph 4 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

5. Answering Paragraph 5, Lawrence responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

6. Answering Paragraph 6, Lawrence responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

7. Lawrence admits the allegations of Paragraph 7 of the Amended Complaint.

8. Lawrence admits only so much of the allegations of Paragraph 8 of the Amended Complaint that allege or can be construed to allege that Park Pointe owns and operates a retirement community that provides services as described in its resident contract, the terms and conditions of which are hereby incorporated by reference. Any allegations in addition to or inconsistent with the above response are denied.

9. Lawrence submits that the allegations of Paragraph 9 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence denies the allegations.

10. Lawrence admits only so much of the allegations of Paragraph 10 that allege or can be construed to allege that Pauline Cook was a resident at all times relevant at Park Pointe. Further responding, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 10 of the Amended Complaint, and, therefore, denies the allegations.

11. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Amended Complaint, and, therefore, denies the allegations.

12. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Amended Complaint, and, therefore, denies the allegations.

13. Lawrence admits only so much of the allegations of Paragraph 13 of the Amended Complaint that allege or can be construed to allege that he is employed by Park Pointe, that he identified Braquette Walton as an employee of Park Pointe, and that he referred the matter to Park Pointe management. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Lawrence denies the remaining allegations in Paragraph 13.

14. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Amended Complaint, and, therefore, denies the allegations.

15. Lawrence admits only so much of the allegations of Paragraph 15 of the Amended Complaint that allege or can be construed to allege that he contacted Braquette Walton on November 12, 2011. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Lawrence denies the remaining allegations in Paragraph 15.

16. Lawrence submits that the allegations of Paragraph 16 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and, therefore, denies the allegations.

17. Lawrence submits that the allegations of Paragraph 17 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 and, therefore, denies the allegations.

18. Lawrence submits that the allegations of Paragraph 18 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18 and, therefore, denies the allegations.

19. Lawrence submits that the allegations of Paragraph 19 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 and, therefore, denies the allegations.

20. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 20 of the Amended Complaint and, therefore, denies the allegations.

21. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Amended Complaint, and, therefore, denies the allegations.

22. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Amended Complaint, and, therefore, denies the allegations.

23. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Amended Complaint, and, therefore, denies the allegations.

24. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Amended Complaint, and, therefore, denies the allegations.

25. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Amended Complaint, and, therefore, denies the allegations.

26. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Amended Complaint, and, therefore, denies the allegations.

27. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Amended Complaint, and, therefore, denies the allegations.

28. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Amended Complaint, and, therefore, denies the allegations.

29. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Amended Complaint, and, therefore, denies the allegations.

**FOR A FIRST DEFENSE TO THE
FIRST CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence – Wrongful Death)**

30. Answering Paragraph 30 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 29 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

31. Lawrence admits the allegations of Paragraph 31 of the Amended Complaint.

32. Lawrence submits that the allegations of Paragraph 32 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 and, therefore, denies the allegations.

33. Lawrence submits that the allegations of Paragraph 33 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and, therefore, denies the allegations.

34. Lawrence submits that the allegations of Paragraph 34 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and, therefore, denies the allegations, including all subparts.

35. Lawrence submits that the allegations of Paragraph 35 of the Amended Complaint are directed toward defendants other than Lawrence to which no response of Lawrence is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

36. Lawrence denies the allegations of Paragraph 36 of the Amended Complaint.

37. Lawrence denies the allegations of Paragraph 37 of the Amended Complaint.

38. Lawrence denies the allegations directed against him in Paragraph 38 of the Amended Complaint. Further responding, Lawrence submits that the remaining allegations of Paragraph 38 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence denies the allegations.

39. Lawrence denies the allegations directed against him in Paragraph 39 of the Amended Complaint, including the prayer for relief. Further responding, Lawrence submits that the remaining allegations of Paragraph 39 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence denies the allegations.

**FOR A FIRST DEFENSE TO THE
SECOND CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence – Survival)**

40. Answering Paragraph 40 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 39 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

41. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Amended Complaint, and, therefore, denies the allegations.

42. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42 of the Amended Complaint, and, therefore, denies the allegations.

43. Lawrence submits that the allegations of Paragraph 43 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 and, therefore, denies the allegations.

44. Lawrence denies the allegations directed against him in Paragraph 44 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
THIRD CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence Supervision – Wrongful Death)**

45. Answering Paragraph 45 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 44 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

46. Lawrence submits that the allegations of Paragraph 46 of the Amended Complaint are directed toward defendants other than Lawrence. Further responding, the remaining allegations set forth in Paragraph 46 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

47. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 47 of the Amended Complaint, and, therefore, denies the allegations.

48. Lawrence submits that the allegations of Paragraph 48 of the Amended Complaint are directed toward defendants other than Lawrence. Further responding, the remaining allegations set forth in Paragraph 48 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

49. Lawrence submits that the allegations of Paragraph 49 of the Amended Complaint are directed toward defendants other than Lawrence. Further responding, the remaining allegations set forth in Paragraph 49 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

50. Lawrence submits that the allegations of Paragraph 50 of the Amended Complaint are directed toward defendants other than Lawrence. Further responding, the remaining allegations set forth in Paragraph 50 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

51. Lawrence submits that the allegations of Paragraph 51 of the Amended Complaint are directed toward defendants other than Lawrence. Further responding, the remaining allegations set forth in Paragraph 51 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

52. Lawrence denies the allegations directed against him in Paragraph 52 of the Amended Complaint, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
FOURTH CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence Supervision - Survival)**

53. Answering Paragraph 53 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 52 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

54. Lawrence submits that the allegations of Paragraph 54 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence denies the allegations.

55. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55 of the Amended Complaint, and, therefore, denies the allegations.

56. Lawrence submits that the allegations of Paragraph 56 of the Amended Complaint are directed toward defendants other than Lawrence. Further responding, the remaining allegations set forth in Paragraph 56 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

57. Lawrence denies the allegations directed against him of Paragraph 57 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
FIFTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Wrongful Death)**

58. Answering Paragraph 58 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 57 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

59. Lawrence submits that the allegations of Paragraph 59 of the Amended Complaint are directed toward a defendant other than Lawrence. To the extent the Court may deem a response is required, Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 59 and, therefore, denies the allegations.

60. Lawrence submits that the allegations of Paragraph 60 of the Amended Complaint are directed toward a defendant other than Lawrence to which no response of Lawrence is required. To the extent the Court may deem a response is required, Lawrence denies the allegations, including all subparts.

61. Lawrence submits that the allegations of Paragraph 61 of the Amended Complaint are directed toward a defendant other than Lawrence to which no response of Lawrence is required. Further responding, the remaining allegations set forth in Paragraph 61 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

62. Lawrence submits that the allegations of Paragraph 62 of the Amended Complaint are directed toward a defendant other than Lawrence to which no response of Lawrence is required. To the extent the Court may deem a response is required, Lawrence denies the allegations, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
SIXTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Survival)**

63. Answering Paragraph 63 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 62 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

64. Lawrence submits that the allegations of Paragraph 64 of the Amended Complaint are directed toward a defendant other than Lawrence to which no response of Lawrence is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

65. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 of the Amended Complaint, and, therefore, denies the allegations.

66. Lawrence submits that the allegations of Paragraph 66 of the Amended Complaint are directed toward a defendant other than Lawrence to which no response of Lawrence is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

67. Lawrence denies the allegations directed against him of Paragraph 67 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
SEVENTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Wrongful Death)**

68. Answering Paragraph 68 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 67 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

69. Lawrence admits only so much of the allegations of Paragraph 69 that allege or can be construed to allege that Lawrence was a cook at Park Pointe. Further responding, the remaining allegations set forth in Paragraph 69 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.

70. Lawrence denies the allegations of Paragraph 70 of the Amended Complaint.
71. Lawrence denies the allegations of Paragraph 71 of the Amended Complaint.
72. Lawrence denies the allegations of Paragraph 72 of the Amended Complaint.
73. Lawrence submits that the allegations of Paragraph 73 of the Amended Complaint constitute a legal conclusion to which no response of Lawrence is required. To the extent the Court may deem a response is required, Lawrence denies the allegations.
74. Lawrence denies the allegations of Paragraph 74 of the Amended Complaint.
75. Lawrence denies the allegations of Paragraph 75 of the Amended Complaint, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
EIGHTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Survival)**

76. Answering Paragraph 76 of the Amended Complaint, Lawrence incorporates by reference his responses to Paragraphs 1 through 75 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.
77. Lawrence denies the allegations of Paragraph 77 of the Amended Complaint.
78. Lawrence is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 of the Amended Complaint, and, therefore, denies the allegations.
79. Lawrence denies the allegations of Paragraph 79 of the Amended Complaint.
80. Lawrence denies the allegations directed against him of Paragraph 80 of the Amended Complaint.

FOR A SECOND DEFENSE

81. Lawrence submits that Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

82. Lawrence affirmatively pleads the provisions of the Federal Arbitration Act, 9 U.S.C.S. § 1, et seq., and the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., as well as all pertinent state and federal precedent construing and applying applicable provisions thereof.

FOR A FOURTH DEFENSE

83. Lawrence affirmatively pleads, and incorporates herein by reference in their entirety, the terms and conditions set forth in the Resident Contract.

FOR A FIFTH DEFENSE

84. Lawrence alleges that any and all causes of action against him are barred by the applicable statutes of limitation.

FOR A SIXTH DEFENSE

85. Lawrence pleads insufficiency of service of process, and, therefore, this Court lacks jurisdiction over him pursuant to Rules 12(b)(2) and 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

86. Lawrence alleges that this Court lacks subject matter jurisdiction over this lawsuit and accordingly should dismiss it.

FOR AN EIGHTH DEFENSE

87. Lawrence submits that Plaintiff's Amended Complaint fails for improper venue pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and the rule of law established in *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 609 S.E.2d 286 (2005) and S.C. Code Ann. § 15-7-30, as amended by the Economic Development, Citizens and Small Business Protection Act of 2005, effective to causes of action arising on or after July 1, 2005.

FOR A NINTH DEFENSE

88. Lawrence alleges that any injury or damage sustained by Plaintiff's decedent were due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom Lawrence had or has no authority or control. Therefore, Lawrence is not liable to Plaintiff in any amount.

FOR A TENTH DEFENSE

89. Lawrence pleads that his actions were based on reasonable cause, and any investigation was conducted in a reasonable manner and time, and, accordingly, Lawrence pleads S.C. Code Ann. § 16-13-140 as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

90. Lawrence alleges that any statements or actions by Park Pointe's employees are subject to an absolute or a qualified privilege under South Carolina law, for which reason Lawrence is not liable to Plaintiff.

FOR A TWELFTH DEFENSE

91. Lawrence submits that he is entitled to a set-off or credit for any amount paid to Plaintiff by any third party as compensation for the injuries and damages for which Plaintiff seeks recovery.

FOR A THIRTEENTH DEFENSE

92. Lawrence alleges, upon information and belief, that any damages alleged to have been caused by Lawrence, which are specifically denied, must be apportioned between Lawrence and other tortfeasors pursuant to S.C. Code Ann. § 15-78-100(c).

FOR A FOURTEENTH DEFENSE

93. Lawrence pleads applicability of the 2005 Tort Reform Statutes, S.C. Code Ann. §§ 15-38-15, 15-7-30, 15-7-100, 36-2-803(B), and other pertinent statutory sections.

FOR A FIFTEENTH DEFENSE

94. Lawrence alleges that if it is determined that Lawrence is liable to Plaintiff, then recovery against Lawrence may not exceed the limitations provided by S.C. Code Ann. §§ 15-78-20 and 15-78-120.

FOR A SIXTEENTH DEFENSE

95. Lawrence alleges that any claims brought against him for punitive damages are barred pursuant to S.C. Code Ann. § 15-78-120(b).

FOR A SEVENTEENTH DEFENSE

96. Lawrence denies any and all liability, but in the alternative, pleads that at all times Lawrence's actions were in good faith and there existed a reasonable basis for these actions, such actions being for a proper purpose and by a proper method.

FOR AN EIGHTEENTH DEFENSE

97. Lawrence is not liable for any alleged action based on the Business Judgment Rule, S.C. Code Ann. § 33-8-300 and S.C. Code Ann. § 33-31-830.

FOR A NINETEENTH DEFENSE

98. Lawrence pleads that he is immune from suit, including but not limited to the immunity provided by S.C. Code Ann. § 33-31-834.

FOR A TWENTIETH DEFENSE

99. Lawrence pleads applicability of the Economic Development, Citizens and Small Business Protection Act of 2005, effective July 1, 2005, which amended S.C. Code Ann. §§ 15-38-15 [joint and several liability], 15-7-30 [venue], 15-7-100 [venue], 36-2-803(B) [jurisdiction], and other pertinent statutory sections, and invokes the remedies and procedures provided therein.

FOR A TWENTY-FIRST DEFENSE

100. Lawrence submits that Plaintiff's Amended Complaint fails, in whole or in part, because the Plaintiff, as named in the Amended Complaint, lacks standing to prosecute this action.

