

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

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SC Court of Appeals

Case No. 2020-000473

White Oak Manor of Spartanburg, Plaintiff,

v.

Paulette Smith-Young,Defendant,

AND

Paulette Smith-Young, Individually and as The Personal Representative of the Estate of Genobia Smith, Deceased, Third-Party Plaintiff,

v.

White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg, and White Oak Management, Inc., Third-Party Defendants

OF WHOM

White Oak Management, Inc. isAppellant,
and

Paulette Smith-Young, Individually and as The Personal Representative of the Estate of Genobia Smith, Deceased, isRespondent.

RECORD ON APPEAL

VOLUME II

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TITLE OF CASE: WHITE OAK MANOR OF SPARTANBURG,
-VS-
PAULETTE SMITH-YOUNG

CASE NUMBER: 2018-CP-42-04174

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OFFICIAL COURT REPORTER
SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
 3
 4 WHITE OAK MANOR OF)
 SPARTANBURG,)
 5) TRANSCRIPT OF RECORD
 PLAINTIFF,) 2018-CP-42-04174
 6)
 -vs-) SPARTANBURG, SOUTH CAROLINA
 7) DECEMBER 18, 2019
 PAULETTE SMITH-YOUNG,)
 8)
 DEFENDANT.

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B E F O R E:

THE HONORABLE GRACE KNIE, JUDGE.

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

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GARY W. POLIAKOFF, ESQUIRE
ATTORNEY FOR THE DEFENDANT

EDWARD JOHN WAELEDE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NO WITNESSES CALLED)

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NO. DESCRIPTION

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(NO EXHIBITS MARKED)

1 (PROCEEDINGS, DECEMBER 18, 2019)

2 THE COURT: Thank you. Please be seated.

3 The next matter on the roster is White Oak Manor
4 Of Spartanburg versus Paulette Smith-Young.

5 And so Mr. Graham, sir, you have been substituted
6 for Ms. Goforth?

7 MR. GRAHAM: Yes, ma'am, happily substituted.

8 THE COURT: Okay. All right.

9 And counsel for the defendant?

10 MR. WAELDE: John Waelde, Your Honor, for the
11 third-party plaintiff.

12 MR. POLIAKOFF: And Gary Poliakoff for the
13 third-party plaintiff.

14 THE COURT: Okay. Thank you.

15 All right. If y'all will just give me one moment
16 to pull that up.

17 (Off the record).

18 (Back on the record)

19 THE COURT: Mr. Graham, did you want me to have
20 the folder from Judge Stilwell as well?

21 MR. GRAHAM: Yes, ma'am. I passed it up and I
22 have given it to opposing counsel.

23 THE COURT: Okay. All right. Thank you.

24 So Mr. Graham --

25 MR. GRAHAM: Yes, ma'am.

1 THE COURT: -- there was a motion -- there is a
2 motion to compel arbitration that was filed on behalf of
3 White Oak Manor on September the 13th of 2019, and so
4 logically I guess we should hear that first, and then I
5 think there is a motion to compel discovery, is that
6 correct?

7 MR. WAELDE: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. GRAHAM: I think depending on how you rule on
10 the arbitration will take care of the motion to compel
11 discovery, so it would probably make sense to go forward
12 with the arbitration motion.

13 THE COURT: Yes, sir.

14 And I will tell you that I routinely take these
15 under advisement and like to review, and I also give counsel
16 an opportunity to submit proposed orders concerning their
17 positions, because usually there are briefs and they are
18 very voluminous and that's very helpful to me.

19 So do you all also want to argue this motion to
20 compel today in anticipation of the ruling, or just for the
21 discovery, or would you just prefer to bifurcate?

22 MR. WAELDE: We are ready to argue discovery
23 today, Your Honor.

24 MR. GRAHAM: Let me just kind of --

25 Is the discovery just to conduct discovery? Is

1 that what the motion is, or is it specific interrogatories
2 or --

3 MR. WAELDE: We sent RPD's back in March of --
4 March 26th, 2019, and we haven't gotten any response from
5 them.

6 MR. GRAHAM: So it's generally just to respond,
7 correct?

8 MR. WAELDE: Without objection at this point,
9 because we believe there has been a waiver, a significant
10 waiver at this point.

11 MR. POLIAKOFF: And to start to preface all this,
12 the request for arbitration didn't occur until fourteen
13 months after White Oak filed its first documents in this
14 litigation.

15 THE COURT: Okay.

16 MR. POLIAKOFF: So there has been a long history
17 here and a long significant waiver argument as well, so we
18 think we are entitled to what we are asking for, so we
19 respectfully request to go forward on that, Your Honor.

20 THE COURT: Okay.

21 And so, Mr. Graham, I'll hear both motions today,
22 and I know that -- I am probably anticipating that you could
23 consent to discovery if I decline to refer the case to
24 arbitration and stay everything, right? Okay.

25 MR. GRAHAM: I think that we could consent that we

1 would respond. They might have a disagreement on what is
2 discoverable and things of that nature.

3 THE COURT: Yes, sir. Yes, sir.

4 MR. GRAHAM: Okay.

5 THE COURT: So first then I'm going to hear from
6 you, sir, on the motion to compel arbitration, and you have
7 provided to me a hard copy of your filed memorandum.

8 MR. GRAHAM: Yes, ma'am.

9 THE COURT: Okay. And have you all each reviewed
10 the others filings?

11 MR. POLIAKOFF: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. GRAHAM: Yes, ma'am.

14 THE COURT: All right.

15 So, Mr. Graham, I'm happy to hear from you. And
16 then afterward I'll hear from --

17 Well, I'm referring to plaintiff and defendant and
18 I guess I need to just say I'm going to hear from counsel
19 for Ms. Smith-Young.

20 MR. POLIAKOFF: It's confusing otherwise, Your
21 Honor.

22 THE COURT: Yes. So to keep the record straight,
23 we will just say White Oak and Ms. Smith-Young, okay?

24 MR. GRAHAM: And to that point -- it's a
25 convoluted history.

1 My understanding is the only claim left is Ms.
2 Smith-Young's claim against White Oak Management in this
3 case. All the other claims here have been dismissed or
4 withdrawn in my understanding. So that would be the narrow
5 claim we are going forward on today, Your Honor.

6 THE COURT: And is White Oak Management separate
7 from White Oak Manor of Spartanburg, Inc.?

8 MR. GRAHAM: Yes, ma'am, but those -- those --
9 White Oak Manor of Spartanburg, Inc. Has been dismissed from
10 the case, I believe, Your Honor.

11 MR. POLIAKOFF: From this case.

12 In a separate filing Paulette Smith-Young, on
13 behalf of Janovia Smith Estate has filed an action against
14 White Oak Manor of Spartanburg, Inc., but that's in a
15 separate matter. So before the court today the only White
16 Oak entity is White Oak Management, Inc..

17 THE COURT: Okay. Okay.

18 All right, Mr. Graham.

19 MR. GRAHAM: Thank you, Your Honor.

20 Other than that I'm going make a pretty
21 straightforward argument to you.

22 THE COURT: Okay. And there has already been an
23 order of substitution?

24 MR. GRAHAM: Substituting me in?

25 THE COURT: Yeah. Well --

1 MR. GRAHAM: I don't believe so, Your Honor.

2 THE COURT: Okay. Well --

3 MR. GRAHAM: My firm.

4 THE COURT: -- I know, Ginger is, but John was on
5 it, right?

6 MR. GRAHAM: John was on it.

7 THE COURT: Okay. So that's not necessary.

8 MR. GRAHAM: Do y'all have a problem with that,
9 with me arguing?

10 MR. POLIAKOFF: No.

11 MR. GRAHAM: John is in my firm.

12 THE COURT: Yeah.

13 MR. POLIAKOFF: I have no objection.

14 THE COURT: Okay. Thank you.

15 Yes, sir.

16 MR. GRAHAM: Thank you.

17 Thank you, Your Honor.

18 Give you some background on what we are arguing
19 today.

20 On March 22nd of 2016 Paulette Smith-Young signed
21 an agreement with White Oak Management. She signed three
22 documents; an admission agreement, arbitration agreement,
23 and an authorized representative agreement that were
24 presented to her at the same time. She signed them at the
25 same time. They deal with the same subject matter as being

1 admitting her mother, the decedent, Janovia Smith, to White
2 Oak for care prior to when she passed away.

3 Upon information and belief, we believe that
4 Paulette Smith-Young had a general durable power of attorney
5 and was, therefore, authorized to sign those documents on
6 behalf of her mother Janovia Smith.

7 Specific to our argument, the admission agreement
8 on paragraph 21, which I have handed to you, Your Honor. I
9 believe it's Exhibit -- it's Exhibit 1.

10 Paragraph 21 specifically states with regard to
11 all monetary claims arising between the facility and
12 resident/authorized representative to the extent they are
13 for more than \$25,000, arbitration pursuant to the Federal
14 Arbitration Act is mandatory, binding and final.

15 It goes on to say exact terms for the arbitration
16 are set forth in a separate document of events/received a
17 entitled arbitration agreement and says that that
18 arbitration agreement is incorporated by referenced into the
19 admission agreement. That specifically provides for in that
20 paragraph. That paragraph is in all capital letters, and
21 the arbitration has been contemporaneously presented to Ms.
22 Smith-Young for her to sign.

23 And the arbitration agreement is a detailed
24 agreement spelling out the company rules of the arbitration
25 and the arbitration is binding. The arbitration agreement

1 is very detailed. It provides procedures for picking the
2 arbitrators, for conducting discovery, what type of evidence
3 is to be presented at the arbitration, how the arbitrators
4 are to decide the merits of the case based upon the evidence
5 and then how payment for costs, depending on who prevails,
6 is to be split between the party. It's a very fair
7 agreement on its face and it's clearly part of the agreement
8 that Ms. Smith-Young entered into in exchange for the
9 admission and care that Janovia Smith received from White
10 Oak Manor.

11 What I have passed up to you, in addition to my
12 memorandum, Your Honor, is an order signed by Robin Stilwell
13 from December of 2016.

14 Mr. Poliakoff cites several Circuit Court orders
15 in his brief in support of not upholding the arbitration
16 agreement.

17 I can tell you none of those orders deal with the
18 specific arbitration agreement that's before you today. The
19 only court order that exists is the one from Robin Stilwell.
20 And if you look at that order, he specifically analyzed the
21 agreement and stated that it was clear, unambiguous and
22 complies with relevant law and decided to enforce. That's
23 the same arbitration agreement that we are arguing about
24 today.

25 So, Your Honor, there is simply no compelling --

1 no reason to repudiate the arbitration provision in the
2 agreement. Mr. Poliakoff is going to do his best to argue
3 there is, but there is simply nothing binding that has
4 struck down any of the arbitration agreement or arbitration
5 language found in what's presented to you today.

6 Furthermore, the admission agreement and the
7 arbitration agreement both state clearly that they are
8 governed by the FAA, and there is ample case law in South
9 Carolina addressing FAA, some of which state that any
10 written provision in the contract evidencing a transaction
11 involving commerce, providing that the arbitration is vowed
12 irrevocable and enforceable. The basic purpose of the FAA
13 is to overcome courts' refusals to enforce agreements to
14 arbitrate and ensure that arbitration will proceed in the
15 event, if any, a state law would have a preclusive effect on
16 an otherwise valid arbitration agreement. That is the Dean
17 case, Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C.
18 FC 371.

19 Additionally, there is South Carolina case law
20 that in South Carolina the state favors alternative dispute
21 resolution. Arbitration, of course, is a form of
22 alternative dispute resolution.

23 There is ample case law that I have cited in my
24 memorandum that there is a strong presumption to the
25 validity of arbitration provisions, strong public policy

1 favoring resolving disputes outside of court through ADR and
2 doubts concerning the scope of arbitrable issues should be
3 resolved in favor of arbitration, particularly in this
4 agreement, Your Honor, where it's clear and unambiguous that
5 there should be resolution in favor of arbitration.

6 And I'll leave you with this, and Mr. Poliakoff is
7 going to stand up and I'm sure provide several points to
8 you, which I'll respond to after he does, but kind of an
9 equitable argument I'll make. This same agreement Mr.
10 Poliakoff and Mr. Rogers just recently as of October of this
11 year conducted a full arbitration before an arbitration
12 panel and there was a decision rendered without any issue,
13 without any objection, and they have already -- they've
14 agreed to go forward under the terms of this agreement. So
15 that's kind of just an equitable argument I'll throw out
16 there to you, but --

17 MR. POLIAKOFF: I have to object about the history
18 as to the arbitration we did --

19 MR. GRAHAM: Whatever they objection --

20 MR. POLIAKOFF: -- as to not having any
21 controversy about it. There was ample controversy.

22 THE COURT: Okay. Well, thank you. Thank you for
23 that and again --

24 MR. GRAHAM: I'll stand firmly on my legal
25 arguments as well, Your Honor.

1 THE COURT: Thank you, Your Honor.

2 MR. GRAHAM: Thank you.

3 THE COURT: All right.

4 Yes, sir, counsel.

5 MR. POLIAKOFF: May it please the court.

6 Your Honor, the court will take notice that the
7 case caption is a 2018 case caption, and so the long, long
8 history of this case is that seventeen months ago is when
9 White Oak first filed its summons and complaint in a court,
10 not in an arbitration, against Janovia Smith-Young's
11 daughter and personal representative Paulette Smith-Young.
12 And so that was July 23rd of 2018. And so that's when this
13 case began. And so once they decided to not pursue
14 arbitration, but to file in a court, it was actually
15 Magistrate's Court, they were suing for what they claimed
16 was money owed by the estate to White Oak, they chose to go
17 into court, which is a significant, significant waiver
18 issue. That's part one of the waiver issue is that they
19 chose to file in court.

20 And so then we go to -- we filed on behalf of
21 Janovia Smith Estate's P.R. and daughter Paulette
22 Smith-Young, we filed an answer and counterclaim. Our
23 counterclaim, of course, exceeded the jurisdiction of the
24 Magistrate's Court.

25 November 13th of 2018 there was a hearing held

1 regarding the motion to transfer.

2 Within a week the parties filed a consent
3 transferring the case to Common Pleas. This is all White
4 Oak availing itself of the court system.

5 The case was transferred to Common Pleas December
6 3rd of 2018. The actual order to transfer was signed by the
7 magistrate.

8 June -- that brings us into -- get into 2019.

9 June 9th of 2019 White Oak filed and this same
10 case caption motions to dismiss based on Section 15-79-125,
11 basically being the requirements of how to bring a medical
12 case, the basic statutory requirements, again availing
13 itself of the courts, not an arbitration, arbitrator, or
14 panel.

15 June 10th of 2019 we had sent discovery to them
16 and White Oak answered some of the discovery requests at
17 that time.

18 September 6th of 2019 a hearing was held on all
19 pending motions. At that hearing the parties agreed to a
20 consent order, which included a sixty day stay of the
21 proceedings. Your Honor actually signed that order about
22 two weeks later on September 20th of 2019.

23 Between that hearing where everybody agreed in
24 open court before Your Honor September 6th, 2019 to the
25 sixty day stay, a week later is the first time that White

1 Oak filed its motion to compel arbitration.

2 So we are fourteen months into the case with White
3 Oak availing itself multiple times of the court system, the
4 real court system, not an arbitration system, for various
5 relief. Filed its first motion to compel arbitration, which
6 hard to believe was about a week after they stood before
7 Your Honor here and agreed to a sixty day stay of
8 proceedings is when they filed their motion for arbitration,
9 a week into having agreed to a sixty day stay of proceeding.

10 But, in any case, the bigger issue is that that
11 filing was some fourteen months after the first time that
12 White Oak sought to avail itself of the court system, not
13 the arbitration system, for its relief.

14 Additionally, there is a further waiver on
15 October 15th of 2019. White Oak Manor sends three subpoenas
16 to Janovia Smith's health care providers. This would be in
17 violation of arbitration as well, for the simple reason that
18 their arbitration agreement that they signed -- excuse me,
19 that they drafted entirely. There was no input by the
20 patient or the patient's family in the development of this
21 arbitration agreement. It was a hundred percent prepared
22 by, drafted by White Oak and its attorneys, but White Oak
23 decided to send three subpoenas.

