

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

PHYLLIS CHAPMAN, on behalf of the  
Estate of Myrtle Brooks  
c/o Eadie Hill Trial Lawyers  
3100 East 45 St., Suite 400  
Cleveland, Ohio 44127

Plaintiff,

vs.

WYANT LEASING CO., LLC dba Wyant  
Woods Care Center  
c/o ACFB Incorporated  
200 Public Square, Suite 2300  
Cleveland, OH 44114

and

COMMUNICARE, INC.  
c/o ACFB Incorporated  
200 Public Square, Suite 2300  
Cleveland, OH 44114

and

COMMUNICARE HEALTH SERVICES,  
INC.  
c/o ACFB Incorporated  
200 Public Square, Suite 2300  
Cleveland, OH 44114

and

HEALTH CARE FACILITY  
MANAGEMENT, LLC dba Communicare  
Family of Companies  
c/o ACFB Incorporated  
200 Public Square, Suite 2300  
Cleveland, OH 44114

and

) CASE NO.

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) JUDGE

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) **COMPLAINT**

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) **With Jury Demand**

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OMG MSTR LSCO, LLC )  
 c/o ACFB Incorporated )  
 200 Public Square, Suite 2300 )  
 Cleveland, OH 44114 )  
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 Defendants. )  
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Now comes Plaintiff, the Estate of Myrtle Brooks, by and through Phyllis Chapman, its duly appointed Administrator, and for Plaintiff’s Complaint against Wyant Leasing Co., LLC dba Wyant Woods Care Center, Communicare, Inc., Communicare Healthcare Services, Inc., Healthcare Facility Management, LLC, and OMG MSTR LSCO, LLC (collectively “Defendants”) states and avers upon information and belief as follows:

**INTRODUCTION**

1. This is a negligence, recklessness, and wrongful death action involving Myrtle Brooks’ care at Wyant Woods Care Center, located at 200 Wyant Rd., Akron, OH 44313 that led to her untimely and wrongful death on August 11, 2017.
2. Plaintiff requests a trial by jury.
3. An Affidavit of Merit is attached as Exhibit 1.
4. Myrtle Brooks was a resident of Wyant Woods Care Center between June 2016 and August 2017.
5. Phyllis Chapman is the duly appointed Administrator of the Estate of Myrtle Brooks.
6. Plaintiff brings this action on behalf of the Estate of Myrtle Brooks, the next of kin of Myrtle Brooks, and anyone else entitled to compensation for the harms and losses sustained as the result of the negligence, recklessness, and other wrongful conduct described herein or discovered during litigation.

7. Plaintiff seeks punitive damages in an amount necessary to punish the above-named Defendants and deter Defendants from engaging in similar conduct in the future.

8. Plaintiff also requests attorneys' fees and the costs of this litigation.

### **DEFENDANTS**

9. Defendant Wyant Leasing Co., LLC (hereafter "Wyant Woods") is an Ohio for-profit corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and does business as Wyant Woods Care Center.

10. Wyant Woods does business under multiple names including, but not limited to, "Wyant Woods Care Center," and "Connections" memory care.

11. Defendant Communicare, Inc. (hereafter "Communicare") is an Ohio for-profit corporation that holds itself out to the public as a provider of medical care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and provides nursing services to more than 75 nursing home facilities throughout Ohio, Indiana, Pennsylvania, Virginia, and Missouri, including Wyant Woods care Center.

12. Defendant Communicare Healthcare Services, Inc. ("Communicare Healthcare") is an Ohio for-profit corporation that holds itself out to the public as a provider of medical care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and provides nursing services to more than 75 nursing home facilities throughout Ohio, Indiana, Pennsylvania, Virginia, and Missouri, including Wyant Woods care Center.

13. Defendant Healthcare Facility Management, LLC (“HFM”) is an Ohio for-profit limited liability company that holds itself out to the public as a provider of medical care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and provides nursing services to more than 75 nursing home facilities throughout Ohio, Indiana, Pennsylvania, Virginia, and Missouri, including Wyant Woods Care Center and does business under the fictitious name “Communicare Family of Companies.”