FOR A TWENTY-SECOND DEFENSE

101. Lawrence pleads the terms of the South Carolina Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-15, as a limit to any amount potentially owed to Plaintiff and the right to apportion liability among all parties.

FOR A TWENTY-THIRD DEFENSE

102. Lawrence denies Plaintiff's claim for punitive damages. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

- c. Any award of punitive damages based upon the wealth or corporate status violates due process guarantees;
- d. The juror's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;
- f. Plaintiff's claims for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Lawrence; and
- g. Any award of punitive damages for conduct or activity of Lawrence outside the State of South Carolina is inconsistent with the interest of federalism.

Plaintiff's claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government, which invades the province of the legislative branch of government.

FOR A TWENTY-FOURTH DEFENSE

103. Lawrence submits that he has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Lawrence intends to act as best he can to inform himself of the pertinent facts and prevailing circumstances surrounding any reported damage as alleged in Plaintiff's Amended Complaint, and give notice of his intent to assert any further defenses that his information gathering process may indicate are supported by fact and law. These defenses may include, but are not limited to, a defense that the action is barred in whole or in part by any applicable statute,

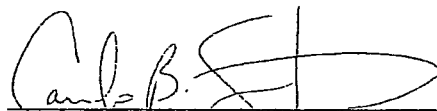
contract, release, covenant, and the doctrine of laches. Lawrence thus reserves the right to amend this Answer and assert additional defenses.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Lawrence prays that the Amended Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

TURNER, PADGET, GRAHAM & LANEY, P.A.

September 20, 2012

By:



R. Gerald Chambers, Jr.

Carmelo B. Sammataro

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

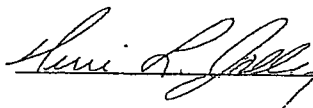
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of September 2012 a copy of the foregoing **ANSWER OF DEFENDANT MARVIN LAWRENCE TO AMENDED COMPLAINT** has been served upon other counsel of record, by mailing same, postage prepaid in the United States Mail, addressed to the following:

Richard A. Harpootlian, Esquire
Graham L. Newman, Esquire
M. David Scott, Esquire
Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, SC 29201

ATTORNEYS FOR PLAINTIFF



FILED-RECEIVED
2012 SEP 21 AM 11:59
DAVID HAMILTON
C.O.C.P. & OS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2012-CP-46-02692

Paul Sullivan as Personal Representative of
the Estate of Pauline C. Cook,

Plaintiff,

vs.

Park Pointe Village, Inc., a wholly owned
subsidiary of ACTS Retirement-Life
Communities, Inc., Neva Lattimer, and
Marvin Lawrence,

Defendants.

**ANSWER OF DEFENDANT
NEVA LATTIMER TO
AMENDED COMPLAINT**

(Jury Trial Demanded)

FILED-RECEIVED
2012 SEP 21 AM 11:58
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Defendant Neva Lattimer ("Lattimer") hereby answers Plaintiff's Amended Complaint as follows. Each and every allegation not hereinafter specifically admitted, qualified, or explained, is expressly denied.

FOR A FIRST DEFENSE

1. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Amended Complaint, and, therefore, denies the allegations.

2. Lattimer submits that the allegations of Paragraph 2 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and, therefore, denies the allegations.

3. Lattimer admits only so much of the allegations of Paragraph 3 of the Amended Complaint that allege or can be construed to allege that Lattimer was formerly the Director of

Resident Nursing at Park Pointe and a resident of York County, South Carolina. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Lattimer denies the remaining allegations in Paragraph 3.

4. Lattimer submits that the allegations of Paragraph 4 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and, therefore, denies the allegations.

5. Answering Paragraph 5, Lattimer responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

6. Answering Paragraph 6, Lattimer responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

7. Lattimer admits the allegations of Paragraph 7 of the Amended Complaint.

8. Lattimer admits only so much of the allegations of Paragraph 8 of the Amended Complaint that allege or can be construed to allege that Park Pointe owns and operates a retirement community that provides services as described in its resident contract, the terms and conditions of which are hereby incorporated by reference. Any allegations in addition to or inconsistent with the above response are denied.

9. Lattimer submits that the allegations of Paragraph 9 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer denies the allegations.

10. Lattimer admits only so much of the allegations of Paragraph 10 that allege or can be construed to allege that Pauline Cook was a resident at all times relevant at Park Pointe. Further responding, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 10 of the Amended Complaint, and, therefore, denies the allegations.

11. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 11 of the Amended Complaint, and, therefore, denies the allegations.

12. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Amended Complaint, and, therefore, denies the allegations.

13. Lattimer submits that the allegations of Paragraph 13 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and, therefore, denies the allegations.

14. Lattimer admits only so much of the allegations of Paragraph 14 that allege or can be construed to allege that Lattimer spoke with Pauline Cook on November 12, 2011, regarding irregularities in Cook's checking account. Further responding, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 14 of the Amended Complaint, and, therefore, denies the allegations.

15. Lattimer admits only so much of the allegations of Paragraph 15 that allege or can be construed to allege that Lattimer spoke with Pauline Cook on November 12, 2011, regarding irregularities in Cook's checking account. Further responding, Lattimer is without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 15 of the Amended Complaint, and, therefore, denies the allegations.

16. Lattimer admits only so much of the allegations of Paragraph 16 that allege or can be construed to allege that Lattimer contacted and met with law enforcement on November 12, 2011. Further responding, Lattimer denies the truth of the remaining allegations set forth in Paragraph 16 of the Amended Complaint.

17. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 regarding the police investigation and conclusions and, therefore, denies the allegations.

18. Lattimer admits only so much of the allegations of Paragraph 18 that allege or can be construed to allege that Lattimer contacted law enforcement and turned any alleged misconduct over to them for further investigation. Further responding, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 18 of the Amended Complaint, and, therefore, denies the allegations.

19. Lattimer admits only so much of the allegations of Paragraph 19 that allege or can be construed to allege that Lattimer contacted law enforcement and turned any alleged misconduct over to them for further investigation. Further responding, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 19 of the Amended Complaint, and, therefore, denies the allegations.

20. Lattimer submits that the allegations of Paragraph 20 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 and, therefore, denies the allegations.

21. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 21 of the Amended Complaint, and, therefore, denies the allegations.

22. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Amended Complaint, and, therefore, denies the allegations.

23. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 23 of the Amended Complaint, and, therefore, denies the allegations.

24. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 24 of the Amended Complaint, and, therefore, denies the allegations.

25. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Amended Complaint, and, therefore, denies the allegations.

26. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Amended Complaint, and, therefore, denies the allegations.

27. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Amended Complaint, and, therefore, denies the allegations.

28. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of the Amended Complaint, and, therefore, denies the allegations.

29. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 of the Amended Complaint, and, therefore, denies the allegations.

**FOR A FIRST DEFENSE TO THE
FIRST CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence – Wrongful Death)**

30. Answering Paragraph 30 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 29 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

31. Lattimer admits the allegations of Paragraph 31 of the Amended Complaint.

32. Lattimer submits that the allegations of Paragraph 32 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 and, therefore, denies the allegations.

33. Lattimer submits that the allegations of Paragraph 33 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and, therefore, denies the allegations.

34. Lattimer submits that the allegations of Paragraph 34 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as

to the truth of the allegations of Paragraph 34 and, therefore, denies the allegations, including all subparts.

35. Lattimer denies the allegations directed toward her of Paragraph 35 of the Amended Complaint. Further responding, the remaining allegations of Paragraph 35 of the Amended Complaint are directed toward defendants other than Lattimer to which no response of Lattimer is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

36. Lattimer submits that the allegations of Paragraph 36 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 36 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

37. Lattimer submits that the allegations of Paragraph 37 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 37 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

38. Lattimer denies the allegations directed against her in Paragraph 38 of the Amended Complaint. Further responding, Lattimer submits that the remaining allegations of Paragraph 38 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer denies the allegations.

39. Lattimer denies the allegations directed against her in Paragraph 39 of the Amended Complaint, including the prayer for relief. Further responding, Lattimer submits that

the remaining allegations of Paragraph 39 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer denies the allegations.

**FOR A FIRST DEFENSE TO THE
SECOND CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence – Survival)**

40. Answering Paragraph 40 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 39 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

41. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Amended Complaint, and, therefore, denies the allegations.

42. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42 of the Amended Complaint, and, therefore, denies the allegations.

43. Lattimer submits that the allegations of Paragraph 43 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 and, therefore, denies the allegations.

44. Lattimer denies the allegations directed against her in Paragraph 44 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
THIRD CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence Supervision – Wrongful Death)**

45. Answering Paragraph 45 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 44 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

46. Lattimer submits that the allegations of Paragraph 46 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 46 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

47. Lattimer submits that the allegations of Paragraph 47 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 47 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

48. Lattimer submits that the allegations of Paragraph 48 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 48 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

49. Lattimer submits that the allegations of Paragraph 49 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 49 of the Amended Complaint constitute legal conclusions to

which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

50. Lattimer submits that the allegations of Paragraph 50 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 50 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

51. Lattimer submits that the allegations of Paragraph 51 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 51 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

52. Lattimer denies the allegations directed against her in Paragraph 52 of the Amended Complaint, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
FOURTH CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence Supervision - Survival)**

53. Answering Paragraph 53 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 52 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

54. Lattimer submits that the allegations of Paragraph 54 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer denies the allegations.

55. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 55 of the Amended Complaint, and, therefore, denies the allegations.

56. Lattimer submits that the allegations of Paragraph 56 of the Amended Complaint are directed toward defendants other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 56 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

57. Lattimer denies the allegations directed against her of Paragraph 57 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
FIFTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Wrongful Death)**

58. Answering Paragraph 58 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 57 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

59. Lattimer admits only so much of the allegations of Paragraph 59 of the Amended Complaint that allege or can be construed to allege that Lattimer was formerly the Director of Resident Nursing at Park Pointe. Any allegations in addition to or inconsistent with the above response are denied. Further responding, Lattimer denies the remaining allegations in Paragraph 59.

60. Lattimer denies the allegations of Paragraph 60 of the Amended Complaint, including all subparts.

61. Answering Paragraph 61, Lattimer responds that the allegations constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

62. Lattimer denies the allegations of Paragraph 62 of the Amended Complaint, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
SIXTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Survival)**

63. Answering Paragraph 63 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 62 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

64. Lattimer denies the allegations of Paragraph 64 of the Amended Complaint.

65. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 65 of the Amended Complaint, and, therefore, denies the allegations.

66. Lattimer denies the allegations of Paragraph 66 of the Amended Complaint.

67. Lattimer denies the allegations directed against her of Paragraph 67 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE
SEVENTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Wrongful Death)**

68. Answering Paragraph 68 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 67 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

69. Lattimer submits that the allegations of Paragraph 69 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 69 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

70. Lattimer submits that the allegations of Paragraph 70 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 70 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

71. Lattimer submits that the allegations of Paragraph 71 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 71 and, therefore, denies the allegations.

72. Lattimer submits that the allegations of Paragraph 72 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 72 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

73. Lattimer submits that the allegations of Paragraph 73 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 73 of the Amended Complaint constitute legal conclusions to

which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

74. Lattimer submits that the allegations of Paragraph 74 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 74 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

75. Lattimer submits that the allegations of Paragraph 75 of the Amended Complaint are directed toward a defendant other than Lattimer. To the extent the Court may deem a response is required, Lattimer denies the allegations, including the prayer for relief.

**FOR A FIRST DEFENSE TO THE
EIGHTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct – Survival)**

76. Answering Paragraph 76 of the Amended Complaint, Lattimer incorporates by reference her responses to Paragraphs 1 through 75 of Plaintiff's Amended Complaint as fully and effectively as if set forth verbatim herein.

77. Lattimer submits that the allegations of Paragraph 77 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 77 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

78. Lattimer is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 78 of the Amended Complaint, and, therefore, denies the allegations.

79. Lattimer submits that the allegations of Paragraph 79 of the Amended Complaint are directed toward a defendant other than Lattimer. Further responding, the remaining allegations set forth in Paragraph 79 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent the Court may deem a response is required, Lattimer denies the allegations.

80. Lattimer denies the allegations directed against her of Paragraph 80 of the Amended Complaint.

FOR A SECOND DEFENSE

81. Lattimer submits that Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

82. Lattimer affirmatively pleads the provisions of the Federal Arbitration Act, 9 U.S.C.S. § 1, et seq., and the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq., as well as all pertinent state and federal precedent construing and applying applicable provisions thereof.

FOR A FOURTH DEFENSE

83. Lattimer affirmatively pleads, and incorporates herein by reference in their entirety, the terms and conditions set forth in the Resident Contract.

FOR A FIFTH DEFENSE

84. Lattimer alleges that any and all causes of action against her are barred by the applicable statutes of limitation.

FOR A SIXTH DEFENSE

85. Lattimer pleads insufficiency of service of process, and, therefore, this Court lacks jurisdiction over her pursuant to Rules 12(b)(2) and 12(b)(5) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

86. Lattimer alleges that this Court lacks subject matter jurisdiction over this lawsuit and accordingly should dismiss it.

