

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

MAR 18 2013

Carmen Tevis Mullen, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2013-000378

Janet Sue Scheerle,.....Respondent,

v.

Brookdale Senior Living, Inc. and Southern Assisted Living, LLC d/b/a
Carolina House of Hilton Head and Sonia S. King,.....Defendants.

Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
d/b/a Carolina House of Hilton Head are the.....Appellants.

**RETURN TO RESPONDENT'S MOTION TO DISMISS NOTICE OF APPEAL DATED
FEBRUARY 19, 2013 AND REQUEST FOR SANCTIONS**

This is a Return to a Motion to Dismiss and Request for Sanctions ("Motion") that the Respondent should never have filed because the Appellants voluntarily withdrew their Notice of Appeal just 17 days after its filing. Further, the Respondent violated her own arbitrary deadline, in which she gave the Appellants until March 8, 2013 to withdraw the appeal. Despite withdrawing the appeal on March 8, 2013, the Respondent had already filed her Motion to Dismiss and for sanctions on March 7, 2013—a day before her own arbitrary deadline. When confronted with the fact that the Appellants complied with Respondent's arbitrary

deadline, the Respondent refused to withdraw the Motion. This in turn forced the Appellants to respond to the Motion. The Respondent's Motion is unnecessary, and the Appellants seek fees and costs for having to respond to the Motion.

For the following reasons, the Respondent's Motion should be dismissed and she should be required to pay reasonable fees and costs.

I. THE RESPONDENT'S MOTION TO DISMISS IS MOOT

The Respondent's Motion to Dismiss is moot because the Appellants voluntarily withdrew their appeal on March 8, 2013—just 17 days after filing it. There is no need to dismiss something that has voluntarily been withdrawn.

II. THE RESPONDENT'S REQUEST FOR SANCTIONS IS IMPROPER.

The Respondent's request for sanctions is improper for three reasons. First, the Appellant's Notice of Appeal dated February 17, 2013 was from an appealable interlocutory order. Second, the Respondent violated her own deadline and filed her motion before giving the Appellants a chance to comply with her deadline. Third, the Respondent suffered no prejudice because, due to the 17-day lifespan of this appeal, the Respondent had no deadlines to meet and no required filings.

A. The Notice of Appeal Dated February 17, 2013 Was an Appeal to an Interlocutory Ruling that Ordered the Appellants to Produce Materials That Appellants Believed Were Privileged.

The Appellants filed their Notice of Appeal on February 17, 2013 to appeal a ruling that ordered the Appellants to produce internal-investigation files that they believed were protected by the attorney work-product doctrine. (See Notice of Appeal dated February 17, 2013). The Appellants filed their Notice of Appeal because the lower court had already informed the Appellants that it would sanction

them \$1,000 a day unless they agreed to produce the internal investigation files within 10 days of Judge Carmen Mullen signing the order. On February 21, 2013, Judge Mullen signed that sanction order, imposing a delayed sanction of \$1,000 a day unless the files were produced by March 2, 2013. (Ex. A, Order dated February 21, 2013). After considering whether to proceed with the appeal and fight the orders, the Appellants decided to produce the internal investigation files. The Appellants produced the files on February 28, 2013, which effectively mooted the appeal that had been filed just eleven days earlier.

Despite the Respondent's claims that the appeal was frivolous, the appeal was in response to an appealable interlocutory order. Although discovery orders generally are not immediately appealable, there are exceptions to this general rule when a party may lose a privilege. In this case, the lower court's order threatened to destroy the Appellant's attorney work-product privilege. As noted in the appellate practice book co-authored by Chief Justice Toal, interlocutory appeals concerning privileged or confidential are often immediately appealable.

[I]f an order requires a part to turn over documents, which the party feels are privileged or contain proprietary or confidential matters, compliance with the order without the ability to seek immediate appeal renders the protection afforded by the privilege or confidentiality a nullity. Hence, where the appealed order has the effect of revealing the very thing that appellant is claiming should remain confidential, an immediate appeal may very well be warranted and allowed.

JEAN HOFER TOAL, SHAHIN VAFAI, AND ROBERT A. MUCKENFUSS, APPELLATE PRACTICE IN SOUTH CAROLINA 94 (2d ed. 2002) (emphasis added); see also McGee v. Bruce Hosp. Sys., 312 S.C. 58, 439 S.E.2d 257 (granting writ of certiorari to consider whether alleged confidential materials were protected from discovery).

Second, the lower court's discovery order should have been immediately appealable because it violated Rule 241's automatic stay and threatened the mode of trial. This case is currently on appeal regarding the enforceability of an arbitration agreement found in admission contract to an assisted-living facility. (See Notice of Appeal filed on September 17, 2012). The arbitration clause provides for discovery. (**Ex. B**, pp. 7-9). The appellants believe that (a) the order regarding the internal investigation files should have been stayed under Rule 241, SCACR, and (b) the order affected the mode of trial (arbitration) because it usurped the arbiter's authority to rule on discovery disputes.

Finally, the appealed discovery order threatened a substantial right. S.C. Code § 14-3-330(2). In addition to violating the automatic stay and threatening the mode of trial, a subsequent sanction order—directly related to the appealed order—exposed the Appellants to sanctions that would have been triggered at \$1,000 a day starting March 3, 2013. (**Ex. A**). Had the Appellants stood on their privilege, not produced the files, and waited to file their appeal until after arbitration or trial, they would have played a dangerous waiting game that could have exposed them to hundreds of thousands of dollars in fines. For example, if the Appellants refused to produce the file on the basis of privilege, it may have taken 12-18 months or more before the arbitration or trial was finally resolved. At this point, the sanction would have approached or exceeded \$500,000. By filing an immediate appeal, the Appellants could seek an immediate determination as to whether the discovery and sanction orders were proper.

In sum, the Appellants had a good-faith basis for filing their Notice of Appeal. After the appeal was mooted by their decision to turn over the files, the Appellants acted in good faith and withdrew their appeal just 17 days after its filing. Contrary to Respondent's unfounded assertions that this appeal was filed for purposes of delay, this appeal would not have delayed the resolution of the case, as the case is currently on appeal. This Court presumably would have decided both appeals at the same time.

B. Respondent Violated Her Own Arbitrary Deadline and Filed a Motion to Dismiss and To Request Sanctions and Then Refused to Withdraw Her Motion.

Just eight days after filing the Notice of Appeal, Appellants informed Respondent and the lower court that it would be withdrawing this Notice of Appeal. (Ex. C, Email from Manton Grier, Jr dated February 27, 2013).¹ On March 4, 2013, Respondent wrote a letter telling Appellants that “[w]e will file a Motion to Dismiss the Notice of Appeal on Friday, March 8, 2013, if you have not previously withdrawn the entire Notice of Appeal. We also intend to seek sanctions for filing a frivolous appeal.” (Ex. D, Letter from Susan Wall dated March 4, 2013).

¹ In subsequent correspondence, Respondent stated she was unclear whether we intended to withdraw the entire February 17 appeal or just the part dealing with the internal investigation files. Although the email references the “appeal as to the internal investigation files,” the purpose of the email was to inform Respondent and the court of their intent to withdraw the entire Notice of Appeal dated February 17, 2013. The Appellant’s Motion to Reconsider—that was attached to the appeal—only challenged the part of the discovery order pertaining to the internal investigation files. Appeals to other parts of the order would have been stale. Admittedly, when asked by Respondents to clarify what they intended to withdraw, the Appellants again reviewed the orders just to be sure before filing the Motion to Withdraw the Appeal on March 8, 2013.

Despite this arbitrary deadline—which the Appellants met on March 8—the Respondent violated her own deadline and filed her motion one day before March 8. The Respondent’s motion is dated March 7, 2013, which is the same day that the Appellants again informed the Respondent that they intended to withdraw the appeal the next day. (**Ex. E.**, Email from Manton Grier, Jr. dated March 7, 2013). This Court should not allow a Respondent to violate the duty to consult by providing an arbitrary deadline and then filing a motion a day before the deadline expires.

When the Appellants received a copy of the Respondent’s Motion on March 11, they immediately requested that the Respondent withdraw the Motion so that this Return would be unnecessary. The Respondent refused, which forced the Appellants to respond by drafting this Return. (**Ex. F and Ex. G**, Emails from Manton Grier, Jr. and Susan Wall, dated March 11, 2013). If any paper filed with this Court deserves to earn sanctions, it is the Respondent’s improperly filed Motion which not withdrawn.