14. Defendant OMG MSTR LSCO, LLC (“OMG”) is an Ohio for-profit limited liability company that holds itself out to the public as a provider of medical care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and provides nursing services to more than 75 nursing home facilities throughout Ohio, Indiana, Pennsylvania, Virginia, and Missouri, including Wyant Woods Care Center.

15. Wyant Woods, Communicare, Communicare Healthcare, HFM, and OMG employ, manage, and direct the care and service providers who were responsible for Myrtle Brook’s care, treatment, and safety at Wyant Woods Care Center at all times she was a resident there.

16. Myrtle Brooks and her family looked to the Defendants for care based upon their representations.

17. The Defendants are vicariously liable for the negligent actions of their employees and agents (*respondeat superior* and agency liability) and / or independent contractors (*Clark v. Southview* agency by estoppel).

### **JURISDICTION AND VENUE**

18. This Court has Jurisdiction over the Defendants because, among other things, all Defendants do, and all times relevant did, reside or have their domicile in the State of Ohio, purposefully avail themselves of the laws of the state of Ohio, and / or commit tortious acts within the state of Ohio.

19. Venue is proper in Summit County under Civil Rule 3(B) because, among other reasons: (a) Defendants reside, domicile, carry on their principal place of business, or practice medicine / nursing, in Summit County; and (b) part of the claim for relief arose in Summit County, in which county Myrtle Brooks was injured and died.

### **COMMON FACTS**

20. Defendants hold themselves out to the public as providers of long-term nursing home, skilled nursing, and memory care services.

21. Defendants' for-profit model means their primary goal is to maximize profit, measured by revenues minus expenses.

22. For nursing homes generally, the largest individual revenue source is residents (filling beds), and the largest individual expense is the cost of employing nursing staff to provide care to those residents. This creates a financial incentive to take on more residents with greater care needs than the nursing staff can properly care for, a violation of federal nursing home regulations regarding staffing levels.

23. Defendants manage, control, and/or employ the nursing staff at Wyant Woods Care Center.

24. Defendants exercise actual control over the facility's management and operations to maximize profits, including control over facility-level:

- a. Policies and procedures, including regarding resident care;
- b. Finances, including obtaining credit and loans, guaranteeing loans (both at the corporate and individual facility level), maintaining funds and banking, obtaining, owning, and leasing facility land and buildings, and capital expenditures.
- c. Budgeting, including controlling the amount of funds available for staffing facilities;
- d. Personnel management, including hiring and firing, or having authority to hire and fire, the supervisory and management personnel in each facility;
- e. Supervision of management, care providers, and staff in each facility, including compliance with federal and state regulations;
- f. Employment, such as setting pay scales, shifts, and time and vacation policies;
- g. Systems for training, monitoring, and supervising staff;
- h. Medical record systems and management;
- i. Financial control systems, including budgeting and payment processing;
- j. Marketing, including setting the image and expectations residents and their family should expect at Wyant Woods Care Center, and even the name of the facility;
- k. Reporting procedures, including reporting to Medicare as to individual resident care and facility-wide issues.

25. As the result of this control, Defendants make decisions that affect the day-to-day care of Wyant Woods Care Center residents, such as the resources available for providing nursing staff and care to residents like Myrtle Brooks, meaning they are responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

### Reporting Data

26. Wyant Woods is required to report significant amounts of data to the federal agency that oversees operations of nursing homes receiving federal or state funding, the Centers for Medicare and Medicaid Services, or “Medicare.”

27. The data Defendants submit to Medicare regarding its facility includes data on its residents (numbers, care needs, and bed days), its finances, and its nurse and nursing aide staffing levels as compared to resident care needs.

28. This data is certified correct by the Defendants and / or submitted under penalty of perjury and / or civil or criminal penalties.

29. Medicare uses some of this data submitted by Defendants to produce its nursing home 5-star rating system, also known as “Nursing Home Compare.”

### Nursing Home Resident Care Needs and Staffing Levels (MDS and RUG Scores)

30. Every nursing home receiving Medicare or Medicaid funding—the clear majority of nursing homes, including Wyant Woods Care Center and others operated and / or controlled by Defendants—is required to provide detailed information regarding the health status, care and treatment, and services provided to each resident in the facility using a questionnaire called the **Minimum Data Set**, or **MDS**. This evaluation is done for all nursing home residents regardless of whether their care is being paid for by Medicare.