FOR AN EIGHTH DEFENSE

87. Lattimer submits that Plaintiff's Amended Complaint fails for improper venue pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure and the rule of law established in *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 609 S.E.2d 286 (2005) and S.C. Code Ann. § 15-7-30, as amended by the Economic Development, Citizens and Small Business Protection Act of 2005, effective to causes of action arising on or after July 1, 2005.

FOR A NINTH DEFENSE

88. Lattimer alleges that any injury or damage sustained by Plaintiff's decedent were due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom Lattimer had or has no authority or control. Therefore, Lattimer is not liable to Plaintiff in any amount.

FOR A TENTH DEFENSE

89. Lattimer pleads that her actions were based on reasonable cause, and any investigation was conducted in a reasonable manner and time, and, accordingly, Lattimer pleads S.C. Code Ann. § 16-13-140 as a complete defense to this action.

FOR AN ELEVENTH DEFENSE

90. Lattimer alleges that any statements or actions by Park Pointe's employees are subject to an absolute or a qualified privilege under South Carolina law, for which reason Lattimer is not liable to Plaintiff.

FOR A TWELFTH DEFENSE

91. Lattimer submits that she is entitled to a set-off or credit for any amount paid to Plaintiff by any third party as compensation for the injuries and damages for which Plaintiff seeks recovery.

FOR A THIRTEENTH DEFENSE

92. Lattimer alleges, upon information and belief, that any damages alleged to have been caused by Lattimer, which are specifically denied, must be apportioned between Lattimer and other tortfeasors pursuant to S.C. Code Ann. § 15-78-100(c).

FOR A FOURTEENTH DEFENSE

93. Lattimer pleads applicability of the 2005 Tort Reform Statutes, S.C. Code Ann. §§ 15-38-15, 15-7-30, 15-7-100, 36-2-803(B), and other pertinent statutory sections.

FOR A FIFTEENTH DEFENSE

94. Lattimer alleges that if she is determined that Lattimer is liable to Plaintiff, then recovery against Lattimer may not exceed the limitations provided by S.C. Code Ann. §§ 15-78-20 and 15-78-120.

FOR A SIXTEENTH DEFENSE

95. Lattimer alleges that any claims brought against her for punitive damages are barred pursuant to S.C. Code Ann. § 15-78-120(b).

FOR A SEVENTEENTH DEFENSE

96. Lattimer denies any and all liability, but in the alternative, pleads that at all times Lattimer's actions were in good faith and there existed a reasonable basis for these actions, such actions being for a proper purpose and by a proper method.

FOR AN EIGHTEENTH DEFENSE

97. Lattimer is not liable for any alleged action based on the Business Judgment Rule, S.C. Code Ann. § 33-8-300 and S.C. Code Ann. § 33-31-830.

FOR A NINETEENTH DEFENSE

98. Lattimer pleads that she is immune from suit, including but not limited to the immunity provided by S.C. Code Ann. § 33-31-834.

FOR A TWENTIETH DEFENSE

99. Lattimer pleads applicability of the Economic Development, Citizens and Small Business Protection Act of 2005, effective July 1, 2005, which amended S.C. Code Ann. §§ 15-38-15 [joint and several liability], 15-7-30 [venue], 15-7-100 [venue], 36-2-803(B) [jurisdiction], and other pertinent statutory sections, and invokes the remedies and procedures provided therein.

FOR A TWENTY-FIRST DEFENSE

100. Lattimer submits that Plaintiff's Amended Complaint fails, in whole or in part, because the Plaintiff, as named in the Amended Complaint, lacks standing to prosecute this action.

FOR A TWENTY-SECOND DEFENSE

101. Lattimer pleads the terms of the South Carolina Uniform Contribution Among Tortfeasors Act, S.C. Code Ann. § 15-38-15, as a limit to any amount potentially owed to Plaintiff and the right to apportion liability among all parties.

FOR A TWENTY-THIRD DEFENSE

102. Lattimer denies Plaintiff's claim for punitive damages. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth or corporate status violates due process guarantees;
- d. The juror's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;
- f. Plaintiff's claims for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Lattimer; and
- g. Any award of punitive damages for conduct or activity of Lattimer outside the State of South Carolina is inconsistent with the interest of federalism.

Plaintiff's claim for punitive damages violates the federal doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government, which invades the province of the legislative branch of government.

FOR A TWENTY-FOURTH DEFENSE

103. Lattimer submits that she has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's

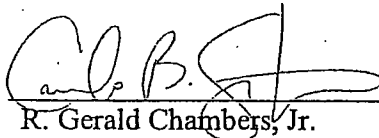
allegations. Lattimer intends to act as best she can to inform herself of the pertinent facts and prevailing circumstances surrounding any reported damage as alleged in Plaintiff's Amended Complaint, and give notice of her intent to assert any further defenses that her information gathering process may indicate are supported by fact and law. These defenses may include, but are not limited to, a defense that the action is barred in whole or in part by any applicable statute, contract, release, covenant, and the doctrine of laches. Lattimer thus reserves the right to amend this Answer and assert additional defenses.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Lattimer prays that the Amended Complaint be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

TURNER, PADGET, GRAHAM & LANEY, P.A.

September 20, 2012

By:



R. Gerald Chambers, Jr.
Carmelo B. Sammataro
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

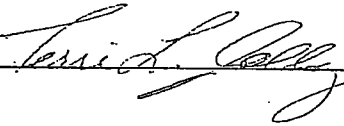
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that this 20th day of September 2012 a copy of the foregoing **ANSWER OF DEFENDANT NEVA LATTIMER TO AMENDED COMPLAINT** has been served upon other counsel of record, by mailing same, postage prepaid in the United States Mail, addressed to the following:

Richard A. Harpootlian, Esquire
Graham L. Newman, Esquire
M. David Scott, Esquire
Richard A. Harpootlian, P.A.
1410 Laurel Street
Columbia, SC 29201

ATTORNEYS FOR PLAINTIFF



FILED-RECEIVED
2012 SEP 21 AM 11:58
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Paul Sullivan as Personal Representative)
of the Estate of Pauline C. Cook,)

CASE NO. 2012-CP-46-2692

Plaintiff,)

vs.)

Park Pointe Village, Inc., a wholly owned)
subsidiary of ACTS Retirement-Life)
Communities, Inc., Neva Lattimer,)
and Marvin Lawrence,)

Defendants.)

AMENDED
COMPLAINT
(Jury Trial Demanded)

FILED-RECEIVED
2012 SEP -5 PM 12:52
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

The Plaintiff, Paul Sullivan as Personal Representative of the Estate of Pauline C. Cook, brings this action against the Defendants Park Pointe Village ("PPV"), Neva Lattimer, and Marvin Lawrence. The Plaintiff, complaining of the Defendants herein, will respectfully show unto this court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Paul Sullivan as Personal Representative of the Estate of Pauline C. Cook ("Cook"), was a citizen of the State of South Carolina and a resident of the York County at her time of death.
2. Defendant Park Pointe Village, Inc. ("PPV") is a corporation organized under the laws of the State of Pennsylvania. Upon information and belief, PPV's corporate headquarters are located in the State of South Carolina. Upon information and belief, PPV is a wholly-owned subsidiary and alter ego of ACTS Retirement-Life Communities, Inc. ("ACTS"), a

corporation organized under the laws of the State of Pennsylvania whose corporate headquarters are located in the State of Pennsylvania.

3. Defendant Neva Lattimer is an individual who at all times relevant to this complaint acted within the scope and course of her employment as an employee, servant, and/or agent of Defendant PPV. Defendant Lattimer resides in York County, South Carolina.
4. Defendant Marvin Lawrence is an individual who at all times relevant to this complaint acted within the scope and course of his employment as an employee, servant, and/or agent of Defendant PPV. Defendant Lawrence resides in York County, South Carolina.
5. This Court has jurisdiction over the subject matter of this action pursuant to Article V, Section 11 of the South Carolina Constitution.
6. Venue is proper in York County pursuant to S.C. Code Ann. § 15-7-30(C) in that at least one the Defendants resides in York County and the most substantial part of the acts and omissions giving rise to this complaint occurred in York County.

FACTUAL BACKGROUND

7. At all times relevant herein, Pauline C. Cook was a resident of Park Pointe Village located at 3025 Chesbrough Boulevard, Rock Hill, South Carolina 29732.
8. Park Point Village is a retirement community providing independent living residences for senior citizens and access to assisted living and nursing care services for its residents.
9. Park Pointe Village, Inc. is upon information and belief, a wholly-owned subsidiary of ACTS Retirement-Life Communities, Inc.
10. Pauline Cook and her husband retired to an apartment in Park Point Village in 1998. After her husband died, Pauline moved to another smaller apartment in Park Pointe

Village, but was not able to live alone for long due to her propensity to fall. In July 2011, Pauline moved to PPV's assisted living facility.

11. On Saturday November 12, 2011, Pauline discovered someone had been writing checks from her BB&T checking account and forging her signature on the checks. Pauline later determined all the forged checks were made payable to "Braquette Walton."
12. Unfamiliar with this name, Pauline asked several PPV employees and other residents of Park Pointe Village if they could identify "Braquette Walton."
13. One of the PPV employees Pauline spoke with was Marvin Lawrence ("Lawrence"), a chef employed in the Park Pointe Village kitchen. Upon information and belief, Lawrence identified "Braquette Walton" to Pauline as a PPV employee and told Pauline she should speak with Neva Lattimer, who was Braquette Walton's supervisor.
14. Pauline then informed Neva Lattimer ("Lattimer"), a PPV employee and the Director of Resident Nursing at Park Pointe Village, that Pauline had discovered irregularities in her checking account and that Braquette Walton was evidently stealing and forging Pauline's checks.
15. Upon information and belief, while Pauline was meeting with Lattimer to discuss the matter, as Lawrence had suggested, Lawrence contacted Braquette Walton to inform her of Pauline's suspicions. Thus, Walton was aware from the outset that Pauline suspected Walton of serious criminal conduct.
16. At approximately 5:00 p.m. on November 12, Pauline and Lattimer contacted law enforcement and met with members of the Rock Hill Police Department at Park Pointe Village.

17. Immediately, police obtained evidence and suspected Walton stole, forged and cashed Pauline's checks, and Lattimer, Walton's supervisor had actual knowledge of Walton's conduct.
18. Despite knowing of the allegations of Walton's criminal conduct, Lattimer chose to take no immediate action against Walton. Lattimer did not change Walton's work schedule, she took no action to bar Walton from the premises or to prevent Walton's reentry, and she did not inform any staff that police had substantial evidence that Walton had stolen from Pauline.
19. Instead, Lattimer assured Pauline that she would do so when Walton returned to work on her next scheduled day.
20. Acting on the knowledge and information provided to her by Lawrence, Walton, using her electronic entry card that Lattimer allowed her to retain, entered the Park Pointe Village assisted living building where Pauline lived shortly before 8 p.m. on the night of November 12.
21. Upon gaining entry to the facility, Walton concealed herself in the "Tree Room" until the hall was clear. Walton continuously called the nurses' station phone to monitor the nurses' locations, hanging up the phone as soon as it was answered. Despite these unusual activities occurring, the nurses on duty never sought help from security or law enforcement and never attempted to secure or even monitor Pauline's room.
22. Walton waited until the hallway was clear before entering Pauline's unguarded and unlocked room. The lights were turned off. Upon entering the room, Walton confronted Pauline about the matter. Walton admitted she cashed Pauline's checks and offered to pay Pauline back.

23. When Pauline attempted to reach for the phone in her room, Walton grabbed the phone from Pauline and – as Pauline tried to call out for help – began to smother Pauline. As Pauline struggled for her life, Walton beat her about her face and body, causing bruises and other wounds to Pauline's torso, arms, neck, and face.
24. After Pauline stopped moving, Walton checked her for a heartbeat in three separate locations but found no pulse. Walton then turned on the light in Pauline's room and saw Pauline's blood covering the pillowcases, the headboard, and the sheets of Pauline's bed.
25. Walton decided to stage the scene of Pauline's murder and attempt to make it appear to be an accidental death. Walton used a bed sheet to drag Pauline's lifeless body to the shower; she removed Pauline's nightgown; and placed Pauline's naked body halfway inside of the shower, to make it appear as though Pauline had fallen while bathing.
26. Walton packed the sheets and pillows that were soaked with Pauline's blood into a plastic bag. She then turned on the shower and left the room. Upon information and belief, she disposed of the evidence of the murder in a trash compactor outside of the facility.
27. Only on the following day, Sunday, November 13, 2011, did a PPV employee decide to finally check on Pauline. Linda Roach, a PPV employee, entered Pauline's room to make sure she was awake. Pauline was not in bed and Roach noticed water coming from under the bathroom door. When Roach opened the door she found Pauline laying half way in the stand-up shower and half way out into the bathroom. The shower was on and the cold water was pouring all over Pauline's body. Pauline's upper body was covering the shower drain, and the water was flooding out into the bathroom and into the rest of the apartment.

