

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

BLANCHE W. BELL,)	Case Number: 2:05-1953-DCN-RSC
)	
Plaintiff,)	
)	
vs.)	
)	<u>ANSWER AND COUNTERCLAIMS</u>
THE EPISCOPAL CHURCH HOME, INC.,)	
d/b/a BISHOP GADSDEN RETIREMENT)	
COMMUNITY,)	
)	
Defendant.)	
_____)	

The Defendant, The Episcopal Church Home (incorrectly identified as The Episcopal Church Home, Inc.), d/b/a Bishop Gadsden Retirement Community ("Bishop Gadsden" or "Defendant"), answering the Complaint of the Plaintiff herein and counterclaiming, states as follows that:

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.

FOR A FIRST DEFENSE

2. Paragraph 1 of the Complaint recites a preliminary statement of Plaintiff's alleged bases for her action and the relief which she seeks there under and, as such, requires no response from this Defendant. To the extent that a response is required, Defendant denies that it has any policies, procedures, and practices that violate Federal and state protections against discrimination based on disability or handicap. Defendant further denies that it makes any unlawful inquiries into the nature and severity of Plaintiff's disabilities, denies that it requires Plaintiff to prove her ability to perform tasks independently to obtain or enjoy benefits and programs provided by Defendant, and denies that it has failed to reasonably accommodate her

disabilities. Defendant denies that Plaintiff is entitled to any declaratory and permanent injunctive relief as sought in Plaintiff's Complaint. For further answer, Defendant denies that it seeks Plaintiff's "involuntary" transfer to a different living situation within Defendant's facility; rather Defendant contends that Plaintiff elected to become a resident at Bishop Gadsden pursuant to a Residence and Services Agreement dated March 30, 2000, in order to enjoy, *inter alia*, the benefits and privileges of Bishop Gadsden's continuing care environment. A copy of the Residence and Services Agreement is attached as Exhibit "A" hereto and incorporated as if fully set forth herein. Defendant states that pursuant to the aforementioned Residence and Services Agreement, Plaintiff expressly agreed, *inter alia*, to transfer voluntarily to a living arrangement within Bishop Gadsden as her health care needs changed so that she could be provided with appropriate health care services.

3. The allegations of Paragraphs 2, 3 and 4 constitute conclusions of law which Defendant is required neither to admit nor deny.

4. Defendant admits the allegations of Paragraph 5.

5. Defendant admits the allegations of Paragraph 6. Defendant further affirmatively states that it is licensed and therefore subject to the rules and regulations of both the South Carolina Department of Consumer Affairs and the South Carolina Department of Health and Environmental Control.

6. Defendant admits the allegations of Paragraph 7.

7. In response to the allegations of Paragraph 8, Defendant admits that Plaintiff moved into Bishop Gadsden pursuant to the Residence and Services Agreement dated March 30, 2000, attached as Exhibit "A". Defendant craves reference to that Residence and Services Agreement and denies any and all allegations inconsistent therewith. Defendant is without

information sufficient to form a belief as to the truth or accuracy of the remaining allegations of Paragraph 8 and therefore denies the same.

8. In response to the allegations of Paragraph 9, Defendant craves reference to the Residence and Services Agreement and denies any and all allegations inconsistent therewith.

9. Defendant denies the allegations of Paragraph 10 and affirmatively alleges that Plaintiff is in breach of the Residence and Services Agreement, as more fully pled in the defenses and Counterclaims stated hereafter.

10. Defendant denies the allegations of Paragraph 11 and reference to a "standard rental agreement." The parties herein do not have a "rental agreement;" but rather, a Residence and Services Agreement which controls their relationship. Defendant craves reference to the Residence and Services Agreement and denies any and all allegations inconsistent therewith.

11. In response to the allegations of Paragraph 12, Defendant admits only that Plaintiff, upon admission to Bishop Gadsden in 2000, was not in need of health care services as provided in the assisted living facility and nursing care facility (Health Care Center) of Bishop Gadsden. The remaining allegations of Paragraph 12 are denied.

12. Defendant admits the allegations of the first and second sentences of Paragraph 13. Defendant admits, upon information and belief, the allegations of the third, fourth and fifth sentences of Paragraph 13. Defendant admits, upon information and belief, so much of the sixth sentence of Paragraph 13 as alleges that Plaintiff takes breakfast in the café and dinner in the dining hall and that these are facilities offered for residents of independent living units, but also affirmatively states that these are also facilities offered for residents in all other levels of care in Bishop Gadsden, including residents of the Health Care Center. Defendant lacks knowledge and

information sufficient to form a belief as to the allegations of the seventh, and final, sentence of Paragraph 13 and therefore denies the same.

13. Defendant admits, upon information and belief, the allegations of Paragraph 14.

14. The allegations of Paragraph 15 constitute conclusions of law which Defendant is required neither to admit nor deny. To the extent that an answer is deemed necessary, Defendant admits that Plaintiff has a physical impairment that substantially limits one or more major life activities.

15. In response to the allegations of Paragraph 16, Defendant admits that it reserved a room for Plaintiff in its nursing home facility, the Health Care Center, and that said room is a skilled nursing room with such services as twenty-four hour licensed nursing staff, emergency call and assistance with all activities of daily living. Defendant admits that it requested that Plaintiff comply with the terms of the Residence and Services Agreement, and that if she failed to comply by July 12, 2005, that the aforementioned reserved room may not be available after that date. Defendant admits that it informed Plaintiff that if she failed to surrender her apartment and transfer by July 12, 2005, as required under the Residence and Services Agreement, that it would have no choice but to consider Plaintiff in breach of her contractual obligations and, upon said breach by Plaintiff, the contract would terminate and Plaintiff would be required to vacate or be ejected from Bishop Gadsden's community, pursuant to the valid and applicable terms of the Residence and Services Agreement. Defendant is now forced to seek that relief herein by way of Counterclaims and craves reference thereto.

16. Defendant denies the allegations of Paragraph 17.

17. Defendant denies the allegations of Paragraph 18. Plaintiff agreed to the terms of the Residence and Services Agreement when she entered Bishop Gadsden, but does not now

agree to abide by those terms and, as such, is in breach of the Residence and Services Agreement, as more fully pled in the Counterclaims stated herein.

18. Defendant denies the allegations of Paragraphs 19, 20 and 21.

19. The allegations of Paragraphs 22 and 23 constitute conclusions of law which Defendant is required neither to admit nor deny.

20. Defendant denies the allegations of Paragraphs 24, 25 and 26.

AS TO THE FIRST CAUSE OF ACTION

21. Answering Paragraph 27, Defendant repeats and incorporates herein by reference so much of the foregoing portions of the within Answer and Counterclaims as may be pertinent hereto.

22. Defendant denies the allegations of Paragraphs 28, including subparagraphs a, b.i. through b.vi, c and d, and 29.

AS TO THE SECOND CAUSE OF ACTION

23. Answering Paragraph 30, Defendant repeats and incorporates herein by reference so much of the foregoing portions of the within Answer and Counterclaims as may be pertinent hereto.

24. Defendant denies the allegations of Paragraphs 31, including subparagraphs a, b, c, d, e, f, and g, and 32.

AS TO THE THIRD CAUSE OF ACTION

25. Answering Paragraph 33, Defendant repeats and incorporates herein by reference so much of the foregoing portions of the within Answer and Counterclaims as may be pertinent hereto.