24 Their arbitration agreement doesn't allow or
25 provide for subpoenas at all. In fact, in the arbitration

1 proceeding that counsel just referenced to the court we did
2 do a week long arbitration in Charlotte, North Carolina a
3 month or two ago. No subpoenas were allowed in that
4 arbitration, because their arbitration agreement doesn't
5 provide for it. And so they send subpoenas. Again,
6 subpoenas are a function of the court. The court that
7 allows them to sign -- issue subpoenas because their
8 arbitration agreement doesn't allow or provide for it.

9 So, again, they are availing themselves of the
10 court system, not an arbitration system when they issue
11 those three subpoenas.

12 And, again, that's still during that sixty days of
13 stay, which they represented to Your Honor on September 6th
14 they were requesting, and we consented to, and that Your
15 Honor issued an order on September 20th.

16 So, once Your Honor signed the order
17 September 20th, then literally less than a month later they
18 are issuing subpoenas to her health care providers. Again,
19 this is further waiver.

20 So we have got serious, serious waiver arguments,
21 and there is case law on waiver, but before I get into the
22 case law on waiver, I would point out that the arbitration
23 agreement before the court, White Oak Management, Inc.,
24 which is the only White Oak entity before Your Honor at
25 today's hearing, is not a signatory to this. The

1 signatories are Janovia Smith through Paulette Smith-Young,
2 the daughter and P.R., and White Oak Manor of Spartanburg,
3 Inc., which is not before Your Honor today.

4 And so the White Oak folks are asking to arbitrate
5 and enforce an arbitration agreement for an entity which is
6 not a party to this arbitration agreement, in which they
7 just indicated when Your Honor asked the question are these
8 separate entities, I believe the answer was yes, they are
9 separate entities. They are certainly related entities, but
10 they are separate corporations, but they're not a party.
11 They are not a signatory to the arbitration agreement.

12 And so going back to the -- again, they are not a
13 signatory, but going back to this waiver argument, and again
14 pointing out that it was fourteen months after White Oak
15 filed its first papers seeking to avail itself of court
16 assistance for things that it wanted before it made a
17 request for arbitration, now they are asking it for a party
18 that's not a signatory to the arbitration contract.

19 So going back to the waiver issue, there is an
20 excellent case on point, South Carolina Supreme Court, Linda
21 Johnson v. Heritage Health Care and others. It's Supreme
22 Court case filed May 25, 2016, that talks about the elements
23 of waiver, what -- in this case they determined -- the
24 Supreme Court determines that, in fact, there was a waiver
25 of arbitration. I'm quoting from the decision, "Accent's

1 prolongation of discovery necessitated Evans's pursuit of
2 discovery, thereby forcing her to incur costs she would not
3 have incurred in arbitration. Thus, we find evidence that
4 Accent's continuation of discovery, rather than seeking
5 arbitration in a timelier manner, prejudiced Evans by
6 forcing her to incur discovery costs."

7 They talk about conducting its own discovery,
8 appearing in court multiple times. All of that's occurred
9 here.

10 Additionally, the Court of Appeals, Davis v. K.B.
11 Home of South Carolina, Inc., Court of Appeals case from
12 2011, in talking about waiver of arbitration, it cited three
13 factors; whether a substantial --

14 "Number one, whether a substantial length of time
15 transpired between commencement of the action and
16 commencement of the motion to compel arbitration." Again,
17 here it's about fourteen months.

18 "Number two, whether the party requesting
19 arbitration engaged in extensive discovery before moving to
20 compel arbitration." Well, they participated in it and have
21 issued subpoenas, which are not part of their arbitration
22 agreement that they drafted.

23 "Number three, whether the nonmoving party was
24 prejudiced by the delay in seeking arbitration." Yes, we
25 have been prejudiced. It's now been seventeen months since

1 this action was filed and we don't have substantial
2 discovery yet and we have had a series of delays.

3 So, again, the party seeking to compel arbitration
4 today is not a signatory. There has been a waiver. They
5 didn't even make their request for fourteen months. They
6 availed themselves on a number of occasions of assistance
7 from courts, not arbitrators, even sending -- issuing
8 subpoenas to nonparties, which would not be part of the --
9 certainly it's not allowed or provided for in their own
10 arbitration agreement.

11 Additionally, there is case law on the lack of
12 consideration mutuality. And this is no mere puffing, Your
13 Honor. It's a substantive argument about lack of
14 consideration and mutuality based on White Oak's own
15 arbitration agreement.

16 So we have here an agreement which is entirely
17 separate from the admissions agreement. They both have
18 separate signature pages, completely separate documents.

19 We also look to the admissions agreement that has
20 language of -- entire agreement language, language that says
21 this is the entire agreement, no other agreements, no other
22 representations taking precedence. This is the entire
23 agreement. So it's clearly separate agreements and there
24 has been no merger of the two.

25 And additionally in this case White Oak has the

1 right to revoke it. They have this provision about \$25,000
2 where they can decide whether or not to make use of courts
3 or arbitrators and they chose the court, Your Honor.

4 And going back in particular to the -- there have
5 been a couple of great cases we've -- Exhibit No. 4 is an
6 order from Judge Buckner we believe on point. It's the
7 Holmes v. Bay View case.

8 Our Exhibit No. 5, Rawl v. West Ashley decision,
9 which is from Judge Goodstein.

10 And in both of those cases the courts found that
11 the arbitration agreement was not valid or enforceable
12 because of the lack of consideration, lack of mutuality.

13 And it recognizes that our Supreme Court, Thompson
14 in particular, and Hodge, the three primary state Supreme
15 Court -- state appellate court cases are Thompson, Hodge and
16 Coleman, and they have established there is no direct
17 benefit to nursing home residents from a pre-admission
18 arbitration contract separate from the admission agreement.
19 There is no additional consideration in this. There is no
20 direct benefit. It doesn't benefit the resident at all to
21 be -- to give up her rights to -- her Constitutional Right
22 to go to court and to appear before a jury.

23 And, again, these are entirely separate documents,
24 the admissions agreement and the purported arbitration
25 agreement, and it's got --

1 The Coleman case recognizes that if there is a
2 "entirety of agreement" provision, that that on its face
3 means that it's a document separate from the other document,
4 the other document being the arbitration document.

5 And, again, different -- different paginations,
6 different signature pages, totally separate.

7 And, again, there is no mutual -- no
8 consideration, no mutuality.

9 And, again, primarily they are asking to enforce
10 it for a party that's never signed it, not a signatory to
11 it, that is separate from the facility that was the
12 signatory to it, and then the waiver of the argument is
13 substantial here. Thank you.

14 THE COURT: Thank you.

15 Okay. Mr. Graham?

16 MR. GRAHAM: Yes, ma'am.

17 You are going to give us some time to respond?

18 THE COURT: Yes, sir.

19 Well, now, not as to anything new. What I
20 normally do is just ask you all to convert your memoranda to
21 proposed orders, okay, but I'm happy to hear from you now.

22 MR. GRAHAM: Okay. Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. GRAHAM: As to the labor, Mr. Poliakoff
25 mentioned that in light of starting this lawsuit by filing a

1 collection action against his client in Magistrate's Court,
2 the arbitration provision clearly provides that it applies
3 to --

4 THE COURT: \$25,000.

5 MR. GRAHAM: -- \$25,000. Obviously Magistrate
6 Court couldn't get you their to the jurisdictional limit, so
7 by filing that lawsuit White Oak in no way waives any
8 arbitration, so the arbitration provision wouldn't apply to
9 that suit, because the value is too low, Your Honor.

10 As for discovery, he mentioned that we
11 participated. We responded -- I believe what we responded
12 to were some requests to admit. Had we not responded to
13 those, he might would probably be here trying to argue to
14 enforce our lack of response and those requests to admit
15 deemed admitted. So you are kind of in between a rock and a
16 hard place if you choose not to respond, because you don't
17 know how the arbitration decision is going to come out. In
18 no way is that a waiver for a valid enforceable contract
19 that was entered into, and in no way is White Oak Management
20 waived its right to arbitration by participating and
21 responding to its requests to admit, Your Honor.

22 As to the lack of consideration issue, Your Honor,
23 and the cases he's talking about, Thompson, Hodge and
24 Coleman, I read those last night after I received his brief.
25 Our case is distinguishable from -- those are agreements

1 distinguishable for those for one admitted to our facility
2 is not an -- the arbitration is not a condition for
3 admittance to our facility.

4 Number two, it states specifically that the
5 arbitration agreement is incorporated by reference into the
6 admission agreement. So they are not -- they are not two
7 separate documents. They are the same document because it's
8 incorporated by reference and it's specifically stated in
9 the admission agreement, Your Honor.

10 And in regards to that, Ms. Smith-Young signed
11 three total agreements, but definitely signed the admission
12 agreement and the arbitration agreement, and as you are
13 likely aware, it's clear in South Carolina that if you
14 signed a document, you are deemed to have read it and you
15 are deemed to realize the consequences of signing that
16 agreement, Your Honor.

17 So there certainly was consideration in the form
18 of admittance to the facility and care to be provided for
19 that contract, Your Honor, and that contract being
20 enforceable because of that consideration.

21 Your Honor, simply put, we have a valid
22 enforceable contract that was signed. It's been determined
23 by a Circuit Court Judge that our agreement complies with
24 the relevant laws that are applicable to it. Despite Mr.
25 Poliakoff's best efforts, there has been no argument that

1 could be valid to repudiate what's in our agreement that is
2 valid and enforceable under our law.

3 So, Your Honor, I would just summarize by saying
4 that it's not as complicated as Mr. Poliakoff has made it to
5 be. There has been no waiver. It's a valid contract and
6 the arbitration agreement should be enforced. Thank you.

7 THE COURT: Thank you.

8 Okay.

9 MR. POLIAKOFF: I think we are well covered by our
10 argument in our brief, Your Honor. Thank you.

11 THE COURT: Thank you.

12 And so with regard to that motion, as I stated to
13 you at the outset, if you all would be so kind as to convert
14 your memorandums to proposed orders for me. That's very
15 helpful to me. And if you will do that in a word format, a
16 word document, and e-mail those to my law clerk.

17 And how much time -- can y'all do that by January
18 the 1st?

19 MR. POLIAKOFF: Yes, Your Honor.

20 MR. GRAHAM: I think so, Your Honor.

21 May I approach real quick?

22 THE COURT: Yes, sir.

23 MR. GRAHAM: Can we approach?

24 MR. POLIAKOFF: Sure.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)

2 THE COURT: So now we are going to hear regarding
3 the motion to compel discovery.

4 MR. WAELDE: Yes, Your Honor.

5 THE COURT: Okay. Just give me one moment.

6 (Off the record)

7 (Back on the record).

8 THE COURT: Okay. So this is the motion that was
9 filed with the court on October the 14th and this would be
10 Ms. Smith-Young's motion to compel discovery.

11 MR. WAELDE: Yes, Your Honor, against White Oak
12 Management.

13 THE COURT: Okay. All right.

14 And so is the motion to stay or the order to stay
15 everything, did that cover White Oak Management?

16 MR. POLIAKOFF: I believe that that was the only
17 party still in the case, so yes.

18 THE COURT: Okay. And so when this was filed,
19 though, I had previously filed -- I just want to make sure I
20 understand. I had filed a motion to stay everything based
21 upon the request of counsel?

22 MR. POLIAKOFF: Yes, Your Honor.

23 MR. WAELDE: Yes.

24 MR. POLIAKOFF: And the hearing was September 6th,
25 and the consent order was signed by Your Honor September

1 20th.

2 THE COURT: Okay. And I do remember I think that
3 Ray was here and Ms. Goforth was here and they -- we had a
4 number of motions. They left and came back in and said they
5 thought they had resolved it --

6 MR. POLIAKOFF: Yes, Your Honor.

7 THE COURT: -- to their mutual satisfaction.

8 Okay. I remember it all.

9 MR. POLIAKOFF: And I wasn't here, but that's my
10 understanding.

11 THE COURT: Okay. All right. Thank you.

12 So, yes, sir, I'm happy to hear from you with
13 regard to the motion.

14 MR. WAELDE: May it please the court, Your Honor,
15 I know we've heard a lot about this today, so I'll keep this
16 very succinct.

17 We sent requests for production of documents to
18 the third-party defendants on March 26th of 2019. So that
19 would have made them due on or around April 25th of 2019.

20 The third-party defendant asked and we granted a
21 thirty day extension, moving that to May 25th.

22 And then third-party defendant asked and we
23 granted again another extension to June 7th, I believe.

24 So as of this date that put us a little over seven
25 months that these requests for productions have been

1 outstanding.

2 It's nothing voluminous, Your Honor. It's nine
3 items that we are requesting, and the RPD's, they been there
4 for seven months.

5 The third-party defendant has responded to some
6 requests to admit, but that was with a different party.
7 That is White Oak Spartanburg, Incorporated.

8 We are not asking for too much. They have already
9 participated in the civil action, as Mr. Poliakoff argued
10 previously.

11 Additionally, the third-party defendants have
12 submitted subpoenas out to Piedmont Internal Medicine, East
13 Family Medical Center, Mary Black Hospital, Spartanburg
14 Regional October 14th of 2019. So it's the clear intention
15 that the third-party defendant has been -- intent has been
16 conducting discovery in this matter, so we would only like
17 the same courtesy for us.

18 Since it has been so overdue with the discovery,
19 we have submitted orders as exhibits with the motion, but
20 it's very clear in South Carolina case law that at this
21 point third-party defendants would have waived any
22 objections to be made in response to their request for
23 production of documents and that they need to answer them
24 fully and truthfully at this point.

25 And we would ask that Your Honor, the court

1 instruct the third-party defendants to answer the requests
2 for production of documents as soon as feasibly possible so
3 we may continue with our case. Thank you.

4 THE COURT: Okay. And so just to be clear, this
5 motion states that there has been no responses?

6 MR. WAELDE: No, Your Honor, we haven't had any
7 response whatsoever to any of our requests.

8 THE COURT: All right. Thank you.

9 MS. WAELDE: Yes, Your Honor.

10 THE COURT: Okay. Mr. Graham?

11 MR. GRAHAM: Yes, ma'am.

12 You can probably anticipate I guess what I'm going
13 to say, but we have not responded because we knew they would
14 argue that would be deemed a waiver of our arbitration
15 agreement.

16 I think that I can say to you that we are happy to
17 engage quickly in discovery, should you rule that the
18 arbitration agreement is not enforceable. I certainly don't
19 want to waive any objections. I don't believe that I've
20 waived it due to the communications that what appears to may
21 have been between Ms. Goforth, Mr. Rogers and Mr. Poliakoff
22 and his office throughout the case, that efforts have been
23 made, but I think that -- I'm comfortable putting on the
24 record that if you find the arbitration agreement is not
25 enforceable, that we will move quickly to respond to these

1 appropriately.

2 THE COURT: Okay. All right. Thank you.

3 Anything in reply?

4 MR. WAELDE: Just very quickly, Your Honor.

5 You know, if third-party claims were that
6 concerned, they could have moved for a protective order with
7 the court in regards to the discovery, but they have made no
8 such motion with the court for that.

9 We would ask, if at all possible, Your Honor, that
10 pending your ruling on the motion to compel arbitration,
11 that should you find in favor of the third-party plaintiff
12 that -- that we get the responses -- that we have our
13 responses within thirty days.

14 And I would just like to reiterate that at this
15 point White Oak Management has three subpoenas they have
16 sent out requesting medical records for our client.

17 THE COURT: Okay.

18 MR. WAELDE: Which is inconsistent with their
19 motion to compel arbitration.

20 THE COURT: Okay.

21 MR. WAELDE: That would be it, Your Honor. Thank
22 you.

23 THE COURT: Okay. All right.

24 And so pending my decision on whether or not to
25 compel arbitration and stay all matters in this action, I

1 will then rule on discovery issue, if that is necessary,
2 okay? Okay. So I'm not going to ask y'all to draft
3 anything with regard to that, all right?

4 MR. GRAHAM: Thank you, Your Honor.

5 MR. WAELDE: Thank you, Your Honor.

6 THE COURT: Thank you all.

7 MR. GRAHAM: I'll be in contact with you and Mr.
8 Poliakoff today.

9 THE COURT: Okay.

10 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case in the Court of Common Pleas for Spartanburg County, South Carolina, on the 18th day of December, 2019.