28. An autopsy concluded that from the bruising around Pauline's eyes, nose and mouth, it appeared that Pauline's death was caused from being suffocated and the bruising was not consistent with an accidental fall. There was petechia from the neck-up and in the eyes and abrasions to the left cheek, under the eyes and to sides, tip and bridge of Pauline's nose. There were also two tongue abrasions noted, one was at the tip of the tongue, that appeared to indicate pushing against a tooth and one was to the right rear that appeared to be a bite mark. A conjunctival hemorrhage was observed in Pauline's left eye.
29. Walton was arrested for murder on November 17, 2011. Shortly thereafter, Walton gave a statement describing the events on November 12, 2011. Her statement was consistent with what is set forth above.

AS A FIRST CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence - Wrongful Death)

30. Paragraphs one (1) through twenty (29) are repeated herein verbatim.
31. At all times relevant to this complaint, Pauline was a resident of Park Pointe Village.
32. By entering into a contract with Pauline C. Cook to provide assisted living services to her as a resident of Park Pointe Village, Defendant PPV assumed a duty to use due care while providing such services. This duty included: 1) providing security to its residents, visitors, and employees by controlling access to the premises; 2) notifying personnel of the duty to report persons who are wrongfully on the premises; and 3) challenging any suspicious activity or individuals on the premises.
33. Defendant PPV further owed a duty of due care to the assisted living facility's employees, residents, and visitors, including Pauline, to guard against any foreseeable criminal conduct or threat on the facility's premises. By being informed of Walton's theft

from Pauline, Defendant PPV and their employees were aware that Walton posed a foreseeable threat to Pauline and other Park Pointe Village residents. By being personally informed of Walton's theft from Pauline, Defendants Lattimer and Lawrence also were aware that Walton posed a foreseeable threat to Pauline and other Park Point Village residents and thus owed a duty of due care to prevent Walton from causing harm to Pauline.

34. Defendant PPV, by and through their own actions or, via *respondeat superior*, the actions of their employees, breached these duties in at least the following regards:

- 1) By failing to protect Pauline from foreseeable criminal acts of Walton;
- 2) By failing to provide adequate security measures;
- 3) By failing to prohibit Walton from gaining access to Pauline;
- 4) By informing Walton of the investigation of her possible theft of checks from Pauline; and
- 5) Through such other actions that may be revealed by discovery.

35. Defendant Lattimer breached her duty of due care to Pauline by failing to confront Walton with the criminal allegations made against her or otherwise to prohibit Walton from gaining physical access to Pauline. Whereas Defendant Lattimer, at all times relevant to this complaint, acted as the employee, servant, and/or agent of Defendant PPV, all breaches of duty committed by Defendant Lattimer are directly attributable to PPV via *respondeat superior*.

36. Defendant Lawrence breached his duty of due care to Pauline by informing Walton of the investigation being conducted regarding her actions despite the knowledge that such conduct could foreseeably imperil Pauline. Whereas Defendant Lawrence, at all times

relevant to this complaint, acted as the employee, servant, and/or agent of Defendant PPV, all breaches of duty committed by Defendant Lawrence are directly attributable to PPV via *respondeat superior*.

37. As a direct and proximate result of Defendant PPV's breaches of duty, Pauline was physically assaulted by Braquette Walton and suffered severe injuries that caused her death.

38. Defendants PPV, Lattimer and Lawrence's failures to prevent or to take reasonable care to prevent serious harm from occurring upon the assisted living facility's premises and specifically to Pauline Cook constituted reckless indifference to the safety of Pauline Cook and rose to the level of gross negligence, wilfulness, and wantonness.

39. As a result of Defendants' negligence and gross negligence and damages resulting therefrom, the Estate of Pauline Cook is entitled to recover from the Defendants all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants all proceeds receivable due to the wrongful death of Pauline. And due to the gross negligence, recklessness, willfulness and wantonness of the Defendants' actions, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendants the seriousness of their actions.

AS A SECOND CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligence - Survival)

40. Paragraphs one (1) through thirty-nine (39) are repeated herein verbatim.

41. Prior to her death, Pauline suffered severe and extreme conscious pain and suffering and mental distress as a result of being beaten and suffocated by Walton.

42. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

43. Pauline's conscious pain and suffering pain were directly and proximately caused by the breaches of duty committed by PPV set forth more fully above.

44. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in paragraphs 41 and 42, above.

AS A THIRD CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligent Supervision - Wrongful Death)

45. Paragraphs one (1) through forty-four (44) are repeated herein verbatim.

46. At all times relevant to the allegations set forth in this Complaint, Defendant PPV had a duty to exercise reasonable care to control Walton's conduct, described more fully above, even if that conduct was outside the scope and course of Walton's employment.

47. When she committed the heinous acts set forth above, Walton was upon the premises of her employer, PPV, and she was privileged to enter these premises only by reason of her employment.

48. Defendant PPV knew or should have known that it had the ability to control Walton. For example, after learning of Walton's theft from Pauline, PPV could have and reasonably should have rescinded or revoked Walton's privileges to be upon the property.

49. Defendant PPV knew or should have known that it was necessary to prevent Walton from reentering the property by reason of the serious accusations made against her and the evidence indicating her guilt. Further, PPV had the opportunity and means to exercise this control by banning Walton from the premises by revoking her security access device.

50. Defendant PPV breached their duty by permitting Walton to reenter the property, where she committed the acts described above.

51. As a direct and proximate result of PPV's breaches, Pauline was brutally killed by Walton.

52. As a result of Defendants' negligence and gross negligence and damages resulting therefrom, the Estate of Pauline Cook is entitled to recover from the Defendant all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendant PPV all proceeds receivable due to the wrongful death of Pauline. Due to the gross negligence, recklessness, willfulness and wantonness of the Defendant's actions, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendant the seriousness of its actions.

AS A FOURTH CAUSE OF ACTION AGAINST DEFENDANT PPV
(Negligent Supervision - Survival)

53. Paragraphs one (1) through fifty-two (52) are repeated herein verbatim.

54. Prior to her death, Pauline suffered severe and extreme conscious pain and suffering and mental distress as a result of being beaten and suffocated by Walton, all of which would have been prevented had PPV exercised reasonable care in its supervision of Walton.

55. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

56. Pauline's conscious pain and suffering were directly and proximately caused by the breaches of duty committed by PPV in failing to adequately supervise Walton, as set forth more fully above.

57. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in Paragraphs 54 and 55 above.

AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Wrongful Death)

58. Paragraphs one (1) through fifty-seven (57) are repeated herein verbatim.

59. By reason of her position as director of resident nursing, Defendant Lattimer owed Pauline a duty to exercise due care in all aspects of her job. At all times relevant hereto, Defendant Lattimer was acting within the scope and course of her employment with PPV.

60. Lattimer breached this duty in the following ways:

- a) By failing to adopt and enforce policies that would have prevented Walton from having access to Pauline's checkbook and stealing and forging Pauline's checks;
- b) By failing to adequately investigate and take appropriate action against Walton once she discovered Walton's criminal conduct;
- c) By failing to prevent Walton from reentering the property and denying her access to patients;
- d) By failing to alert nurses and staff that Walton posed a potential threat to Pauline by reason of the criminal accusations against Walton;
- e) By failing to direct and instruct nurses and staff, including security staff, that Pauline's room should be constantly monitored after Pauline discovered and reported Walton's criminal conduct; and

f) By failing to discover and detect Walton's entry at Park Pointe Village on the night of November 11, 2011, and failing to take appropriate action to prevent Walton from entering Pauline's room and murdering her.

61. Each of the acts alleged in subsections (a) through (f) of paragraph 61, above, constitutes a separate occurrence of gross negligence, wanton and reckless conduct, all of which combined to directly and proximately cause Pauline's death.

62. As a direct and proximate result of Defendant Lattimer's gross negligence, willful, wanton and reckless misconduct, Pauline's death and the damages resulting therefrom, the Estate of Pauline Cook is entitled to recover from the Defendant all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants all proceeds receivable due to the wrongful death of Pauline. Due to the gross negligence, recklessness, willfulness and wantonness of the Defendant Lattimer, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendant Lattimer the seriousness of her actions.

AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Survival)

63. Paragraphs one (1) through sixty-two (62) are repeated herein verbatim.

64. As a direct and proximate result of the six separate occurrences of gross negligence, willful, wanton and reckless misconduct alleged against Defendant Lattimer in Paragraph 60, Pauline suffered extreme and severe conscious pain and suffering and mental distress, all of which would have been prevented had Lattimer exercised even slight care in discharging her duty to Pauline.

65. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

66. Pauline's conscious pain and suffering pain were directly and proximately caused by the breaches of duty committed by Defendant Lattimer, as set forth more fully in paragraph 60, above.

67. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in paragraphs 64 and 65, above.

AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Wrongful Death)

68. Paragraphs one (1) through sixty-seven (67) are repeated herein verbatim.

69. By reason of his position as an employee and agent of PPV, Defendant Lawrence likewise owed Pauline a duty to exercise due care in all aspects of his job. At all times relevant hereto, Defendant Lawrence was acting within the scope and course of his employment with PPV.

70. Defendant Lawrence breached this duty by calling Walton and informing her that Pauline had discovered Walton's theft and forgery.

71. Defendant Lawrence knew or reasonably should have known that his conduct would imperil Pauline because Walton would take action to avoid detection of her criminal conduct.

72. Defendant Lawrence's conduct was grossly negligent, willful, wanton and reckless and placed Pauline's health and safety in grave danger.

73. Defendant Lawrence's conduct described above constitutes an occurrence separate and apart from those occurrences alleged herein against Defendant Lattimer.

74. As a direct and proximate result of Defendant Lawrence's failure to exercise even slight care, his willful, wanton and reckless actions, Walton murdered Pauline.

75. The Estate of Pauline Cook is entitled to recover from Defendant Lawrence all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants all proceeds receivable due to the wrongful death of Pauline. Due to the gross negligence, recklessness, willfulness and wantonness of the Defendant Lawrence, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendant Lawrence the seriousness of his actions.

AS A EIGHTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Survival)

76. Paragraphs one (1) through seventy-five (75) are repeated herein verbatim.

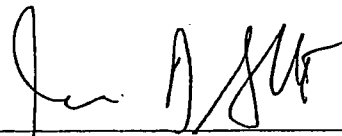
77. As a direct and proximate result of the occurrence of gross negligence, willful, wanton and reckless misconduct alleged against Defendant Lawrence in Paragraphs 70, 71 and 72, Pauline suffered extreme and severe conscious pain and suffering and mental distress, all of which would have been prevented had Lawrence exercised even slight care in discharging his duty to Pauline.

78. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

79. Pauline's conscious pain and suffering pain were directly and proximately caused by the breaches of duty committed by Defendant Lawrence, as set forth more fully in Paragraph 70, 71, and 72 above.

80. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in paragraphs 77 and 78, above.

WHEREFORE, Plaintiff prays for a jury trial on all causes of action set forth above, and that judgment be entered against the Defendants. Plaintiff prays for an award of damages sufficient to compensate for the damages Pauline Cook suffered as a result of the Defendants' acts and omissions, set forth above, including damages resulting from Pauline's wrongful death, to compensate Pauline's estate for the conscious pain and suffering she endured prior to her death, all medical bills incurred, all funeral bills incurred and such other damages as may be revealed through discovery. Plaintiff further prays for an award of punitive damages in an amount sufficient to impress upon all Defendants the seriousness of their conduct and to deter similar conduct by Defendants and others in the future. Finally, Plaintiff prays for such other relief as the Court deems just and proper.



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
September 5, 2012

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF YORK)

CASE NO.

2012-CP-46-2692

Paul Sullivan as Personal Representative
of the Estate of Pauline C. Cook,

Plaintiff,

vs.

ACTS Retirement-Life Communities, Inc.,
d/b/a Park Pointe Village, Neva Lattimer,
and Marvin Lawrence,

Defendants.

COMPLAINT
(Jury Trial Demanded)

FILED-RECEIVED
2012 JUL 25 PM 1:13
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

The Plaintiff, Paul Sullivan as Personal Representative of the Estate of Pauline C. Cook, brings this action against the Defendant ACTS Retirement-Life Communities, Inc. d/b/a Park Pointe Village ("ACTS"), and ACTS' employees Neva Lattimer and Marvin Lawrence. The Plaintiff, complaining of the Defendants herein, will respectfully show unto this court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Paul Sullivan as Personal Representative of the Estate of Pauline C. Cook ("Cook"), was a citizen of the State of South Carolina and a resident of the York County at her time of death.
2. Defendant ACTS Retirement-Life Communities, Inc. ("ACTS") is a corporation organized under the laws of the State of Pennsylvania whose corporate headquarters are located in the State of Pennsylvania.
3. Defendant Park Pointe Village, Inc. ("PPV"), is a corporation organized under the laws of the State of Pennsylvania. Upon information and belief, PPV's corporate headquarters are

located in the State of South Carolina and PPV is a wholly-owned subsidiary or alter ego of ACTS.