26. Defendant denies the allegations of Paragraph 34 and 35.

AS TO THE FOURTH CAUSE OF ACTION

27. Answering Paragraph 36, Defendant repeats and incorporates herein by reference so much of the foregoing portions of the within Answer and Counterclaims as may be pertinent hereto.

28. Defendant denies the allegations of Paragraphs 37 and 38.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION

(Failure to State Claim)

29. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

30. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that the Complaint fails to state facts sufficient to constitute causes of action.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION

(Failure to Mitigate)

31. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

32. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that the Plaintiff has failed to mitigate her damages, if any, as required by law.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION

(Statute of Limitations)

33. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

34. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that the Complaint comes after the expiration of the time permitted by the applicable statute of limitations and is, therefore, barred.

FOR A FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

(Waiver)

35. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

36. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's action is barred by the doctrine of waiver.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION

(Estoppel)

37. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

38. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's action is barred by the doctrine of estoppel based on Plaintiff's own conduct, acts and omissions. Further, Plaintiff agreed to comply with Defendant's level of care decisions and is estopped from claiming such level of care decisions violate her civil rights.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Laches)

39. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

40. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's action is barred by the doctrine of laches based on Plaintiff's own conduct, acts and omissions.

FOR AN EIGHTH DEFENSE AS TO ALL CAUSES OF ACTION

(Unclean Hands)

41. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

42. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's action is barred by the equitable doctrine of unclean hands.

FOR A NINTH DEFENSE AS TO ALL CAUSES OF ACTION

(No Penalties and/or Damages Warranted)

43. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

44. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's Complaint fails to state a claim for relief upon which civil penalties may be awarded and/or upon which compensatory or monetary damages may be awarded.

FOR A TENTH DEFENSE AS TO ALL CAUSES OF ACTION

(No Undue Hardship)

45. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

46. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that any guidelines regarding the use of ambulatory aids do not impose an undue hardship on handicapped or disabled persons.

FOR AN ELEVENTH DEFENSE AS TO ALL CAUSES OF ACTION

(No Disparate Impact)

47. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

48. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that any safety guidelines regarding the use of ambulatory aids in the common areas at Bishop Gadsden were established and intended to ensure the health and safety of all residents and have no detrimental effect on disabled persons.

FOR A TWELFTH DEFENSE AS TO ALL CAUSES OF ACTION

(Ambulatory Aid Guidelines as a Reasonable Accommodation)

49. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

50. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that any guidelines regarding the use of ambulatory aids are interpreted and applied so as to provide a reasonable accommodation to handicapped or disabled persons.

FOR A THIRTEENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Statements Not Discriminatory)

51. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

52. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that no materials, notices or statements that it uses to describe its dwellings, services or facilities state a preference, limitation or discrimination on the basis of disability.

FOR A FOURTEENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Failure to Exhaust Administrative Remedies)

53. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

54. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's claims are barred, in whole or in part, to the extent that she has failed to exhaust applicable administrative remedies as outlined in the disclosure statement of Bishop Gadsden.

FOR A FIFTEENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Accommodations Sought Alters Nature of Business And Are Not Reasonable)

55. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

56. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that the accommodations to services, policies and procedures requested by Plaintiff would fundamentally alter the nature of Defendant's business. Further, transfer and placement of a resident at the appropriate level of care is a fundamental aspect of the continuing care retirement community business and any accommodation of Plaintiff that would interfere with that function is not reasonable.

FOR A SIXTEENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Accommodation Sought Would Cause Undue Hardship)

57. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

58. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that the accommodations to services, policies and procedures requested by Plaintiff would cause an undue financial or administrative burden on Defendant as well as require fundamental alterations to its business operations and programs.

FOR A SEVENTEENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Direct Threat)

59. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

60. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's failure to comply with the terms of the Residence and Services Agreement as stated herein and other guidelines poses a direct threat to the health and safety of Plaintiff, Defendant and its staff and other residents.

FOR AN EIGHTEENTH DEFENSE AS TO ALL CAUSES OF ACTION

(Non-Discrimination)

61. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

62. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Plaintiff's claims are barred, in whole or in part, because Defendant's actions about which Plaintiff complains were justified by legitimate, nondiscriminatory reasons.

FOR A NINETEENTH DEFENSE AS TO ALL CAUSES OF ACTION**(Defendant's Conduct Not Arbitrary)**

63. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

64. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Defendant's activities with respect to residents, if any, were privileged or otherwise justified, as such activities were proper, fair and legitimate business activities and/or business related reasons and were neither arbitrary, capricious nor unlawful.

FOR A TWENTIETH DEFENSE AS TO ALL CAUSES OF ACTION**(Defendant's Conduct Not Intentional)**

65. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

66. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that the discriminatory conduct alleged by Plaintiff, if any, was not intentional.

FOR A TWENTY-FIRST DEFENSE AS TO ALL CAUSES OF ACTION**(Defendant's Conduct in Compliance with Law)**

67. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

68. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that Defendant's activities and agreements with respect to residents, if any, were required, privileged, approved or otherwise justified under applicable Federal and state laws, including but not limited to, those state statutes and regulations governing Continued Care Retirement Communities in South Carolina.

FOR A TWENTY-SECOND DEFENSE AS TO ALL CAUSES OF ACTION**(Full Access to Facilities)**

69. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

70. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that at no time did Defendant's guidelines, policies and/or procedures result in less than full access for handicapped or disabled persons at Defendant's services and facilities.

FOR A TWENTY-THIRD DEFENSE AS TO ALL CAUSES OF ACTION**(Privileged Conduct)**

71. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

72. Further answering said Complaint, and as and for a further defense thereto, Defendant alleges that its conduct is privileged, justified and protected under the Americans with Disabilities Act as part of the underwriting, administration and classification of risk permitted of insurers, benefit plans and health maintenance organizations.

FOR A TWENTY-FOURTH DEFENSE AS TO ALL CAUSES OF ACTION**(Good Faith)**

73. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

74. Further answering said Complaint, and as and for a further defense thereto, Defendant acted at all relevant times in good faith pursuant to the terms of the Residence and Services Agreement signed by Plaintiff and Defendant on March 30, 2000.

FOR A TWENTY-FIFTH DEFENSE AS TO ALL CAUSES OF ACTION

(Standing)

75. Defendant repeats and reiterates the pertinent allegations above as fully as if set forth verbatim herein.

76. Further answering said Complaint, and as and for a further defense thereto, Plaintiff has suffered no injury in fact from any of Defendant's alleged conduct and therefore has no standing for any award of damages or other relief in this action.

COUNTERCLAIMS

Background

77. Defendant incorporates herein so much of the foregoing Answer and allegations as may be pertinent hereto.

78. The parties and subject matter of these Counterclaims are within the jurisdiction of this Court.

79. Bishop Gadsden is a Continuing Care Retirement Community, as defined under South Carolina law, and provides a continuum of care to those residents who enter into life care contracts, such as the Residence and Services Agreement entered into by Plaintiff, a copy of which is attached as Exhibit "A" hereto and incorporated as if fully set forth herein.