C. Respondent Has Suffered No Prejudice

Because the Appellants withdrew their appeal a mere 17 days after its filing, the Respondent has suffered no prejudice that would warrant sanctions. The Respondent had no deadlines to meet, no required filings, and any inconvenience she suffered is entirely self-induced by filing her premature Motion.

III. THIS COURT SHOULD SANCTION THE RESPONDENT FOR FILING THIS MOTION AND SUBSEQUENTLY REFUSING TO WITHDRAW IT.

If there is a frivolous filing relating to this appeal, it is not the Notice of Appeal, but rather the Respondent’s Motion. After receiving the Respondent’s Motion on March 11, 2013, Appellants immediately asked the Respondent to

withdraw her Motion. Appellants thought she made a mistake and filed the Motion early by accident. Certainly she would withdraw a motion that violated her own deadline?

The Appellants do not make this request lightly. They make this request only to seek the fees and costs incurred in drafting this Return. It is unfortunate that it came to this, but the Appellants needlessly forced fees and costs to be incurred by having to draft what should have been an unnecessary response.

CONCLUSION

The Respondent's Motion is improper and in violation of her own arbitrary deadline. The Appellant's had a good-faith basis for filing their appeal, which they promptly withdrew 17 days later, before Respondent suffered any prejudice. Because she refused to withdraw the Motion, the Respondent should pay the fees and costs the Appellant incurred in drafting this Return. Therefore, the Respondent's Motion should be denied and she be ordered to pay reasonable fees and costs.



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March 18, 2013
Columbia, South Carolina

Attorneys for Appellants
Brookdale Senior Living, Inc. and Southern
Assisted Living, LLC

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT

CASE NO.: 2011-CP-07-2654

JANET SUE SCHEERLE,

Plaintiff,

v.

BROOKDALE SENIOR LIVING, INC.,
SOUTHERN ASSISTED LIVING, LLC, d/b/a
CAROLINA HOUSE OF HILTON HEAD, and
SONIA S. KING,

Defendants.

ORDER

This matter comes before the Court upon Plaintiff's motion for sanctions against Defendants Brookdale Senior Living, Inc., and Southern Assisted Living, LLC, d/b/a Carolina House of Hilton Head (collectively "Defendants") for failing to obey this Court's order requiring Defendants to produce discovery to Plaintiff. Following adequate notice, a hearing was held on this motion on January 23, 2013.¹ Plaintiff was represented by her counsel Kelly Jolley and Kathleen Chewning. Defendants were represented by their counsel Mark Manos and Manton Grier. After listening to oral arguments by counsel, and reviewing the pleadings, I find as follows:

alleged

1. This case arises out of three incidents of elder abuse that occurred at Defendants' community residential care facility on Hilton Head Island, Beaufort County, South Carolina on December 31, 2010.

¹ Plaintiff had also filed a Petition for a Rule to Show Cause directing Defendants to appear before this Court and show cause as to why Defendants refuse to comply with this Court's order requiring Defendants to produce discovery documents to Plaintiff and why Defendants should not be found in contempt of court for refusing to comply with this Court's order. However, at the hearing on both motions, Plaintiff's counsel explained that Plaintiff did not wish to hold either of the lawyers in contempt based on a decision by their corporate client. Instead, Plaintiff requested only that the Court grant her motion for sanctions. Therefore, this Court need not rule on the Motion for Contempt and does not do so.

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2. On August 2, 2012, Plaintiff filed a Motion to Compel Responses to Plaintiff's ~~First Set of Interrogatories and Requests for Production to Defendants and Plaintiff's~~ Subpoena Duces Tecum and 30(b)(6) Deposition of Southern Assisted Living, LLC, pursuant to Rule 37(a), SCRCF. On September 4, 2012, this Court considered three motions in Plaintiff's case: (1) Defendants' Motion to Reconsider the Court's order denying its initial Motion to Dismiss or Compel Arbitration, (2) Defendants' Renewed Motion to Dismiss or Compel Arbitration, and (3) Plaintiff's Motion to Compel discovery responses. At the hearing, the Court denied Defendants' Renewed Motion to Dismiss or Compel Arbitration and granted Plaintiff's Motion to Compel discovery responses.

3. On September 18, 2012, this Court issued an *Order Granting Plaintiff's Motion to Compel Responses to Plaintiff's First Set of Interrogatories, Requests for Production to Defendants, and Plaintiff's Subpoena Duces Tecum and 30(b)(6) Deposition of Southern Assisted Living, LLC*. Among other items, the Court ordered the Defendants to "file all documents it prepared in its full internal investigation, including specifically those listed on Defendants' privilege log, with this court for an in camera review within thirty (30) days. The court will then determine whether any of the documents prepared during Defendants' investigation are privileged attorney work product prepared in anticipation of litigation."

4. On November 7, 2012, after reviewing the documents submitted for in camera review, I ordered that all documents submitted for review be turned over to Plaintiff.

5. Defendants have failed to obey this Court's order to provide discovery and have made clear their intention to not give the internal investigation documents to the Plaintiff.



6. Based on the nature of this case and Plaintiff's allegations of abuse, documents regarding Defendants' non-privileged internal investigation of the abuse is integral to Plaintiff's case and Defendants' willful refusal to produce these documents after this Court has ruled that they are not protected by any privilege is, at least, in gross indifference to the rights of the Plaintiff.

7. "[S]anctions for discovery abuse are left to the sound discretion of the trial court." *McNair v. Fairfield County*, 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008). "Under Rule 37(b)(2)(C), SCRCP, when a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just..." *Id.* at at 465, 665 S.E.2d at 832. "In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.* (internal quotation marks omitted).

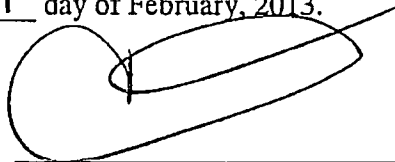
8. As to Defendants' assertion at the hearing that this Court lacks jurisdiction to issue an order for sanctions, this Court disagrees and finds the appeal as to the arbitration issue does not stay this Court's ability to grant sanctions for Defendants' failure to comply with a discovery order. Under Rule 241, SCACR, the lower court "retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Under Rules 205 and 241(a), SCACR, "the lower court's power to proceed" with the action and address matters not affected by the appeal "is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal." *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012). This Court's order on Defendants' failure to follow a discovery order is not a matter affected by an appeal of an order denying a motion to

compel arbitration. Additionally, the determination of whether certain documents are ~~privileged or subject to work-product doctrine is not a matter affected by the appeal~~ because even the arbitration provision provides that written discovery "shall be governed by the South Carolina Rules of Civil Procedure."

9. Based on Defendants' willful, intentional, and prejudicial conduct, I grant Plaintiff's request for sanctions. Defendants have ten (10) days from the date of this order to produce all of the documents I reviewed in camera to Plaintiff's counsel. Should Defendants fail to produce the documents to Plaintiff's counsel within ten (10) days of this order, Defendants will be required to pay a fine of One Thousand Dollars and no cents (\$1,000) per day, for each day that Defendants remain in violation of my order to produce the discovery.

10. I find that this sanction is just and reasonable and does not go beyond the necessities of the matter to foreclose on any decision on the merits of this case. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct. App. 1990).

AND IT IS SO ORDERED, this 21 day of February, 2013.



Carmen T. Mullen
Circuit Court Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina



EXHIBIT B

CAROLINA HOUSE
BROOKDALE SENIOR LIVING
RESIDENCY AGREEMENT

THIS AGREEMENT IS SUBJECT TO ARBITRATION

This Agreement ("Agreement") dated July 10, 2010 is made by and between Southern Assisted Living, Inc. d/b/a Carolina House of Hilton Head (the "Company," "us," "we" or "our") a corporate affiliate of Brookdale Senior Living Inc., and Janet Scheerle ("Resident," "you" or "your").