4. Defendant Neva Lattimer is an individual who at all times relevant to this complaint acted within the scope and course of her employment as an employee, servant, and/or agent of Defendant ACTS Retirement-Life Communities, Inc. Defendant Lattimer resides in York County, South Carolina.
5. Defendant Marvin Lawrence is an individual who at all times relevant to this complaint acted within the scope and course of his employment as an employee, servant, and/or agent of Defendant ACTS Retirement-Life Communities, Inc. Defendant Lawrence resides in York County, South Carolina.
6. This Court has jurisdiction over the subject matter of this action pursuant to Article V, Section 11 of the South Carolina Constitution.
7. Venue is proper in York County pursuant to S.C. Code Ann. § 15-7-30(C) in that at least one the Defendants resides in York County and the most substantial part of the acts and omissions giving rise to this complaint occurred in York County.

FACTUAL BACKGROUND

8. At all times relevant herein, Pauline C. Cook was a resident of Park Pointe Village located at 3025 Chesbrough Boulevard, Rock Hill, South Carolina 29732.
9. Park Point Village is a retirement community providing independent living residences for senior citizens and access to assisted living and nursing care services for its residents.
10. Pauline Cook and her husband retired to an apartment in Park Point Village in 1998. After her husband passed, Pauline moved to another smaller apartment in Park Pointe

Village, but was not able to live alone for long due to her propensity to fall. In July 2011, Pauline moved to PPV's assisted living facility.

11. On Saturday November 12, 2011, Pauline discovered someone had been writing checks from her BB&T checking account and forging her signature on the checks. Pauline later determined all the forged checks were made payable to "Braquette Walton."
12. Unfamiliar with this name, Pauline asked several ACTS' and PPV employees and other residents of Park Pointe Village if they could identify "Braquette Walton."
13. One of the ACTS/PPV employees Pauline spoke with was Marvin Lawrence ("Lawrence"), a chef employed in the Park Pointe Village kitchen. Upon information and belief, Lawrence identified "Braquette Walton" to Pauline as an ACTS/PPV employee and told Pauline she should speak with Neva Lattimer, who was Braquette Walton's supervisor.
14. Pauline then informed Neva Lattimer ("Lattimer"), an ACTS/PPV employee and the Director of Resident Nursing at Park Pointe Village, that Pauline had discovered irregularities in her checking account and that Braquette Walton was evidently stealing and forging Pauline's checks.
15. Upon information and belief, while Pauline was meeting with Lattimer to discuss the matter, as Lawrence had suggested, Lawrence contacted Braquette Walton to inform her of Pauline's suspicions. Thus, Walton was aware from the outset that Pauline suspected Walton of serious criminal conduct.
16. At approximately 5:00 p.m. on November 12, Pauline and Lattimer contacted law enforcement and met with members of the Rock Hill Police Department at Park Pointe Village.

17. Immediately, police obtained evidence and suspected Walton stole, forged and cashed Pauline's checks, and Lattimer, Walton's supervisor had actual knowledge of Walton's conduct.
18. Despite knowing of the allegations of Walton's criminal conduct, Lattimer chose to take no immediate action against Walton. Lattimer did not change Walton's work schedule, she took no action to bar Walton from the premises or to prevent Walton's reentry, and she did not inform any staff that police had substantial evidence that Walton had stolen from Pauline.
19. Instead, Lattimer assured Pauline that she would do so when Walton returned to work on her next scheduled day.
20. Acting on the knowledge and information provided to her by Lawrence, Walton, using her electronic entry card that Lattimer allowed her to retain, entered the Park Pointe Village assisted living building where Pauline lived shortly before 8 p.m. on the night of November 12.
21. Upon gaining entry to the facility, Walton concealed herself in the "Tree Room" until the hall was clear. Walton continuously called the nurses' station phone to monitor the nurses' locations, hanging up the phone as soon as it was answered. Despite these unusual activities occurring, the nurses on duty never sought help from security or law enforcement and never attempted to secure or even monitor Pauline's room.
22. Walton waited until the hallway was clear before entering Pauline's unguarded and unlocked room. The lights were turned off. Upon entering the room, Walton confronted Pauline about the matter. Walton admitted she cashed Pauline's checks and offered to pay Pauline back.

23. When Pauline attempted to reach for the phone in her room, Walton grabbed the phone from Pauline and – as Pauline tried to call out for help – began to smother Pauline. As Pauline struggled for her life, Walton beat her about her face and body, causing bruises and other wounds to Pauline's torso, arms, neck, and face.
24. After Pauline stopped moving, Walton checked her for a heartbeat in three separate locations but found no pulse. Walton then turned on the light in Pauline's room and saw Pauline's blood covering the pillowcases, the headboard, and the sheets of Pauline's bed.
25. Walton decided to stage the scene of Pauline's murder and attempt to make it appear to be an accidental death. Walton used a bed sheet to drag Pauline's lifeless body to the shower; she removed Pauline's nightgown; and placed Pauline's naked body halfway inside of the shower, to make it appear as though Pauline had fallen while bathing.
26. Walton packed the sheets and pillows that were soaked with Pauline's blood into a plastic bag. She then turned on the shower and left the room. Upon information and belief, she disposed of the evidence of the murder in a trash compactor outside of the facility.
27. Only on the following day, Sunday, November 13, 2011, did an ACTS/PPV employee decide to finally check on Pauline. Linda Roach, an ACTS/PPV employee, entered Pauline's room to make sure she was awake. Pauline was not in bed and Roach noticed water coming from under the bathroom door. When Roach opened the door she found Pauline laying half way in the stand-up shower and half way out into the bathroom. The shower was on and the cold water was pouring all over Pauline's body. Pauline's upper body was covering the shower drain, and the water was flooding out into the bathroom and into the rest of the apartment.

28. An autopsy concluded that from the bruising around Pauline's eyes, nose and mouth, it appeared that Pauline's death was caused from being suffocated and the bruising was not consistent with an accidental fall. There was petechia from the neck-up and in the eyes and abrasions to the left cheek, under the eyes and to sides, tip and bridge of Pauline's nose. There were also two tongue abrasions noted, one was at the tip of the tongue, that appeared to indicate pushing against a tooth and one was to the right rear that appeared to be a bite mark. A conjunctival hemorrhage was observed in Pauline's left eye.

29. Walton was arrested for murder on November 17, 2011. Shortly thereafter, Walton gave a statement describing the events on November 12, 2011. Her statement was consistent with what is set forth above.

AS A FIRST CAUSE OF ACTION AGAINST DEFENDANTS ACTS AND PPV
(Negligence - Wrongful Death)

30. Paragraphs one (1) through twenty-nine (29) are repeated herein verbatim.

31. At all times relevant to this complaint, Pauline was a resident of Park Pointe Village.

32. By entering into a contract with Pauline C. Cook to provide assisted living services to her as a resident of Park Pointe Village, Defendants ACTS and PPV assumed a duty to use due care while providing such services. This duty included: 1) providing security to its residents, visitors, and employees by controlling access to the premises; 2) notifying personnel of the duty to report persons who are wrongfully on the premises; and 3) challenging any suspicious activity or individuals on the premises.

33. Defendants ACTS and PPV further owed a duty of due care to the assisted living facility's employees, residents, and visitors, including Pauline, to guard against any foreseeable criminal conduct or threat on the facility's premises. By being informed of

Walton's theft from Pauline, Defendants ACTS and PPV and their employees were aware that Walton posed a foreseeable threat to Pauline and other Park Pointe Village residents.

By being personally informed of Walton's theft from Pauline, Defendants Lattimer and Lawrence also were aware that Walton posed a foreseeable threat to Pauline and other Park Point Village residents and thus owed a duty of due care to prevent Walton from causing harm to Pauline.

34. Defendants ACTS and PPV, by and through their own actions or, via *respondeat superior*, the actions of their employees, breached these duties in at least the following regards:

- 1) By failing to protect Pauline from foreseeable criminal acts of Walton;
- 2) By failing to provide adequate security measures;
- 3) By failing to prohibit Walton from gaining access to Pauline;
- 4) By informing Walton of the investigation of her possible theft of checks from Pauline; and
- 5) Through such other actions that may be revealed by discovery.

35. Defendant Lattimer breached her duty of due care to Pauline by failing to confront Walton with the criminal allegations made against her or otherwise to prohibit Walton from gaining physical access to Pauline. Whereas Defendant Lattimer, at all times relevant to this complaint, acted as the employee, servant, and/or agent of Defendants ACTS and PPV, all breaches of duty committed by Defendant Lattimer are directly attributable to ACTS and PPV via *respondeat superior*.

36. Defendant Lawrence breached his duty of due care to Pauline by informing Walton of the investigation being conducted regarding her actions despite the knowledge that such

conduct could foreseeably imperil Pauline. Whereas Defendant Lawrence, at all times relevant to this complaint, acted as the employee, servant, and/or agent of Defendants ACTS and PPV, all breaches of duty committed by Defendant Lawrence are directly attributable to ACTS and PPV via *respondeat superior*.

37. As a direct and proximate result of Defendants ACTS and PPV's breaches of duty, Pauline was physically assaulted by Braquette Walton and suffered severe injuries that caused her death.

38. Defendants ACTS, PPV, Lattimer and Lawrence's failures to prevent or to take reasonable care to prevent foreseeable harm from occurring upon the assisted living facility's premises and specifically to Pauline Cook constituted reckless indifference to the safety of Pauline Cook and rose to the level of gross negligence, wilfulness, and wantonness.

39. As a result of Defendants' negligence and gross negligence and damages resulting therefrom, the Estate of Pauline Cook is entitled to recover from the Defendants all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants all proceeds receivable due to the wrongful death of Pauline. And due to the gross negligence, recklessness, willfulness and wantonness of the Defendants' actions, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendants the seriousness of their actions.

AS A SECOND CAUSE OF ACTION AGAINST DEFENDANT ACTS AND PPV
(Negligence - Survival)

40. Paragraphs one (1) through thirty-nine (39) are repeated herein verbatim.

41. Prior to her death, Pauline suffered severe and extreme conscious pain and suffering and mental distress as a result of being beaten and suffocated by Walton.
42. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.
43. Pauline's conscious pain and suffering pain were directly and proximately caused by the breaches of duty committed by ACTS and PPV set forth more fully above.
44. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in paragraphs 41 and 42, above.

AS A THIRD CAUSE OF ACTION AGAINST DEFENDANT ACTS AND PPV
(Negligence Supervision - Wrongful Death)

45. Paragraphs one (1) through forty-four (44) are repeated herein verbatim.
46. At all times relevant to the allegations set forth in this Complaint, Defendants ACTS and PPV had a duty to exercise reasonable care to control Walton's conduct, described more fully above, even if that conduct was outside the scope and course of Walton's employment.
47. When she committed the heinous acts set forth above, Walton was upon the premises of her employer, ACTS and PPV, and she was privileged to enter these premises only by reason of her employment.
48. Defendants ACTS and PPV knew or should have known that it had the ability to control Walton. For example, after learning of Walton's theft from Pauline, ACTS and PPV could have and reasonably should have rescinded or revoked Walton's privileges to be upon the property.

49. Defendants ACTS and PPV knew or should have known that it was necessary to prevent Walton from reentering the property by reason of the serious accusations made against her and the evidence indicating her guilt. Further, ACTS and PPV had the opportunity and means to exercise this control by banning Walton from the premises by revoking her security access device.

50. Defendants ACTS and PPV breached their duty by permitting Walton to reenter the property, where she committed the acts described above.

51. As a direct and proximate result of ACTS' and PPV's breaches, Pauline was brutally killed by Walton.

52. As a result of Defendants' negligence and gross negligence and damages resulting therefrom, the Estate of Pauline Cook is entitled to recover from the Defendant all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants ACTS and PPV all proceeds receivable due to the wrongful death of Pauline. Due to the gross negligence, recklessness, willfulness and wantonness of the Defendants' actions, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendant the seriousness of its actions.

AS A FOURTH CAUSE OF ACTION AGAINST DEFENDANT ACTS AND PPV
(Negligence Supervision - Survival)

53. Paragraphs one (1) through fifty-two (52) are repeated herein verbatim.

54. Prior to her death, Pauline suffered severe and extreme conscious pain and suffering and mental distress as a result of being beaten and suffocated by Walton, all of which would

have been prevented had ACTS and PPV exercised reasonable care in their supervision of Walton.

55. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

56. Pauline's conscious pain and suffering were directly and proximately caused by the breaches of duty committed by ACTS and PPV in failing to adequately supervise Walton, as set forth more fully above.

57. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in Paragraphs 54 and 55 above.

AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Wrongful Death)

58. Paragraphs one (1) through fifty-seven (57) are repeated herein verbatim.

59. By reason of her position as director of resident nursing, Defendant Lattimer owed Pauline a duty to exercise due care in all aspects of her job. At all times relevant hereto, Defendant Lattimer was acting within the scope and course of her employment with ACTS and PPV.