80. The Bishop Gadsden community consists of residential apartments and cottages, assisted living facilities and skilled nursing home facilities, the latter being known as the Health Care Center, and a community center with a host of common areas and amenities.

81. The health care accommodations, services and programs of Bishop Gadsden offered to and provided to Plaintiff are set forth in the Residence and Services Agreement and include:

“a. Levels of Care. The Bishop Gadsden Health Center will have accommodations, equipment, staffing, programs, services, and supervision necessary for skilled nursing care and assisted living care. Such accommodations and services are available to the Resident on a priority basis if needed as determined by Bishop Gadsden.”

Residence and Services Agreement, ¶ I.G.12.a.

“c. Staffing. Twenty-Four (24) Hour licensed nursing staff will be provided in the Health Center.”

Id. at ¶ I.G.12.c.

82. The Residence and Services Agreement sets forth the terms of residency, which include:

“A. Rights of Resident. Subject to the terms and provisions of this Agreement, the Resident has the right to occupy, use, and enjoy the Residence, common areas, amenities, programs, and services of the community during the Resident’s lifetime unless this Agreement shall be terminated as provided herein. It is understood that this Agreement does not transfer or grant any interest in the real or personal property owned by Bishop Gadsden other than the rights and privileges as described in this Agreement.”

Residence and Services Agreement, ¶ IV.A.

“B. Policies and Procedures. The Resident will abide by the Community’s policies and procedures and such amendments, modifications and changes of the policies and procedures as may hereafter be adopted by Bishop Gadsden and the Community.”

Id. at ¶ IV.B.

“C. Changes in the Residence. Bishop Gadsden has the right to change the Residence to meet requirements of any applicable statutes, law, or regulation. The Residence may not be used in any matter in violation of any zoning ordinances or other governmental law or regulation.”

Id. at ¶ IV.C.

83. Transfers or changes in levels of care are specifically provided for in the Residence and Services Agreement as follows:

“A. Transfer to Assisted Living or Skilled Nursing Care. The Resident agrees that Bishop Gadsden shall have authority to determine that the Resident should be transferred from the Resident’s Residence to assisted living, or skilled nursing care, or from one level of care to another level of care within the Community. Such determination shall be

based on the opinion of the Transfer Committee of Bishop Gadsden and shall be made after consultation with the Resident or a representative of the Resident and the Resident's attending physician. Such decisions shall be made only in the best interests of the Resident as determined by Bishop Gadsden."

Residence and Services Agreement, ¶ V.A.

"C. Surrender of Residence. If a determination is made by Bishop Gadsden that any transfer described in Paragraph V is probably not temporary in nature, the Resident agrees to surrender the Residence or any other accommodation in the Community occupied by the Resident prior to such transfer. If Bishop Gadsden subsequently determines that the Resident can resume occupancy in Residence or accommodations comparable to those occupied by the Resident prior to such transfer, the Resident shall have priority to such accommodations as soon as they become available."

Id. at ¶ V.C.

84. Termination by Bishop Gadsden is also provided for in the Residence and

Services Agreement pursuant to Paragraph VI.E. as follows:

"Bishop Gadsden may terminate this Agreement at any time if there has been a material misrepresentation or omission made by the Resident in the Resident's Application for Admission, Personal Health History, or Confidential Financial Statement; if the Resident fails to make payment to Bishop Gadsden of any fees or charges due Bishop Gadsden within Sixty (60) Days of the date when due; or if the Resident does not abide by the rules and regulations adopted by Bishop Gadsden or breaches any of the terms and conditions of this Agreement"

85. The above cited provisions and the other terms of the Residence and Services

Agreement are fundamental to the nature and operation of the business of Bishop Gadsden.

86. On June 13, 2005, Bishop Gadsden advised Plaintiff in writing that a room in the Health Care Center was available, pursuant to an earlier assessment process and decision for her to be transferred by the Bishop Gadsden Transfer Committee to a higher level of care.

87. Bishop Gadsden, pursuant to its contractual obligations and duties, had previously made a careful and thoughtful analysis and assessment of Plaintiff and after exhaustive consultation with Plaintiff, her family and her attending physicians, determined that a transfer to the Health Care Center was appropriate and probably not temporary in nature.

88. Plaintiff has refused to surrender her apartment and transfer to the Health Care Center as required under the Residence and Services Agreement and has, instead, brought the instant action to have provisions of the Residence and Services Agreement stricken as violative of civil rights laws, allegations to which Defendant vehemently denies as stated above. Defendant now also responds, and affirmatively asserts, by way of Counterclaims the following.

BY WAY OF TWENTY-SIXTH DEFENSE AND COUNTERCLAIM

(Declaratory Judgment)

89. Further answering the Complaint and by way of counterclaim, this declaratory judgment claim is brought pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

90. Defendant incorporates so much of the foregoing allegations as may be pertinent hereto.

91. Defendant seeks by way of Counterclaim a declaratory judgment of the rights and legal relations of the parties under the Residence and Services Agreement. The Residence and Services Agreement is attached as Exhibit "A" hereto.

92. The parties made and entered into the Residence and Services Agreement on March 30, 2000.

93. Defendant seeks to have this Residence and Services Agreement declared binding, valid and enforceable in its entirety.

94. Defendant also seeks to have declared that Plaintiff has waived her rights to claim otherwise by voluntarily entering into and agreeing to said Residence and Services Agreement.

95. Defendant further seeks to have the Court declare that the Residence and Services Agreement is not actionable under, nor violative of, the civil rights laws alleged by Plaintiff.

Among other items, Plaintiff's refusal to surrender her apartment and transfer in contravention of the Residence and Services Agreement and policies of Bishop Gadsden and her request to remain in her apartment with her own private duty personal care assistants is not a reasonable accommodation request, insofar as Plaintiff's actions would impose undue financial and administrative burdens on Defendant and/or require a fundamental alteration in its operations. Plaintiff's actions and requests contravene, alter and eviscerate the fundamental nature of the business of Bishop Gadsden and Continuing Care Retirement Communities in general. Further, Defendant seeks to have the Court declare that the fair housing laws and disabilities laws, when applied appropriately, clearly allow the provisions and actions of the Defendant.

BY WAY OF TWENTY-SEVENTH DEFENSE AND COUNTERCLAIM

(Breach of Contract and Breach of the Implied Covenant of Good Faith and Fair Dealing)

96. Further answering the Complaint and by way of Counterclaim, Defendant seeks to have Plaintiff declared in breach of the Residence and Services Agreement and the covenant of good faith and fair dealing.

97. Defendant incorporates so much of the foregoing allegations as may be pertinent hereto.

98. The Residence and Services Agreement is a valid and binding contract entered into by Plaintiff and Defendant.

99. The Residence and Services Agreement, as a contract as described above, also contains an implied covenant of good faith and fair dealing.

100. Defendant has fully performed its obligations under the Residence and Services Agreement.

101. In Paragraph V.A. of the Residence and Services Agreement, Plaintiff agreed that Bishop Gadsden shall have authority to determine that she should be transferred from her apartment to another level of care within Bishop Gadsden. Bishop Gadsden made that determination, which was in good faith and reasonable, to transfer Plaintiff to the Health Care Center and the determination was based on the opinion of the Bishop Gadsden Transfer Committee. The determination to transfer the Plaintiff was also made after consultation with Plaintiff, her family and Plaintiff's physicians. Bishop Gadsden's transfer decision was made in the best interests of Plaintiff. Bishop Gadsden also determined, pursuant to Paragraph V.C. of the Residence and Services Agreement, that the transfer would probably not be temporary in nature.

