

DISPUTE RESOLUTION AGREEMENT

THIS DISPUTE RESOLUTION AGREEMENT ("Agreement") is made and entered into by and between _____ (the "Facility"), and _____, an individual (the "Resident" or "Resident's Authorized Representative," hereinafter collectively the "Resident"), and _____, the Resident's Representative.

R E C I T A L S:

WHEREAS, the Facility operates a nursing home located in _____, Alabama (the "Nursing Home"); and

WHEREAS, the Resident has applied for admission to the Nursing Home.

NOW, THEREFORE, in consideration of the mutual benefits of the speedy, impartial, and cost-effective dispute resolution program agreed to by all parties pursuant to this Agreement, and the mutual covenants and promises herein contained, the receipt and adequacy of which are acknowledged by each party, the parties agree as follows:

1. The Program.

This Agreement creates a dispute resolution program (the "Program") which shall govern the resolution of any and all claims or disputes that would constitute a cause of action in a court of law that the Facility may have now or in the future against the Resident, or that the Resident or the Resident's estate, successors, assigns, heirs, personal representatives, executors, and administrators may have now or in the future against the Facility, any parent or subsidiary of the Facility, any company affiliated with the Facility, or any of the Facility's officers, directors, managers, employees, or agents acting in such capacity, or that any other person may have arising out of or relating in any way to the Resident's stay at the Facility (hereinafter referred to as "Disputes"). The Disputes whose resolution is governed by the Program shall include, but not be limited to, claims for breach of contract or promise (express or implied); tort claims; and claims for violation of any federal, state, local, or other governmental law, statute, regulation, common law, or ordinance. Notwithstanding the foregoing, the Program shall not govern (i) any grievance proceeding brought either formally or informally under the Facility's grievance policy or with an appropriate state or federal agency, (ii) any appeal proceeding with the appropriate state or federal entity regarding an involuntary transfer or discharge, (iii) any complaint proceeding with the appropriate state or federal agency concerning the Facility's compliance with applicable regulations governing care, Facility services, or residents rights, (iv) any complaint proceeding with the appropriate state or federal agency concerning resident abuse, neglect, misappropriation of resident property, or non-compliance with advance directive requirements, or (v) any claim or dispute involving solely a monetary claim in an amount less than \$50,000, and any such claim or dispute shall not be deemed a Dispute hereunder. This Agreement shall not limit the right of the Resident or anyone else to communicate with federal, state, or local

officials, including but not limited to federal and state surveyors, other federal or state health department employees, and representatives of the Office of the State Long-Term Care Ombudsman.

2. Mediation.

If a Dispute arises and the parties are unable to resolve such Dispute through negotiation or through the ombudsman program, then the parties may attempt to resolve the Dispute by mediation. Mediation is a voluntary, non-binding procedure in which the parties submit a Dispute to a neutral third-party (the mediator) who works with the parties to arrive at a settlement of the Dispute which is mutually agreeable to the parties. Under no circumstances shall mediation be a condition precedent to arbitration.

Subject to the terms and provisions of this Agreement, any mediation conducted pursuant to this Agreement shall be conducted by, and according to the rules and procedures of, an independent and impartial entity that is regularly engaged in providing mediation services (the “Mediation Services Provider”). The Mediation Services Provider shall be JAMS (Judicial Arbitration and Mediation Services), or, in the event that JAMS is unwilling or unable to serve as the Mediation Services Provider, the Facility shall select another independent and impartial entity that is regularly engaged in providing mediation services to serve as the Mediation Services Provider. The mediation process starts when either party files a request for mediation with the Mediation Services Provider. Information about how and where to file a request for mediation is available from the Facility. A request for mediation should contain a brief statement of the nature of the Dispute, the names, addresses, and telephone numbers of all the parties to the Dispute, and their representatives, if known. The party requesting mediation should notify the other party of its request for mediation by sending a copy of its request for mediation to the other party. Regardless of which party requests mediation, the Facility shall pay the administrative fee for the mediation, as well as any compensation owed the mediator, unless another party objects and wishes to share equally in such costs.

3. Arbitration.

All Disputes shall be resolved by binding arbitration. Any party may compel the arbitration of a Dispute, regardless of whether the parties have chosen to attempt to resolve a Dispute by mediation. Arbitration is a procedure in which the parties submit a Dispute to one or more mutually selected, impartial persons for a final and binding decision. The parties expressly agree to settle all Disputes by binding arbitration rather than by a judge, jury, or administrative agency; provided, however, that nothing in this Agreement shall prevent Resident or any other person from reporting, and an administrative agency from investigating, alleged violations of law. **Arbitration is a complete substitute for a trial by a judge or a jury.** Only Disputes that would constitute a legally cognizable cause of action in a court of law may be arbitrated.