We operate the community located at 35 Beach City Road, Hilton Head, South Carolina 29926 (the "Community") which is licensed by the State of South Carolina as a Community Residential Care Facility and residency in the Community has been requested by you or on your behalf. The terms and conditions of this Agreement are as follows:

I. SERVICES AND ACCOMMODATIONS.

A. BASIC SERVICES. We will provide you with the following Basic Services, which are included in the Basic Service Rate, subject to the terms of this Agreement:

- ◆ **Accommodations** – You have elected to live in the Suite described in Exhibit A and are entitled to the use of our property located in the Suite. You are also entitled to use and enjoy with all other residents the common areas of the Community. You may provide your own furnishings and personal property; however, we reserve the right to limit the number and type of furnishings/small appliances. You agree that you are responsible for the maintenance and repair of any personal belongings you bring to the Community.
- ◆ **Dining Services** – We will furnish three meals daily. Snacks are available 24 hours a day.
- ◆ **Utility Service** – The cost of gas, electric, heat, air conditioning and water service are included. The cost of basic cable, satellite or comparable television service is not included. You are responsible for paying any other utility charges including, but not limited to, telephone, internet or premium cable charges.
- ◆ **Housekeeping Service** – We will provide light housekeeping once a week.
- ◆ **Laundry and Linen Service** – We will launder your personal belongings and bed linens once a week.
- ◆ **Activities Program** – We will provide planned social and recreational programs.
- ◆ **Transportation** – We will secure or provide transportation for resident when a physician's services are needed. Local transportation (within a ten (10) mile radius of the Community) for medical reasons shall be provided by us at no additional charge. Basic transportation services will include the use of a car or conventional, non-adapted mini van. Residents requiring more services including private duty aide or specially adapted equipment or vehicle will be responsible for the costs incurred by that service. You

understand that transportation for purposes other than those described in the preceding sentence will be at your expense.

- ◆ **Staffing 24 hours a day** – Associates are available 24 hours a day, seven days a week.

We will provide thirty (30) days written notice of any change in Basic Services.

B. PERSONAL SERVICE PLAN. Prior to moving in and periodically throughout your residency, we will use a personal service assessment to determine the personal services you require. The personal service assessment will be used to develop your Personal Service Plan. The results of the assessment and the cost of providing the additional personal services (the "Personal Service Rate") will be shared with you. Your initial Personal Service Rate is set forth in Exhibit A.

C. AVAILABLE SELECT AND THERAPEUTIC SERVICES. Select Services and Therapeutic Services are available to you at your request. Such additional services are not included in the Basic Service Rate or the Personal Service Rate. Where available, such services may include, but are not limited to guest meals, transportation beyond that which is included in the Basic Service Rate, transportation escort services, enhanced cable television, special events or certain clinical services. The available Select Services and Therapeutic Services as well as the associated prices are found on Exhibit X and Exhibit Y to this Agreement.

D. SERVICES NOT COVERED BY RESIDENCY AGREEMENT. In some circumstances, the provision of outside services may be required for your continued ability to safely remain at the Community. An outside agency or individual will be permitted to provide these services or any related personal services only if we have given prior approval.

You are responsible for obtaining and paying for all services that are not included in the Basic Services or Personal Service Plan (including, but not limited to, the services of third party health care and medical providers), whether provided by us, our subcontractors, third party health care and medical providers, or others. These services may include, but are not limited to, pharmacy, therapy, private companion, beauty/barber or other health care services. Fees for such services will be billed to you directly by the service provider, unless otherwise agreed to by the parties. All third party service providers (including, but not limited to, health care service providers) must agree to adhere to our standards for outside providers prior to being permitted to provide services in the Community.

You may not hire our current associates to provide services in the Community. You may contract with former associates to perform any services at the Community only with our consent. We reserve the right to refuse entry to (1) former associates; (2) persons whose actions may be disruptive to the Community; or (3) persons whose actions may threaten the safety of any resident or associate.

II. YOUR RESPONSIBILITIES AND REPRESENTATIONS.

A. CARE OF SUITE. You agree that the Community and the Suite are in satisfactory, habitable condition and we have made no promise to decorate, alter or improve the Community or Suite unless otherwise provided in writing and attached as part of this Agreement. You agree to maintain the Suite and to leave the Suite upon termination of this Agreement in good condition, except for normal wear and tear. You agree to pay all damages, beyond normal wear and tear, which you (including your agent, employee,

contractor, or other invitee) cause to our property. The Community may invoice you for the cost of such repairs.

B. ALTERATIONS. We, in our sole discretion, will permit reasonable alterations to the Suite if you have a disability and the proposed modification is necessary to afford you full enjoyment of the Suite. Structural or physical alterations, whether based on a handicap or not, may be made only upon our prior written approval. All structural or physical changes to the Suite shall remain at the Suite and be considered part of the Suite and the Community. Any changes or modifications to the Suite that require assistance of appropriately licensed and insured electricians, contractors or similar professionals must be approved in advance by us in our sole discretion. The cost of any alterations made by you shall be paid by you unless we otherwise agree in writing. You agree that you will bear the cost of restoring the Suite to its original condition, reasonable wear and tear excepted, upon the termination of this Agreement, unless we specifically exempt you from this requirement in writing. We may enter and make any modifications or alterations to the Suite to meet the requirements of any applicable law.

C. RIGHT OF ENTRY. For your safety and comfort, our associates must be permitted to enter your Suite to provide services under the terms of this Agreement, to respond to emergencies, to make repairs and improvements, or if there is reasonable belief that your safety or the safety of others is in question or that our policies and procedures are being violated, as we deem necessary or advisable. Therefore, it is not permissible to change the locks or add locks to the entrance door to your Suite. When feasible, our associates will attempt to give you reasonable notice before entering your Suite.

We reserve the right to relocate you to a more appropriate Suite within the Community as required for your health or safety, or because the residents of a companion Suite are incompatible.

D. HEALTH ASSESSMENT. You agree that we may assess your health to create and update a Personal Service Plan and/or to determine whether you are appropriate to remain at the Community. Not more than thirty (30) days prior to the date of this Agreement or upon our request, you agree to undergo an examination by your physician (or other licensed provider as allowed by law). You agree to undergo examination by a particular specialist, at your cost, as we determine is warranted by your current physical or mental status. You will request the examiner to provide us with recommendations, including a statement attesting to the appropriateness of your continued placement. Based upon the assessment(s) and our judgment, we may determine your appropriateness to remain in the Community. You will request the examiner to perform any tests and complete any forms required by us or applicable law.

E. HEALTH CARE PROVIDER NOTIFICATION. You authorize us to contact your legal representative/family, health care providers, and/or other persons listed in your records (1) if it is necessary to advise them of your situation; (2) to arrange for required health care services and other assistance; or (3) in case of an emergency.

If your designated health care providers are unavailable, you authorize us to arrange for the services of other health care providers. You agree we may provide such persons with copies of your records, including, but not limited to, resident records, advance directives, living will, and the names of persons empowered to make health care decisions.

F. SUBSTITUTE DECISION MAKERS/ADVANCE DIRECTIVES. You will provide us with accurate, complete and current information about yourself, substitute decision-makers and health care providers, including but not limited to addresses and phone numbers, and your health care status and needs. You will provide us with copies of any power of attorney, guardianship, living will, or conservator documents, or other legal documents relating to the making of health or financial decisions or decision-makers. You authorize us to rely on the instructions of such designees or appointees. You further agree to immediately notify us of changes relating to the information stated above.

It is strongly suggested that you have advance directives in place in the event you become incapacitated. If you do not have such advance directives in place, you understand that a court may name a guardian upon application of any interested party (including the Company). Neither we nor any of our associates or agents may be your guardian. If it is necessary for us to petition the court for appointment of a guardian, any costs associated therein shall be paid by you and we may invoice you for such costs.

G. ELECTRIC SCOOTERS. Electric scooters and similar vehicles may be used, subject to the following:

1. Your ability to walk is substantially limited due to a disability;
2. Your operation of the vehicle does not pose a threat to the health and safety of yourself or others.
3. The vehicle is operated at a low speed setting; and
4. You agree to abide by our safety guidelines for the use of motorized vehicles on the premises, which may be modified from time to time.

Reasonable accommodations will be made to the rules, policies and practices (upon a showing of necessity) so long as the requested accommodation does not constitute a threat to the health or safety of you, the other residents, our associates or visitors.