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

December 22, 2019



Michael R. Watts
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

White Oak Manor of Spartanburg,)
)
Plaintiff,)

v.)

Paulette Smith-Young,)
)
Defendant,)

ORDER GRANTING
WHITE OAK MANAGEMENT, INC.’s
MOTION TO COMPEL ARBITRATION

AND)

Paulette Smith-Young, individually,)
and as the personal representative of)
the Estate of Genobia Smith, deceased,)

Third-Party Plaintiff,)

CA No.: 2018-CP-42-04174

v.)

White Oak Manor-Spartanburg, Inc.)
d/b/a White Oak of Spartanburg and)
White Oak Management, Inc.,)

Third-Party Defendant.)
_____)

This matter came before me for argument on December 19, 2019 for consideration of a Motion to Compel Arbitration by Third-Party Defendant White Oak Management, Inc. (“White Oak Management”) and a Motion to Compel Discovery by Third-Party Plaintiff Paulette Smith-Young, individually and as the personal representative of the Estate of Genobia Smith (“Smith-Young”). For the reasons set forth herein, White Oak Management’s Motion to Compel Arbitration is granted. Smith-Young’s Motion to Compel Discovery is denied as moot.

BACKGROUND/PROCEDURAL HISTORY

On or about March 22, 2016, Smith-Young, as attorney-in-fact and authorized representative for Genobia Smith, duly executed pursuant to those powers an Authorized Representative Agreement, Admission Agreement, and Arbitration Agreement with respect to Genobia Smith's admission to White Oak Manor-Spartanburg, Inc. ("White Oak Manor-Spartanburg"). On or about May 19, 2016, Smith-Young signed a Re-Admission Agreement on behalf of Genobia Smith to White Oak Manor-Spartanburg that properly incorporated the terms of the prior agreements, including the Arbitration Agreement.

The Arbitration Agreement at issue provides that all claims exceeding \$25,000.00 shall be resolved exclusively by binding arbitration pursuant to the FAA. The claims brought by Smith-Young in the Third-Party Complaint against White Oak Management seek damages exceeding this amount.

White Oak Manor-Spartanburg, Inc. ("White Oak Manor-Spartanburg"), a former party to this lawsuit, initially brought this collection action in magistrate's court seeking payment of \$2,250.00 in outstanding fees owed to White Oak Manor-Spartanburg for skilled nursing care rendered to Genobia Smith. This claim was not within the purview of claims covered by the Arbitration Agreement between the parties because it did not exceed \$25,000.00. Genobia Smith was deceased at the time that claim was filed, and White Oak Manor-Spartanburg named Genobia Smith's former Authorized Representative and current Personal Representative, Smith-Young, as the defendant to seek payment from the Estate. Smith-Young filed a Third-Party Complaint (among other claims) in this magistrate's court collection action alleging Wrongful Death and Survival claims against (among other parties) White Oak Management.

White Oak Management and White Oak Manor-Spartanburg moved to dismiss Smith-Young's counterclaim/Third-Party Complaint in the magistrate's court action because these claims failed to comply with the requirements of S.C. Code Ann. § 15-79-125 (Notice of Intent to File Suit as prerequisite to filing action). Because the damages sought in Smith-Young's responsive pleadings divested the magistrate's court of jurisdiction, the case was removed by consent to the Spartanburg County Court of Common Pleas. The consent order expressly preserved and did not waive White Oak Management and White Oak Manor-Spartanburg's motion to dismiss and/or the right to refile that motion if necessary.

Smith-Young filed the consent order on December 3, 2018, and sent a filed copy to counsel for White Oak Management and White Oak Manor-Spartanburg on January 24, 2019.

On or about March 26, 2019, Smith-Young served Requests for Production on White Oak Management and White Oak Manor-Spartanburg, and also served Requests for Admission on White Oak Manor-Spartanburg. After evaluating the discovery requests and case posture, White Oak Manor-Spartanburg answered the requests for admission out an abundance of caution. Neither White Oak Manor-Spartanburg nor White Oak Management responded to the additional extensive discovery requests from Smith-Young to avoid any argument that either party waived enforcement of the Arbitration Agreement. At no time did White Oak Manor-Spartanburg or White Oak Management, Inc. serve any discovery requests.

White Oak Management and White Oak Manor-Spartanburg refiled their preserved Motion to Dismiss on June 9, 2019. Smith-Young on July 9, 2019 filed a Motion to Compel Discovery from White Oak Manor-Spartanburg and White Oak Management, and on August 5, 2019, filed a Motion for Summary Judgment.

Prior to the hearing on these motions on September 6, 2019, the parties reached a mutual agreement to dismiss all motions and claims in this matter without prejudice save Smith-Young's claim against White Oak Management. White Oak Management's Motion to Dismiss was withdrawn without prejudice. The parties agreed to stay the action "for 60 days to allow for a pre-suit mediation in a related pending action," (which was Smith-Young's Notice of Intent, filed on July 10, 2019.) The consent order further provided that at the conclusion of the pre-suit mediation, the remaining claim against White Oak Management would either be consolidated with the Notice of Intent or dismissed "depending upon the outcome of the pre-suit mediation." Pursuant to the consent order, the parties intended to participate in pre-suit mediation in the Notice of Intent to resolve Smith-Young's claims against both White Oak Manor-Spartanburg and White Oak Management.

Smith-Young filed the Notice of Intent pursuant to S.C. Code Ann. § 15-79-125 on July 10, 2019. While she formally named only White Oak Manor-Spartanburg, Inc. as a Defendant, this pleading alleged claims against White Oak Management and White Oak Manor-Spartanburg to the same manner and extent as the Third-Party Complaint in this action. The pleading stated the following:

Paulette Smith-Young, as Personal Representative of the Estate of Genobia Smith, deceased, pursuant to § 15-79-125 of the South Carolina Code of Laws hereby submits this Notice of Intent to file suit against the Defendants named above. If Defendants do not raise arbitration, Plaintiffs will assume no arbitration clause exists or Defendants have abandoned any alleged claim to arbitration. This notice is being filed on the following facts:

Genobia Smith was a resident of Defendants' facility in Spartanburg, SC from March 22, 2016 through August 23, 2016. Defendants are and have been acting in a joint enterprise to operate and manage the facility in order to provide care and treatment to vulnerable adults including Genobia Smith.

Numerous failures, deficiencies, omissions, and breaches of the standard of care have been committed by the Defendants with respect to Genobia Smith. These

include, but are not limited to: neglect; corporate negligence and mismanagement; failure to exercise independent judgment as patient advocates; failure to ensure proper preventative measures were in place to keep resident safe; failure to properly assess resident; failure to properly train staff; failure to properly supervise; and failure to abide by applicable federal and state laws governing long term care facilities and skilled nursing facilities.

This Notice of Intent – unlike the Third-Party Complaint – specifically raised the arbitration issue. White Oak Management, in an effort to clarify the issues and work within the construct created by the unusual procedural history of this matter, thereafter filed its Motion to Compel Arbitration. Smith-Young filed her Second Motion to Compel Discovery.

The pre-suit mediation was conducted on October 14, 2019, less than a month after the consent order. The claims against White Oak Management and White Oak Manor-Spartanburg were not resolved.

On December 11, 2019, Smith-Young clarified her claims by filing a Wrongful Death and Survival Action against White Oak Manor, Inc., White Oak Management, Inc., White Oak Manor-Spartanburg, Inc. d/b/a/ White Oak of Spartanburg; Inpatient Consultants of North Carolina, P.C.; and Edward Warren, M.D. raising claims for “negligence, gross negligence, negligence per se, wrongful death, corporate negligence, breach of fiduciary duty, and joint venture” arising out of the same alleged occurrence/transaction as those in the Third-Party Complaint and Notice of Intent. C.A. No. 2019-CP-42-04347. All White Oak entities, including White Oak Management and White Oak Manor-Spartanburg, have accepted service of this Complaint. Their responsive pleadings are not yet due.

I thereafter White Oak Management’s Motion to Compel Arbitration and Smith-Young’s Motion to Compel Discovery in this matter on December 19, 2019, over 60 days following the entry of the consent order.

FINDINGS OF FACT AND LAW

1. Smith-Young had authority to act on Genobia Smith's behalf in executing the subject Arbitration Agreement.

Smith-Young properly executed all admission documents and paperwork on behalf of Genobia Smith when she was admitted. She did so pursuant to a valid Durable Power of Attorney with Healthcare. The effectiveness of the Arbitration Agreement is not disputed based on any lack of capacity or authority of Smith-Young to sign on behalf of Genobia Smith. Therefore, I find that Smith-Young's reliance on the cases of Hodge v. Unihealth Post-Acute Care of Bamberg, LLC, et al., 422 S.C. 544, 813 S.E.2d 292 (2018), Thompson v. Pruitt Corporation d/b/a UHS-Pruitt Corp., et al., 416 S.C. 43, 784 S.E.2d 679 (2016), Coleman v. Mariner Health Care, Inc., et al., 407 S.C. 346, 755 S.E.2d 450 (2014), and related cases are inapposite. In those cases, the health care defendant was seeking to confer binding signatory authority through other theories, such as the Adult Healthcare Consent Act, estoppel, equitable estoppel, agency, and apparent agency. In none of those cases did the individual signing the Arbitration Agreement and related documents possess, like Smith-Young, a Durable Power of Attorney granting them the authority to sign.

2. The Arbitration Agreement is valid, binding, and enforceable on and against Smith-Young and the Estate of Genobia Smith and White Oak Management .

Arbitration agreements enjoy a strong presumption of validity in federal and state courts. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014)(holding that courts may not refuse to compel arbitration simply because a wrongful death claim is involved). South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 361 (2013). The party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration. Dean, 408 S.C. at 379, 759 S.E.2d at 731 (2014).

Arbitration is a matter of contract, and evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law. Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009); Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). A written agreement to submit a controversy to arbitration is valid, enforceable, and irrevocable, except upon such grounds as exist for the revocation of any contract. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001). “Although the intention of parties is relevant, as a matter of policy, arbitration agreements are liberally construed in favor of arbitrability.” Landers v. Federal Deposit Ins. Corp., 402 S.C. 100, 108-109, 739 S.E.2d 209, 213 (2013), citing American Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 94 (4th Cir. 1996).

It is the policy of the state of South Carolina to favor the arbitration of disputes. Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009); Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003).

The Federal Arbitration Act (“FAA”) will preempt any state law that completely invalidates the parties’ agreement to arbitrate. The basic purpose of the FAA is to ensure that arbitration will proceed in the event that a state law would have a preclusive effect on an otherwise valid arbitration agreement. Accordingly, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001); Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014). A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute. Zabinski, 346 S.C. at 597, 553 S.E.2d at 118–119.

The necessary elements of a contract are an offer, acceptance, and consideration. Arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted only by the terms of the agreement. To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596-597, 553 S.E.2d 110, 118 (2001).

The Resident and Facility Admission Agreement contains the following arbitration provision:

21. **ARBITRATION.**

WITH REGARD TO ALL MONETARY CLAIMS ARISING BETWEEN THE FACILITY AND RESIDENT/AUTHORIZED REPRESENTATIVE, TO THE EXTENT THAT THEY ARE FOR MORE THAN \$25,000.00, ARBITRATION (PURSUANT TO THE FEDERAL ARBITRATION ACT) IS MANDATORY (SUBJECT TO THE “OPT OUT” PROVISIONS SET FORTH IN PARAGRAPH 16 OF THE ARBITRATION AGREEMENT), BINDING AND FINAL. THE EXACT TERMS FOR ARBITRATION ARE SET FORTH IN A SEPARATE DOCUMENT OF EVEN/RECENT DATE, ENTITLED “ARBITRATION AGREEMENT” AND ARE INCORPORATED HEREIN BY REFERENCE. WITH REGARD TO ANY NONMONETARY CLAIM, OR ANY CLAIM FOR LESS THAN \$25,000.00, ARBITRATION SHALL NOT BE REQUIRED.

The Arbitration Agreement provides, in pertinent part, that “[a]ll monetary claims between the parties of \$25,000.00 or more will be resolved by arbitration and will be subject to the terms of this Agreement.” Further, the Arbitration Agreement provides as follows (and expressly includes White Oak Management, Inc. and related entities within its coverage):

14. An award against the Facility will be paid within thirty (30) days after the arbitrators make their decision and notify the Facility in writing of that decision. Upon payment, the Facility, as well as all other “White Oak” facilities, **including specifically White Oak Manor, Inc., and White Oak Management, Inc., and their respective shareholders, directors, officers and employees,** will be deemed

to be released and forever discharged from any and all other claims arising prior to the date of the hearing.

The Arbitration Agreement also provides:

13. When a determination is made by a majority of the arbitrators, they shall also award the “prevailing party,” as defined herein, reimbursement by the other party of all reasonable costs and expenses associated with the arbitration, such as the third arbitrator’s fees, travel expenses, witness fees, deposition expenses, and other costs associated with the hearing, but excluding attorney’s fees. . . .

16. At the time of signing this Agreement, the Resident/Authorized Representative/Attorney-in-Fact acknowledges having received a copy; having been told that he/she has the right to have this Agreement reviewed by an attorney of his/her own choosing prior to signing it; and having been advised that, beginning seven (7) days from date hereof, and for another ten (10) days thereafter, he/she has the right to “opt out” of this Agreement, and no longer be bound by it. In the event the party signing below determines to opt out, he/she must give the Facility written notice thereof within the time provided. **TIME IS OF THE ESSENCE.** If written notification of the Resident/Authorized Representative/Attorney-in-Fact having opted out of this Agreement is not received within the time frame set forth, the within Agreement will remain and continue in full force and effect. By initialing here, the undersigned acknowledges having specifically read this paragraph.
_____ (initials)

17. If signed below by the Resident, the Resident intends to indicate that he/she believes himself/herself to be mentally competent and, in signing this Agreement, is doing so freely and voluntarily. If instead of the Resident, it is the Authorized Representative/Attorney-in-Fact signing below for the Resident, he/she has the legal right to execute this document in behalf of the Resident, and to thereby bind the Resident, as well as the Resident’s heirs/beneficiaries; that so far as he/she knows, other than himself/herself, no one else has the legal right to act in behalf of the Resident and that no one else is an attorney-in-fact for the Resident pursuant to any Power of Attorney; and that all representations set forth in this paragraph are accurate.

23. By signing below, the undersigned certifies and affirms that he/she has been given sufficient time to read this Agreement, and that any questions that the undersigned had, if any, were satisfactorily answered.

Smith-Young initialed all sections requiring initials. She did not opt out of the Arbitration Agreement. She has not revoked or challenged the Arbitration Agreement in any forum, until resisting this motion.

There is no evidence in the record to indicate that Smith-Young did not willingly and with full understanding execute the Arbitration Agreement on behalf of Genobia Smith.

Further, the Arbitration Agreement is clear that it covers **all monetary claims** in excess of \$25,000.00. The claims raised in Smith-Young's Third-Party Complaint meet this threshold, both on their face and by acknowledgment of the parties.

Finally, the Arbitration Agreement contains express consideration favorable to Smith-Young, including, but not limited to:

1. The ability to be represented by someone other than an attorney, thereby reducing litigation expenses;
2. The ability to have a speedy resolution of a claim, not encumbered by the formalities of a litigation forum;
3. The ability to present all evidence in an arbitration forum, not strictly limited by the rules of evidence;
4. The guarantee of payment within 30 days of an arbitration ruling, not limited by any appeals; and,
5. The ability to recover all costs, fees, and expenses of the arbitration, (except any attorney's fees).

I therefore find that the Arbitration Agreement is a valid and enforceable.

I also find that the Arbitration Agreement expressly covers claims against White Oak Management, Inc., and that the parties intended the Arbitration Agreement to cover those claims. The Arbitration Agreement does not specify that it only covers certain claims for monetary relief. No matter what theory of recovery Smith-Young is employing to sue White Oak Management (and the same numerous theories of recovery are alleged in both the Third-Party Complaint, the

Notice of Intent, and the newly-filed Complaint, as set forth in the quoted language above), those claims are encompassed by the plain language of the Arbitration Agreement.