31. Nursing homes like Wyant Woods are required to evaluate every resident using the Minimum Data Set questionnaire shortly after the time of admission, every 90 days thereafter, when a resident has a significant improvement or decline in health (physical, mental, or psychosocial), and upon discharge.

32. Based on this Minimum Data Set, each resident's individual care needs (called "acuity level") are assigned into a group signifying how much nursing or staff care the resident requires, called a **Resource Utilization Group** score, or **RUG score**.

33. Each resident's Resource Utilization Group score is contained in section Z of their Minimum Data Set evaluations, meaning the total care needs of the residents in any facility at a specific time is available by totaling the residents' Resource Utilization Group scores from their Minimum Data Set evaluations.

34. Medicare has commissioned and made available to every nursing home studies and data showing the number of minutes of nursing and nursing aide care a person at a specific RUG level should be expected to require, which Medicare calls "expected staffing."

35. When these Resource Utilization Group scores are combined for all residents in a nursing home facility, the nursing home knows exactly how many minutes of nursing and nursing aide care should be provided, on average, to meet the expected care needs of their residents.

### **Misleading Advertising**

36. In an effort to persuade the families of patients with memory care disorders to become customers, Defendants make promises to the families of such potential residents that they will provide a level of care that they know they are incapable of providing.

37. For example, Defendants state on their website the following information:

*"Wyant Woods Care Center offers person-centered memory care to Akron residents through our Connections memory care program. Our specially-trained staff are Certified Connections Practitioners who help residents reconnect with their past, present and to the things and people they know"*

*and love through stimulating activities aligned to their particular needs. Connections was designed by leading experts in the industry with evidence-based practices that provide the highest quality of life for residents.”* <http://www.communicarehealth.com/facility/wyant-woods-care-center/>

38. Defendants do not inform families of potential residents of the following:
- a. Staffing Ratings
    - i. Wyant Woods is a 1-star facility according to Medicare’s staffing ratings, meaning that it has the worst rating for nursing care staffing possible.
  - b. Registered Nurse Staffing
    - i. The national and state average for registered nursing time available in a particular day for each resident is 51 and 50 minutes, respectively. This means that for the average nursing home facility in Ohio or across the country, if you take the total amount of hours registered nurses are paid to work during a given day and divide that time by the number of residents in the facility, there would be approximately 50 minutes of time registered nurses could spend with each resident per day.
    - ii. But at Wyant Woods there is only on average 31 minutes of registered nursing time available per day for each resident.
    - iii. The amount of registered nursing time available at Wyant Woods Manor is actually less than 31 minutes per resident each day because these figures take into account all time nurses are being paid—including breaks, vacations, holidays, and personal time off—and is

not limited to the time they are actually at Wyant Woods Care Center providing nursing care.

c. Nursing Assistant and Aide Staffing

- i. Wyant Woods also falls far short in the amount of nursing assistant or aide time available for its residents. The national and state average for nursing assistant or nursing aide time per resident is 2 hours and 27 minutes (national) and 2 hours and 17 minutes (Ohio) per day. This means that if you take the total amount of time all nursing assistants or aides worked per day and divided it by the total number of nursing home residents in the facility, the state and national average is close to two-and-a-half hours of nursing assistant / aide time available for each resident per day.
- ii. But at Wyant Woods there is only 1 hour and 38 minutes of available nursing assistant / aide time available per resident per day—approximately half the national average.

- d. In addition to having severely deficient staffing levels, Defendants also fail to mention that the amount they pay those staff members is nearly 30-40% less than the industry average meaning not only is Wyant Woods severely understaffed, the available staff is underpaid and overburdened.
- e. Not only is Wyant Woods understaffed, it has approximately twice as many residents to care for as comparable facilities. Wyant Woods resident census—the number of beds occupied in the facility—is 161

residents and is more than double the Ohio average (76.9 residents) and nearly double the national average (85.3 residents).