You agree to pay for all damages to others or to the Community, which are caused by you or your scooter and that we may invoice you for such costs. You further understand and agree that we may, at our sole discretion, prohibit your further use of an electric scooter or similar vehicle at any time.

H. RESPONSIBILITIES UPON TERMINATION. You will vacate premises, removing all belongings on or before the effective date of termination. If you fail to remove your belongings by the effective date of termination, you understand and agree that we may continue to charge you for the Basic Service Rate of your Suite, or have your belongings placed in storage at your cost. You further agree that we may donate any unclaimed property after forty-five (45) days. You will provide written notice of a forwarding address where you can be reached and receive mail. Termination will not release you or us from any liability or obligation to the other party under the terms of this Agreement.

I. EXAMINATION OF RECORDS. You acknowledge that we are licensed by the State of South Carolina as an Community Residential Care Facility. You understand that regulatory officials having jurisdiction over the Community may inspect your records as part of an evaluation of the Community. You have the right to review and access your health care records in accordance with the requirements of applicable law.

J. RULE AND REGULATION COMPLIANCE. You understand that the Community has shared common areas, and you agree to honor all rules of courtesy and respect for others.

You agree to abide by and conform to our rules, regulations, handbook, policies and procedures as they now exist and as amended from time-to-time. You understand that failure to abide by such policies may result in your discharge from the Community.

- K. GUESTS.** You have the right to associate with your friends and family during reasonable hours. Because the Community is a licensed building, overnight guests are generally not permitted in a resident's room. Limited exceptions may be granted by the Executive Director based upon the circumstances.

You acknowledge and understand that your guests are subject to our rules and regulations, and if your guests become disruptive to the operations of the Community and/or are verbally or physically abusive to residents, our associates or others, we may request that they leave the Community until their behavior is under control or may restrict their visitation. Where circumstances warrant, we may exclude such individuals from the Community.

III. RATES.

- A. COMMUNITY FEE.** We require a one-time non-refundable Community Fee in an amount indicated in Exhibit A to be paid at the time this Agreement is signed. The Community Fee does not excuse you from financial responsibility for any damage caused to your Suite beyond normal wear and tear upon move-out.

B. MONTHLY SERVICE RATE.

1. **Rate.** You agree to pay the Basic Service Rate and, if applicable, the Personal Service Rate as indicated in Exhibit A (together the "Monthly Service Rate").
2. **Refund.** We will refund a prorated share of the Monthly Service Rate if this Agreement is terminated before the end of a month:
 - a. following written notice in accordance with Section IV;
 - b. because you require care that is not offered by us; or
 - c. by reason of death.

Refunds will be based on the actual number of days you were in the Community or a bed was held for you in the Community. A storage fee equal to the prorated (using 30.5 days to calculate the Daily Rate) share of the Monthly Service Rate will be charged until all of your property is removed from the Suite. Unless prohibited by law, you agree we may offset such refunds by any amount due under the terms of this Agreement.

C. ABSENCES.

1. **Notice of Absence.** Except for an emergency medical absence, if you will be absent from the Community for any period of time, you must inform us of your plans prior to leaving and sign the Sign In/Sign Out Book upon exiting and re-entering the Community. We assume no responsibility or liability for your welfare during times that you are away from the Community.
2. **Fees During Absence.** If you are absent from the Community for any reason, such as, for a hospitalization, vacation, temporary nursing home care or rehabilitation, the Residency Agreement will remain effective and you will be charged the full Monthly Service Rate. If you provide written notice of your intent to terminate the Agreement pursuant to Section IV, termination will be effective and charges will cease the later of the end of any applicable notice period or the removal of all of your personal belongings.

D. **SELECT & THERAPEUTIC SERVICES.** In addition to the Monthly Service Rate, you agree to pay the established charges for any Select Services or Therapeutic Services provided to you by us.

E. **PAYMENT.** We will issue a monthly statement before the first day of the month itemizing the Monthly Service Rate for the upcoming month and, if any, charges incurred for Select Services and Therapeutic Services provided during the prior month. Payment for all charges shown on the statement is due on the first (1st) calendar day of each month. The first payment of the Monthly Service Rate is due prior to taking occupancy. If you move in after the first of the month, your first Monthly Service Rate will be prorated (using 30.5 days to calculate the Daily Rate).

We will charge a \$250.00 late fee if we have not received all fees when due. We will also charge a \$30.00 returned payment fee for each check or automatic withdrawal that is returned or denied for any reason. After two such occurrences, you agree to pay all amounts due by cashiers check or such other method specified by us. You also agree to pay interest on all outstanding amounts based upon the lesser of 1.5% per month or the highest rate permitted by law.

F. **RATE CHANGES.** We will provide thirty (30) days written notice of any change in the rates for Basic Services, Personal Services, Select Services or Therapeutic Services. We may offer or require a change in the Personal Service Plan when we determine additional services are requested or required. The new Personal Service Rate resulting from a change in your Personal Service Plan is effective immediately after written notice is given.

IV. TERM AND TERMINATION.

A. **TERM.** This Agreement begins on the date set forth above and continues until terminated as provided below.

B. **TERMINATION BY RESIDENT.** You may terminate this Agreement upon thirty (30) days written notice to us. Termination occurs shall be effective the day after your last day of residence. You will be charged a storage fee equal to the Monthly Service Rate until all of your belongings are removed from the Community.

C. **TERMINATION BY THE COMPANY.** We may terminate this Agreement, upon providing you or your legal representative thirty (30) days written notice, for any of the following events, as determined by us:

1. You require care or services that we are unable to provide or which requires staff that are not available at the Community;
2. Your or your visitors' behavior impairs the well-being, care or safety of yourself or others, creates unsafe conditions, is physically or verbally abusive to others, or otherwise interferes with the orderly operation of the Community.
3. For your welfare or the welfare of others in the Community;
4. You or your third party payor fail to pay fees and charges when due.

We may, upon written notice to you, immediately terminate this Agreement, and transfer or discharge you for emergency medical or welfare reasons that would endanger the health and safety of yourself or others. If the emergency requires your immediate transfer, we will notify your legal representative as soon as practical, but not later than twenty-four (24) hours

following the transfer. We will provide a written explanation for termination with less than thirty (30) days notice.

D. TERMINATION BY EITHER PARTY. Either party may terminate this Agreement immediately upon written notice in the event of your death or if a physician certifies to us in writing, based upon an examination prior to moving out, that you must be relocated due to your health. You will be charged a storage fee equal to the Monthly Service Rate until all of your belongings are removed from Community.

V. ARBITRATION AND LIMITATION OF LIABILITY PROVISION. Should any of sub-sections A, B or C provided below, or any part thereof, be deemed invalid, the validity of the remaining sub-sections, or parts thereof, will not be affected.

A. ARBITRATION PROVISION.

1. Any and all claims or controversies arising out of, or in any way relating to, this Agreement or your stay at the Community, excluding any action for eviction, and including disputes regarding interpretation of this Agreement, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties, irrespective of the basis for the duty or the legal theories upon which the claim is asserted, shall be submitted to binding arbitration, as provided below, and shall not be filed in a court of law. **The parties to this Agreement further understand that a jury will not decide their case.** The South Carolina Revised Code concerning arbitration shall govern the procedure, except if inconsistent with this Arbitration Provision or expressly stated otherwise in this Agreement. Further, nothing in this Agreement is to be construed to contradict any applicable South Carolina statutory grievance or mediation procedure. Any party who demands arbitration must do so for all claims or controversies that are known, or reasonably should have been known, by the date of the demand for arbitration, and if learned of during the course of the arbitration proceeding shall amend the claims or controversies to reflect the same. All current damages and reasonably foreseeable damages arising out of such claims or controversies shall also be incorporated into the initial demand or amendment thereto.
2. A demand for Arbitration by you, your legal representative, a person or organization acting on your behalf with your consent, or the personal representative of the estate of your estate (collectively "Resident Party") shall be made in writing and submitted to CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, via certified mail, return receipt requested. Demand for Arbitration by us shall be made in writing and submitted to you or your agent, representative, successor or assign and/or your legal representative via certified mail, return receipt requested.
3. The arbitration proceedings shall take place in the county in which the Community is located, unless agreed to otherwise by mutual consent of the parties.
4. The arbitration panel shall be composed of one (1) arbitrator. Subject to the requirements of section A.5. herein, the parties shall agree upon an arbitrator that must either be a retired South Carolina circuit or federal court judge or a member of the South Carolina Bar with at least ten (10) years of experience as an attorney. If the parties cannot reach an agreement on an arbitrator within twenty (20) days of receipt of the Demand for Arbitration, then each party will select an arbitrator. These arbitrators will act only for the purpose of appointing a sole arbitrator to hear the case, subject to the criteria above. If

either party fails to select their arbitrator within the (20) days mentioned above, they effectively forfeit their right to choose an arbitrator. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.