102. Plaintiff has failed to surrender her apartment and transfer to the Health Care Center as determined by Bishop Gadsden and as required under the Residence and Services Agreement.

103. Plaintiff is in breach of the Residence and Services Agreement and has unjustifiably failed to perform and surrender her apartment and transfer to the Health Care Center.

104. Pursuant to the Residence and Services Agreement, Defendant is therefore entitled to terminate said Agreement and has notified Plaintiff of such in writing.

105. Upon termination, Plaintiff must vacate her apartment pursuant to Section VI.F. of the Residence and Services Agreement. Plaintiff refuses to vacate her apartment.

106. Plaintiff, through her actions and inactions as described above, has also breached the implied covenant of good faith and fair dealing.

107. Defendant seeks to have the Court declare and order, based on the above, that Plaintiff is in breach of the Residence and Services Agreement, thereby resulting in termination of said Agreement, and must vacate Bishop Gadsden or otherwise be ejected from the Bishop Gadsden community, pursuant to the terms of the Residence and Services Agreement and issue appropriate permanent injunctive relief. Defendant also seeks to recover all actual and consequential damages caused by Plaintiff's breach of the Residence and Services Agreement.

BY WAY OF A TWENTY-EIGHTH DEFENSE AND COUNTERCLAIM

(Specific Performance)

108. Defendant further seeks by way of Counterclaim that Plaintiff, as an alternative to the above Counterclaim for breach of contract and relief by way of vacation and/or ejectment, be required to specifically perform the Residence and Services Agreement and surrender her apartment and transfer to the Health Care Center.

109. Defendant incorporates herein so much of the foregoing Answer and allegations as may be pertinent hereto.

WHEREFORE, Defendant, having fully answered the Complaint and having set forth its Counterclaims, respectfully requests that this Court enter an order:

- a. That Plaintiff take nothing by this action, and that the Complaint be dismissed in its entirety with prejudice;
- b. That judgment be entered in Defendant's favor;
- c. That permanent injunctive relief be awarded directing Plaintiff to comply with the Residence and Services Agreement and surrender her apartment and transfer to the appropriate level of care or otherwise vacate the Bishop Gadsden community;

- d. That Defendant recover its costs of suit incurred herein and reasonable attorneys' fees pursuant to Federal and state law; and
- e. For such other and further relief as the Court may deem just and proper.

S/Trudy H. Robertson

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ATTORNEYS FOR THE DEFENDANT

Charleston, South Carolina

Dated: July 28, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

BLANCHE W. BELL,

Plaintiff,

vs.

THE EPISCOPAL CHURCH HOME, INC.,
d/b/a BISHOP GADSDEN RETIREMENT
COMMUNITY,

Defendant.

Case Number: 2:05-1953-DCN-RSC

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of July, 2005, served a copy of the foregoing **Defendant's Answer and Counterclaim** upon the following individuals by electronic mail and by depositing same in the United States Mail, properly addressed, with sufficient postage affixed thereto, addressed to:

Harriet McBryde Johnson, Esq.
Federal ID No. 2192
171 Church Street, Suite 160
Charleston, SC 29402

John R. Polito, Esq.
Federal ID No. 3081
1325 Pherigo Street
Mt. Pleasant, SC 29464

S/Trudy H. Robertson

EXHIBIT "A"

RESIDENCE AND SERVICES AGREEMENT*Bishop Gadsden*

This Residence and Services Agreement (hereinafter "the Agreement") is made this 30th day of March, 2005, by and between Bishop Gadsden Episcopal Retirement Community, Inc., a South Carolina non-profit Corporation (hereinafter "Bishop Gadsden") and Blanche W. Bell (hereinafter the "Resident(s)").

WHEREAS, Bishop Gadsden presently owns and operates a retirement community located at 1873 Camp Road in Charleston, South Carolina which offers assisted living care and nursing home care; and

WHEREAS, Bishop Gadsden is developing and will own and operate an expansion described as a new Continuing Care Retirement Community, as defined under South Carolina Statutes, consisting of residential apartments in mid-rise buildings, cottages, and a community center with a host of common areas and amenities on a acreage surrounding the existing retirement community (hereinafter the "Community"); and

WHEREAS, Resident desires to reserve an independent living residence and become a resident in the Community expansion;

NOW, THEREFORE, Resident and Bishop Gadsden agree as follows:

I. RESIDENCE, COMMON AREAS AND AMENITIES, PROGRAMS AND SERVICES

- A. Residence. Resident shall have the exclusive right to occupy, use, and enjoy residence number 109 a Cornellia type of residence, located within the Community (hereinafter called the "Residence").
- B. Furnishings in the Residence. Bishop Gadsden will provide wall-to-wall carpeting, emergency signal equipment, refrigerator with icemaker, stove, dishwasher, oven, hood vent, washer and dryer, garbage disposal, and mini-blinds. All other furniture, furnishings, decorations, and other personal property will be provided by the Resident.
- C. Options and Custom Features in the Residence. Bishop Gadsden will offer and Resident may select certain options and custom features in the Residence as described in the Community's literature for an additional charge. Any such options and custom features selected and paid for by the Resident will become part of the Residence and the property of Bishop Gadsden. The value of any such improvements will not be considered in computing refunds.

- D. Common Areas and Amenities. Bishop Gadsden will provide common areas and amenities for the use and benefit of all residents to include a central dining room, private dining room, library, mail boxes, multi-purpose room, lounges, activities areas, swimming pool, arts and crafts room, walking areas, exercise areas, and on-site Health Center and other common areas and amenities described in the Community's current literature.
- E. Parking. Bishop Gadsden will provide lighted parking areas for the Resident's personal vehicle (limited to one vehicle for each individual resident). Covered parking may be available at additional cost to the Resident.
- F. Storage. Bishop Gadsden will provide limited storage space for personal items in addition to storage space in the central apartment building Residences.
- G. Services and Programs.
1. Utilities. Bishop Gadsden will furnish heating, air conditioning, electricity, water, sewer, ~~standard television antenna system~~, trash removal, and standard municipal services. The Resident is responsible for the charges related to telephone and cable television.
 2. Meals. Bishop Gadsden will make available to Residents Three (3) nutritionally well-balanced meals each day. The cost of Thirty (30) meals each month will be included in the Monthly Fee. The cost of additional meals taken by the Resident will be billed and paid for by the Resident on a monthly basis.
 3. Special Diets and Tray Service. Meals containing substitute or special diets will be made available to the Resident. When approved by authorized staff, tray service may be delivered to the Residence in accordance with the policies and limitations as set by Bishop Gadsden.
 4. Housekeeping Services. Bishop Gadsden will provide housekeeping services weekly, including vacuuming, dusting, and cleaning of baths and kitchens. Additional housekeeping may be provided for an extra fee.
 5. Laundry and Linens. Bishop Gadsden will launder and change the Resident's bed and bath linens weekly. Personal laundry and dry cleaning are the responsibility of the Resident. Washer and dryer facilities are provided in the Residence by Bishop Gadsden.
 6. Lawn care. Bishop Gadsden will furnish basic lawn care service, including lawn, tree, and shrubbery care. Subject to approval by Bishop

Gadsden, Residents may plant and maintain certain areas designated for such purpose by Bishop Gadsden.