In sum, Smith-Young was properly identified as an authorized representative to act on behalf of Genobia Smith, and the Arbitration Agreement is clear, direct, unambiguous, contains sufficient consideration, and is expressly inclusive of claims against White Oak Management.¹

3. White Oak Management did not waive its right to enforce the Arbitration Agreement.

While parties may waive their right to enforce arbitration, the FAA requires the courts to resolve “any doubts concerning the scope of arbitrable issues . . . in favor of arbitration, whether the problem at hand is the construction of the contract language itself or *an allegation of waiver, delay, or a like defense to arbitrability.*” Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 387, 759 S.E.2d 727, 736 (2014), citing Moses H. Cone Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983) (emphasis added in Dean). There is a presumption against finding that a party has waived its right to compel arbitration; moreover, a party seeking to prove waiver carries a heavy burden to prove “prejudice through an undue burden caused by delay and demanding arbitration.” Id. 388, 759 S.E. 2d at 736.

Waiver decisions are fact-specific, but the court generally considers three factors: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the

¹ The Court also finds persuasive, though not binding, the order of Judge Robin Stilwell from December of 2016, wherein Judge Stilwell evaluated and interpreted the identical Arbitration Agreement and found that it was clear, unambiguous, in compliance with applicable law, and enforceable.

nonmoving party was prejudiced by the delay in seeking arbitration. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007).

In Dean, Plaintiff claimed that Heritage waived its right to enforce arbitration because it participated in discovery, including issuing subpoenas for documents and requesting limited discovery in order to engage in meaningful settlement talks. This process lasted approximately four months, between Plaintiff filing her Notice of Intent and prior to Plaintiff filing her formal complaint.

The court in Dean soundly rejected Plaintiff's argument, finding that Heritage had the right to engage limited discovery effectively evaluate the claims and attempt settlement, and further finding that Plaintiff had not demonstrated any prejudice or undue burden.

This analysis squarely applies to the facts of this matter.

First, White Oak Management did not avail itself of the courts for any matter otherwise covered by the Arbitration Agreement. The initial collection action filed by White Oak Manor-Spartanburg in magistrate's court involved a small sum well below the Agreement's express \$25,000.00 limit.

Second, Smith-Young - not White Oak Management – filed the Third-Party Complaint alleging wrongful death and survival that divested the magistrate's court of jurisdiction.

Third, Smith-Young – not White Oak Management – served extensive discovery requests. White Oak Management did not engage in discovery, but filed its Motion to Dismiss based on Smith-Young's failure to comply with the notice requirements of S.C. Code Ann. § 15-79-125. Smith-Young in July of 2019 did file a Notice of Intent under this statute. White Oak Management sought to obtain medical records from Genobia Smith's third-party providers Spartanburg

Regional Healthcare System, Mary Black Memorial Hospital, and Piedmont Internal Medicine. Smith-Young's counsel objected to these subpoenas, claiming that White Oak Management waived arbitration by their issuance. The Dean decision expressly holds that such limited attempts to obtain information sufficient to evaluate a claim do **not** constitute a waiver.

Fourth, Smith-Young has now filed, on December 11, 2019, a formal action in circuit court raising all of her claims against White Oak Management (in addition to other parties).

Finally, and most important, Smith-Young has not established any prejudice or undue burden caused in any way by the timing of White Oak Management's Motion to Compel Arbitration. Mere inconvenience or delay is insufficient to establish prejudice on its own. Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 513, 788 S.E.2d 216, 219 (2016); Rich v. Walsh, 357 S.C. 64, 72, 590 S.E.2d 506, 510 (Ct. App. 2003)("[M]ere delay, regardless of its duration, should not be considered a factor independent of the actual prejudice it occasions."). I find that White Oak Management did not delay because it filed a Motion to Dismiss the Third-Party Complaint rather than file a Motion to Compel Arbitration.

I am unpersuaded by Smith-Young's reliance on Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 513, 788 S.E.2d 216, 219 (2016) and Davis v. KB Home of South Carolina, Inc., 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011).

In Johnson, the parties engaged in significant written and deposition discovery after the lawsuit was filed before Defendant filed its Motion to Compel Arbitration. Further, Judge Pleicones wrote a strong dissent in Johnson finding that Plaintiff did not meet its burden of proving waiver.

The decision regarding waiver of arbitration in KB Home was vacated by the Supreme Court on January 29, 2014.

CONCLUSION

Having fully considered the parties arguments, I find that:

1. Paulette Smith-Young had authority to bind Genobia Smith when she executed the Arbitration Agreement;
2. The Arbitration Agreement is valid, enforceable, and binding with regard to all of Smith-Young's claims; and
3. White Oak Management did not waive its right to compel arbitration under the Arbitration Agreement.

I THEREFORE ORDER that White Oak Management's Motion to Compel Arbitration is granted, and Smith-Young's Motion to Compel Discovery is denied.

IT IS SO ORDERED.

Grace Gilchrist Knie
Circuit Court Judge
Seventh Judicial Circuit

January _____, 2020

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-02905

Michael Weninger as Personal Representative of the
Estate of Stephen Weninger

White Oak Manor, Inc., White Oak Management
Inc., and White Oak Manor-Charleston, White
Oak Rehabilitation Center

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

This matter comes before the Court pursuant to the Defendant's Motion to Compel Arbitration. The Court has had the opportunity to review the submissions of the parties, the subject Arbitration Agreement, and the arguments of counsel. After having carefully considered the matter, the Motion is granted.

It is well settled that Alternative Dispute Resolution is favored by the courts in the State of South Carolina, and that Arbitration Agreements are enforceable. (Citations omitted). In the instant matter, the Arbitration Agreement is clear, unambiguous, and complies with relevant law. It was signed by the Decedent's Attorney in Fact, who ultimately became the Personal Representative of the Estate. It is unpersuasive, and legally insufficient, for a signatory to feign oblivion and claim that he did not read or understand the agreement.

The case is, therefore, stayed while the parties submit to contractually required Arbitration.

This order ends XX does not end (stays) the case.

Additional Information for the Clerk :

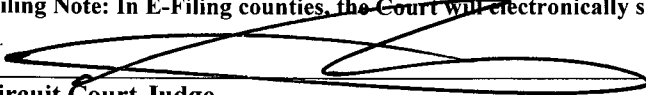
FILED
 2017 JAN 12 AM 4:18
 JULIE J. ANTHONY
 CLERK OF COURT

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

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


 _____ 2158 1/9/2017
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

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

Daniel Nathan Hughey
PO Box 348 Mt. Pleasant SC 29465

John E. Rogers
PO Box 5663 Spartanburg SC 29304

Matthew Henderson
360 E Henry St Ste. 101 Spartanburg SC 29302
Richard Vieth
360 E. Henry St. Ste.101 Spartanburg SC 29302

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

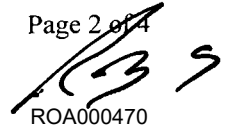
 CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.


 ROA000470



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Robin B. Stilwell
Judge

Greenville County Courthouse
305 East North Street, Suite 315
Greenville, SC 29601-2113
Phone: (864) 467-8406
Fax: (864) 235-3625
rstilwellj@sccourts.org

January 9, 2017

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, SC 29401

RE: Weninger vs. White Oak Manor, Inc., et al.
2016-CP-10-02905

Dear Ms. Armstrong:

Enclosed herewith please find an executed Form 4 Order in the above-referenced civil action. I would appreciate your filing and distributing it to the interested parties.

Please do not hesitate to let me know should you need anything else regarding this matter.

With kindest regards,

A handwritten signature in black ink, appearing to read "Robin B. Stilwell", written over a horizontal line.

ROBIN B. STILWELL

RBS:cor

Enclosure

cc: Daniel Nathan Hughey
Matthew Henderson
Richard Vieth



ARBITRATION

AGREEMENT

ARBITRATION AGREEMENT
(Pursuant to the FEDERAL ARBITRATION ACT only)

PLEASE READ CAREFULLY

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, ~~White Oak~~ **White Oak of Spartanburg** ("the Facility"), and ~~Valerie Smith-Yank~~ **Gaobita L. Smith** ("the Resident"), AGREE TO ARBITRATE ALL MONETARY CLAIMS that may arise between them (with the exception of monetary claims of less than \$25,000.00).

Specifically, the parties hereto agree as follows:

1. All monetary claims between the parties of \$25,000.00 or more will be resolved by arbitration and will be subject to the terms and provisions of this Agreement.

2. If one party to the Admission Agreement between the parties hereto believes he, she or it (hereinafter referred to as the "first party") has a monetary claim of more than \$25,000.00 against the other party (hereinafter referred to as the "second party"), the first party shall give the second party written notice thereof. That claim may be resolved by mutual agreement. If it is, that will conclude permanently that claim, and any other claims that arise on or before the date the claim is resolved. If the claim is not resolved by mutual agreement, then the parties will proceed as subsequently set forth herein.

3. Within thirty (30) days of giving written notice of a claim, the first party will identify in writing an arbitrator of that party's choosing. That party may choose, as that party's arbitrator, anyone that party wishes, provided the person chosen may not be a party to this Agreement, or someone who will give testimony, or provide an affidavit or other written statement for presentation at the hearing provided for below. Further, if the party is the Facility, it may not choose as an arbitrator anyone associated with the Facility as a shareholder, officer, director, or employee.

4. Within thirty (30) days of receipt of written notice of the first party's choice of an arbitrator, the second party will likewise choose an arbitrator, whomever that party wishes, subject to the same restrictions on potential arbitrators set forth in paragraph 3, above, and shall give the first party written notice thereof.

5. Within thirty (30) days of the second party's notification of that party's choice of an arbitrator, the two (2) arbitrators shall confer/meet and attempt to agree upon a third arbitrator. In choosing a third arbitrator, they will be limited to choosing someone who is certified by the Bar Association of the state in which the Facility is located, to be a mediator/arbitrator, and who has substantial prior experience in mediating/arbitrating nursing home claims. In the event the two (2) arbitrators cannot agree on a third arbitrator, then either side may apply to the American Arbitration Association to seek appointment of the third arbitrator. The choice made by the American Arbitration Association will be final and binding so long as the person chosen has substantial prior

experience in mediating/arbitrating nursing home claims, and can be expected to be both fair and impartial.

6. Within ninety (90) days of the determination of the third arbitrator, a hearing ("the hearing") shall be held at a mutually convenient location before a board consisting of the three (3) arbitrators. At the hearing each side may present whatever evidence that side deems appropriate. This "evidence" may be presented in any reasonable manner, and need not conform to the normal rules of evidence utilized in a court of law. All testimony will, however, be under oath.

7. At the arbitration hearing, each party may, but need not, be represented by an attorney. In other words, should the Resident wish to be represented by a family member, subject to the limitations set forth in paragraph 3 above, that is permissible.

8. Subject to paragraph 13 below, each party shall be responsible for paying that party's own arbitrator. Furthermore, prior to the actual arbitration hearing, each party will pay one-half (1/2) of the fees and costs associated with the third arbitrator and the hearing.

9. Each party shall promptly provide the other party with copies of all documents upon which the producing party intends to rely at the hearing. Under all circumstances, all such documents shall be made available to the other party at least ten (10) days prior to the hearing. If not, they will not, under any circumstances, be admissible at the hearing.

10. Prior to the hearing, depositions may be taken by the parties. If a dispute arises regarding these depositions, the number that may be taken, their length, etc., it will be resolved by a majority of the arbitrators. Under all circumstances, this decision by a majority of the arbitrators, and any other decisions made by a majority of the arbitrators, will be both final and binding.

11. All time limits set forth herein may, by mutual agreement or by a majority of the arbitrators, be extended or otherwise modified. Furthermore, all other issues that may arise between the parties hereto will likewise be resolved by a majority of the arbitrators.

12. At least ten (10) days prior to the hearing, each party shall submit in writing to the other party that party's best demand/offer of settlement. The parties may continue to negotiate up to and even through the actual hearing. At the hearing, each party shall provide, in writing, the arbitrators with that party's best offer/demand. When the arbitrators make their decision, they will be limited to selecting one of the two (2) figures presented by the parties. That determination will be both final and binding, will be in writing, and will be signed by at least two (2) of the arbitrators.

13. When a determination is made by a majority of the arbitrators, they shall also award the "prevailing party," as defined herein, reimbursement by the other party of all reasonable costs and expenses associated with the arbitration, such as the third arbitrator's fees, travel expenses, witness fees, deposition expenses, and other costs associated with the hearing, but excluding attorneys' fees. Each party will be responsible

for paying that party's own attorney. For purposes of this paragraph, "the prevailing party" shall be the party whose final offer or demand submitted at the hearing is the amount ultimately awarded by a majority of the arbitrators.

14. An award against the Facility will be paid within thirty (30) days after the arbitrators make their decision and notify the Facility in writing of that decision. Upon payment, the Facility, as well as all other "White Oak" facilities, including specifically White Oak Manor, Inc. and White Oak Management, Inc., and their respective shareholders, directors, officers and employees, will be deemed to be released and forever discharged from any and all other claims arising prior to the date of the hearing.

15. In the event payment is not made by the Facility within thirty (30) days of written notification of the arbitrators' decision, judgment against the Facility may be entered of record in any County in which it does business, and will accrue interest at the applicable statutory rate until payment is made.

16. At the time of signing this Agreement, the Resident/Authorized Representative/Attorney-in-Fact acknowledges having received a copy, having been told that he/she has the right to have this Agreement reviewed by an attorney of his/her own choosing prior to signing it; and having been advised that, beginning seven (7) days from date hereof, and for another ten (10) days thereafter, he/she has the right to "opt out" of this Agreement, and no longer be bound by it. In the event the party signing below determines to opt out, he/she must give the Facility written notice thereof within the time provided. **TIME IS OF THE ESSENCE.** If written notification of the Resident/Authorized Representative/Attorney-in-Fact having opted out of this Agreement is not received within the time frame set forth, the within Agreement will remain and continue in full force and effect. By initialing here, the undersigned acknowledges having specifically read this paragraph. ABJ (initials)

17. If signed below by the Resident, the Resident intends to indicate that he/she believes himself/herself to be mentally competent and, in signing this Agreement, is doing so freely and voluntarily. If instead of the Resident, it is the Authorized Representative/Attorney-in-Fact signing below for the Resident, he/she has the legal right to execute this document in behalf of the Resident, and to thereby bind the Resident, as well as the Resident's heirs/beneficiaries; that so far as he/she knows, other than himself/herself, no one else has the legal right to act in behalf of the Resident and that no one else is an attorney-in-fact for the Resident pursuant to any Power of Attorney; and that all representations set forth in this paragraph are accurate.

18. Except as may be required by law, neither party hereto nor any arbitrator may disclose the determination made by the arbitrators without the prior written consent of the other party, or by court order.

19. To the extent that any questions arise that are not covered by this Agreement, they will be resolved by a majority of the arbitrators. That decision will be both final and binding.

20. In the event any portion of this Agreement is determined to be invalid or unenforceable, the remainder will nevertheless continue in full force and effect and be binding upon the parties hereto, and upon their respective heirs, personal representatives, successors or assigns.

21. The within Arbitration Agreement constitutes the entire agreement by and between the parties hereto; incorporates all representations supposedly made at or before being signed by the undersigned; and may not be modified or otherwise amended except by subsequent written agreement entered into by and between all parties hereto. This Agreement shall be governed by the Federal Arbitration Act and, to the extent not inconsistent therewith, the laws of the state where the Facility is located.

22. This Agreement provides for Arbitration as the sole method of resolving disputes of \$25,000.00 or more. However, nothing herein contained shall be construed to reduce, diminish, or have any affect upon the substantive rights either party hereto may have by virtue of either statute or case law.

23. By signing below, the undersigned certifies and affirms that he/she has been given sufficient time to read this Agreement, and that any questions that the undersigned had, if any, were satisfactorily answered.

IN WITNESS WHEREOF, the undersigned have hereunto caused their hands and seals to be affixed as of this 22nd day of March, 2016

RESIDENT / AUTHORIZED REPRESENTATIVE:

GONDOLA L. SMITH
Printed Resident Name

Signature / Date

L. Paulette Smith-Very
Printed Authorized Representative

Paulette Smith-Very 3/22/16
Signature / Date

Daughter
Relationship

FACILITY STAFF / WITNESS:

White Oak of Spartanburg
White Oak _____, Inc.