39. The intent and outcome of this misleading practice is to cause residents, their families, and external care providers to believe the nursing facility is much better staffed than it is.

40. The intent and outcome of this misleading practice is to drastically limit the budget and overhead needed to run a safe facility in order to maximize profits and syphon resources at the expense of patient safety.

### **Systemic Understaffing and Myrtle's Brooks Care**

41. Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Wyant Woods was sufficiently staffed to meet the individual needs of Myrtle Brooks.

42. Defendants engaged in a systemic practice to understaff its nursing home facility to maximize its profits at the expense of its residents' care.

43. This lack of sufficient staff directly resulted in Myrtle Brooks not receiving basic and necessary services to prevent, among other things, neglect leading to repeated falls between June 2016 and August 2017, including the last fall on August 4, 2017 that caused her to break her femur and die.

### **Defendants' Negligence and Recklessness with Myrtle Brooks**

44. Defendants received Myrtle Brooks as a nursing home resident in May 2016.

45. Defendants agreed to accept Myrtle Brooks into their facility and provide care to her in exchange for monetary payment.

46. Myrtle Brooks had a memory disorder called dementia that affects about 5.3 million people in the U.S. who are over the age of 65.

47. Myrtle Brooks was 78 years old when these events happened.

48. Defendants knew that Myrtle Brooks had dementia.

49. Defendants solicited patients with dementia and publicly advertised themselves as full providers of memory care, including holding Wyant Woods Care center out as "Connections" Memory Care with "Certified Connections Practitioners" in an effort to attract nursing home residents with dementia and other memory disorders.

50. People with dementia are known to be at an increased risk of falling for, among other reasons, gait related disturbances that cause unsteadiness and weakness, short and long-term memory disorders, loss of impulse control, lack of insight into what actions are safe and unsafe, and related behaviors.

51. In addition to dementia, Myrtle Brooks had numerous other risk factors for falling including numerous documented falls, advanced age, cognitive decline, administration of psychotropic medications, urinary incontinence and urgency, agitation and confusion, and frailty.

52. Because of these numerous risk factors and prior falling incidents, Myrtle Brooks required additional supervision and precautions to prevent additional falls and fall-related injuries.

53. Myrtle Brooks was documented to have more than 20 falls between June 2016 and August 2017.

54. Myrtle Brooks fell on August 4, 2017, and she suffered, among other injuries, a broken femur.

55. Myrtle Brooks died on August 11, 2017.

56. The Summit County Medical Examiner certified Myrtle Brooks' official cause of death as "sequelae of fractured left femur" from a fall at Wyant Woods Care Center on August 4, 2017.

**FIRST CAUSE OF ACTION**  
**(SURVIVORSHIP / NEGLIGENCE / RECKLESSNESS)**

57. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

58. Myrtle Brooks depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

59. The Defendants, including their medical and nursing staff, failed to provide proper care and treatment to Myrtle Brooks, which they knew or should have known he required, resulting in his injury and death.

60. The Defendants' failure to provide proper care and treatment included, but is not limited to:

- a. Choosing to put inadequate prevention and response interventions in place to prevent falling and injuries, including deaths;
- b. Choosing to provide inadequate resident observation, supervision, and monitoring;
- c. Choosing to provide improper training to staff members regarding fall prevention and response;
- d. Choosing to provide too few, and / or underqualified nursing staff members for the resident needs at the facility to protect and provide adequate care to residents like Myrtle Brooks;
- e. Choosing to not provide accurate, adequate, or timely information to Myrtle Brooks family;
- f. Choosing to violate state and federal regulations governing care and staffing levels in nursing home facilities by which residents like Myrtle Brooks are a

member of the class of persons intended to be protected from injuries like she suffered; and

- g. Such other acts or omissions described in this Complaint or discovered during litigation.

61. The Defendants and their medical and nursing staff provided care to Myrtle Brooks that fell below the standard of care expected of medical care and nursing home organizations, under the same or similar circumstances.

62. As a direct and proximate result of the negligence described above, Myrtle Brooks sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, and significant medical expenses and these physical injuries caused her untimely and wrongful death on April 11, 2017.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), for Myrtle Brooks' conscious pain and suffering, medical expenses, loss of enjoyment, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the decedent may be entitled to and / or that the court finds is appropriate and / or equitable.