7. Maintenance and Repairs. Bishop Gadsden will maintain and keep in repair its own improvements, furnishings, and equipment. Resident will be responsible for the cost of repairing damage to property of Bishop Gadsden caused by the negligence of Resident or any guests of the Resident, ordinary wear and tear excepted.

8. Transportation. Bishop Gadsden will provide local transportation for Residents on a regular, scheduled basis for shopping and activities. Transportation to local doctor and medical appointments may be scheduled for an extra fee. Transportation for personal or special group trips may require an extra fee.

9. Security. Bishop Gadsden will provide twenty-four (24) hour security patrol, emergency call systems and response, smoke detectors in each residence, and a central security system and security procedures.

10. Activities. Bishop Gadsden will provide scheduled social, recreational, spiritual, educational and cultural activities, arts and crafts, exercise and health programs, and other activities designed to meet the needs of Residents.

11. Other Services and Programs at Additional Charge. Other services and programs will be available to the Resident at the Resident's expense, including, but not limited to additional housekeeping services, polishing of Resident's silver or brass items, personal laundry or dry cleaning, private transportation, catering, guest meals, repair of personal property, and other special services performed for the Resident beyond the normal scope of services offered by Bishop Gadsden. The availability and charges for additional services will be determined by Bishop Gadsden.

12. Health Care Accommodations and Services. Bishop Gadsden will provide health care accommodations and services as follows:

a. Levels of Care. The Bishop Gadsden Health Center will have accommodations, equipment, staffing, programs, services, and supervision necessary for skilled nursing care and assisted living care. Such accommodations and services are available to the Resident on a priority basis if needed as determined by Bishop Gadsden.

b. Outpatient Clinic. A Clinic for certain examinations, consultations, checks, tests, and appointments is available to Residents as authorized and provided by Bishop Gadsden.

- c. Staffing. Twenty-Four (24) Hour licensed nursing staff will be provided in the Health Center.
- d. Medical Director. The overall coordination and supervision of health care services within the Community will be provided by a Medical Director who will be a licensed physician selected by Bishop Gadsden.
- e. Charges. Charges for the nursing and health care accommodations and services described above shall be as set forth in Paragraph II H of this Agreement. The Community reserves the right to bill Medicare and other third party payors for covered services.
- f. Other Health Care Services. Other health care services may be available to the Resident at the Resident's expense, including, but not limited to, pharmacy services, laboratory tests, physical therapy, occupational therapy, including therapeutic activities, rehabilitative treatments, and wheelchairs and other medical equipment and supplies. The cost of such services shall not be covered by and are in addition to the charges described in Paragraph II H 1.
- g. Personal Physicians. Residents may choose their own personal physicians and will be responsible for the charge of each physician.

II. FINANCIAL ARRANGEMENTS

- A. Entrance Fee Options. The Resident agrees to pay to Bishop Gadsden an Entrance Fee as a condition of becoming a Resident. The Resident shall choose one of the following options, amounts, and amortization schedules as to the Entrance Fee to be paid:

<u>Entrance Fee Option</u>	<u>Amount of Entrance Fee</u>	<u>Amortization Schedule</u>
1. Standard	\$ <u>161,100</u>	2% per month for 50 months.
2. 50% Refund	\$ _____	2% per month for 25 months. Refund never less than 50%.
3. 90% Refund	\$ _____	2% per month for 5 months. Refund never less than 90%.

The Resident must notify Bishop Gadsden in writing of the selection of the 50% Refund or 90% Refund Entrance Fee Options on or before the date that the balance of the Entrance Fee is due provided in Paragraph II B 3 below. Without approval of Bishop

Gadsden, the Resident may not change the option selected after the date that the balance of the Entrance Fee is due.

B. Terms of Payment of the Entrance Fee. The terms of payment of the Entrance Fee shall be as follows:

1. Reservation Deposit. An initial Reservation Deposit of One Thousand Dollars (\$1,000.00) will have been paid upon execution of the Reservation Agreement; and,
2. Ten Percent (10%) Deposit. An amount equal to Ten Percent (10%) of the total Entrance Fee, based on the plan selected by you, less the One Thousand Dollar (\$1,000.00) Reservation Deposit, or \$15,110 is due and payable within Ten (10) Days upon the Resident having received written notice of approval by Bishop Gadsden's Admission Committee and upon execution of this Agreement and,
3. Balance of the Entrance Fee. The balance of the total Entrance Fee for the Entrance Fee Option selected by the Resident will be due and payable upon completion of construction of the Residence and when the Residence is declared by Bishop Gadsden to be ready for occupancy, unless otherwise agreed to in writing by Bishop Gadsden.

C. Interest Before Commencement of Construction. Upon the Resident having paid the full Ten Percent (10%) Deposit, Bishop Gadsden agrees to pay the Resident interest on such Deposit as described in Paragraph II B 2. The interest rate shall be the Treasury Bill Rate in effect on the preceding January 1 or July 1, less one-half of one percent. The applicable Treasury Bill Index shall be adjusted January 1 and July 1 of each year to reflect the rate in effect on that date. Such interest will be payable on June 30 and December 31. Interest will be paid to the Resident from the date of receipt of the Ten Percent (10%) Deposit until the date of commencement of construction of the Community. No interest will be paid to the Resident on any portions of the Entrance Fee after such commencement of construction of the Community.

D. Escrow Account. Bishop Gadsden shall establish an escrow account with a bank or trust company selected by Bishop Gadsden. Bishop Gadsden shall place in the escrow account any portion of the Entrance Fee received by Bishop Gadsden from the Resident pursuant to this Agreement prior to the date the Resident is permitted to occupy the Residence. The agreement establishing such escrow account shall provide for terms and conditions under which the Entrance Fee deposited into such account may be released to Bishop Gadsden, or under which such fee shall be refunded to the Resident in accordance with South Carolina statutory requirements.