Date: 3/22/16

By Mary P. Sprouse
Staff Printed Name and Title

Mary P. Sprouse
Staff Signature Witness



**AUTHORIZED
REPRESENTATIVE
AGREEMENT**

AUTHORIZED REPRESENTATIVE AGREEMENT
PLEASE READ CAREFULLY AND ASK ANY QUESTIONS

This Authorized Representative Agreement (hereinafter referred to as "Agreement") is made between ~~White Oak / Spartanburg~~ Facility Name], (hereinafter referred to as the "Facility") and PAULETTE SMITH-YOUNG, the legal representative or representative individual (hereinafter referred to as "Authorized Representative") of the Resident, 624061A L. SMITH (hereinafter referred to as "Resident").

WHEREAS, Authorized Representative and Facility enter into this Agreement to facilitate the provision of care to the Resident.

WHEREAS, the Authorized Representative may be the Guardian/Conservator, the Agent under a valid Power of Attorney, or any person authorized by the Resident to serve as Resident's Authorized Representative.

WHEREAS, Facility shall discuss and consult with the Authorized Representative regarding pertinent decisions related to Resident's stay and care at the Facility.

THEREFORE, Facility and Authorized Representative agree to the following terms and conditions:

1. Authorized Representative affirms that the information and related documents provided during the admission process are true and correct to the best of his or her knowledge. Authorized Representative acknowledges that the submission of any false information, misrepresentation or lack of disclosure may result in the termination of the Resident and Facility Admission Agreement (hereinafter referred to as "Admission Agreement") and may result in the discharge of the Resident from the Facility at the Resident and/or Authorized Representative's expense.

2. If the Resident selects an Authorized Representative, then said Authorized Representative shall sign this Agreement, the Admission Agreement and the Arbitration Agreement in recognition of this designation with the intent to be legally bound by this Agreement, the Admission Agreement and the Arbitration Agreement (subject, however, to the opt-out provisions of the Arbitration Agreement). The Authorized Representative shall be obligated to fulfill the duties on behalf of the Resident imposed by the Admission Agreement in accordance with the law governing fiduciary duties. Facility may petition a court to appoint a Guardian / Conservator and take other legal action if Facility reasonably believes that the Resident's needs are not being properly met or the duties imposed by the Admission Agreement are not being fulfilled by the Authorized Representative. Resident, Resident's estate, or Authorized Representative shall pay the cost of such Guardianship/Conservatorship proceedings, including attorneys' fees.

3. Authorized Representative affirms that he or she has access to Resident's income and resources and that Resident's income and resources are available to pay for Resident's care

in the Facility. The Authorized Representative shall provide payment from Resident's income and resources for such care. Authorized Representative shall apply Resident's income and resources to the costs and charges incurred during Resident's stay unless and until such costs are paid by private insurance or other benefits such as Medicare or Medicaid. When the Resident's financial resources warrant it, Authorized Representative shall take any and all actions necessary and appropriate to initiate, make and conclude application for Medicaid benefits on behalf of the Resident, including providing all necessary documentation, complying with deadlines and pursuing all necessary appeals. Authorized Representative shall utilize Resident's income and resources only for Resident and shall not utilize any of Resident's income or resources for Authorized Representative's benefit nor transfer any of Resident's real property except for proceeds at no less than fair market value for the benefit of Resident.

4. Authorized Representative is obligated to pay Facility from Resident's financial resources for services and supplies provided to Resident in accordance with the Admission Agreement. If the Authorized Representative withholds or misappropriates Resident's financial resources for personal use or gifts, or otherwise does not use the Resident's financial resources to fulfill Resident's financial obligations to Facility for services and supplies provided to Resident in accordance with the Admission Agreement, then Authorized Representative shall be held liable for payment, but only up to the amount of the Resident's financial resources, and Facility will apply to become representative/designated payee for available income.

5. If Resident becomes unable to pay the charges for nursing facility care due to the depletion of Resident's financial resources, Authorized Representative shall timely assist Resident in the preparation, completion and submission of Resident's application for Medicaid benefits, and if applicable, file an appeal of a determination of ineligibility. Assistance provided by Facility in the preparation, completion or submission of an application for Medicaid benefits does not relieve Resident or Authorized Representative of these obligations. Authorized Representative shall provide all information and documentation requested by the Medicaid Office. Upon Facility's request, Authorized Representative shall execute an authorization for Facility to obtain Resident's financial information for the purposes of securing Medicaid benefits, pursuing a hardship waiver, and bringing Resident's account current. If Resident is determined to be ineligible for Medicaid as a result of Authorized Representative's failure to meet the obligations set forth in this Agreement, then Facility may terminate the Admission Agreement for non-payment, and Resident may be discharged for non-payment. Authorized Representative shall be liable for any losses sustained by Facility as a result of failure to meet contractual obligations.

6. In the event Resident applies for Medicaid benefits, Authorized Representative shall pay the applicable Recurring Liability Amount to Facility on a monthly basis. The Recurring Liability Amount is determined by the Department of Health and Human Services ("DHHS") and described in the Admission Agreement. Authorized Representative may request the Facility, to the extent permitted by law, to apply as representative / designated payee for any income available to Resident.

7. Authorized Representative is obligated to pay Facility for all losses or damages incurred by Facility resulting from the failure of the Authorized Representative to fulfill his/her

duties under the Admission Agreement and/or this Agreement. In the event that Facility initiates any legal actions or proceedings to collect payments due from Resident and Authorized Representative under this Agreement, or to enforce Authorized Representative's obligations under the Admission Agreement, then Resident and Authorized Representative shall pay all damages, attorneys' fees and costs incurred by Facility in pursuing the enforcement of Resident's and/or Authorized Representative's financial or other obligations under the Admission Agreement and/or this Agreement. Such damages, fees, and costs may include, in the discretion of Facility, an amount equivalent to revenue lost by Facility due to Authorized Representative's failure to timely submit or complete a Medicaid application or to cooperate with DHHS in the Medicaid eligibility determination.

8. Authorized Representative understands that if he or she fulfills his or her obligation under the Admission Agreement and/or this Agreement, he or she shall not be held personally liable for the Resident's charges. This Agreement shall not be construed or operate as a third party guaranty.

9. Authorized Representative is obligated to perform all provisions in the Admission Agreement related to Authorized Representative.

10. This Agreement shall bind the Authorized Representative, his or her executors, heirs, administrators and assigns and the benefits shall inure to Facility, its successors and assigns.

11. Authorized Representative acknowledges he or she has reviewed this Authorized Representative Agreement and understands the information set forth herein.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have signed this Authorized Representative Agreement on this 22nd day of March, 2016

RESIDENT / AUTHORIZED REPRESENTATIVE:

GENOBIA L. SMITH
Printed Resident Name

Signature / Date

Paulette Smith-Vanz
Printed Authorized Representative

Paulette Smith-Vanz 3/22/16
Signature / Date

daughter
Relationship

FACILITY STAFF / WITNESS:

White Oak of Spartanburg
White Oak, Inc.

Date: 3/22/16

By MARY P. SPRUIELL
Staff Printed Name and Title

Mary P. Spruiell
Staff Signature / Witness



**RESIDENT AND FACILITY
ADMISSION AGREEMENT**

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- 20.8. Get A Lift Safe Resident Handling Program
- 20.9. Physical Device Policy
- 20.10. Admission Handbook
- 20.11. Consent to Care
- 20.12. Participation in Care Plan
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- 20.15. Notification of Facility Symbols
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21. ARBITRATION

22. BINDING EFFECT

RESIDENT AND FACILITY ADMISSION AGREEMENT
PLEASE READ CAREFULLY AND ASK ANY QUESTIONS

This Agreement is made by and between White Oak of Spartanburg (hereinafter called "Facility") and Resident and his/her Authorized Representative and/or the individual who has access to Resident's income and financial resources available to pay for nursing care (hereinafter called "Authorized Representative") for the provision of nursing services for GENOBIAL C. SMITH (hereinafter called "Resident").

Resident and/or Authorized Representative affirm that the information provided during the admission process is true and correct to the best of their knowledge, and acknowledge that the submission of any false information may constitute grounds to terminate this Agreement.

Identification of Authorized Representative (if applicable):

The Authorized Representative is anyone authorized by the Resident or by law to act on the Resident's behalf. Please check the type and scope of authority for anyone other than the Resident who signs this Agreement.

TYPE (Check one)

- General POA*
- Durable POA*
- Durable POA w/ Healthcare*
- Guardianship / Conservatorship*
- Healthcare POA*
- Other: _____

SCOPE (check all that apply)

- Routine health care
- Unlimited health care
- Limited access to income / finance
- Authorized to accept income and control financial resources of Resident

*** Must provide copies of any and/or all documents checked above**

The Authorized Representative, by signing this Agreement, acknowledges acceptance of the duties and responsibilities of this role.

The Authorized Representative will not incur personal financial liability except for breach of duty or contract related to the misuse of Resident's resources or the failure to use those resources to pay for the Resident's care.

PRELIMINARY STATEMENTS:

Resident individually or by and through Resident's Authorized Representative has considered appropriate care settings and is desirous of receiving care at the Facility.

Facility is a licensed nursing facility and will provide the services set forth below in accordance with the applicable standards of care, none of which cause the Facility to become an insurer nor guarantor of the health and safety of the Resident, or for that matter, the insurer or guarantor of the Resident's personal property.

NOW, THEREFORE, in consideration of the prompt payment by the Resident (and the applicable state, federal, or private insurance program) of the charges made to the Resident's account in accordance with the charge structure of the Facility, and in further consideration of the mutual covenants and promises herein, the parties agree as follows:

2. PROVISION OF SERVICES

2.1. Care and Services. The Facility offers, at the Daily Rate, the following services: room accommodations, food services, licensed routine nursing services, social services, activities, housekeeping services, laundering of linens and towels, routine hair care, and resident trust fund services.

2.2. Ancillary Services and Supplies. The Facility shall make available at an additional charge, unless included in the Daily Rate, the following items and services: therapy services, medical supplies, laboratory services, pharmaceuticals, beauty/barbershop, guest meals, and toiletries for personal comfort, grooming, or hygiene, and transportation. All items and services not included in the Daily Rate, such as Medicare A or Medicaid, will be billed to the applicable payor. The Resident is responsible for all non-covered items and services, co-payments or deductible amounts, according to the Facility's Rate Schedule, as amended from time-to-time. Items and services not included in the Daily Rate will be updated periodically upon notice to residents.

2.3. Services of Other Providers. The services of outside providers such as a licensed physician, optometrist, podiatrist and/or dentist, a registered pharmacist for the provision of medications, rehabilitation therapies and diagnostic services, i.e., laboratory, x-ray and/or ambulance services, are available at the Facility or under arrangement. These services are available under guidelines and procedures established by the Facility and may be utilized by Resident at his or her own expense unless covered by another pay source. The Facility retains the right to control the source of supply of any items and contract services used within the Facility. Resident or Authorized Representative has exercised freedom of choice by applying for admission to Facility and thereby agrees and contracts with Facility to provide said supply items and contract services as requested. The place of purchase for pharmaceutical items is within Resident's freedom of choice subject to the Facility's policy for Resident drugs.

2.4. **Role of Attending Physician and Medical Director.** The Resident shall obtain the services of a qualified physician who will provide medical care during the Resident's stay at the Facility. The Resident is free to receive care from any licensed physician who agrees to submit credentials to the Facility and adhere to the Facility's policies and procedures. The Resident elects WARREN HOUSTON as the attending physician(s). WH (initials). The Facility is not obligated to provide Resident with any medicines, treatments, special diets or equipment without specific orders or directions from Resident's attending physician. In the event Resident's attending physician is unavailable, the Facility's Medical Director / Designee may issue appropriate orders. Resident is responsible to pay for all services or equipment ordered by Resident's attending physician or the Facility's Medical Director / Designee for Resident's care unless covered by Medicare / Medicaid or other third-party insurer.

2.5. **Room Assignments.** The Facility makes room and bed assignments according to availability and/or in accordance with the Resident's physical and psychosocial wellbeing. Resident acknowledges that bed assignments may be changed in order to provide a proper environment for all residents. Resident and family / Authorized Representative will be notified of any room changes.

3. CHARGES

3.1. **Recurring / Periodic Charges for Care and Services.** Resident shall pay the Daily Rate, specified in the Rate Schedule in effect at the time the service is rendered, for routine nursing services provided to Resident. The Daily Rate may be changed from time-to-time in accordance with the provisions of Section 4.3. Charges for a resident whose payor source is other than Medicare Part A or Medicaid will begin on the designated admission date or actual admission, whichever is earlier; charges for a resident whose payor source is Medicare Part A or Medicaid will begin no earlier than the date of admission.

3.2. **Additional Charges for Ancillary Services and Supplies.** Resident shall pay for other services and supplies provided by or through the Facility which are not covered by the Daily Rate as set forth in the Rate Schedule in effect at the time such ancillary services or supplies are rendered. Any items ordered by a physician, which are not identified on the Rate Schedule, will be provided at charges identified by the Facility. The charges for ancillary services and supplies are subject to change from time-to-time.

3.3. **Charges for Outside and Non-Facility Services.** In addition to the Facility's charges, Resident shall pay all fees and costs for goods or services furnished to or for Resident by anyone other than the Facility as described in Section 2.3 (Services of Other Providers) unless otherwise covered in full by Medicare or Medicaid or another third-party payor. Resident or Authorized Representative is obligated to pay such fees and costs whether the goods and services are furnished by a person or provider made available by the Facility, or by a person or provider selected by Resident, and whether the goods or services are provided at the Facility or elsewhere. These fees and costs are not included in the Daily Rate. Fees for professional services rendered by a physician are not included in the Daily Rate and will be charged directly to the Resident by the physician.

4. PERIODIC BILLINGS AND PAYMENT DUE DATE

- 4.1. **Monthly Statements and Other Billings.** Prepayment for one (1) month of the basic monthly rate is required at the time of admission. The Facility will mail Resident or Authorized Representative on or about the tenth (10th) day of the month a billing statement reflecting charges for care and services for the upcoming month and charges for ancillary services and supplies which were incurred in the prior month. Statements are due and payable upon receipt of the Monthly Statement.

Resident expecting Medicare coverage specifically understands that Medicare co-insurance is the responsibility of the Resident. Payment of co-insurance is required. Payment for Medicare services is not expected until services are rendered.

- 4.2. **Failure to Pay and Cost of Collection.** Failure to pay an account at the Facility when due is a breach of this Agreement and will allow Facility to discharge Resident upon giving a thirty (30) day written notice, during which thirty (30) day period the breach may be cured by payment of the account in full.

In the event the Facility initiates legal action to collect payments due from the Resident under this Agreement, and the Facility is successful, the Resident and/or Authorized Representative shall be responsible for reimbursing the Facility for all costs and expenses thereby incurred, including reasonable attorneys' fees.

- 4.3. **Modification of Charges.** The Facility reserves the right to change the Rate Schedule reflecting the amount of any of its charges or how and when charges are computed, billed or become due. The Facility shall provide thirty (30) days advance written notice of any such changes.

- 4.4. **Obligations of Resident's Estate and Assignment of Property.** Resident and Authorized Representative acknowledge the charges for services provided under this Agreement remain owed until paid. In the event of Resident's discharge for any reason, including death, this Agreement shall operate as an assignment, transfer and conveyance to the Facility of so much of Resident's property as is equal in value to the amount of any unpaid obligations under this Agreement. This assignment shall be an obligation of Resident's estate and may be enforced against the Resident's estate.

- 4.5. **Change in Contact Information.** Resident and/or Authorized Representative agree to notify the Facility within ten (10) days of any change in Authorized Representative's contact information.

5. MEDICARE / MEDICAID PROGRAMS

- 5.1. **Participation in Programs.** The Facility currently participates in the South Carolina / North Carolina Medicaid program and the federal Medicare program. The Facility reserves the right to withdraw from the Medicaid or Medicare programs at any time in accordance with law.

5.2. Actions of Medicaid and Medicare Agencies. The South Carolina / North Carolina Department of Health and Human Services ("DHHS") is responsible for administering benefits under the Medicaid program. The Centers for Medicare and Medicaid Services ("CMS"), of the United States Department of Health and Human Services, is responsible for administering the Medicare program through an intermediary. Resident acknowledges that the Facility is not responsible for, and has made no representations regarding, the actions or decisions of DHHS, CMS or the Medicare intermediary in administering the programs.