5. The arbitrator shall be independent of all parties, witnesses, and legal counsel. No past or present officer, director, affiliate, subsidiary, or employee of a party, witness, or legal counsel may serve as an arbitrator in the proceeding.
6. Discovery in the arbitration proceeding shall be governed by the South Carolina Rules of Civil Procedure. However, discovery shall be modified by the following, unless agreed to otherwise by the party to whom the request is made:
 - a. The Resident Party shall provide us with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after Demand for Arbitration is received (and we shall reimburse Resident Party \$0.25 per page).
 - b. We shall provide the Resident Party with permissible discovery per the South Carolina Rules of Civil Procedure within twenty (20) days after the Demand for Arbitration is received (and Resident Party, unless proven indigent, shall reimburse us \$0.25 per page).
 - c. The only depositions allowed shall be of experts. No other individuals may be deposed.
 - d. Resident Party shall designate any and all expert witnesses within sixty-five (65) days after Demand for Arbitration is submitted.
 - e. We shall have thirty (30) days after Resident Party's expert designation is received in which to depose such experts.
 - f. We shall designate any and all experts one hundred and fifteen (115) days after Demand for Arbitration is submitted.
 - g. Resident Party shall have thirty (30) days after our expert designation is received in which to depose such experts.
 - h. Any report or affidavit of an expert, and a list of all records contained in the expert's file, must be exchanged by the parties no later than ten (10) working days before the date of the expert's deposition.
 - i. The following shall be exchanged no later than fourteen (14) working days before the arbitration hearing:
 - (1) List of witnesses to be called at the arbitration hearing (full name, title, address and phone number if known) and an outline of each witness' intended testimony;
 - (2) List of documents to be relied upon at the arbitration hearing;
 - (3) Any sworn recorded statements to be relied upon at the arbitration hearing and included therewith the full name, title, address and phone number of the person making the sworn statement.
 - j. The arbitration hearing shall be held no later than one hundred and eighty (180) days after Demand for Arbitration is submitted, or within a reasonable time thereafter if a conflict arises with the arbitrator's calendar.

7. The arbitrator shall designate a time and place within the county in which the Community is located, for the arbitration hearing and shall provide thirty (30) days' notice to the parties of the arbitration hearing.
8. The arbitrator shall apply the South Carolina Rules of Evidence and South Carolina Rules of Civil Procedure in the arbitration proceeding except where otherwise stated in this Agreement. Also, the arbitrator shall apply, and the arbitration decision shall be consistent with, South Carolina law except as otherwise stated in this Arbitration Provision.
9. The arbitration decision should be signed by the arbitrator and delivered to the parties and their counsel within thirty (30) days following the conclusion of the arbitration. The decision shall set forth in detail the arbitrator's findings of fact and conclusions of law.
10. The arbitrator's decision shall be final and binding without the right to appeal.
11. The arbitrator's fees and costs associated with the arbitration shall be divided equally among the parties, unless the Resident Party is proven indigent. The parties shall bear their own attorneys' fees and costs and hereby expressly waive any right to recover attorney fees or costs, actual or statutory.
12. The arbitration proceeding shall remain confidential in all respects, including the Demand for Arbitration, all arbitration filings, deposition transcripts, documents produced or obtained in discovery, or other material provided by and exchanged between the parties and the arbitrator's findings of fact and conclusions of law. Following receipt of the arbitrator's decision, each party agrees to return to the producing party within thirty (30) days the original and all copies of documents exchanged in discovery and at the arbitration hearing, except those documents required to be retained by counsel pursuant to law. Further, the parties to the arbitration also agree not to discuss the amount of the arbitration award or any settlement, the names of the parties, or name/location of the Community except as required by law.
13. The Limitation of Liability Provision below is incorporated by reference into this Arbitration Provision.
14. The Arbitration Provision and the Limitation of Liability Provision below shall survive your death.

B. LIMITATION OF LIABILITY PROVISION. *Read Carefully Before Signing*

1. The parties to this Agreement understand that the purpose of this "Limitation of Liability Provision" is to limit, in advance, each party's liability in relation to this Agreement.
2. Liability for any claim brought by a party to this Agreement against the other party, including but not limited to a claim by us for unpaid Basic Service Rate or Personal Service Rate or other charges, or a claim by, or on behalf of you, Resident Party or your estate, agent or legal representative, arising out of the care or treatment received by you or your occupancy or presence at the Community, including, without limitation, claims for medical negligence, shall be limited as follows:
 - a. Net economic damages shall be awardable, including but not limited to, past and future medical expenses, offset by any collateral source payments such as payments made by medical insurance.
 - b. Non-economic damages, such as pain and suffering, shall be limited to a maximum of \$250,000.00.

- c. Interest and/or late fees on unpaid assisted living charges shall not be awarded.
 - d. Punitive damages shall not be awarded.
3. Should sub-sections a, b, c and/or d, provided above, be deemed invalid, the validity of the remaining sub-sections will not be affected.

C. BENEFITS OF ARBITRATION AND LIMITATION OF LIABILITY PROVISIONS.

The parties' decision to select arbitration is supported by the potential cost-effectiveness and time-savings offered by selecting arbitration, which may avoid the expense and delay of judicial resolution in the court system. The parties' decision to select arbitration and to agree to a limitation of liability also are supported by the potential benefit of preserving the availability, viability, and insurability of an assisted living company for the elderly and disabled in South Carolina, by limiting such assisted living company's exposure to liability. With this Agreement, we are better able to offer our services and accommodations at a rate that is more affordable to you. In terms of the time-savings offered by selecting arbitration, the parties recognize that selecting a quick method of resolution is potentially to a Resident's advantage.

You or your legal representative understands that other assisted living companies' Agreements may not contain an arbitration provision, or limitations of liability provision. The parties agree that the reasons stated above are proper consideration for the acceptance of the Arbitration and Limitation of Liability Provisions. **The undersigned acknowledges that he or she has been encouraged to discuss this Agreement with an attorney.**

The parties to this Agreement further understand that a jury will not decide their case.

VI. MISCELLANEOUS.

- A. **WAIVER OF TRIAL BY JURY.** If a court determines that the Arbitration Provision provided above is invalid, the parties express their desire to waive a jury trial and resolve any claims in the appropriate court solely before a judge.
- B. **NON-DISCRIMINATION.** We operate on a non-discriminatory basis and afford equal treatment and access to services to eligible persons regardless of race, religion, color, national origin, sex, disability or any other category protected by applicable law.
- C. **RISK AGREEMENT.** You are responsible for your personal, financial and health care decisions. You are also responsible for maintaining health, personal property, liability, automobile (if applicable), and other insurance coverages in adequate amounts. You agree to obtain insurance in an amount adequate to cover your personal property and your general liability. You acknowledge that we do not insure your person or property. You understand and agree that:
 1. We may encourage you to participate in community, leisure, and social activities and to maintain an appropriate level of independence in activities of daily living, as well as your personal and financial affairs;
 2. Independent activities, responsibility for personal, financial, and health care decisions, and lifestyle and care preferences may involve risks of personal injury and/or property damage or loss;
 3. The standard of service for an assisted living community does not include one-on-one care, assistance or supervision, e.g., one resident assistant for each Resident, or immediate response to non-emergent needs. There may be short and long periods of time

in which you will be left alone, unsupervised such as while watching television, listening to music, reading, and sleeping at night;

4. We make no representations or guarantees that our associates can prevent falls. We do not represent or guarantee that your health condition will not change or deteriorate;
5. We make no representations or guarantees that our associates can prevent the onset of skin break down or the worsening of existing skin break down.
6. Our services may not meet all of your personal, social, or health care needs and we will attempt to assist you in arranging for such services which are not included in this Agreement;
7. Many residents suffer from cognitive impairment, including Alzheimer's disease and dementia. This condition can cause unexpected behavior such as wandering, forgetfulness, agitation towards others and confusion. We make no representations or guarantees that we can predict the behavior of our residents. Therefore, we also make no representations or guarantees that we can always prevent a resident from wandering or attempting to wander from the Community, entering into a private area, misplacing or losing items or engaging in physical contact with another resident;
8. We make no representations or guarantees that we can prevent the loss of personal items, including but not limited to clothing, dentures, hearing aides or other medical equipment. We will not be responsible for the loss of such items. We make no representations or guarantees that we can prevent theft or other criminal acts perpetrated by another resident or person; therefore, we recommend that valuables such as jewelry and large sums of money, not be kept at the Community. If you choose to bring in valuables, you do so at your own risk and we will not be held responsible for any theft or loss of such items;
9. Due to state regulations and fire code, we may not lock our exterior doors against exiting. Therefore, we cannot guarantee that a resident will not wander from the Community. Some buildings have exterior doors that are alarmed with a delayed egress feature and our systems are designed to alert our associates to respond and assist a resident if they wander from the building.