- E. Monthly Service Fee. In addition to the Entrance Fee, Resident agrees to pay a Monthly Service Fee upon occupancy and for the term of this Agreement which shall be payable in advance by the 10th of each month. The Monthly Service Fee will begin at occupancy or no later than thirty (30) days from the date the Residence is declared by Bishop Gadsden to be ready for occupancy, unless otherwise agreed to in writing by Bishop Gadsden. Bishop Gadsden projects that the Monthly Service Fee associated with the Residence will be approximately \$2050 per month, and an additional \$ 750 per month if a second Resident occupies the Residence. The Monthly Service Fee may be adjusted by Bishop Gadsden during the term of this Agreement as described in Paragraph II F below.
- F. Adjustments in the Monthly Service Fee. The Monthly Service Fee is paid to provide the facilities, programs, and services described in this Agreement and is intended to meet the cost of the expenses associated with the operation and management of the Community. Bishop Gadsden shall have the authority to adjust the Monthly Service Fee from time to time during the term of this Agreement as directly relates to the costs of providing such facilities, programs, and services described herein consistent with operating on a sound financial basis and maintaining the quality of services called for herein. Any such increases in the Monthly Service Fee or other charges may be made by Bishop Gadsden upon Thirty (30) Days written notice to the Resident.
- G. Monthly Statements. Bishop Gadsden will furnish the Resident with monthly statements showing the Monthly Service Fee payable in advance and the other charges from the previous month, which shall be payable by the tenth day of the current month. Bishop Gadsden may charge interest at a rate of One and One-Half Percent (1 %) per month on any unpaid balance owed by the resident Thirty (30) Days after the monthly statement is furnished.
- H. Health Care Accommodations and Services Fees and Charges.
1. Continuance of Monthly Service Fee. Should Resident qualify for the health care accommodations and services either in skilled nursing care or assisted living care (but specifically excluding the Community's specialized dementia accommodations), it is understood that Resident will pay a Monthly Service Fee equal to the weighted average of the Monthly Service Fees of all independent living residences within the Community, including such adjustments or increases in the Monthly Service Fee as described in Paragraph II F. This fee shall be prorated based on the number of days Resident remains in either skilled nursing or assisted living care facility. In addition to the Monthly Service Fee, charges will be made for Two (2) additional meals per day and other charges for ancillary services as more fully described in Paragraph II H 3, below. This is known as the "Life Care" benefit.

2. Second Person Monthly Service Fee. In the event a couple occupies a residence and one member of the couple requires transfer to either the skilled nursing or assisted living facility, the Resident remaining in the independent living residence shall pay the applicable first person Monthly Service Fee, and the transferring member shall pay the weighted average Monthly Service Fee, plus the adjustment for meals and ancillary charges.
3. Additional Charges for Ancillary Health Care Services. Additional charges for health care services may be made by Bishop Gadsden for ancillary services provided at the Community. Ancillary services will include all services not provided by the staff of the Community and are therefore not included in the Monthly Service Fee. Examples of such additional charges include, but are not limited to, the cost of prescription and non-prescription medications, physical examinations, laboratory tests, physical therapy, occupational therapy, rehabilitative treatments, wheelchairs, other medical equipment and supplies, and any other medical services beyond that available in the Community. Also, any professional services (medical or otherwise) contracted by Resident or on behalf of Resident shall be billed directly to Resident.
4. Care in Another Facility. Should Resident need a level of care beyond that licensed at the Community and require transfer to another facility, all expenses which will result from such transfer and care shall be borne entirely by Resident.
5. Specialized Dementia Accommodations. Should a Resident qualify for the Community's specialized dementia accommodations, it is understood that the Resident will pay a Monthly Service Fee described in Paragraph II H 1 above plus an additional per diem charge equal to 15% of the charges for that level of care as more fully described in the Community's literature.
6. Third Party Reimbursement. The Community reserves the right to bill Medicare and other third party payors.

III. ADMISSION REQUIREMENTS AND PROCEDURES

A prospective resident will become qualified for admission to the Community upon satisfaction of the following provisions:

- A. Age. The admission requirements for residence at the Community are non-discriminatory except as to age, and the Community is open to both married couples and single men and women of all races and religions and without regard to place of former residence. Admission is restricted to persons 62 years of age or older. If a member of the prospective couple shall not meet the age requirement, the couple may be approved for admission under special circumstances.

- B. Personal Interview. The Resident shall have an interview with a representative from Bishop Gadsden prior to taking residency. Upon review of all information required to be furnished herein, additional personal interviews may be requested by Bishop Gadsden.
- C. Application Forms. The Resident shall have submitted for approval by the Admissions Committee appointed by Bishop Gadsden, an Application for Admission, a Personal Health History, and a Confidential Financial Statement, all on forms furnished by Bishop Gadsden within Thirty (30) Days after the execution of the Reservation Agreement.
- D. Admissions Committee Review. Upon receipt of the completed application forms and the personal interview, Bishop Gadsden's Admissions Committee will have reviewed the forms submitted by Resident as a basis for initial admission to the Community. The Admissions Committee, in its sole discretion, will have, within Thirty (30) Days' receipt of the completed application forms, approved or denied the application for initial admission based on admissions criteria and policies established by the Board of Trustees of Bishop Gadsden. The Resident shall be notified of such action of the Admissions Committee.
- E. Notification. Bishop Gadsden will notify the Resident as early as possible of the date on which the construction of the Residence is to be completed and when the Residence is to be declared by Bishop Gadsden to be ready for occupancy.
- F. Health Requirements. Prior to admission for residency at the Community, the Resident shall submit a Physician's Examination Report completed by the Resident's personal physician on such form provided by Bishop Gadsden within approximately Sixty (60) Days of the projected occupancy date. Such report shall include a statement by such physician that the Resident is in good health, is ambulatory or can move about independently and is able to take care of himself or herself in normal living activities. Bishop Gadsden may require the Resident to have another physical examination by the Medical Director or by another physician approved by Bishop Gadsden. The Resident shall be responsible for the costs of such physical examinations. If the health of the Resident as disclosed by such physical examination does not meet the criteria established by the Board of Trustees of Bishop Gadsden, Bishop Gadsden shall have the right to decline admission of the Resident and to terminate this Agreement, or in the discretion of Bishop Gadsden, to permit the Resident to take occupancy of accommodations within the Community more suitable to the needs of the Resident.
- G. Financial Requirements. The Resident must have assets and income which will be sufficient under foreseeable circumstances to pay the financial obligation of the Resident under this Agreement and to meet ordinary living expenses of the Resident. Bishop Gadsden may require the Resident to furnish additional, current financial information as may be needed.

- H. Representations. The Resident affirms that the representations made in the Application for Admission, Personal Health History, and Confidential Financial Statement are true and correct and may be relied upon by Bishop Gadsden as a basis for entering into this Agreement.

IV. TERMS OF RESIDENCY

- A. Rights of Resident. Subject to the terms and provisions of this Agreement, the Resident has the right to occupy, use, and enjoy the Residence, common areas, amenities, programs, and services of the Community during the Resident's lifetime unless this Agreement shall be terminated as provided herein. It is understood that this Agreement does not transfer or grant any interest in the real or personal property owned by Bishop Gadsden other than the rights and privileges as described in this Agreement.
- B. Policies and Procedures. The Resident will abide by the Community's policies and procedures and such amendments, modifications, and changes of the policies and procedures as may hereafter be adopted by Bishop Gadsden and the Community.
- C. Changes in the Residence. Bishop Gadsden has the right to change the Residence to meet requirements of any applicable statutes, law, or regulation. The Residence may not be used in any matter in violation of any zoning ordinances or other governmental law or regulation.
- D. Visitors. Except for short term visitors or guests, no person other than the Resident may reside in the Residence without the approval of Bishop Gadsden.
- E. Occupancy by Two Residents. In the event that Two (2) Residents occupy a Residence under the terms of this Agreement, upon the permanent transfer to the Health Center or the death of one of such Residents, or in the event of the termination of this Agreement with respect to one of such Residents, the Agreement shall continue in effect as to the remaining or surviving Resident who shall have the option to retain the same Residence, in which event there will be no addition to or refund of the Entrance Fee, or to move to a smaller Residence in which event the Resident shall be entitled to a refund of the difference, if any, between the following: (a) the Entrance Fee paid on the larger Residence less 2% thereof for each month (or portion thereof) from the occupancy date through the date on which the Resident transfers to the smaller Residence; and (b) the Entrance Fee for the smaller Residence in effect on the date of transfer less 2% of such Entrance Fee for each month (or portion thereof) from the occupancy date through the date on which the Resident transfers to the smaller Residence. The remaining or surviving Resident will thereafter pay the Monthly Service Fee for one Resident associated with the Residence occupied by the Resident.