5.3. Medicaid Benefits.

5.3.1. Obligations of Resident. Resident is obligated to make full and complete disclosure regarding all financial resources and income during the application process. Failure to identify all resources and income, or the submission of false information, may result in the termination of this Agreement. Resident is obligated to notify the Facility when Resident's resources available to satisfy the Resident's financial obligations under this Agreement are no longer sufficient to pay all the Facility charges for Resident's care and services or when directed to do so by the Facility. Resident shall provide any documentation requested by the County Medicaid Office. Upon Facility's request, Resident shall execute an authorization for Facility to assist the Resident in securing Medicaid benefits, pursuing a hardship waiver, and bringing Resident's account current. In the event Resident applies for Medicaid benefits, Resident shall continue to pay and apply all of Resident's available resources toward the fulfillment of Resident's financial obligations under this Agreement while the Medicaid application is pending an eligibility determination by DHHS.

5.3.2. Recurring Liability Amount. For residents approved for Medicaid benefits, the Facility will accept payment from the State of South Carolina / North Carolina and, if applicable, the Resident's Recurring Liability Amount as determined by DHHS as payment in full only for those services covered by the Medicaid program. Resident remains obligated to pay such Recurring Liability Amount on a monthly basis. Services not covered by Medicaid are identified in the Rate Schedule and Resident remains obligated to pay for such services. If Resident plans to apply for Medicaid, then the Resident will have an **estimated** monthly Recurring Liability in the amount of \$ 904.00 until the State determines the amount of Resident's income to be paid to the Facility. Once the approved Recurring Liability amount has been set by Medicaid, any differences must be paid or adjusted. The Recurring Liability amount is due to the Facility by the fifth (5th) day of the month 085 (initials)

5.3.3. Determination of Eligibility. Resident and Authorized Representative are obligated to cooperate fully in any Medicaid eligibility determination or re-determination process. In the event that Resident's eligibility for Medicaid benefits is denied, interrupted or terminated due to the failure of Resident or Authorized Representative to cooperate in the Medicaid application, re-determination or appeal process, the Resident and Authorized Representative shall be liable for the Daily Rate plus charges for ancillary services and supplies during any period of ineligibility, and the Facility may terminate this Agreement.

5.3.4. Authorization to Apply for and/or Appeal (Medicaid). In the event of Resident's incapacity and in situations where Resident's resources are depleted or appear to be depleted to the extent that Resident can no longer pay privately for nursing care, and it appears that Resident has become or will become eligible for Medicaid benefits to cover the cost of Resident's continued stay in the Facility; and if there is no other legal representative of Resident known to the Facility or other friend or relative known to the Facility who is authorized and/or is available or willing to act on Resident's behalf, after the Facility has made a good faith effort to identify such persons; then Resident hereby authorizes the Facility to request, file and/or apply for Medicaid benefits on behalf of Resident for the limited purpose of assisting Resident to secure payment through the Medicaid program for Resident's continued stay in the Facility. In the event the application for Medicaid benefits filed on behalf of the Resident is denied, or in the event Medicaid benefits are granted and subsequently discontinued, Resident hereby authorizes the Facility to file on Resident's behalf an appeal of any such denial of Medicaid eligibility or discontinuance of Medicaid benefits, and to take such actions to secure Resident's Medicaid benefits as the Facility deems reasonably necessary or appropriate and consistent with law. Resident warrants and represents that the financial information disclosed in the admission process is true and accurate and may be relied on by the Facility in pursuing Medicaid benefits on behalf of Resident.

5.3.5. Authorization to File a Hardship Waiver with DHHS on Behalf of Resident. If DHHS' application of a transfer of assets penalty operates to deprive Resident of medical care such that Resident's life would be in danger, or would deprive Resident of food, clothing or shelter, or the necessities of life, then in the event of Resident's incapacity, inability or unwillingness to act, and if there is no other Authorized Representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, then Resident authorizes Facility to file a Hardship Waiver with DHHS on Resident's behalf.

5.4. Medicare Part A and Part B Benefits. To the extent that Resident is a beneficiary under either Medicare Part A or Medicare Part B insurance and the nursing services or ancillary services or supplies ordered by a physician are covered by such insurance, the Facility or other provider will bill the charges for the covered services or supplies to the Medicare program. The Resident is responsible for and shall pay any co-insurance or deductible amounts under Medicare Part A or Part B insurance. The Facility shall accept payment from the Medicare intermediary as payment in full only for those services deemed to be covered in full under the Medicare Part A or the Medicare Part B program. Services not covered by Medicare are identified in the Rate Schedule.

5.5. Medicare Part B Payment Limitations: Therapy Caps.

5.5.1. General. Effective January 1, 2006, CMS imposed payment limitations on covered therapy services provided to individuals who are eligible beneficiaries under Medicare Part B. Under this financial limitation, Medicare will pay an annual capped amount for physical and speech therapy (combined) and an annual capped amount for occupational therapy. The capped amounts are revised by CMS

annually. Facility shall provide Resident and/or Authorized Representative with notice of the current capped amounts as appropriate.

5.5.2. Resident's Responsibility to Pay for Therapy Services Beyond the Capped Amounts. Resident is responsible to pay the charges for all medically necessary therapy services in excess of the annual capped amounts, unless such therapy services are covered in whole or in part by private insurance or another government reimbursement program. In the event that another government reimbursement program or available third-party payor or insurance program denies coverage for therapy services provided to Resident after exhaustion of the annual capped amount, then Resident or Authorized Representative shall remain responsible to pay all fees and costs for all such therapy services. If Resident is not eligible for Medicaid, then failure to pay for therapy services rendered above the capped amount shall be grounds for termination and discharge from Facility pursuant to Section 10 of this Agreement.

5.5.3. Exception Requests.

5.5.3.1. Automatic Exceptions. Medicare beneficiaries may be automatically exempted from the annual therapy caps for certain conditions or complexities that have a direct and significant impact on the need for the course of therapy being provided and the additional treatment is medically necessary.

5.5.3.2. Manual Exceptions. Medicare beneficiaries not automatically exempted from the annual therapy caps are entitled to request an exception to the annual therapy caps, for up to fifteen (15) additional treatment days. In the event that Resident has exhausted the annual capped amount, and is not automatically exempted from the therapy caps, then the following shall apply:

5.5.3.2.1. Resident and/or Authorized Representative may submit an exception request to the applicable CMS Medicare contractor; or

5.5.3.2.2. In the event of Resident's incapacity, and if there is no other legal representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, then Resident authorizes Facility to submit an appropriate exception request to the applicable CMS Medicare contractor.

5.5.3.2.3. If the exception request is granted, then therapy services provided to Resident shall be covered by Medicare for the number of additional treatments approved. Once the additional approved treatments have been exhausted, Resident shall be responsible to pay all fees and costs for additional therapy services provided as noted in Section 5.5.2.

5.5.3.2.4. If the exception request is denied, then Resident shall be responsible to pay all fees and costs for additional therapy services provided as noted in Section 5.5.2.

5.6. Medicare Part D Prescription Drug Benefits.

5.6.1. Enrollment in Medicare Part D Plan. If Resident is an eligible beneficiary under the Medicare Part D insurance program and has enrolled or has been mandatorily enrolled in a Medicare Part D Prescription Drug or Medicare Advantage Plan ("PDP"), Resident shall advise Facility in writing of Resident's chosen PDP upon admission. In the event that Resident becomes an eligible beneficiary under Medicare Part D after admission or subsequently chooses to enroll in a PDP following admission, Resident shall notify Facility in writing of Resident's chosen PDP prior to enrollment in the PDP. Resident shall advise Facility if Resident elects to change PDPs, and shall provide written notice of such election, including the name/identity of the newly selected PDP prior to the effective date of the change in the PDP. *W. J.* (initial)

5.6.2. Resident's Responsibility to Pay for Pharmaceuticals. Resident is responsible to pay the charges for all prescription and other drugs or medications while a resident in Facility, except to the extent that such drugs and medications are covered in whole or in part by an applicable government reimbursement program. Some or all of the charges for prescription drugs and other drugs and medications may be covered by certain benefits available through Medicare Part D or other private insurance or governmental insurance / benefit programs, including Medicare Part A or B. In the event that coverage for any prescription drug, supply, medication or pharmaceutical provided to Resident is denied by any applicable governmental reimbursement program or other potentially available third-party payor or insurance program, then Resident or Authorized Representative shall remain responsible to pay for all such prescription drugs, supplies, other medications or pharmaceuticals.

5.6.3. Actions of Medicare Part D Plan. Facility is not responsible for and has made no representations regarding the actions or decisions of any PDP, including, but not limited to, decisions relating to the establishment of the PDP formulary, denial of coverage issues, or contractual arrangements between the PDP and the Resident, and with respect to any decisions made by the PDP relating to any long term care pharmacy provider that may be under contract with Facility.

5.6.4. Dually Eligible Residents. If Resident becomes eligible for Medicaid at any time during Resident's stay at Facility, and also qualifies for benefits under the Medicare Program, then Resident shall be **required** to enroll in a PDP (unless covered by private insurance) to ensure coverage of Resident's prescription drug needs. Resident and/or Authorized Representative shall take all necessary action to enroll Resident in a PDP, and shall advise Facility of such enrollment upon Resident's acceptance into the PDP. Resident acknowledges that should Resident fail to select a PDP, then CMS will assign Resident to a PDP. Resident shall provide written notice to Facility of the name of the Resident's PDP and the effective date of enrollment.

5.6.5. Billing and Resident Cost Sharing Obligations. To the extent that Resident is a beneficiary under Medicare Part D, and the pharmacy prescriptions and/or services ordered by a physician are covered by Medicare Part D, then the Pharmaceutical Provider (as required by law) shall bill the charges for the covered services to the Resident's PDP. Resident is responsible for and shall pay any and all cost-sharing amounts applicable under Medicare Part D insurance. Facility shall not be responsible to pay for any fees or cost-sharing amounts, including co-insurance and deductibles, relating to the provision of covered Medicare Part D pharmaceuticals to Resident. To the extent that Resident may qualify as a "subsidy eligible individual" who would be entitled to a reduction or elimination of some or all the cost-sharing or premium amounts under the Medicare Part D benefit, Resident and/or Authorized Representative has the sole responsibility to apply for such benefits.

5.6.6. Authorization to Request and/or Appeal Coverage Determinations. In the event that Resident is denied coverage under Resident's PDP for pharmaceutical services or supplies prescribed by Resident's attending physician, then the following shall apply:

5.6.6.1. Resident and/or Authorized Representative may independently (i) request an exception from Resident's PDP to cover non-formulary or non-covered Medicare Part D drugs that are otherwise needed or required by Resident; (ii) file a request for a re-determination of any coverage denial issued by Resident's PDP; (iii) file an appeal with the appropriate agency and judicial tribunals to challenge any denial of a request for re-determination.

5.6.6.2. In the event of Resident's incapacity, and if there is no other legal representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, or if Resident's physician is unable or unwilling to act on behalf of Resident, then Resident authorizes Facility to (i) request an exception from Resident's PDP to cover non-formulary or non-covered Medicare Part D drugs that are otherwise needed or required by Resident; (ii) file a request for a re-determination of any coverage denial issued by Resident's PDP; (iii) file an appeal with the appropriate agency and judicial tribunals to challenge any denial of a request for re-determinations.

5.6.6.3. In the event of an initial denial of coverage by the Resident's PDP, then pending the outcome of an exception request, a request for re-determination, or an appeal, and in the event that Resident's attending physician fails to prescribe a clinically and reasonably acceptable substitute prescription medication, resident authorizes Facility Medical Director / Designee to prescribe a clinically and reasonably acceptable substitute prescription medication which is covered by Resident's PDP, if such clinically and reasonably acceptable substitute is available.

5.6.6.4. If a request for exception (filed by Resident, Facility or any other authorized representative) is ultimately denied following either reconsideration by the PDP or appeal to an appropriate tribunal, and if the requested pharmaceuticals are deemed medically necessary by Resident's physician, and

no reasonably acceptable substitute, as determined by Facility's Medical Director / Designee, from the formulary of Resident's PDP exists, then Facility shall make arrangements to provide the requested pharmaceuticals to Resident. In any such situation, Resident shall be responsible to pay all fees and costs for the non-covered pharmaceuticals, consistent with the requirements of this Section.

5.6.6.5. No Effect on Medicare Part A Covered Nursing Services. Resident's Medicare Part D prescription drug benefits do not apply while the Resident's stay in Facility is covered under Medicare Part A. While Resident is in Facility on a Medicare Part A stay, Resident's pharmaceutical needs generally are covered by the Medicare Part A program.

5.7. Non-Covered Services. Resident is and remains obligated to pay the Facility for services and supplies not covered by the Medicaid or the Medicare programs.

6. MANAGED CARE ORGANIZATIONS.

6.1. Participation in Managed Care Organizations. The Facility is an authorized provider of skilled nursing services to members of certain managed care organizations (MCOs). The MCOs for whom the Facility is an authorized provider are listed on Attachment "B".

6.2. Enrollment in a Managed Care Organization. Resident or Authorized Representative shall notify the Facility in writing prior to enrolling with an MCO or switching Resident's MCO enrollment.

6.3. Actions of Managed Care Organization. Resident acknowledges that an MCO for whom the Facility is not an authorized provider may not approve payment for services provided by the Facility. Resident acknowledges that the Facility is not responsible for and has made no representations regarding the actions or decisions of any MCO for whom the Facility is an authorized provider, including decisions relating to a denial of coverage.

6.4. Obligations of Resident. The Facility will accept payment from the MCO as payment in full only for those services and supplies covered by the MCO. Resident is responsible for any co-payments or other costs assigned to Resident under the specific terms of the managed care plan. Resident also shall pay for any services or supplies not covered by the MCO under the specific terms of the managed care plan. Co-payments and other costs assigned to Resident and charges for services or supplies not covered by the specific terms of the managed care plan are identified in the Rate Schedule. Managed care plans typically require pre-authorization of services by the MCO. If Resident chooses to have services which the MCO refuses to pre-authorize, Resident shall pay the Facility for those services. Resident shall pay the Facility in a timely manner for all non-covered services retroactive to the date of the initial delivery of services.

6.5. **Withdrawal from Participation in the MCO.** The Facility reserves the right to terminate its contractual relationship and its status as a network or authorized provider with one or more of the listed MCOs at any time in accordance with law and the terms of the applicable agreement. In the event that the Facility terminates its contractual relationship with the MCO in which Resident is enrolled, Resident may convert his or her coverage to a health plan for which the Facility is an authorized provider or transfer to a facility that is an authorized provider for Resident's MCO. The Facility shall provide thirty (30) days advance notice of its decision to withdraw as a participating provider from Resident's MCO so Resident and the MCO can coordinate a transfer to another facility.

6.6. **Notice of Change in Insurance Coverage.** Resident and/or Authorized Representative shall notify the Facility immediately of any change in Resident's insurance status or coverage made by the insurance carrier including, but not limited to, being dropped by the insurance carrier for any reason, or a decrease or increase in insurance benefits. Resident and/or Authorized Representative shall give the Facility notice before Resident is unable to meet Resident's insurance premium or before Resident implements an increase, decrease or termination from insurance coverage.

7. DURABLE FINANCIAL POWER-OF-ATTORNEY.

Resident shall submit, as appropriate, to Facility, no later than the date of admission, a durable Power-of-Attorney executed by Resident as Principal designating someone other than the Facility or a representative or affiliate of Facility as Agent, for the limited purpose of financial decisions and payment of services. In the event Resident fails to designate an Agent under a Power-of-Attorney, Resident shall be responsible to pay for any guardianship proceedings related to the appointment of someone or a legal entity to make decisions on behalf of Resident, if and when Resident lacks capacity to make such decisions as determined by Facility.