You understand and agree to assume the risks inherent in this Agreement. You agree to hold us, our associates and agents harmless for any damages, injury or other loss resulting from: (1) reasonable acts or omissions made in good faith; (2) action by a third party, fire, water, theft or the elements; or (3) loss of personal property.

- D. **PETS.** You may have a household pet in your Suite, subject to (1) our prior written approval, (2) execution of a Pet Agreement, which is available upon request and (3) payment of any applicable pet fee or deposit. You agree to pay for any damage to our property or the property of others caused by your pet. We reserve the right to require the permanent removal of your pet for failure to adhere to the Pet Agreement or our applicable policies and rules, or if we have reason to believe that your pet poses a threat to others or the Community.
- E. **SMOKING.** Except for grandfathered residents, smoking is not permitted in any part of the Community.

- F. **WEAPONS.** Weapons, as defined by us, are not allowed in the Community or on Community property. This includes but is not limited to firearms, explosive materials, and collectible or antique weapons.
- G. **NO TENANCY INTEREST.** You have none of the rights of a tenant under this Agreement, subject to applicable state law.
- H. **ASSIGNMENT.** This Agreement is not assignable without our prior written consent. Our rights and obligations may be assigned to any person or entity which will be responsible to ensure our obligations under this Agreement are satisfied in full from the date of notification. We may engage another person or entity to perform any or all of the services under this Agreement.
- I. **AMENDMENTS.** This Agreement and any written amendments constitute the entire agreement between the parties and supersede all prior and contemporaneous discussions, representations, correspondence, and agreements whether oral or written. Except for our right to modify fees, rates and charges, amend services provided and establish and modify reasonable operating procedures and rules for the general welfare and safety of the residents, this Agreement may be amended only in writing signed by both parties.
- J. **SEVERANCE.** Should any part of this Agreement be invalid, the validity of the other parts of this Agreement will not be affected.
- K. **FINANCIAL RESPONSIBILITY.** You have designated a Guarantor, who has agreed to the terms of the attached Statement of Financial Responsibility.
- L. **SUBORDINATION.** This Agreement and the parties' rights hereunder are subordinate to any lease, mortgage or deed of trust placed upon the Community, but you may remain in your Suite so long as you comply with the provision of this Agreement.
- M. **REPRESENTATION AND WARRANTY.** By executing this Agreement you represent and warrant that all representations made by you or on your behalf, whether written or verbal, with respect to your application for admission to the Community were true when made. You understand that we rely upon the truthfulness of this information in making our decision to enter into this Agreement. Your application forms, including personal data forms, statement of financial condition (if applicable), health history and medical reports submitted by you or on your behalf to us, are incorporated by reference into this Agreement and made an express part of it. You understand and agree that any material misrepresentation or omission made by you or on your behalf in connection with these documents shall make this Agreement voidable at our option, the extent permitted by law.
- N. **CHOICE.** You have a choice of providers for private sitters, therapy, rehabilitation, home health and other health care services. As part of the complement of services offered by the Company and its affiliates, therapy, rehabilitation, home health or other services may be available at the Community through Innovative Senior Care or other corporate affiliates. If you require such services, Community associates will assist you in obtaining such services from Innovative Senior Care or another service provider of your choice.
- O. **ASSIGNMENT OF BENEFITS.** To the extent that the Community participates in a government payor program, long term care insurance program or other insurance program ("Third Party Payor") of which you are a beneficiary, you authorize us to disclose any medical or administrative information and request payment. You certify that the information given in applying for payment from such Third Party Payor is correct. You authorize release

of all medical and administrative records required to act on this request and request that payment of authorized benefits be made on your behalf. You authorize us to disclose any medical or administrative information required in the processing of applications for financial coverage for services rendered. To the extent permitted by your Third Party Payor, you authorize direct payment of all benefits to us.

P. NOTICES. Notices will be written and given by personal delivery or mailing by regular mail, postage pre-paid to the following or such other persons or places as the parties may notify each other. Notices shall be deemed given based upon the date personally delivered or upon the date postmarked.

Company:
Executive Director at Community
(At the Community)

Resident:
(At the Community)

Legal Representative/Responsible Party:
(as noted below)

We believe it is important to disclose all services and fees to the best of our ability and in accordance with the law. We recommend that you consult with legal counsel to ensure understanding of this Agreement before signing.

BY THEIR SIGNATURES, the parties or their representatives have executed this Agreement.


Resident/Legal Representative

Date

For Company


Title

Date

LEGAL REPRESENTATIVE/RESPONSIBLE PARTY ADDRESS:

Name:

J. Jones

Address:

80 Wedgefield Dr., Hilton Head, SC 29926

Phone Nos.:

843-342-9216 (H) 843-247-2108 (C)

Email:

J.Jones9968@aol.com

Globalcolor@aol.com

OTHER RELATED MATERIALS:

1. Resident Bill of Rights
2. Community Handbook
3. Emergency Evacuation Plan
4. Admissions Package
5. Medical Records Release
6. Personal Service Assessment
7. Personalized Service Plan

EXHIBITS INCLUDED:

- A. Schedule of Services and Rates
- B. Statement of Financial Responsibility

C. Pharmacy Services Agreement

ADDITIONAL EXHIBITS TO ATTACH AS PART OF THE AGREEMENT:

- X. Select Services List
- Y. Therapeutic Services List
- Z. Assessment Price Schedule

EXHIBIT A
SCHEDULE OF SERVICES AND RATES

Resident Janet Scheerle
Suite Type and Number 411 A - Sp

Services Included in the Basic Service Rate

- ◆ **Parking.** -- Each Suite (whether occupied by one or two Residents) will have access to shared and uncovered parking spaces, provided you own and drive an automobile.

COMMUNITY FEE (Prior to Move-in) \$ 1000.00
BASIC SERVICE RATE \$ _____
(Check below if applicable)

1x only

The Basic Service Rate above is the Basic Service Rate for a Companion Suite. If the Companion Suite converts to single occupancy, the Basic Service Rate will adjust to the then current single occupancy Basic Service Rate for such Suite.

PERSONAL SERVICE RATE \$ 2550
(The current Personal Service Price Schedule is attached as Exhibit Z)
(See attached Personal Service Rate Report)

MONTHLY SERVICE RATE \$ 3131
(Add Basic Service Rate and Personal Service Rate) PSR - \$ 581

SELECT SERVICES AND THERAPEUTIC SERVICES \$ _____*
(The Select Service List and Therapeutic Services List are attached as Exhibits X and Y)
*Amount varies based upon monthly usage.

I acknowledge receipt of Exhibits X, Y and Z and agree to the above Schedule of Services and Rates to commence as of July 10 2010. I understand and agree that the Company has the right to change these rates and/or change the services provided in accordance with the provisions of the Residency Agreement.

[Signature] Resident/Legal Representative Date 7/9/10
Khmerle Mary Ego For Company Title Date July 9, 2010

EXHIBIT B
STATEMENT OF FINANCIAL RESPONSIBILITY

Julie Jones ("Guarantor" or "you") and Southern Assisted Living, Inc. d/b/a Carolina House of Hilton Head (the "Company," "us," "we" or "our"), agree as follows:

The Resident named in the attached Residency Agreement desires to live at the Community and we are willing to enter into the Residency Agreement if the Resident has an individual who is willing to fulfill the conditions of this Statement of Financial Responsibility; and

In consideration for our accepting the Resident into the Community, you agree to fulfill the provisions of this Statement of Financial Responsibility, if and as necessary.