- F. Loss of Property. Bishop Gadsden shall not be responsible for the loss of any property belonging to the Resident due to theft, mysterious disappearance, fire or any other cause. It is understood that the Resident will have the responsibility of providing any desired insurance protection covering any such loss.
- G. Medical Insurance. The Resident shall maintain Medicare Part A, Medicare Part B, and one supplemental health insurance policy or equivalent insurance coverage acceptable to Bishop Gadsden, and shall furnish Bishop Gadsden with evidence of such coverage upon request. Exceptions to the aforementioned must be agreed to in writing by the Community.
- H. Marriage During Occupancy. If a Resident, while occupying a Residence marries a person who is also a Resident, the Two (2) Residents may occupy the Residence of either Resident and shall surrender the Residence not to be occupied by them. No refund will be payable with respect to the Residence surrendered except in the case of a Resident who has elected the 50% or 90% Refund Entrance Fee Option or in the case of a Resident who has occupied the Residence less than Fifty (50) Months. Such married Residents will pay the Monthly Service Fee for double occupancy associated with the Residence occupied by them. In the event that a Resident shall marry a person who is not a Resident of the Community, the spouse may become a Resident if such spouse meets all the then-current requirements for admission to the Community, enters into a then-current version of the Residence and Services Agreement with Bishop Gadsden and pays an Entrance Fee in an amount determined by Bishop Gadsden in its discretion but in any event no more than one-half of the then-current Entrance Fee associated with the type of Residence to be occupied by the Resident and spouse. The Resident and spouse shall pay the Monthly Service Fee for double occupancy associated with the Residence occupied by them. If the Resident's spouse shall not meet the requirements of Bishop Gadsden for admission as a Resident, the Resident may terminate this Agreement in the same manner as provided in Paragraph VI C hereof with respect to a voluntary termination, or the Resident may be approved for admission under special circumstances and a modified financial arrangement as agreed to in writing by Bishop Gadsden and the Resident.
- I. Right of Entry. Resident hereby authorizes employees or agents of the Community to enter the Residence for the purposes of housekeeping, repairs, maintenance, inspection, and in the event of an emergency.
- J. Resident's Organizations. Residents of the Community will organize a Residents' Association and Residents' Committees which will be open to all Residents. Such organizations will elect representatives, officers, and other positions to engage in concerted activities set forth by the Residents' Association.

V. TRANSFERS OR CHANGES IN LEVELS OF CARE

- A. Transfer to Assisted Living or Skilled Nursing Care. The Resident agrees that Bishop Gadsden shall have authority to determine that the Resident should be transferred from the Resident's Residence to assisted living, or skilled nursing care, or from one level of care to another level of care within the Community. Such determination shall be based on the opinion of the Transfer Committee of Bishop Gadsden and shall be made after consultation with the Resident or a representative of the Resident and the Resident's attending physician. Such decisions shall be made only in the best interests of the Resident as determined by Bishop Gadsden.
- B. Transfer to Hospital or Other Facility. If it is determined by Bishop Gadsden that the Resident needs care beyond that which can be provided by the Community, the Resident may be transferred to a hospital, center, or institution equipped to give such care, which will be at the expense of the Resident. Such transfer of the Resident will be made after consultation with the Resident, or a representative of the Resident, and the Resident's attending physician.
- C. Surrender of Residence. If a determination is made by Bishop Gadsden that any transfer described in Paragraph V is probably not temporary in nature, the Resident agrees to surrender the Residence or any other accommodation in the Community occupied by the Resident prior to such transfer. If Bishop Gadsden subsequently determines that the Resident can resume occupancy in Residence or accommodations comparable to those occupied by the Resident prior to such transfer, the Resident shall have priority to such accommodations as soon as they become available.

VI. TERMINATION AND REFUND PROVISIONS

- A. Termination by Resident Prior to Occupancy. This Agreement may be terminated by the Resident for any reason prior to occupancy by giving written notice to Bishop Gadsden. In the event of such termination, the Resident shall receive a refund of the Entrance Fee paid by the Resident, less an administrative charge equal to 4% of the total amount of the Standard Entrance Fee described in Paragraph II A 1. No administrative charge will be made, however, if such termination is because of death of a Resident, or because the Resident's physical, mental or financial condition makes the Resident ineligible for admission to the Community. Any such refund shall be paid by Bishop Gadsden within Sixty (60) Days following receipt of written notification of such termination.

B. Trial Period. The first Sixty (60) Days of occupancy at the Community will be considered to be a Trial Period. During such Sixty (60) Day Trial Period, the Resident will have the right to terminate this Agreement by giving Bishop Gadsden written notice of such termination. In the event of such termination by the Resident, or in the event of the death of the Resident during such Sixty (60) Day Trial Period, the Resident (or the Resident's estate) shall receive a full refund of the Entrance Fee paid, less an administrative charge equal to 4% of the total amount of the Entrance Fee as described in Paragraph II A. Also, during such Sixty (60) Day Trial Period, Bishop Gadsden shall have the right to terminate this Agreement based on Bishop Gadsden's determination that the Resident's physical or mental condition or emotional adjustment will not permit adaptation to the living environment at the Community. In the event of such termination by Bishop Gadsden, Bishop Gadsden will refund the full Entrance Fee paid by the Resident. Any refund due the Resident under this paragraph shall be paid within Sixty (60) Days after the Residence has been vacated by the Resident.

C. Voluntary Termination After Occupancy. At any time after occupancy, the Resident may terminate this Agreement by giving Bishop Gadsden written notice of such termination. Refunds shall be made as follows:

1. Standard Entrance Fee Option: If the Resident has elected the Standard Entrance Fee Option, the Resident shall receive a refund in an amount equal to the Standard Entrance Fee Option less 2% for each month of residency for up to Fifty (50) Months.
2. Fifty Percent (50%) Refund Entrance Fee Option: If the Resident has elected the 50% Refund Entrance Fee Option, the Resident shall receive a refund in an amount equal to the 50% Refund Entrance Fee Option less 2% for each month of residency for up to Twenty-Five (25) Months and never less than 50% of the 50% Refund Entrance Fee Option.
3. Ninety Percent (90%) Refund Entrance Fee Option: If Resident has elected the 90% Refund Entrance Fee Option, the Resident shall receive a refund in an amount equal to the 90% Refund Entrance Fee Option less 2% for each month of residency for up to Five (5) Months, and never less than 90% of the 90% Refund Entrance Fee Option.