8. THIRD-PARTY PAYMENTS.

8.1. **Eligibility for Third-Party Payments.** Resident may be or may become eligible to receive financial assistance, reimbursement, or other benefits from third parties, such as private insurance, employee benefit plans, Medicaid under the South Carolina / North Carolina Medicaid Program, Medicare benefits, managed care coverage, supplementary medical or other health insurance, supplemental security income insurance, or old-age survivors' or disability insurance. It is the responsibility of the Resident and/or Authorized Representative to apply for these benefits. If Resident is or becomes eligible to receive payments from any third parties for Resident's stay and care, the Facility reserves the right to collect such payments directly from the third-party source. The Resident and Authorized Representative shall at all times cooperate fully with the Facility and each third-party payor to secure payment. Cooperation includes providing information; signing and delivering documents; and assigning to the Facility (to the extent permitted by law) any payments for the Resident from federal or state governmental assistance programs or any other reimbursements or benefits to the extent of all amounts due the Facility.

8.2. **Assignment of Payments.** Resident irrevocably authorizes the Facility to make claims and to take other actions to secure for the Facility receipt of third-party payments to reimburse the Facility for its charges for the stay and care of Resident. To the fullest extent permitted by law, as security for payment of the Facility's charges, Resident hereby assigns to the Facility all of Resident's rights to any third-party payments now or subsequently payable to the extent of all charges due under this Agreement. Resident or Authorized Representative promptly shall endorse and turn over to the Facility any payments received from third parties to the extent necessary to satisfy the charges under this Agreement. Resident or Authorized Representative shall sign any necessary documents to forward third-party payments directly from the payor to the Facility.

8.3. **Insurance.** The Facility will bill Medicare and Medicaid for any services rendered to Resident by the Facility. The Facility may, at its discretion, bill Resident's private / supplemental insurance carrier for services rendered to Resident by the Facility. In the event of an initial or subsequent denial of coverage by the Resident's insurance carrier, Resident shall pay the Facility timely for all non-covered services retroactive to the date of the initial delivery of services, so long as such payment obligation is consistent with the regulations governing the Facility's participation in the Medicare and Medicaid Programs. *ADZ* (initial)

8.3.1. The fact that the Facility submits a claim for payment does not relieve the Resident from liability for the cost of care for any days determined by the Program Administrators of the particular insurance coverage as non-covered, or for the Resident's portion of the liability as determined by the appropriate Program Administrators. **Pre-certification of insurance, if required, is the responsibility of the Resident.**

9. **PERSONAL FINANCES.**

9.1. **Personal Funds Management.** Resident is responsible to provide his or her personal funds, and Resident has the right to manage his or her personal funds. Resident may authorize the Facility, in writing, on a document provided by the Facility, to hold Resident's personal funds, and may revoke at any time the Facility's authorization by providing the Facility with a written notice signed and dated by Resident or Authorized Representative. If Resident authorizes the Facility to hold Resident's personal funds, the Facility shall hold, safeguard and account for Resident's personal funds in accordance with applicable provisions in the Admission Handbook. If the Facility has been appointed by the Social Security Administration as Representative Payee for the Resident's funds, then the Facility, and not the Resident's Authorized Representative, if any, shall have control over the Resident's funds. The Facility shall follow the policies and procedures as set forth by the Social Security Administration.

9.2. **Refunds of Personal Funds.** Any personal funds or valuables of Resident held by the Facility will be refunded, subject to deductions for payment of any outstanding bills or other amounts due the Facility, such as any costs incurred by Facility to repair Resident's room for damages caused by Resident, within thirty (30) days after Resident's discharge or death. In the event of Resident's death, such refund will be made to the Resident's estate in accordance with state law.

9.3. **Refunds of Prepayments or Overpayments.** Any prepayments or overpayments made by Resident and held by the Facility will be refunded, subject to deductions for payment of any outstanding bills or other amounts due the Facility, after all claims have been adjudicated. In the event of Resident's death, such refund will be made to the Resident's estate in accordance with state law. No interest shall accrue on any funds required to be refunded under this Agreement.

10. **TERMINATION, TRANSFER OR DISCHARGE.**

10.1. **Resident Initiated.** This Agreement remains in full force and effect until discharge of Resident regardless of payment source changes. The Facility requests a three (3) day advance written or oral notification of an impending discharge.

10.2. **Facility Initiated.** The Facility may terminate this Agreement and Resident's stay and transfer or discharge Resident if:

10.2.1. The transfer or discharge is necessary to meet Resident's welfare and Resident's needs cannot be met in the Facility;

10.2.2. Resident's health has improved sufficiently so that Resident no longer needs the services provided by the Facility;

10.2.3. The safety or health of individuals in the Facility is or otherwise would be endangered;

10.2.4. Resident has failed, after notice, to pay for (or to have paid or treated as paid under the Medicare or Medicaid Programs) charges for Resident's care and stay at the Facility; or

10.2.5. The Facility ceases to operate.

10.3. **Notice and Waiver of Notice.** The Facility will notify Resident and Authorized Representative at least thirty (30) days in advance of transfer or discharge, except in situations when appropriate plans that are acceptable to the Resident can be implemented earlier, and except in cases of emergencies, including those situations described in subparagraphs 10.2.1, 10.2.2, and 10.2.3 above, or when the Resident has not resided in the Facility for at least thirty (30) days. Then only such notice as is reasonable under the circumstances shall be provided.

10.4. **Withdrawal Against Advice.** In the event Resident withdraws from the Facility against the advice of his/her attending physician and/or without approval of the Facility, all of Facility's responsibilities for the care of Resident are terminated.

11. **FACILITY RULES, REGULATIONS, POLICIES AND PROCEDURES.**

Resident shall comply fully with all governmental laws and regulations, the provisions of this Agreement, and the Facility's rules, regulations, policies and procedures as published in the Facility's Admission Handbook or other documents or publications made available by the

Facility. The Facility reserves the right to amend or change its rules, regulations, policies and procedures. The Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on the Facility or granting any contractual rights to Resident, and are subject to change from time-to-time.

12. PERSONAL AND OTHER PROPERTY.

12.1. Responsibility for Maintenance and Loss. Resident is responsible for furnishing and maintaining his or her own clothing and other items of property as needed or desired. Seasonal items and clothing must be removed timely to assure the safety and comfort of the Resident. The Facility is not responsible for the personal property / valuables or items belonging to the Resident. If damage or loss occurs to Resident's property, the Facility will investigate each incident of loss or damage.

12.2. Disposition and Storage Upon Resident's Death. Upon the Resident's death, Facility shall contact Resident's Authorized Representative and arrange for the disposition of the Resident's personal property. Facility is authorized to transfer Resident's personal property to the Authorized Representative. The Authorized Representative must acknowledge, in writing, the receipt of the personal property transferred to his or her custody by Facility. Facility, in its sole discretion, may move and place Resident's personal property into storage at Facility's expense. If property held in storage is not claimed within thirty (30) days, Facility shall donate or discard all unclaimed property.

12.3. Disposition and Storage Upon Resident's Transfer or Discharge. If Resident's personal property is not claimed or removed by the Authorized Representative following Resident's transfer or discharge, the Facility shall move and place Resident's personal property in storage until claimed. If Resident's personal property remains unclaimed after a thirty (30) day period in storage, the Facility may dispose of Resident's property. The Facility is not responsible for any damages incurred to Resident's property if storage becomes necessary.

12.4. Damage to Room or Facility Property. Resident or Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

13. RESIDENT RECORDS.

Resident consents to the release of Resident's personal and medical records maintained by the Facility for treatment, payment and operations as determined reasonably necessary by the Facility. Any such release may be to the Facility's employees, agents and to other health care providers from whom the Resident receives services, to third-party payors of health care services, to any MCO in which Resident may be enrolled, or to others deemed reasonably necessary by the Facility for purposes of treatment, payment and operations. Release of records for other purposes shall be done in accordance with applicable laws, with a specific authorization from the Resident where required. Authorized agents of the state or federal government, including the Long Term Care Ombudsman, may obtain Resident's records without the written consent or authorization of Resident.

14. TREATMENT AUTHORIZATION.

Resident authorizes the Facility to provide care and treatment consistent with the terms of this Agreement. Resident also authorizes the Facility to obtain all necessary clinical and/or financial information from the hospital or nursing facility from which Resident may be transferring.

15. DEATH OF RESIDENT.

Upon admission, Resident is required to designate a funeral home. This designation will remain in effect until otherwise notified in writing. In the event of Resident's death, the Facility shall notify the person(s) designated by Resident. The Facility is authorized to arrange for the transfer of Resident's body to the designated funeral home. Resident's estate is responsible for the payment of all costs associated with the transfer and funeral expenses. Resident shall notify the Facility of any changes of the person(s) or funeral home to be notified in the event of death.

16. CAPACITY OF RESIDENT AND GUARDIANSHIP.

If Resident is, or becomes, unable to understand or communicate, and is determined by Resident's Physician or the Facility's Medical Director / Designee after admission to be incapacitated, the Facility shall have the right, in the absence of Resident's prior designation of an authorized legal representative, or upon the unwillingness or inability of the legal representative to act, to commence a legal proceeding to adjudicate Resident incapacitated and to have a court appoint a guardian for Resident. The cost of the legal proceedings, including attorneys' fees, shall be paid by Resident or Resident's estate.

17. CLINICAL ISSUES RELATED TO AGING:

17.1. The Resident has been advised of the high risks and consequences associated with aging and impaired physical condition, including (but not limited to):

17.1.1. A high risk of skin breakdown and development of pressure ulcers secondary to significant time confined to bed or inability or unwillingness to eat and/or drink.

17.1.2. The risk of significant weight loss and dehydration if the Resident's physical condition is currently chronic or hereinafter deteriorates, which may diminish Resident's nutritional and hydration input.

17.1.3. The enhanced risk of falls and subsequent bruises, cuts or fractures, which then increases the already high risk of pressure ulcers.

17.1.4. The goal of the Facility is to strive for a restraint-free environment, and processes are implemented to pursue this goal. These processes recognize and protect the Resident's rights and ensure that restraints are safe and appropriate if they must be used.

17.1.5. The above risks, and others, are inherent with the aging process. We urge the

Resident and all family members to further acquaint themselves with the risk issues inherent with aging and an impaired physical condition.

18. REPORTING COMPLAINTS.

If Resident and/or Authorized Representative believe(s) that Resident is being mistreated in any way or Resident's rights have been violated by staff or another resident, Resident or Authorized Representative shall make his/her complaint known to Facility Administrator, in accordance with the Grievance Procedure reflected in the Admission Handbook and provide Facility with sixty (60) days to resolve the complaint satisfactorily to Resident and/or Authorized Representative before the Resident / Authorized Representative may pursue arbitration (or legal action for claims involving less than \$25,000.00). This notice requirement is not intended to preclude Resident and/or Authorized Representative from filing a complaint with any appropriate governmental regulatory agency at any time.

19. MISCELLANEOUS PROVISIONS.

19.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina / North Carolina.

19.2. Severability. The various provisions of this Agreement shall be severable one from another. If any provision of this Agreement is found by a court or administrative body of proper jurisdiction and authority to be invalid, the other provisions shall remain in full force and effect as if the invalid provision had not been a part of this Agreement.

19.3. Captions. The captions used in connection with the sections and subsections of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement, nor shall such captions be given any legal effect.

19.4. Entire Agreement. This Agreement, the Authorized Representative Agreement, the Arbitration Agreement, and the admission documentation represent the entire Agreement and understanding between the parties and supersedes, merges and replaces, all prior negotiations, offers, warranties and previous representations, understandings or agreements, oral or written, between the parties.

19.5. Modifications. The Facility reserves the right to modify unilaterally the terms of this Agreement to conform to subsequent changes in law, regulation or operations. To the extent reasonably possible, the Facility will give Resident and Resident's Authorized Representative thirty (30) days advance written notice of any such modifications. Resident may not modify this Agreement except by a writing signed by the Facility.

19.6. Waiver of Provisions. The Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement shall be deemed to have been waived by the Facility unless such waiver is in writing by the Facility. Any waiver by the Facility shall not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and this Agreement shall remain in full force and effect.

20. ACKNOWLEDGMENTS.

- 20.1. Rate Schedule. Resident acknowledges the receipt of a copy of the Rate Schedule and the opportunity to ask questions about the Facility's charges.
- 20.2. Resident's Rights. Resident acknowledges being informed orally and in writing of Resident's Rights and further acknowledges having an opportunity to ask questions about those rights. The Notice of Rights of Nursing Facility Residents is subject to change from time-to-time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to Resident.
- 20.3. Advance Directives. Resident acknowledges being informed, orally and in writing, of the Facility's policy on advance directives and medical treatment decisions.
- 20.4. Bed Hold Policy – Readmission. Resident acknowledges being informed orally of the Facility's policy on readmission and bed hold. Resident further acknowledges having received in writing a copy of the readmission bed hold policy, and an opportunity to ask questions.
- 20.5. Agreement. Resident acknowledges that he/she has read and understands the terms of this Agreement, that the terms have been explained to him/her by a representative of the Facility, and that he or she has had an opportunity to ask questions about this Agreement, and has received a copy of this Agreement.
- 20.6. Smoke-Free / Tobacco-Free Policy. Resident acknowledges that he/she has read and understands that this Facility and campus are smoke-free and tobacco-free. The terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the Smoke-free /Tobacco-free Policy.
- 20.7. Camera Policy. Resident acknowledges that he/she has read and understands the Facility camera policy and that the terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the camera policy.
- 20.8. Get a Lift Safe Resident Handling Program. Resident acknowledges that he/she has received an oral explanation and a copy of the safe resident handling program policy and procedures. Resident further acknowledges having an opportunity to ask questions about this policy.
- 20.9. Physical Device Policy. Resident acknowledges that he/she has read and understands the Facility physical device policy and that the terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the physical device policy.
- 20.10. Admission Handbook. Resident acknowledges the receipt of a copy of the Admission Handbook and the opportunity to ask questions about Facility's policies

contained in the Admission Handbook. The Admission Handbook is subject to change from time-to-time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to Resident.

- 20.11. **Consent to Care.** Resident hereby consents to all routine care and services rendered in accordance with physician's orders. Resident also consents to student care from universities or other academic programs which are under contract with the facility unless the facility receives from the Resident/Authorized Representative a signed document of denial of student services. (Revised 10/2010)
- 20.12. **Participation in Care Plan.** Resident is encouraged to participate in the care planning process. Approval of the Resident Care Plan is the preferred manner in which consent for most treatment is obtained. There are certain specific procedures for which an individual consent form will be provided.
- 20.13. **Consent to Photograph.** Resident consents to pictures taken for identification purposes only.
- 20.14. **Contents of Personal Medical Records.** Resident understands and agrees that the designated record set concerning Resident is and will continue to be the property of the Facility, provided that Facility will not disclose the same to any person or party other than the Resident except as outlined in the Privacy Practices Notice. The designated record set is defined as the medical record in its entirety and the financial record including itemized charges. The following items are specifically excluded from the designated record set: incident reports, QA/QI reports, tracking forms, resident care assignment forms, shift to shift report forms, admission waiting list and financial "work papers."
- 20.15. **Notification of Facility Symbols.** Resident / Authorized Representative hereby acknowledge being informed of the use of signs and symbols which may be observed in this facility. For the resident's safety and comfort, the facility may post on a doorway leading into a resident's room a symbol for type of lift device to be used or a star alerting staff to a potential fall risk. Other symbols may be used from time to time which may designate and alert staff to a specific need. You or your Authorized Representative may opt out of having symbols posted by signing a waiver of release from use of facility designated symbols.
- 20.16. **Competency.** Resident declares that he or she retains capacity and is competent, has never been adjudged or determined to lack capacity or competence, and knows of no petition pending to adjudicate his or her lack of capacity or competence. Alternatively, if the Resident has been or should be deemed to lack capacity or competence, then Resident's Authorized Representative declares that he or she has been given authority by the Resident when competent to ask on behalf of the Resident, and/or is qualified to act as Resident's surrogate by reason of special care and concern for the Resident, familiarity with the Resident's personal values, reasonable availability, and willingness to serve.
- 20.17. **Scope of Care.** Resident acknowledges that routine nursing services do not include: continuous one-on-one care or CNA services when required by Resident's Care

plan; care for certain high acuity conditions, such as ventilator dependent care; dialysis services; treatment for drug and alcohol conditions; or psychiatric care.