Therefore, in consideration of the mutual covenants contained in this Statement of Financial Responsibility, the parties agree as follows:

I. PERSONAL ASSISTANCE. In the event the condition of the Resident requires such assistance, and upon our request, you will assist Resident or legally responsible person, as necessary by:

- A. Participating with our associates in evaluating Resident's needs and in planning and implementing an appropriate plan for Resident's care;
- B. Maintaining Resident's welfare and fulfilling Resident's obligations under the Residency Agreement;
- C. Relocating Resident following termination and removing the Resident's property;
- D. Transferring Resident to a hospital, nursing home, or other facility in the event that Resident requires care we do not offer;
- E. Making necessary arrangements for funeral services and burial in the event of death.

II. FINANCIAL RESPONSIBILITY. If Resident fails to make payments due to us under the Residency Agreement, you agree to pay us such amounts within thirty (30) days of receiving written notice of nonpayment.

III. REVIEW OF RESIDENCY AGREEMENT. You acknowledge that you have received and reviewed a copy of the Residency Agreement, and have had an opportunity to ask questions.

BY THEIR SIGNATURES, the parties have executed this Agreement to be effective as of

July 9, 2010
JULIE JONES 275-74-8542 7/9/10

Guarantor Social Security No. D.L. No. Date
Rhonda Maw of Eng July 9, 2010

For the Company Title Date

SEND NOTICES TO GUARANTOR AT:

Address: 80 Wedge Field Dr, Hilton Head, SC 29926
Home and Work Phone Nos.: 843-342-9216
Cell Phone No.: 843-247-2808
Email Address: jones9968@aol.com

**EXHIBIT C
PHARMACY SERVICES AGREEMENT**

We work closely with pharmacy providers to meet the needs of our residents. Preferred pharmacy providers are chosen based upon their ability to provide services to our residents to enhance their health and wellness. Important services include:

- Screening for possible negative drug interactions
- Assessments for potential allergic reactions of medications
- Recommending therapeutic substitutions and offering generic substitutions when appropriate
- Providing competitive pricing for comparable packaging
- Alerting our associates and physicians when there is a duplication of prescriptions
- Regular scheduled review and monitoring of medications
- Routine or emergency delivery 24-hours a day, 365 days a year
- Medication packaging that meets our safety standards

Palmetto Long Term Care Pharmacy is our preferred provider for pharmacy services ("Preferred Provider"). The Preferred Provider will review your current medications upon your move-in and the consultant pharmacist will be in the Community on a regular schedule to meet with you individually, if needed.

If you decide to use another pharmacy provider other than the Preferred Provider, it will be required to meet our medication management standards.

Please review and sign the following statement acknowledging you understand our expectations and requirements regarding the provision of medications.

I understand that if I choose not to use the Preferred Provider, I will be charged a service fee, which is set forth on Exhibit X.

I understand that I will be required to provide medications that are packaged in a unit of use packaging system, unless I have been granted an exemption to the packaging requirement by the Company's Regional Director of Operations. I understand there is a packaging exemption fee as set forth in Exhibit X associated with a packaging exemption due to the additional administrative oversight required. **If at any time I am not able or no longer willing to provide this type of packaging system and I do not have an exemption, I understand that I need to find alternative housing.**

If I do not use the Community's Preferred Provider, I also understand that I will have the responsibility for reordering medications. If medications are not delivered **within two days prior to their depletion**, the Community will reorder my medications with the Preferred Provider. **I agree to pay for the medications and any associated service charges.** The fees associated with reordering medications from the Preferred Provider are determined by the Preferred Provider, and are in addition to the service fee described above.

MY SIGNATURE BELOW INDICATES THAT I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PHARMACY SERVICES AGREEMENT.

Resident/Legal Representative Signature

Date

EXHIBIT C

Grier, Manton M.

From: Grier, Manton M.
Sent: Wednesday, February 27, 2013 4:42 PM
To: Mullen, Carmen T. Law Clerk (Robin Graham) (CMullenLC@sccourts.org)
Cc: Wall, Susan (SWall@mcnair.net); kjolley@mcnair.net
Subject: Internal Investigation Files in O'Meara, Pruett, and Scheerle [IWOV-NPCOL1.FID1229708]
Attachments: HILTONHEAD-#804462-v1-Confidentiality_Agreement_2_27_13.PDF; HILTONHEAD-#804460-v1-Confidentiality_Agreement.PDF; HILTONHEAD-#804459-v1-Confidentiality_Agreement.PDF
Importance: High

Allison:

My clients are not going to appeal Judge Mullen's sanction order and we will be withdrawing our appeal as to the internal investigation files and will produce the files to the plaintiffs.

However, can you see whether Judge Mullen can first sign these proposed confidentiality orders? If possible, we would like these proposed orders executed before the files are produced.

Assuming there is no problem and Judge Mullen signs them, we also have no problem with you just releasing the files to the Plaintiff and allowing someone from McNair to pick them up from Judge Mullen's chambers, as Kelly has suggested.

If there is any issue with getting these proposed orders signed and then releasing the files to McNair, please let me know.

Thanks
Manton

CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US Federal Tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the internal revenue code or (II) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent. To read more about this disclosure, please see http://www.mcnair.net/D1D330/portalresource/IRS_Circular_230.pdf

PRIVILEGE AND CONFIDENTIALITY NOTICE: This communication (including any attachments) is being sent by or on behalf of a lawyer or law firm and may contain confidential or legally privileged information. The sender does not intend to waive any privilege, including the attorney-client privilege, that may attach to this communication. If you are not the intended recipient, you are not authorized to intercept, read, print, retain, copy, forward or disseminate this communication. If you have received this communication in error, please notify the sender immediately by email and delete this communication and all copies.

EXHIBIT D

March 4, 2013

Susan Taylor Wall

swall@mcnair.net
T (843) 723-7831
F (843) 722-3227

Via E-mail (mgrier@nexsenpruet.com)

Via U.S. Mail

Manton M. Grier, Jr.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201

Re: *Scheerle v. Brookdale Senior Living, Inc., Southern Assisted Living, LLC, and Sonia King*
Case No. 2011-CP-07-2654
McNair File No. 055181-00001
Incomplete Discovery Responses

Dear Manton:

Despite an order signed by Judge Mullen on September 18, 2012, requiring your client to respond to Plaintiff's discovery requests in the above-referenced case, we still have not received complete responses.

Although you have filed a Notice of Appeal from Judge Mullen's denial of Defendants' motion to reconsider, it is well established law that an order compelling discovery is not immediately appealable. You have stated that Defendants will withdraw the Notice of Appeal as to the internal investigation documents but have not responded to our inquiry as to withdrawal as to other documents. We will file a Motion to Dismiss the Notice of Appeal on Friday, March 8, 2013, if you have not previously withdrawn the entire Notice of Appeal. We also intend to seek sanctions for filing a frivolous appeal.

The following responses are still incomplete, in violation of Judge Mullen's Order:

1. Order, No. 1: Investigation reports Defendants filed with DHEC and the Long Term Care Ombudsman Program.
 - a. We received reports given to DHEC but none given to the Long Term Care Ombudsman Program.
2. Order, No. 4: Staff training schedules, sign in sheets, and tests or evaluations for training.