60. Lattimer breached this duty in the following ways:

- a) By failing to adopt and enforce policies that would have prevented Walton from having access to Pauline's checkbook and stealing and forging Pauline's checks;
- b) By failing to adequately investigate and take appropriate action against Walton once she discovered Walton's criminal conduct;

- c) By failing to prevent Walton from reentering the property and denying her access to patients;
- d) By failing to alert nurses and staff that Walton posed a potential threat to Pauline by reason of the criminal accusations against Walton;
- e) By failing to direct and instruct nurses and staff, including security staff, that Pauline's room should be constantly monitored after Pauline discovered and reported Walton's criminal conduct; and
- f) By failing to discover and detect Walton's entry at Park Pointe Village on the night of November 11, 2011, and failing to take appropriate action to prevent Walton from entering Pauline's room and murdering her.

61. Each of the acts alleged in subsections (a) through (f) of paragraph 60, above, constitutes a separate occurrence of gross negligence, wanton and reckless conduct, all of which combined to directly and proximately cause Pauline's death.

62. As a direct and proximate result of Defendant Lattimer's gross negligence, willful, wanton and reckless misconduct, Pauline's death and the damages resulting therefrom, the Estate of Pauline Cook is entitled to recover from the Defendant all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants all proceeds receivable due to the wrongful death of Pauline. Due to the gross negligence, recklessness, willfulness and wantonness of the Defendant Lattimer, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendant Lattimer the seriousness of her actions.

AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANT LATTIMER
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Survival)

63. Paragraphs one (1) through sixty-two (62) are repeated herein verbatim.

64. As a direct and proximate result of the six separate occurrences of gross negligence, willful, wanton and reckless misconduct alleged against Defendant Lattimer in Paragraph 60, Pauline suffered extreme and severe conscious pain and suffering and mental distress, all of which would have been prevented had Lattimer exercised even slight care in discharging her duty to Pauline.

65. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

66. Pauline's conscious pain and suffering pain were directly and proximately caused by the breaches of duty committed by Defendant Lattimer, as set forth more fully in paragraph 60, above.

67. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in paragraphs 64 and 65, above.

AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Wrongful Death)

68. Paragraphs one (1) through sixty-seven (67) are repeated herein verbatim.

69. By reason of his position as an employee and agent of ACTS and PPV, Defendant Lawrence likewise owed Pauline a duty to exercise due care in all aspects of his job. At all times relevant hereto, Defendant Lawrence was acting within the scope and course of his employment with ACTS and PPV.

70. Defendant Lawrence breached this duty by calling Walton and informing her that Pauline had discovered Walton's theft and forgery.
71. Defendant Lawrence knew or reasonably should have known that his conduct would imperil Pauline because Walton would take action to avoid detection of her criminal conduct.
72. Defendant Lawrence's conduct was grossly negligent, willful, wanton and reckless and placed Pauline's health and safety in grave danger.
73. Defendant Lawrence's conduct described above constitutes an occurrence separate and apart from those occurrences alleged herein against Defendant Lattimer.
74. As a direct and proximate result of Defendant Lawrence's failure to exercise even slight care, his willful, wanton and reckless actions, Walton murdered Pauline.
75. The Estate of Pauline Cook is entitled to recover from Defendant Lawrence all damages present and prospective that she has suffered. The wrongful death beneficiaries of Pauline are entitled to recover from the Defendants all proceeds receivable due to the wrongful death of Pauline. Due to the gross negligence, recklessness, willfulness and wantonness of the Defendant Lawrence, the Estate of Pauline Cook and her wrongful death beneficiaries are entitled to an award of punitive damages sufficient to impress upon the Defendant Lawrence the seriousness of his actions.

AS A EIGHTH CAUSE OF ACTION AGAINST DEFENDANT LAWRENCE
(Gross Negligence, Willful, Wanton, Reckless Misconduct - Survival)

76. Paragraphs one (1) through seventy-five (75) are repeated herein verbatim.
77. As a direct and proximate result of the occurrence of gross negligence, willful, wanton and reckless misconduct alleged against Defendant Lawrence in Paragraphs 70 and 71,

Pauline suffered extreme and severe conscious pain and suffering and mental distress, all of which would have been prevented had Lawrence exercised even slight care in discharging his duty to Pauline.

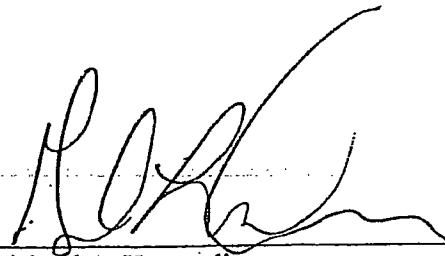
78. Upon information and belief, Pauline also incurred medical, surgical and hospital bills as a result of medical professionals' efforts to save her life.

79. Pauline's conscious pain and suffering pain were directly and proximately caused by the breaches of duty committed by Defendant Lawrence, as set forth more fully in Paragraph 70 and 71, above.

80. Plaintiff is entitled to recover, on behalf of the estate of the decedent, an award of actual damages sufficient to compensate for the damages described in paragraphs 77 and 78, above.

WHEREFORE, Plaintiff prays for a jury trial on all causes of action set forth above, and that judgment be entered against the Defendants. Plaintiff prays for an award of damages sufficient to compensate for the damages Pauline Cook suffered as a result of the Defendants' acts and omissions, set forth above, including damages resulting from Pauline's wrongful death, to compensate Pauline's estate for the conscious pain and suffering she endured prior to her death, all medical bills incurred, all funeral bills incurred and such other damages as may be revealed through discovery. Plaintiff further prays for an award of punitive damages in an amount sufficient to impress upon all Defendants the seriousness of their conduct and to deter similar conduct by Defendants and others in the future. Finally, Plaintiff prays for such other relief as the Court deems just and proper.

Signature Page to Follow



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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

July 24, 2012

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF YORK

4

5

6 Paul Sullivan, as Personal Rep. of Estate of Pauline Cook

7 vs.

8 Park Pointe Village, Inc., et al.

9

10

11 York, South Carolina

12 October 18, 2012

13 Before the Honorable S. Jackson Kimball, III

14

15 APPEARANCES

16 For the Plaintiff: Richard A. Harpootlian

17 For the Defendant: Carmelo B. Sammataro

18

19 Reported by: Michael C. Watkins

20 Official Court Reporter

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22

23

24

25

1 THE COURT: Paul Sullivan and others versus ACTS
2 Retirement-Life and others.

3 MR. HARPOOTLIAN: Your Honor, we have a memorandum and
4 cases for you.

5 MR. SAMMATARO: Your Honor, may I hand forward a memo?

6 THE COURT: Yes, sir. Mr. Sammataro, your motion.

7 MR. HARPOOTLIAN: Thank you, Judge. Your Honor, Sam
8 Sammataro with Turner, Padgett, I am here today on defendants
9 Park Pointe Village, Inc. Neva Lattimer and Marvin Lawrence
10 in a case brought against them by Mr. Paul Sullivan who is
11 proceeding as the personal representative of the estate of
12 Pauline Cook. And the motion today is to enforce an
13 arbitration agreement that appears within the resident
14 contract that Ms. Cook signed back in January of 2006. If
15 Your Honor will permit I'll just back up and give you a
16 little bit of the factual history of this case. The
17 defendants in this case concede that at all times relevant
18 of the facts in question that Ms. Cook was a resident of
19 Park Pointe Village in its assisted living facility which is
20 just right down the road here in York County. In November
21 of last year it came to Ms. Cooks' awareness that somebody
22 had been writing checks out of her checking account drawn on
23 BB&T Bank. She immediately or very promptly alerted
24 facility management to that issue, and Ms. Neva Lattimer,
25 who at the time was director of nursing for the facility,

1 was working with Ms. Cook to get to the bottom of what was
2 going on and to pursue involvement by law enforcement and
3 looking at the best way to handle that situation. Ms. Cook
4 also realized that checks were being signed by an individual
5 named Braquette Walton. Ms. Walton at the time was an
6 employee of Park Pointe who worked in the facility, and
7 while it wasn't her day to work that day they called in law
8 enforcement who was working with them and it was determined
9 that they would let law enforcement handle the situation as
10 regards Ms. Walton's criminal activity. Later in the night
11 of November 12th Ms. Walton used her electronic access key
12 to surreptitiously gain entrance into Park Pointe's
13 facility, she wasn't scheduled to work I believe until the
14 following Monday, she concealed herself for a period of time
15 and eventually made her way into Ms. Cook's apartment there
16 at Park Pointe. And I don't know what was said but they
17 began to talk, and when Ms. Cook reached for the telephone
18 it's alleged that Ms. Walton lost control and murdered
19 Ms. Cook, staged the murder to look like Ms. Cook had fallen
20 in the shower, then disposed of evidence -- or tried to
21 dispose of evidence before departing the facility.
22 Plaintiff has --

23 THE COURT: And Ms. Cook was a patient, right?

24 MR. SAMMATARO: Ms. Cook was a resident of the assisted
25 portion -- Park Pointe has various levels of care, they have

1 no care, assisted living care and skilled care in different
2 parts of the campus there at Park Pointe, she was the
3 assisted level care.

4 THE COURT: Hence the contract.

5 MR. SAMMATARO: Exactly, Your Honor, and we'll get into
6 that contract momentarily. It was attached in its entirety
7 to the amended motion to enforce the arbitration, that
8 motion was amended after the plaintiffs amended their
9 complaint to name a different corporate defendant.

10 (Break in proceedings.)

11 THE COURT: I'm sorry. Go ahead.

12 MR. SAMMATARO: I think we left off on the fact that
13 Ms. Cook was a resident in the assisted portion of the
14 facility, it was about a 12-acre campus, it's a pretty big
15 place. Anyhow, after these events in question -- I believe
16 that Ms. Walton is in criminal custody and is facing a
17 criminal trial related to the activities at the facility
18 that night -- but on the civil side of things her personal
19 representative, an individual named Paul Sullivan, brought
20 suit against the three named defendants in the amended
21 complaint. Essentially what Mr. Sullivan is alleging are
22 negligence claims against the defendants and also negligent
23 supervision as to Park Pointe Village, Incorporated. And
24 the primary thrust of those allegations is that Park Pointe
25 owed Mrs. Cook an obligation to provide her with security

1 and to keep her safe from harm. There are other
2 allegations, of course, in the complaint but that is one of
3 the key elements of their allegations against Park Pointe
4 Village as well as the individual defendants who are named.
5 Part of the factual recitation that I have left out that is
6 alleged in the complaint is that another Park Pointe
7 employee by the name of Marvin Lawrence, who is a defendant
8 in this case, overheard or was involved in some
9 conversations about the identity of the person who had been
10 writing the checks, and he's the person alleged to have
11 informed Ms. Walton that she was under suspicion for writing
12 these fraudulent checks from Ms. Cooks' account. He called
13 her, it is alleged, and discussed that issue before
14 Ms. Walton entered the facility and engaged her in criminal
15 activities. Now, turning to the motion at hand. As I
16 mentioned back in January of 2006 --

17 THE COURT: Let me stop you a second.

18 MR. SAMMATARO: Yes, sir.

19 THE COURT: You mentioned an amended complaint?

20 MR. SAMMATARO: Yes, Your Honor.

21 THE COURT: I didn't find the amended complaint.

22 MR. SAMMATARO: I'll defer to counsel, but basically
23 the amendment merely inserted a different corporate
24 defendant, the allegations are largely unchanged.

25 THE COURT: Is that true, Mr. Harpootlian?

1 MR. HARPOOTLIAN: Yes, Your Honor, we have a copy here
2 for you. They corrected who the corporate defendants were
3 and I think everything else remained the same.

~~4 MR. SAMMATARO: Continue? I keep losing my place.~~

5 Back in January of 2006 Ms. Cook signed -- she was in the
6 unskilled or no skilled portion of Park Pointe and it became
7 necessary for her, even though she had all of mental
8 faculties, to move to the assisted living portion. And when
9 she did that she signed the operative version of the
10 resident contract that was attached to our motion. Now, at
11 section 21 of the resident contract there is a provision
12 obligating Ms. Cook to binding non-appealable arbitration.
13 Section 21.1 is the specific section, and it reads, "Any
14 controversy, dispute or disagreement arising out of or
15 relating to this contract or concerning any rights or a
16 breach of this contract shall be settled by voluntary
17 arbitration. This arbitration shall be conducted on
18 companies property," et cetera, et cetera.

19 THE COURT: I've got it with me, you don't need to read
20 it.

21 MR. SAMMATARO: You're with me. Okay. One of the
22 other provisions of the contract between Ms. Cook and Park
23 Pointe Village, Incorporated, is the fact that Park Pointe
24 agreed to undertake the provision of security services to
25 Ms. Cook while she was a resident at Park Pointe Village.