Subject to the terms and provisions of this Agreement, the Parties mutually agree that any arbitration conducted pursuant to this Agreement shall be conducted by, and according to the rules

and procedures of, an independent and impartial entity that is regularly engaged in providing arbitration services (the “Arbitration Services Provider”). The Arbitration Services Provider shall be JAMS, or, in the event that JAMS is unwilling or unable to serve as the Arbitration Services Provider, the Parties shall select another independent and impartial entity that is regularly engaged in providing arbitration services to serve as the Arbitration Services Provider. Information about JAMS and its procedures can be obtained from JAMS at <http://www.jamsadr.com> or 949-224-1810. In the event of any material, adverse inconsistency between the terms of this Agreement and the rules regularly employed by the Arbitration Services Provider, the terms of this Agreement shall apply. The parties further agree to arbitrate each Dispute hereunder on an individual basis, and will not seek representative, consolidated, or class treatment of any Dispute.

4. Arbitration Procedure.

A. Starting the Arbitration Procedure. The arbitration process starts when a party files a demand for arbitration with the Arbitration Services Provider. Information about how and where to file a request for arbitration is available from the Facility. A party must notify all other parties of its demand for arbitration by sending a copy of its written demand for arbitration to all other parties. A demand for arbitration must be sent by certified mail to the Arbitration Services Provider together with a \$250 check or money order for any filing fees required by the Arbitration Services Provider. Any filing or administrative fees in excess of \$250, as well as any compensation owed to the arbitrator(s), shall be paid by the Facility, unless another party objects and wishes to share equally in such costs.

A demand for arbitration must be filed within the applicable limitations period provided by law for the Dispute. If a party fails to file a demand for arbitration within the applicable limitations period provided by law for the Dispute, then the party agrees that they waive that claim. The parties also further agree and understand that filing a civil action in Court shall not be considered the filing of a demand for arbitration and will not be used to determine whether a party has met the limitations period for filing the Dispute.

The parties understand that this means that a party who files a civil action prior to the expiration of the statute of limitations for a Dispute, but fails to file a demand for arbitration in the manner provided for in this Agreement until after the case is compelled to arbitration by a Court, will be barred from bringing their Dispute unless the demand for arbitration is filed prior to the expiration of the statute of limitations for that Dispute.

Initialed: Resident _____ Resident Representative _____

B. Location. The arbitration shall take place in a location convenient to both parties. Facility and Resident agree that the arbitration shall take place in or near the city where the Facility is located, and that this location is a convenient location for both parties, unless the parties mutually agree on another location.

C. Selection of Arbitrator(s). The arbitration shall be conducted by a single neutral arbitrator agreed upon by both parties. The single arbitrator shall be mutually selected by the parties in accordance with the procedures established by the Arbitration Services Provider. The person(s) selected to be the arbitrator(s) shall not be the same person(s) who mediated the Dispute.

D. Authority of Arbitrator(s). The arbitrator(s) shall be impartial and independent and shall apply the substantive law (and the law of remedies, if applicable) of Alabama, or federal law, or both, as may be applicable to the Dispute. The arbitrator(s) shall have the power to award all relief that a court would be able to award under the circumstances. The arbitrator(s) must apply statutory and case law to the facts of the Dispute and must apply the burden of proof required by applicable federal, state or local law. The arbitrator(s), and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, formation, or scope of this Agreement, including but not limited to any claim that all or any part of the Agreement or this dispute resolution process is void or voidable. The arbitration shall be final and binding upon the parties.

E. Discovery and Admissibility of Evidence. The parties shall have the right to engage in discovery consistent with the Alabama Rules of Civil Procedure, subject to any restrictions contained in applicable statutes, rules, and regulations, including, but not limited to, the Alabama Medical Liability Act, Alabama Code § 6-5-540 *et seq.* The admissibility of evidence at the arbitration hearing shall be determined in accordance with the Alabama Rules of Evidence, subject to any restrictions contained in applicable statutes, rules, and regulations, including, but not limited to, the Alabama Medical Liability Act, Alabama Code § 6-5-540 *et seq.* This provision shall supersede and take precedence over any conflicting provisions contained in the rules and procedures of any Arbitration Services Provider.

F. Attorney's Fees. Each party may be represented by an attorney. Each party is responsible for paying its own costs and attorney's fees associated with arbitration. If a party prevails on a statutory claim which provides for the prevailing party to receive payment for its attorney's fees, or if there is a written agreement between the parties providing for the prevailing party to receive payment for its attorney's fees, the arbitrator(s) may award reasonable fees to the prevailing party in accordance with the standards established under such statute or agreement.