21. ARBITRATION.

WITH REGARD TO ALL MONETARY CLAIMS ARISING BETWEEN THE FACILITY AND RESIDENT / AUTHORIZED REPRESENTATIVE, TO THE EXTENT THAT THEY ARE FOR MORE THAN \$25,000.00, ARBITRATION (PURSUANT TO THE FEDERAL ARBITRATION ACT) IS MANDATORY (SUBJECT TO THE "OPT OUT" PROVISIONS SET FORTH IN PARAGRAPH 16 OF THE ARBITRATION AGREEMENT), BINDING AND FINAL. THE EXACT TERMS FOR ARBITRATION ARE SET FORTH IN A SEPARATE DOCUMENT OF EVEN / RECENT DATE, ENTITLED "ARBITRATION AGREEMENT" AND ARE INCORPORATED HEREIN BY REFERENCE. WITH REGARD TO ANY NONMONETARY CLAIM, OR ANY CLAIM FOR LESS THAN \$25,000.00, ARBITRATION SHALL NOT BE REQUIRED.

22. BINDING EFFECT.

This Agreement shall be binding upon all parties hereto and upon their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have signed this Agreement this 22nd day of March, 2016.

RESIDENT / AUTHORIZED REPRESENTATIVE:

GENOBIA L. SMITH
Printed Resident Name

Signature / Date

Patricia Smith King
Printed Authorized Representative

Patricia Smith King 3/22/16
Signature / Date

Daughter
Relationship

FACILITY STAFF / WITNESS:	
White Oak <u>White Oak of Spartanburg</u> , Inc.	Date: <u>3/22/16</u>
By: <u>Mary P. Sprouse</u> Staff Printed Name and Title	<u>Mary P. Sprouse</u> Staff Signature / Witness

White Oak of Spartanburg

Facility Name: _____

Date: 5-19-16

Resident Name: Genobia L. Smith

Admission # 8201

RE-ADMISSION AGREEMENT

THIS RE-ADMISSION AGREEMENT (this "Agreement") is made as of this 19th day of May, 20 16, by and between White Oak of Spartanburg, a South Carolina Corporation, and Genobia L. Smith, a South Carolina Corporation, and Genobia L. Smith (Resident)

RECITALS

WHEREAS, Resident had a previous contractual relationship with Facility that terminated within thirty (30) days prior to the Effective Date (defined below) of this Agreement;

WHEREAS, Resident and facility wish to incorporate by reference the terms of the Original Admission Agreement (defined below) with certain noted modifications described in this Agreement:

WHEREAS, Resident and Facility agree to certain modifications of the Original Admission Agreement noted in Attachment B;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Facility. Without reinstating the Original Admission Agreement, the parties agree to incorporate the terms of the Original Admission Agreement and any attachments to that document, collectively attached and incorporated as Attachment A ("Original Admission Agreement"), with certain noted modifications to the Original Admission Agreement, which are attached and incorporated as Attachment B.
2. Resident. Resident agrees to the terms of this Agreement incorporating that Original Admission Agreement with certain noted modifications, which are attached and incorporated as Attachment B.
3. Term and Termination.
 - 3.1 Effective Date. The effective date of this Agreement is the 19th day of May, 20 16.

- 3.2 The term of this agreement shall begin on the Effective Date and continue throughout the term of the Resident's stay.
- 3.3 The termination of this Agreement shall be determined by the termination provisions of the Original Admision Agreement, unless Attachment B states a different termination provlslon.
- 4. Original Admision Agreement. This Agreement does not revive or sustain the Original Admision Agreement except as it may pertain to the rights and obligations of the parties that survived the termination of the Original Admision Agreement as if this Admision Agreement were not executed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

RESIDENT / AUTHORIZED REPRESENTATIVE

Benobia L. Smith
Printed Resident Name

Signature / Date

Paulette Smith Young
Printed Authorized Representative

Paulette Smith Young 5/19/16
Signature / Date

daughter
Relationship

FACILITY STAFF / WITNESS:

White Oak of Spartanburg Inc. Date: 5/19/16

By: Tracy Johnson B.O. Manager Tracy Johnson
Staff Printed Name and Title Staff Signature / Witness

IN THE MATTER OF GENOBIA L SMITH

CASE NUMBER 2016ES4201758

CERTIFICATE OF APPOINTMENT

This is to certify that
PAULETTE SMITH YOUNG

is/are the duly qualified

- PERSONAL REPRESENTATIVE
- GUARDIAN
- CONSERVATOR
- TRUSTEE
- _____

In the above matter and that this appointment, having been executed on the 9th day of January, 2017, now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

NONE.

Executed this 9th day of January, 2017.

Ponda A. Caldwell

Ponda A. Caldwell, Probate Court Judge

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE SPARTANBURG
MAGISTRATES COURT

White Oak Manor of Spartanburg,)
)
Plaintiff,)

CASE NO. 2018-CV-42-10106803

v.)

**PLAINTIFFS' RESPONSES TO
STANDARD INTERROGATORIES**

Paulette Smith-Young)
)
Defendant,)

AND)

Paulette Smith-Young, Individually)
and as the Personal Representative of the)
Estate of Genobia Smith, Deceased,)
)
Third Party Plaintiff,)

v.)

White Oak Manor-Spartanburg, Inc., d/b/a)
White Oak of Spartanburg, and White Oak)
Management, Inc.,)

Third Party Defendant.)

PLAINTIFFS' RESPONSES TO STANDARD INTERROGATORIES

TO: THE ABOVE-NAMED DEFENDANTS:

Pursuant to S.C. Code § 15-79-125 and SCRPC 33, Plaintiffs respond to Standard Interrogatories as follows:

Interrogatory #1:

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response:

Paulette Smith-Young

627 Stafford Avenue
Spartanburg, SC 29302

No written or recorded statement has been taken from this witness.

This witness will testify to the acts and omissions related to the care and treatment provided to Genobia Smith by the Defendants during her residency at Defendants' facility as well as Genobia Smith's injuries, surgeries, and her pain and suffering.

Dorothy S. Johnson
4114 Leisure Drive
Temple Hills, MD 20748

No written or recorded statement has been taken from this witness.

This witness will testify to the acts and omissions related to the care and treatment provided to Genobia Smith by the Defendants during her residency at Defendants' facility as well as Genobia Smith's injuries, surgeries, and her pain and suffering.

Harold Smith
402 Highland Ave.
Spartanburg, SC 29306

No written or recorded statement has been taken from this witness.

This witness will testify to the acts and omissions related to the care and treatment provided to Genobia Smith by the Defendants during her residency at Defendants' facility as well as Genobia Smith's injuries, surgeries, and her pain and suffering.

David Smith, Jr.
c/o Poliakoff & Associates, P.A.

No written or recorded statement has been taken from this witness.

This witness will testify to the acts and omissions related to the care and treatment provided to Genobia Smith by the Defendants during her residency at Defendants' facility as well as Genobia Smith's injuries, surgeries, and her pain and suffering.

Joseph Smith
c/o Poliakoff & Associates, P.A.

No written or recorded statement has been taken from this witness.

This witness will testify to the acts and omissions related to the care and treatment provided to Genobia Smith by the Defendants during her residency at Defendants' facility as well as Genobia Smith's injuries, surgeries, and her pain and suffering.

William Lindsey
c/o Poliakoff & Associates, P.A.

No written or recorded statement has been taken from this witness.

This witness will testify to the acts and omissions related to the care and treatment provided to Genobia Smith by the Defendants during her residency at Defendants' facility as well as Genobia Smith's injuries, surgeries, and her pain and suffering.

Physicians and staff at Mary Black Memorial Hospital

Employees and staff at White Oak Manor-Spartanburg
Medical records in possession of Defendants.

Interrogatory #2:

Set forth a list of photograph plats, sketches or other prepared documents in possession of the party that relate to the claim or defense of this case.

Response:

Genobia Smith's records from Defendants' facility;
Genobia Smith's records from Mary Black Memorial Hospital.

Interrogatory #3:

In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs involved.

Response:

Physicians and staff at Mary Black Memorial Hospital.
Medical bills will be provided upon appearance of counsel.

Interrogatory #4:

Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Response:

Not applicable.

Interrogatory #5:

Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Response:

Medical bills, mental anguish, and pain and suffering. Medical bill recap has already been provided.

Interrogatory #6:

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case.

Response:

Unknown at this time.

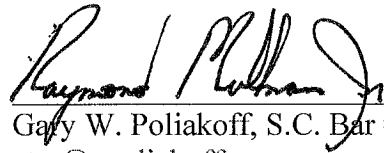
Interrogatory #7:

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or

observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Response:

See Response to Interrogatory #1.



Gary W. Poliakoff, S.C. Bar #4488
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Raymond P. Mullman, Jr., S.C. Bar 8662
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Attorneys for Plaintiffs

October 12, 2018
Spartanburg, SC.

THE WARD LAW FIRM, P.A.

ATTORNEYS AT LAW
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JOHN E. ROGERS, II*
GINGER D. GOFORTH
C. REED TEAGUE
CHAD M. GRAHAM
T. JONATHAN CLARK

♦ CERTIFIED MEDIATOR
* ALSO MEMBER NORTH CAROLINA BAR
• ALSO MEMBER GEORGIA BAR

RUFUS M. WARD (1908-1988)
L. PAUL BARNES (1931-1986)
JAMES W. HUDGENS (1940-2017)

233 SOUTH PINE STREET
SPARTANBURG, S.C. 29302
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E-mail: jrogers@wardfirm.com
Direct No. 864-591-2366

June 10, 2019


Gary W. Poliakoff, Esquire
Ray Mullman, Esquire
Poliakoff & Associates, PA
215 Magnolia Street
Spartanburg, SC 29306

**Re: White Oak Manor of Spartanburg v. Paulette Smith-Young - AND -
Paulette Smith-Young, individually and as the Personal Representative of the
Estate of Genobia Smith, deceased v. White Oak Manor-Spartanburg, Inc., d/b/a
White Oak of Spartanburg and White Oak Management, Inc.
CA No.: 2018-CV-42-10106803**

Dear Gary and Ray:

Enclosed please find the Plaintiff and Third Party Defendant's Responses to Defendant and Third Party Plaintiff's Request for Admission in the above-referenced matter. Also enclosed is a Certificate of Service.

Sincerely,


John E. Rogers, II
Ginger D. Goforth

JERII/ss
Enclosures

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 White Oak Manor of Spartanburg,)
)
 Plaintiff,)
)
 vs.)
)
 Paulette Smith-Young)
)
 Defendant,)
)
 AND)
)
 Paulette Smith-Young, Individually and)
 as the Personal Representative of the)
 Estate of Genobia Smith, Deceased,)
)
 Third Party Plaintiff,)
)
 vs.)
)
 White Oak Manor-Spartanburg, Inc., d/b/a)
 White Oak of Spartanburg, and White Oak)
 Management, Inc.,)
)
 Third Party Defendants.)
)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2018-CP-42-04174

**PLAINTIFF AND
 THIRD PARTY DEFENDANT
 WHITE OAK MANOR-SPARTANBURG,
 INC., D/B/A WHITE OAK OF
 SPARTANBURG’S RESPONSES TO
 DEFENDANT AND THIRD PARTY
 PLAINTIFF’S REQUEST FOR ADMISSION**

Plaintiff and Third Party Defendant, White Oak Manor-Spartanburg, Inc., d/b/a White Oak of Spartanburg (herein referred to as “White Oak”), submits the following responses to Defendant and Third Party Plaintiff’s Request for Admission:

1. Please admit that no employee of the facility contacted Genobia Smith’s treating physician about the elevated blood sugars between April 23, 2016 and April 29, 2016.

RESPONSE:

Denied.

2. Please admit that no employee of the facility requested a physician order to monitor blood glucose levels after Genobia Smith was prescribed Prednisone.

RESPONSE:

Denied.

3. Please admit that Defendant was aware that Prednisone may affect blood glucose levels in elderly patients.

RESPONSE:

Defendant admits the general statement contained herein, that Prednisone may affect blood glucose levels. Any remaining requests are denied.

4. Please admit that the facility did not notify Dr. Warren of Genobia Smith's recent history of elevated blood sugars prior to his Order to infuse IV fluids with Dextrose on May 3, 2016.

RESPONSE:

Denied.

5. Please admit that the facility's employees were aware that Genobia Smith had a recent history of elevated blood sugars when they administered infuse IV fluids with Dextrose on May 3, 2016.

RESPONSE:

6. Please admit that Spartanburg EMS on May 4, 2016 recorded/noted Genobia Smith's blood glucose levels were over 500.

RESPONSE:

White Oak would crave reference to the specific documents cited by Plaintiff concerning the details of charting therein.

7. Please admit that Genobia Smith was transferred to the hospital on May 4, 2016 because of hyperglycemia.

RESPONSE:

White Oak would crave reference to the specific documents cited by Plaintiff concerning the details of charting therein.

8. Please admit that Genobia Smith's blood glucose levels were recorded as being over 1300 at Mary Black Hospital on May 4, 2016.

RESPONSE:

White Oak would crave reference to the specific documents cited by Plaintiff concerning the details of charting therein.

9. Please admit that Genobia Smith was hospitalized on May 4, 2016 as a result of urinary tract infection with sepsis, and hyperglycemia.

RESPONSE:

White Oak would crave reference to the specific documents cited by Plaintiff concerning the details of charting therein.

10. Please admit that Genobia Smith incurred medical bills as a result of her hospitalization commencing on May 4, 2016.

RESPONSE:

White Oak does not have information with which to form a belief as to the truth or falsity of this request for admission. White Oak would presume that Genobia Smith was charged in some manner for medical care rendered to her.

11. Please admit that Genobia Smith incurred medical bills related to her hospitalization of May 4, 2016 in the amount of \$172,938.58.

RESPONSE:

White Oak does not have information with which to form a belief as to the truth or falsity of this request for admission. White Oak would presume that Genobia Smith was charged in some manner for medical care rendered to her.

12. Please admit that the medical bills incurred in the hospitalization of Genobia Smith commencing on May 4, 2016 were reasonable, necessary, and resulted from the actions of the facility.

RESPONSE:

Denied.

THE WARD LAW FIRM, P.A.

Attorneys for Plaintiff and Third Party Defendant
White Oak Manor-Spartanburg, Inc., d/b/a
White Oak of Spartanburg



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June 10, 2019.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE MAGISTRATE'S COURT
SEVENTH JUDICIAL CIRCUIT

White Oak Manor of Spartanburg,)
)
Plaintiff,)

v.)

Paulette Smith-Young,)
)
Defendant,)

AND)

Paulette Smith-Young, individually,)
And as the personal Representative of)
The Estate of Genobia Smith, deceased,)

Third Party Plaintiff,)

v.)

White Oak Manor-Spartanburg, Inc.)
d/b/a White Oak of Spartanburg and)
White Oak Management, Inc.,)

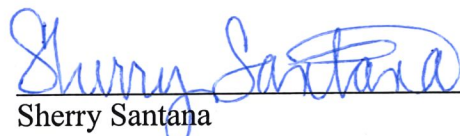
Third Party Defendant.)
_____)

CERTIFICATE OF SERVICE

CA No.: 2018-CP-42-04174

The undersigned hereby certifies that Plaintiff and Third Party Defendant, White Oak Manor-Spartanburg, Inc., d/b/a White Oak of Spartanburg's Responses to Defendant and Third Party Plaintiff's Request for Admission was served upon the following on June 10, 2019 via electronic transmission and/or via United States Postal Service, with proper postage affixed thereto to the following address(es):

Gary W. Poliakoff, Esquire
Ray Mullman, Esquire
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atty@gpoliakoff.com
rmullmanjr@gmail.com



Sherry Santana
Paralegal
To John E. Rogers, II

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Oct 30 2020

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2020-000473

White Oak Manor of Spartanburg, Plaintiff,

v.

Paulette Smith-Young,Defendant,

AND

Paulette Smith-Young, Individually and as The Personal Representative of the Estate of Genobia Smith, Deceased, Third-Party Plaintiff,

v.

White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg, and White Oak Management, Inc., Third-Party Defendants

OF WHOM

White Oak Management, Inc. isAppellant,
and

Paulette Smith-Young, Individually and as The Personal Representative of the Estate of Genobia Smith, Deceased, isRespondent.

CERTIFICATE OF COUNSEL

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

THE WARD LAW FIRM, P.A.
Attorneys for Appellant

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s/ Ginger D. Goforth
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September 18, 2020

Other Counsel of Record:

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