1 Also included in the contract is the fact that Ms. Cook had
2 access to 24 hour emergency response as a resident at Park
3 Pointe Village and its assisted living facility. I have
4 quoted and cited those provisions of the contract in the
5 memorandum that I handed up to the Court. Finally at the
6 end of the contract there's another provision where Ms. Cook
7 agreed that not only she but also her heirs, assigns and
8 personal representative would be bound by the terms of the
9 resident contract, that would include by operation of law
10 Mr. Sullivan as her personal representative of the estate.
11 Now, I haven't -- I'm not aware of what arguments that the
12 plaintiff will bring against enforcement of that arbitration
13 agreement, so what I would like to do is just cover some of
14 the legal parameters that apply. In a long line of
15 decisions that the United States -- the Supreme Court of the
16 United States has reinforced the strong federal policy
17 favoring enforcement of arbitration provisions, and the
18 Supreme Court of South Carolina has largely followed suit.
19 The most recent pronouncements by the Supreme Court of the
20 United States are the AT&T Mobility case, which basically
21 indicates to the state courts and inferior trial level
22 courts in the United States that a hostile policy towards
23 enforcement of the arbitration provisions won't be accepted
24 or affirmed by our Supreme Court of the United States.
25 THE COURT: I promise I won't be hostile.

1 MR. SAMMATARO: It's their word, Your Honor, not mine,
2 I'm sorry. And then following up in the Marmet Healthcare
3 Case which was decided, or released in February of 2012, the
4 ~~Supreme Court extended their thinking along those lines to~~
5 specifically wrongful death and personal injury claims
6 arising out of nursing facility arrangements. And so what
7 they say is it really doesn't matter that it's a personal
8 injury type claim.

9 THE COURT: I understand all of that.

10 MR. SAMMATARO: Right. Okay. I don't know again where
11 the plaintiffs are going to go in their argument, but I
12 think if you read the totality of the case law out there
13 it's unquestionable that our courts are in favor of
14 enforcement of arbitration.

15 THE COURT: There isn't any question about that. The
16 question is whether it fits within the matrix of what you
17 have to do to invoke that preference.

18 MR. SAMMATARO: Well, turning to that issue, Your
19 Honor. I think I've addressed that in section two of the
20 memorandum, and that has to do with whether or not the
21 parties agreed to submit all disputes, including disputes
22 arising from Park Pointe Security Services, to binding
23 arbitration, and our argument is that that is unquestionably
24 true in this case. The parties undertook to enter into a
25 contract which specifically contemplated the provision of

1 security services, and the argument raised at least in the
2 amended complaint of the plaintiff is that Park Pointe and
3 its individual employees like Neva Lattimer and Marvin

4 Lawrence, failed in their undertaking to keep Ms. Cook and
5 other residents safe from harm, the type of harm that
6 Ms. Cook was subjected to by Ms. Walton.

7 THE COURT: Go back and point me to the place in the
8 contract about the services to be provided, I didn't mark
9 that yet.

10 MR. SAMMATARO: Sure. Your Honor, if you'll take a
11 look at section 5.12, that's on page eight, I believe, of
12 the resident contract, that has to do with the emergency
13 response system.

14 THE COURT: That says response system; is that right?

15 MR. SAMMATARO: Yes, Your Honor. And in 5.13 it
16 provides that the company, Wells Fargo, the services
17 included in the monthly rate provides certain security
18 services in the retirement community in accordance with the
19 prevailing policy.

20 THE COURT: All right.

21 MR. SAMMATARO: If you drive down the road and you take
22 a look at Park Pointe you'll notice that there's a gated
23 entrance, visitors have to sign in or you have to have a
24 badge that allows you to have access to the facility. The
25 same is true with the doors that were locked at night, you

1 have to have an electronic pass to get in. If something
2 array happens the residents can pick up the phone and call
3 for emergency assistance. So clearly at least in our
4 view --

5 THE COURT: In the -- let me get back to where I was.
6 In the agreement -- and -- I'm sorry, in the arbitration
7 provision in the agreement. Oddly enough I have the two of
8 these, one of them got settled so I may be confusing in the
9 reading of two different files. I don't remember seeing --
10 I can't find readily the typical thing that says -- that
11 talks about goes beyond breach of contract and talks about
12 negligence and any other manner of tort you might imagine.
13 Is that in this contract somewhere, expressed?

14 MR. SAMMATARO: I think it is, Your Honor. I think by
15 any and all disputes and language similar to that it
16 encompasses breach of contract or a negligence --

17 THE COURT: It says concerning any rights arising under
18 this contract or a breach of this contract. Is there a
19 provision in that contract that you pointed out -- I'm just
20 trying to narrow this down -- that arguably would cover an
21 assault and battery by an employee?

22 MR. SAMMATARO: I'm not aware of that provision, Your
23 Honor. But our argument would be it is tongue and grove.
24 If you undertook to provide security and there's a breach of
25 that security that would be something that's covered with

1 this contract. If you undertake to provide a service and
2 then that service fails it is essentially a breach whether
3 it involves a tort or not.

4 THE COURT: So you're saying it's absolute liability if
5 somebody gets in and kills a resident?

6 MR. SAMMATARO: That's not what I'm saying, Your Honor.
7 What I'm saying is it can be construed to arise --

8 MR. HARPOOTLIAN: We'll take that, Your Honor.

9 THE COURT: I understand.

10 MR. SAMMATARO: I understand he would take that, I
11 would too. What I'm saying is it clearly arrives in arising
12 under retirement. The parties contemplated that the
13 security would be part of Ms. Cooks' monthly rate, and the
14 argument that they've alleged or that the theory they've
15 advanced at least in part in the amended complaint is that
16 that provision of security services was inadequate and --

17 THE COURT: Well, here we're just dealing with the
18 allegations of the complaint. This is still a 12.B6, right?

19 MR. SAMMATARO: Yes, Your Honor.

20 THE COURT: Okay. Go ahead.

21 MR. SAMMATARO: Well, that's how I would answer that
22 question, Your Honor. All right. And then again I'm sort
23 of trying to steer the ship because I'm not sure which
24 arguments the plaintiffs intend to make, I haven't had a
25 chance to review their memo yet. The third section of our

1 memorandum addresses any potential argument by the
2 plaintiff, Mr. Sullivan, that he would not be somehow
3 subject to the same binding arbitration provision. I think
4 by operation of our survival action it's clear that any
5 claim that he has as a personal representative is derivative
6 of the claims that Ms. Cook herself would have had had she
7 survived. And also if you take a look at the express terms
8 of the contract Ms. Cook agreed that her heirs and assigns
9 and personal representatives would also be bound by the
10 terms and conditions of the resident contract. I can cite
11 to Your Honor some cases where the courts around the country
12 have agreed with that provision, I'm not really sure it's
13 necessary at this point but they're cited in our memorandum.
14 And so essentially our argument is that there was a binding
15 contract between the parties, part of that contract included
16 an arbitration provision that Ms. Cook agreed to. The
17 claims asserted by her personal representative arise out of
18 this contract or at least are sufficient to implicate the
19 arbitration provision and so this Court should compel
20 arbitration of this dispute and dismiss the civil action.

21 THE COURT: Let me say this: I've heard these cases
22 before that have to do -- typically have to do with some
23 sort "malpractice" in quotes and the provision of care, that
24 kind of thing, somebody is injured or becomes ill because of
25 negligent or inadequate care. And it strikes me that an

1 alleged -- and that's all we're dealing with, the
2 allegations -- murder by somebody who had the ability to be
3 on the premises is a little bit different. For example, if
4 this was a bar case and the bouncer killed somebody, they
5 would claim that is beyond your client if you were the bar,
6 represented the bar or the insurer would claim that is
7 beyond the scope of his duties and employment therefore
8 they're not liable, which seems to me -- I don't know why I
9 think that has something to do with you're trying to enforce
10 the contract, the arbitration under the contract. Go ahead,
11 maybe I'm just -- I didn't have your memo prior to now so I
12 haven't -- until just a minute ago so I haven't read it so
13 I'm left to speculate some.

14 MR. SAMMATARO: Well, if I could just follow-up on Your
15 Honor's hypothetical, in this situation I think that the key
16 differences are you have a contract that was actually signed
17 by the parties to be bound, the bar example I'm not sure
18 that would be the case.

19 THE COURT: Well, where I was headed with that, it
20 seems to me that was it -- one possible result is that the
21 PR as a relative has a cause of action of his own for
22 something that's quite clearly outside the intentions of the
23 parties in this contract, mainly an intentional -- a murder.

24 MR. SAMMATARO: As a rejoinder to I guess now two parts
25 of what you said, first is that Mr. Sullivan has not made

1 any claims in his individual capacity, all of his claims are
2 as the personal representative of Ms. Cook and so he is
3 standing --

4 THE COURT: There's a wrongful death claim. Wouldn't
5 that be to the benefit of the beneficiary?

6 MR. SAMMATARO: Yes, sir, but it has to do with the
7 damages and the injuries she sustained.

8 THE COURT: It has to do with her death.

9 MR. SAMMATARO: Right. Also in this instance the
10 parties specifically contemplated security as part of the
11 arrangement at Park Pointe Village and so that's why I'm
12 saying it's just unquestionable at least in our minds that
13 any breach of a security issue if somebody came in whether
14 they had the key or not and this happened, it relates to the
15 provision of security services. It clearly arises under the
16 contract for purposes of enforcement of arbitration
17 agreement. They can still pursue all of those claims but it
18 has to be in an arbitral format, not in the civil courts of
19 South Carolina.

20 THE COURT: Why don't you let me hear from
21 Mr. Harpootlian and let's see where we're headed.

22 MR. SAMMATARO: Yes, sir, Your Honor.

23 MR. HARPOOTLIAN: Please the Court, Your Honor? I
24 think there are a couple of things to note, the first is
25 that the arbitration provision never mentions FAA, never

1 mentions federal --

2 THE COURT: I was going to ask that of somebody.

3 MR. HARPOOTLIAN: -- nowhere in that contract.

4 Secondly on page --

5 THE COURT: Mr. Harpootlian, let me go back and ask
6 Mr. Sammataro, I meant to ask that because I highlighted it
7 when I read the thing. There's two things that concern me,
8 one is the arbitration provision in the contract do not, as
9 he points out, mention FAA. And secondly there's -- I did
10 not find, I don't think I found, a caption or anything that
11 complied with the state statute.

12 MR. SAMMATARO: Correct.

13 THE COURT: And thirdly there's a case that has to do
14 with the fact that there is no inference drawn that the fact
15 that -- you know, obviously care facilities like that get
16 employees from out of state, equipment or medicine or food
17 shipped from Charlotte or whatever does not give rise in the
18 nursing home context to an inference of interstate commerce.
19 So I, like I say, haven't had a chance to read your memo.
20 What hit me yesterday was the FAA isn't mentioned, there's
21 no caption giving notice of the application of the state
22 statute, and there is no provision in the agreement that
23 acknowledges the involvement of interstate commerce so as to
24 bootstrap the FAA.

25 MR. SAMMATARO: Okay. I think, Your Honor, that the

1 first two issues about specific citation to the Federal
2 Arbitration Act and compliance with the state statute, those
3 are sort of conflating state law requirements where the
4 parties are seeking enforcement under the Federal
5 Arbitration Act, so FAA doesn't need to be specifically
6 cited. And number two --

7 THE COURT: I disagree with that, unless the contract
8 by some inference or proof can be said to -- I've forgotten
9 exactly how to say it -- but involve interstate commerce,
10 sufficient relationship with interstate commerce.

11 MR. SAMMATARO: Sure. And that's the third point I
12 wanted to address, and I have cited these cases in our
13 memorandum, Your Honor. Our argument is that Tims versus
14 Green is at least partially overruled, if you will, by the
15 United States Supreme Court precedent. If you look at the
16 Citizens Bank versus Alafabco case, and again the citation
17 appears in my brief, it is 539US52. And what the supreme
18 court has said is basically if you examine the aggregate of
19 the activity at issue, and in the Alafabco case it was debt
20 restructuring agreements, and what the court said is that
21 something can be of a particularly local concern but if you
22 examine it in the aggregate it unquestionably implicates or
23 involves or effects interstate commerce. And there are
24 cases in the United States, and those are also cited in our
25 brief, where that logic has been extended to the provision

1 of nursing care, assisted living care services. So again, I
2 think that Tims at least implicitly no longer is good law for
3 the exact reasons I cited for.

4 THE COURT: I disagree with that. That's not -- that's
5 exactly what it says?

6 MR. SAMMATARO: It was also decided before the Alafabco
7 case I have just cited, Your Honor.

8 THE COURT: But nothing you've told me overrules that.
9 First of all, this is a 12.B6 motion, you still have
10 available to you summary judgment or whatever else, what
11 we're talking about here is the allegations of the complaint
12 and the agreement. Do you agree with that? You don't agree
13 with that?

14 MR. SAMMATARO: I don't, Your Honor, because we have
15 the agreement. I think if you look at the agreement in its
16 entirety unquestionably interstate commerce was impacted.

17 THE COURT: That's what was rejected in Tims.

18 MR. SAMMATARO: And Tims was later rejected by supreme
19 court authority --

20 THE COURT: Well, that's for the supreme court to
21 decide, the state supreme court, not me.

22 MR. SAMMATARO: Well, respectfully, Your Honor.

23 (Brief interruption.)