5. Judicial Review.

The decision of the arbitrator(s) shall be final and binding on the Facility, the Resident, the Resident Representative, and all other parties to the Dispute. **The parties acknowledge that arbitration is a complete substitute for traditional litigation and hereby waive their respective rights to file a private lawsuit and have that suit heard in court by a judge or a jury.** Any party may bring an action in any proper court to require arbitration under this Agreement and to enforce an arbitration award.

6. General.

A. Interstate Commerce. The parties acknowledge that Facility regularly engages in transactions involving interstate commerce and that the services provided by Facility to Resident involve such interstate commerce. The parties expressly agree that this Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*

B. Modification or Revocation. This Agreement shall remain in effect until such time as all parties mutually agree in writing to terminate this Agreement. This Agreement shall survive the death of the Resident or the Resident's departure from the Nursing Home and shall apply to all Disputes whether they arise or are asserted before, during, or after the Resident's stay at the Nursing Home. This Agreement can only be revoked or modified by a writing or writings signed by all parties specifically stating an intent to revoke or modify this Agreement.

C. Severability. The invalidity of a portion or provision of this Agreement shall not affect the validity of any other portion or provision. If any portion or provision of this Agreement is found to be invalid or unenforceable in any respect, the remainder of the Agreement will remain in full force and effect.

D. Integration. This Agreement constitutes the entire agreement of the parties with respect to the Program, as a complete and final integration thereof. All understandings and agreements heretofore had between the parties are merged into this Agreement, which alone fully and completely expresses their understandings. In entering this Agreement, no party has relied upon a representation or warranty made by another party which is not contained in this Agreement or expressly referred to herein.

E. Voluntary Agreement. Each party acknowledges that it has carefully read this Agreement, that all understandings between the Resident and the Facility with respect to the Program are contained in the Agreement, and that it has entered into this Agreement voluntarily and not in reliance on any promises or representations by the other party other than those contained in the Agreement itself. The Resident understands that (1) he/she has the right to seek legal counsel regarding this Agreement, (2) that execution of this Agreement is not a precondition of admission to Nursing Home or the furnishing of services to the Resident by the Facility, and (3) this Agreement may be rescinded by written notice to the Facility from the Resident within thirty days of signature. If not rescinded within thirty days of signature, this Agreement shall remain in effect for all subsequent stays at the Nursing Home, even if the Resident is discharged from and readmitted to the Nursing Home.

F. Choice of Law. This Agreement shall be interpreted, construed and enforced pursuant to and in accordance with the laws of Alabama, without reference to the choice of law principles of any other state.

G. Waiver. No waiver by any party of any default, breach, or violation of any term or provision of this Agreement shall be deemed to be a waiver of any other breach, default, or violation of the same, or any other term or provision contained herein.

H. Authorized Representative. This Agreement may be executed by an “Authorized Representative,” who is duly authorized to execute this Agreement on behalf of the Resident, and who shall execute this Agreement on behalf of the Resident on the signature line for the Authorized Representative below and shall indicate his/her relationship to the Resident in the space titled “Relationship to Resident” just below such signature line. If this Agreement is signed by an Authorized Representative of the Resident, the Authorized Representative hereby certifies that he/she is duly authorized by the Resident or otherwise to execute this Agreement and accept its terms. If the person executing this agreement is not the legal attorney-in-fact for the Resident through a power of attorney, guardianship, or otherwise, the Authorized Representative hereby certifies that to the best of his/her knowledge and belief the Resident is sufficiently oriented to person, time, and/or place at the time this Agreement is executed to reasonably understand that the Authorized Representative is acting on the Resident’s behalf, has affirmed that the Resident wishes for the Authorized Representative to act on the Resident’s behalf, and that the Resident understands the nature and effect of the Authorized Representative’s execution of this Agreement, including that the Resident is being admitted to a skilled nursing facility and that the Authorized Representative’s execution of this Agreement means that all disputes shall be resolved by binding arbitration which is a complete substitute for a trial by a judge or jury.

By signing below, the Resident and Resident Representative, if applicable, acknowledge that: (1) this agreement is not a pre-condition to admission to the facility or required for continued care at the Facility, (2) that this agreement has been fully explained to the Resident and Resident Representative by a representative of the Facility in a form and manner that the Resident and Resident Representative understand, including in a language that they understand; and (3) the Resident and Resident Representative understand this agreement and all its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, _____.

Facility: _____

(Signature)

(Print name)

(Title)

Resident Representative:

(Resident Representative's signature)

(Print Resident Representative's Name)

Resident:

(Resident's signature by Resident only)

(Print Resident's Name)

and/or

Authorized Representative:

(Signature of Authorized Representative)

(Print Authorized Representative's Name)

Relationship to Resident: _____