McNair Law Firm, P. A.
100 Calhoun Street, Suite 400
Charleston, SC 29401

Mailing Address
Post Office Box 1431
Charleston, SC 29402

mcnair.net

HILTONHEAD 804967VI

-
- a. We have not received the employee file for Ashley Conen. You represented in an email dated November 12, 2012 that we would receive her file. You have never sent the file.
 - b. The only training schedules received are those in the individual employee files we received. You stated that the staff training schedules are kept in individual files and not together in a single file. This does not relieve your client of producing copies of staff training schedules from individual employee files, as ordered by the Court.
3. Order, No. 8: An organizational directory or chart for Carolina House containing the various organizational divisions, as well as names of the Board of Directors and/or Trustees, corporate consultants and any regional supervisors, division leaders and department heads.
 - a. The response received does not contain consultants, division leaders, or department heads. Further, it does not provide the organizational structure for the Carolina House on Hilton Head Island, where the abuse occurred.
 4. Order, No. 11: Minutes for Residents' Council Meetings from June to December 2008, January to April 2009, July to November 2009, and September 2010 to January 2011.
 - a. We received only the following meeting minutes: June 2007 to April 2008 and May, June, and December 2009. You stated in an email you would check for additional minutes; we have never received any further response. Certainly, meetings were held at other times and minutes would have been taken.
 5. Order, No. 12: Names of Executives or Board Members and head of management personnel.
 - a. We received an email stating the managers listed in Bates No. 00963 were also the board members. We do not know if those three people are the only board members and also received no names of heads of management personnel.

Please provide us with complete responses by Friday, March 8, 2013, to avoid the necessity of Plaintiff filing a motion for sanctions. The Order has now been outstanding for almost six months.

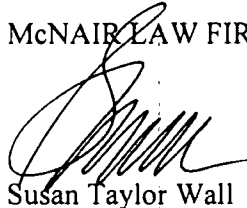
Additionally, prior to the hearing on the motion to compel in September 2012, you represented in an email that your clients would provide certain responses and, based on that representation, Plaintiff did not argue certain discovery requests at the motion to compel hearing. We have not received the following items you represented Defendants would produce:

- (1) the financial file for Mrs. Scheerle,
- (2) census report of employees working in the Clarebridge Unit from December 31, 2010 to January 3, 2011,
- (3) copies of the Defendants' website as it appeared when Mrs. Scheerle entered the facility,
- (4) certificates of insurance for years 2008 to present, and
- (5) DHEC surveys for years 2008, 2009 and second half of 2011.

We look forward to receiving full and complete responses by Friday of this week.

Very truly yours,

McNAIR LAW FIRM, P.A.



Susan Taylor Wall

STW:kc

cc: Kelly M. Jolley, Esq.
Kathleen Chewing, Esq.

EXHIBIT E

Grier, Manton M.

From: Grier, Manton M.
Sent: Thursday, March 07, 2013 2:57 PM
To: Wall, Susan (SWall@mcnair.net); kjolley@mcnair.net
Subject: notice of appeal on the internal investigation files in Scheerle

Susan and Kelly:

We are filing a motion to withdraw the appeal as to the internal investigation files. It may not be filed until tomorrow, though.

Manton M. Grier, Jr.
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
T: 803.540.2116, F: 803.253.8277
mgrier@nexsenpruet.com
www.nexsenpruet.com

NEXSEN | PRUET



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EXHIBIT F

Grier, Manton M.

From: Grier, Manton M.
Sent: Monday, March 11, 2013 3:39 PM
To: Susan Wall
Cc: Kelly Jolley; Kathleen Chewning; Mitchell, VickiLynn; Richardson, Joyce
Subject: Withdrawal of notice of appeal

Susan. Your letter last Monday said that you would file a motion to dismiss and for sanctions in court of appeals unless we withdrew by Friday, which we did. We also informed you of this on Thursday.

However your motion to dismiss and for sanctions was sent last Thursday, before your deadline expired.

In light of the above and our own withdrawal will you likewise withdraw your motion or do I need to file a return to it?

Thanks
Manton

Sent from my iPhone

EXHIBIT G

Grier, Manton M.

From: Grier, Manton M.
Sent: Monday, March 18, 2013 2:37 PM
To: Grier, Manton M.
Subject: FW: Scheerle v Brookdale et al

-----Original Message-----

From: Wall, Susan [mailto:SWall@mcnair.net]
Sent: Monday, March 11, 2013 5:21 PM
To: Grier, Manton
Cc: Jolley, Kelly; Chewning, Kathleen; Harvey, Jeslyn
Subject: Scheerle v Brookdale et al

Manton,

Thank you for your email. Before mailing the Motion to Dismiss Appeal late Thursday, which was required because I could not be in the office on Friday, you did not advise us that you intended to withdraw your appeal as to all portions of the Court's Order, despite requests that you clarify your position. In fact, the Motion to Withdraw Appeal that you filed today references only the internal investigation files yet your Notice of Appeal referenced and attached a court Order that required your client to produce far more than just internal investigation files.

I also note that your Motion to Withdraw Appeal of today's date states that the parties have reached an agreement: I know of no agreement, rather, you produced your client's internal investigation files because the Court compelled production of documents that were neither privileged nor otherwise protected.

The appeal was on its face frivolous whether it was intended to encompass only internal investigation files or also other discovery documents. We were forced to expend considerable time preparing to respond and responding to the Notice of Appeal. We ask that your client pay reasonable attorneys fees and costs which is the likely sanction. We look forward to hearing from you.

Susan Taylor Wall-
Shareholder-
swall@mcnair.net | 843 973 6850 Direct - - McNair Law Firm, P.A.-
Charleston Office | 100 Calhoun Street | Suite 400 | Charleston, SC
29401-

843 723 7831 Main | 843 722 3227 Fax -
Mailing Post Office Box 1431 | Charleston, SC 29402--
Bio: <http://www.mcnaair.net/Professionals/swall>
-Website: <http://www.mcnaair.net>

-----Original Message-----

From: Grier, Manton M. [mailto:MGrier@nexsenpruet.com]
Sent: Monday, March 11, 2013 3:39 PM
To: Wall, Susan
Cc: Jolley, Kelly; Chewning, Kathleen; Mitchell, VickiLynn; Richardson, Joyce
Subject: Withdrawal of notice of appeal

Susan. Your letter last Monday said that you would file a motion to dismiss and for sanctions in court of appeals unless we withdrew by Friday, which we did. We also informed you of this on Thursday.

However your motion to dismiss and for sanctions was sent last Thursday, before your deadline expired.

In light of the above and our own withdrawal will you likewise withdraw your motion or do I need to file a return to it?

Thanks
Manton

Sent from my iPhone

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mmcorp

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Circuit Court Judge

Appeal 2013-000378

RECEIVED

MAR 18 2013

SC Court of Appeals

Janet Sue Scheerle,.....Respondent,

v.

Brookdale Senior Living, Inc. and Southern Assisted Living, LLC d/b/a
Carolina House of Hilton Head and Sonia S. King,.....Defendants,

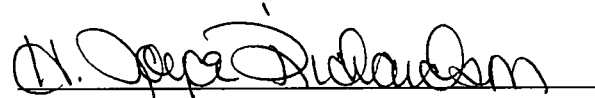
Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC
d/b/a Carolina House of Hilton Head are the.....Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the **Return To Respondent's Motion To Dismiss Notice Of Appeal Dated February 19, 2013 And Request For Sanctions** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid in the United States Mail, on the 18th day of March, 2013, to the addresses shown below.

Kelly M. Jolley, Esquire
McNAIR LAW FIRM, P.A
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Post Office Drawer 3
Hilton Head Island, South Carolina 29938

Susan T. Wall, Esquire
McNAIR LAW FIRM, P.A.
Post Office Box 1431
Charleston, South Carolina 29402


NEXSEN PRUET, LLC

Columbia, South Carolina

Manton M. Grier, Jr.
Special Counsel
Admitted in SC

March 18, 2013

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Janet Sue Scheerle, Respondent vs. Brookdale Senior Living, Inc., Southern Assisted Living, LLC and Sonia S. King, Defendants - Of Whom Brookdale Senior Living, Inc. and Southern Assisted Living, LLC d/b/a Carolina House of Hilton Head are the Appellants / Appellate Case No. 2013-000378

Dear Ms. Kitchings:

Enclosed for filing with the Court is the original and seven copies of the **Return To Respondent's Motion To Dismiss Notice Of Appeal Dated February 19, 2013 And Request For Sanctions**. Please file the original and return the copy, clocked-in, to me via our courier.

By copy of this letter and as evidenced by the attached Proof Of Service, we are serving counsel of record with a copy of the above Return.

Thank you for your assistance.

Very truly yours,


Manton M. Grier, Jr.

MMG/hjr

Enclosure

cc w/encl.: Kelly M. Jolley, Esquire
Susan T. Wall, Esquire

RECEIVED
MAR 18 2013
SC Court of Appeals