24 THE COURT: Go ahead.

25 MR. SAMMATARO: Well, no. Just -- we have cited those

1 cases in our brief, I believe that Tims is no longer good
2 law when it is cited for the proposition that you have to
3 come forward with evidence that shows that the activity
4 implicates or involves interstate commerce. The supreme
5 court said almost as a matter of law this court can decide
6 that particular area or particular industry obviously
7 impacts interstate commerce. You have acceptance of out of
8 state residents, you have purchasing and delivery supplies,
9 you have telephone conversations with persons that cross
10 state lines and involve wires that cross state lines.

11 THE COURT: I wouldn't disagree with you, that decision
12 just hasn't been made in South Carolina. I don't disagree
13 with that. I would have thought the same thing but I
14 couldn't find anything in South Carolina that agreed with
15 what I thought. Let me continue to hear from Mr.
16 Harpootlian, I cut him off.

17 MR. HARPOOTLIAN: It happens a lot, Your Honor, it
18 doesn't offend me. First of all, this contract contains --
19 and I think if you read it and I think they would stipulate,
20 not the word FAA, federal arbitration, nothing. Secondly if
21 you go to page 38, paragraph 23.9, it says, all matters
22 affecting the interpretation of this contract and the rights
23 and obligation as the parties hereto shall be governed by
24 and construed in accordance with the laws of the State of
25 South Carolina. So not only does it not say or imply that

1 if this is -- get to be arbitrated under FAA, it
2 specifically says the State of South Carolina. Now, Your
3 Honor has already mentioned the specific case, Tims vs.
~~4 Green which we think is directly on point, that ---~~ and by
5 the way, in Tims there was an affidavit introduced, there
6 was evidence before the court when you read the case that
7 tried to spell out some nexus between what they do and
8 interstate commerce, we don't have even that here, he just
9 says based on the contract it's interstate commerce so I
10 would ask you to reject that. Now, I think it's important
11 to also note that if we're under South Carolina law and we
12 believe without the provisions there's a couple of reasons
13 why arbitration wouldn't be effected. First they didn't
14 comply with the statute which is section 15-48-10 which
15 requires you to do a number of things which is to put the
16 big letters on the front. But even more importantly in
17 subsection four of that statute any claim arising out of
18 personal injury is excluded.

19 THE COURT: Under the state statute.

20 MR. HARPOOTLIAN: Under the state statute. So I guess
21 the first hurdle is is it mandatory arbitratable under FAA.
22 We think clearly under not only the Tims versus Green but
23 under the Nunez (phonetically) case relying on the United
24 States Supreme Court precedent, the South Carolina Supreme
25 Court explained in Nunez that the parties are free to enter

1 into a contract, but if the contract -- it says -- they
2 state in that state law was therefore preempted to the
3 extent it otherwise invalidated the arbitration agreement
4 the parties are otherwise free to agree that the State
5 Arbitration Act will apply and this agreement would be
6 enforceable. And we would submit that's what they've done
7 here by that specific provision, that state law applies and
8 no mention of the FAA. You and I have both seen a number of
9 arbitration agreements where it was very specific about the
10 Federal Arbitration Act, very specific about the rights of
11 parties. Here there is a very specific provision,
12 everything will be done under South Carolina law. And in
13 Tims, Your Honor has already read it, but Tims I think is
14 almost exactly the same as this, and that is the current
15 state of the law in South Carolina. If Your Honor rules
16 that there is no arbitration provision the defendant will
17 have a chance to immediately appeal that, I'm afraid to say,
18 which will delay the case and we want to talk about that in
19 just a minute.

20 THE COURT: Can you appeal that on 12.B6? Because I
21 don't have to write an order.

22 MR. HARPOOTLIAN: I believe you can.

23 THE COURT: I know it's appealable.

24 MR. HARPOOTLIAN: No. The denial of arbitration --

25 THE COURT: Is appealable.

1 MR. HARPOOTLIAN: -- immediately appealable.

2 THE COURT: I wondered at what stage.

3 MR. HARPOOTLIAN: Right now.

4 THE COURT: Okay.

5 MR. HARPOOTLIAN: So that's one of the reasons.
6 Typically in a personal injury case you would wait awhile,
7 you would wait for the defendant to be convicted. But we
8 filed this immediately because we understood that this was
9 coming, we would be here in front of you one day and that we
10 felt strongly that there's none of the indicis that the
11 South Carolina Supreme Court has relied on to enforce
12 federal arbitration. And, you know, beyond that the Akin
13 vs. World Finance and the -- I'm not sure I can pronounce it
14 correctly, the Chasseraeu (phonetically) case, both exclude
15 arbitration where the conduct is outrageous. If there is
16 anything more outrageous -- and both of those cases involve
17 collection methods for debts, I don't think there's anything
18 more outrageous than killing or murdering somebody. So
19 those further exclude this from arbitration. So Your Honor,
20 now we have also argue this idea that Pauline Cook's
21 personal representative is not a party to the contract, and
22 Your Honor, we would ask you if you deny arbitration include
23 that -- there's no South Carolina law on point as to whether
24 or not the personal representative we believe, no South
25 Carolina on whether the personal representative would be

1 governed or not governed by any arbitration agreement.
2 There's a Missouri case directly on point, and we cite it
3 which says they aren't, there are other cases from other
4 states which say they are. So that's an open question of
5 law if you feel it's one you would like to get resolved. So
6 I think for a number of reasons, and Your Honor got to them
7 before I got a chance to argue, there's no FAA in the
8 contract, they've agreed to arbitrate it under South
9 Carolina law. The Tims case indicates that you don't get to
10 the Federal Arbitration unless -- the burden is on them to
11 show that it's interstate commerce or involved in interstate
12 commerce to the extent it would invoke the FAA. There's
13 nothing in this record, not a single shred of evidence, not
14 a piece of evidence, not an affidavit to say interstate
15 commerce, and then even then more importantly the contract
16 specifically says South Carolina law will apply and South
17 Carolina law is -- and they haven't followed the South
18 Carolina law. So I would be happy to answer any questions.

19 THE COURT: No. Anything, Mr. Sammataro, in reply?

20 MR. SAMMATARO: Just briefly, Your Honor. What Tims
21 says is -- and this is set out again in my memorandum -- is
22 the contract must objectively evidence in writing a
23 transaction involving interstate commerce.

24 THE COURT: Say that again.

25 MR. SAMMATARO: Okay. This is at page -- well, just in

1 Tims what the Court says -- and this is a direct quote from
2 that case -- the contract must objectively evidence in
3 writing a transaction involving interstate commerce. So if
4 you take that and read it in conjunction with later
5 authority decided by the Supreme Court of the United States
6 of America while taken in the aggregate this is exactly the
7 kind of contract that evinces interstate commerce, so I
8 would just ask Your Honor to take a closer look at that.

9 THE COURT: I'm not. I read the Tims case before today
10 and I understand what you're saying but the fact is that
11 Tims after examination of astringent evidence, namely an
12 affidavit or affidavits, gave some guidance shall we say to
13 the lower courts about what -- about the effect of those
14 things that go along with care and nursing homes that may be
15 some indicia of interstate commerce. And I think that this
16 contract is no different from -- let me say it this way, I
17 don't think this contract operates outside the scope of the
18 Tims case.

19 MR. SAMMATARO: The second point I wanted to make is
20 that -- this has sort of escaped me, it was one of those
21 things you said that was very important, turning to the
22 exception for personal injury actions.

23 THE COURT: Oh, World Finance.

24 MR. SAMMATARO: That clearly -- that specifically
25 clearly black letterly, if that is even a word, has been

1 rejected by the Supreme Court of the United States --

2 THE COURT: You're telling me World Finance is no good
3 anymore?

4 MR. SAMMATARO: I'm telling you that the Supreme Court
5 of the United States has said that any time that a state
6 says that an exception like one that he's talking about
7 where there's public policy and that you can't enforce a
8 binding arbitration agreement in an action involving
9 personal injury that arises in the context of a nursing
10 facility that's a no-go, the supreme court has said
11 absolutely those were enforceable agreements to arbitrate.
12 The way I understood Mr. Harpootlian's argument, that was
13 one of the basis that he was urging for rejection of
14 arbitration in this case.

15 THE COURT: What they said was World Finance -- was
16 that the conduct of the employees of World Finance was so
17 far outside of the scope of what they were authorized and
18 expected to do and of such a heinous character that the
19 parties didn't -- couldn't have contemplated that being
20 within the scope of the arbitration provisions of the
21 contract to my memory.

22 MR. SAMMATARO: I understand, Your Honor. And so those
23 are the points that I wanted to make in reply to what
24 Mr. Harpootlian wanted to say this morning. The other thing
25 I would like to do is just request some time to digest his

1 memorandum and perhaps respond to any points that should be
2 responded to and him the same opportunity as to my
3 memorandum.

4 MR. HARPOOTLIAN: I don't need any more time.

5 THE COURT: I'm not going to do that. I try to --
6 first of all I try to prepare for these things and I did and
7 I think there are three reasons why the motion should be
8 denied: One is the contract does not mention the FAA. Two
9 is that despite that fact even reading the contract as a
10 whole the Tims case, at least from my perspective, would not
11 permit me to bootstrap interstate commerce into the contract
12 and thus invoke the FAA anyhow. And thirdly, the contract
13 does not comply with South Carolina law and specifically the
14 arbitration -- State Arbitration Act because it doesn't have
15 the requisite notice, I don't think I have to get to
16 anything else, that includes Mr. Harpootlian's argument
17 about PR's and being bound by the contract. So I'm going to
18 deny the motion for those three reasons.

19 MR. HARPOOTLIAN: Your Honor, can I be heard on one
20 other matter, an administrative matter?

21 THE COURT: Yes, sir.

22 MR. HARPOOTLIAN: We would like you to also in your
23 order, although we will not attempt to invoke it until after
24 a notice of appeal is filed, of the ability to go forward
25 with discovery for this reason: A number of the witnesses

1 in this case are elderly people in an assisted living
2 facility. The average time now to get a decision out of the
3 appellate courts is two and a half years, we're going to
~~4 lose witnesses. I ask you to put it in the order allowing~~
5 us to do that --

6 THE COURT: Allowing you to do that?

7 MR. HARPOOTLIAN: To go forward with the discovery with
8 the representation, we'll not attempt to do that until after
9 they file a notice of intent to appeal and then we'll make a
10 motion to the appellant court to be allowed to do that
11 pursuant to your order.

12 THE COURT: Why wouldn't you be able to do that after
13 they file the notice of appeal anyway?

14 MR. HARPOOTLIAN: Because it stays all discovery I
15 think, that's our impression.

16 THE COURT: Well, unless they let you go ahead.

17 MR. HARPOOTLIAN: But what I'm saying is if it's your
18 order we're going to make a motion to when they appeal your
19 order for extraordinarily relief.

20 THE COURT: I am not comfortable with doing that.

21 MR. HARPOOTLIAN: Okay. I just thought I would take a
22 shot at it.

23 THE COURT: So what I do want you to do, though, is
24 email me -- this is not your typical 12.B denial, e-mail me
25 an order -- and it's appealable. So e-mail me an order in

1 an editable format, Word or Word Perfect, with making the
2 decision on the three basis I gave you and we'll see what
3 happens.

4 MR. HARPOOTLIAN: Your Honor, one other basis that I
5 cited that you did not cite was the fact that the contract
6 contained a specific provision applying South Carolina law,
7 should we put that in there? It's up to you.

8 THE COURT: Yeah. In the discussion I think that's
9 relevant, I was going to do that anyway, that's part of the
10 equation.

11 MR. HARPOOTLIAN: We'll go ahead and prepare the order
12 and send it to counsel for him to review --

13 THE COURT: No. Send it at the same time y'all send it
14 to me, it's going to be my order, not y'all's.

15 (End of the hearing.)

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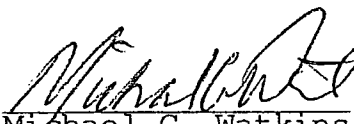
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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in Court of Common Pleas for York
7 County, South Carolina, on the 18th day of October, 2012.

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

10
11 December 14, 2012

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13 
14 Michael C. Watkins
15 Court Reporter.
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court Of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213352

Case No: 2012-CP-46-2692

Paul Sullivan as Personal Representative of the
Estate of Pauline C. Cook, ...Respondent,

v.

Park Pointe Village, Inc., a wholly owned subsidiary of
ACTS Retirement-Life Communities, Inc., Neva Lattimer,
and Marvin Lawrence, ... Appellants.

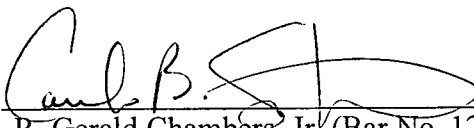
CERTIFICATE OF COUNSEL

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.

TURNER PADGET GRAHAM & LANEY P.A.

October 30, 2013

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