Unless the Resident has elected the 50% Refund Entrance Fee Option or the 90% Refund Entrance Fee Option, no refund of the Entrance Fee shall be paid to the Resident after the Fifty (50) Months of occupancy. The refund due the Resident under this Paragraph for the Standard Entrance Fee Option will be made within Sixty (60) Days after the Residence has been vacated by the Resident. Any refund due the Resident under this paragraph

for the 50% Refund Entrance Fee Option and the 90% Refund Entrance Fee Option will be made at such time as such Resident's Residence shall have been reserved by a prospective resident and such prospective resident shall have paid to Bishop Gadsden the full Entrance Fee, or within one year from the date of termination, whichever first occurs.

- D. Termination Upon Death. In the event of death of the Resident at any time after occupancy, this Agreement shall terminate and the refund of the Entrance Fee paid by the Resident shall be determined in the same manner described in Paragraph VI C above.
- E. Termination by Bishop Gadsden. Bishop Gadsden may terminate this Agreement at any time if there has been a material misrepresentation or omission made by the Resident in the Resident's Application for Admission, Personal Health History, or Confidential Financial Statement; if the Resident fails to make payment to Bishop Gadsden of any fees or charges due Bishop Gadsden within Sixty (60) Days of the date when due; or if the Resident does not abide by the rules and regulations adopted by Bishop Gadsden or breaches any of the terms and conditions of this Agreement. In the event of termination, the refund of the Entrance Fee paid by the Resident shall be determined in the same manner described in Paragraph VI C above.
- F. Condition of Residence. At the effective date of termination of this Agreement, the Resident shall vacate the Residence and shall leave it in good condition except for normal wear and tear. The Resident shall be liable to Bishop Gadsden for any cost incurred in restoring the Residence to good condition except for normal wear and tear, and such costs may be deducted from the refund of the Entrance Fee due the Resident; if any.
- G. Amounts Due. Any amounts due and owing by Resident to Bishop Gadsden may be deducted from the amount of any refund.

VII. RIGHT OF RESCISSION

Notwithstanding anything herein to the contrary, this Agreement may be rescinded by the Resident giving written notice of such rescission to Bishop Gadsden within Thirty (30) Days following the later of the execution of this Agreement. In the event of such rescission, the Resident shall receive a full refund of the Entrance Fee paid by the Resident. Any such refund shall be paid by Bishop Gadsden within Sixty (60) Days following receipt of written notice of rescission pursuant to this paragraph.

VIII. FINANCIAL ASSISTANCE

Bishop Gadsden has established a Residents' Assistance Fund to assist a limited number of residents whose assets may become depleted and to allow such residents to continue to live at the Community. The policies relating to financial assistance are determined by the Board of Trustees. The amount of assistance is determined on an individual basis and there is no guarantee of assistance to any individual resident.

IX. GENERAL

- A. Assignment. The rights and privileges of the Resident under this Agreement to the Residence, common areas and amenities, and services and programs of the Community are personal to the Resident and may not be transferred or assigned by the Resident or otherwise.
- B. Management of the Community. The absolute rights of management are reserved by Bishop Gadsden, its Board of Trustees, and its administrators as delegated by said Board of Trustees. Bishop Gadsden reserves the right to accept or reject any person for residency. Residents do not have the right to determine admission or terms of admission of any other Resident.
- C. Entire Agreement. This Agreement constitutes the entire contract between Bishop Gadsden and the Resident. Bishop Gadsden shall not be liable or bound in any manner by any statements, representations, or promises made by any person representing or assuming to represent the Community, unless such statements, representations, or promises are set forth in this Agreement.
- D. Successors and Assigns. Except as set forth herein, this agreement shall bind and inure to the benefit of the successors and assigns of Bishop Gadsden and the heirs, executors, administrators, and assigns of the Resident.
- E. Power of Attorney, Will, Living Will, and Health Care Power of Attorney. Resident agrees to execute a general power of attorney designating some competent person as attorney-in-fact. Resident agrees to execute a will. Resident is further encouraged to consider execution of a Living Will and Health Care Power of Attorney. The Resident shall provide Bishop Gadsden with copies of Power of Attorney, Living Will, and Health Care Power of Attorney, as well as the location of the Will upon execution.

- F. Transfer of Property. The Resident agrees not to make any gift or other transfer of property for less than adequate consideration for the purpose of evading the Resident's obligations under this Agreement or if such gift or transfer would render such Resident unable to meet such obligations.
- G. Religious Affiliation. Bishop Gadsden is affiliated with the Episcopal Diocese of South Carolina; however, such Diocese has no responsibility for any of the obligations of Bishop Gadsden under this Agreement.
- H. Governing Laws. This Agreement shall be governed by the laws of the State of South Carolina.
- I. Copy of the Agreement. Bishop Gadsden will provide the Resident with a copy of this Agreement upon execution by Bishop Gadsden and the Resident.
- J. Availability of Services. Resident acknowledges and agrees that said services may not be available at all times due to circumstances beyond the control of Bishop Gadsden and Bishop Gadsden will have no liability for such unavailability.
- K. Notice Provisions. Any notices, consents, or other communications to Bishop Gadsden hereunder (collectively "notices") shall be in writing and addressed as follows:

Executive Director
Bishop Gadsden Episcopal Retirement Community
1873 Camp Road
Charleston, South Carolina 29412

The address of the Resident for the purpose of giving notice is the address appearing after the signature of the Resident below.

X. Exceptions

IN WITNESS WHEREOF, Bishop Gadsden has executed this Agreement, and Resident has read and understands this Agreement and has executed this Agreement and the Ten Percent (10%) Deposit has been paid as of the day and year above written.

[Signature]
Witness

[Signature]
Prospective Resident

[Signature]
Witness

Prospective Resident

x 112 Cardinal Crest
Current Address: (Number and Street)

St. Helena Island, SC 29928
City, State, Zip Code

x 843-838-4363
Telephone

BISHOP GADSDEN EPISCOPAL
RETIREMENT COMMUNITY

[Signature]
Signature

Executive Director
Title

4/11/00
Date

Resident further hereby acknowledges having received a copy of Bishop Gadsden's Disclosure Statement.

[Signature]
Witness

[Signature]
Resident

30 March, 2000
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

BLANCHE W. BELL,

Plaintiff,

vs.

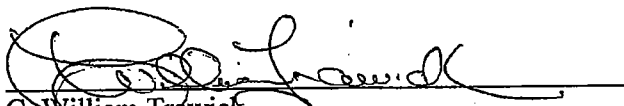
THE EPISCOPAL CHURCH HOME, INC.,
d/b/a BISHOP GADSDEN RETIREMENT
COMMUNITY,

Defendant.

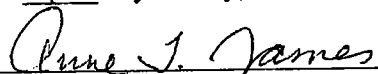
Case Number: 2:05-1953-DCN-RSC

VERIFICATION

PERSONALLY APPEARED before me, C. William Trawick, who, being first duly sworn, deposes and says that he is an agent of Defendant, to-wit, its Executive Director, and that he verifies the foregoing Answer and Counterclaims for and on behalf of said Defendant and is duly authorized to do so; that he has read the within Answer and Counterclaims and that the matters and things therein stated are true and correct of his own knowledge and belief, saving and excepting those matters stated to be on information and belief, and as to those, he believes them to be true.


C. William Trawick

SWORN TO AND SUBSCRIBED before me

this 28th day of July, 2005.

NOTARY PUBLIC FOR SOUTH CAROLINA (L.S.)
My commission expires: 12-18-07