**SECOND CAUSE OF ACTION**  
**(WRONGFUL DEATH)**

63. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

64. Plaintiff brings this Cause of Action pursuant to Ohio's Wrongful Death Statute for the benefit of Myrtle Brooks' heirs and next of kin who have suffered loss and damage due to Myrtle Brooks' wrongful and untimely death

65. As a direct and proximate result of the negligence / recklessness described above, Myrtle Brooks sustained physical injuries that caused her untimely and wrongful death.

66. Plaintiff and Myrtle Brooks' additional next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, including mental anguish and grief, medical and funeral expenses, and loss of decedent's support, services, society and companionship.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00) to compensate the decedent's next of kin and heirs at law, together with costs of suit, attorney's fees and expenses, exemplary damages, and any other relief the court finds is appropriate and/or equitable.

**THIRD CAUSE OF ACTION**  
**(NURSING HOME RESIDENT RIGHTS VIOLATION R.C. 3721.13)**

67. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

68. Defendants, directly or through their employees or agents, violated Myrtle Brooks' rights as a resident of the Defendants' facilities, as enumerated in R.C. 3721.13, including, but not limited to, the right to adequate and appropriate medical treatment and nursing care.

69. These violations constitute negligence *per se* and give rise to a statutory cause of action.

70. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Myrtle Brooks endured conscious pain and suffering and disability, incurred medical expenses, suffered her untimely death, and was otherwise harmed.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and/or equitable.

**A TRIAL BY JURY IS HEREBY DEMANDED.**

*/s/ Michael A. Hill*

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***Counsel for Plaintiff***

Affiant THEODORE MORRISON IHOMA, M.D., having been first duly

sworn, states:

1. I am an adult, with no known disability preventing my truthful testimony, and have personal knowledge of the matters contained within this affidavit.

2. I am a medical doctor licensed to practice medicine in the State of Illinois. I devote greater than seventy-five percent (75%) of my professional time to the active clinical practice of medicine. I am a graduate of St. Louis University School of Medicine. My post-graduate training in Internal Medicine was at the University of Connecticut. I am board Certified in Internal Medicine and a Certified Medical Director in long term care. I have been practicing since 1977 in Internal Medicine, geriatrics and long-term care. I treat patients in a range of settings, including in skilled nursing settings as well as outpatients in a campus-based clinic on the grounds of the Lutheran Home in Arlington Heights, Illinois.

3. Through my specialized knowledge, skill, training, experience, and education, I am familiar with the standard of care applicable to the medical and nursing care and treatment that was provided to Myrtle Brooks while she was a resident of Wyant Woods Care Center, including the psychiatric care she received during her admission between May 2016 and August 2017.

4. I have reviewed the medical records reasonably available to the Estate of Myrtle Brooks concerning the allegations of negligence causing her death.

5. To a reasonable degree of medical probability, it is my opinion that the medical and nursing care and treatment provided to Myrtle Brooks by the medical and nursing staff of Wyant Woods Care Center and Renga Pakeeree, M.D. were below the standard of care and caused Ms. Brooks' injuries and death.

6. By way of background, Ms. Brooks was admitted to Wyant Woods Care Center in May 2016. Ms. Brooks was admitted with—among other diagnoses—dementia and was frequently noted to have confusion, poor judgment, and agitation. These memory and emotional disturbances were in addition to her physical limitations, including weakness, need for physical assistance when ambulating or transferring, and frequent wheelchair use.

7. Ms. Brooks had numerous risk factors for falling and any reasonably trained nursing or medical provider would have recognized that Ms. Brooks was a high fall risk. The records reveal that Wyant Woods staff did not appreciate these significant risk factors, despite Ms. Brooks' numerous falls while under their care.

8. Falls pose a significant and serious risk of injury to the elderly and are a major cause of serious accidental injury and death. It is incumbent on long-term care centers like Wyant Woods to provide appropriate assessments, reassessments, and interventions to prevent falls and injuries related to falls.

9. Wyant Woods Care Center's care was deficient for numerous reasons, including but not limited to the following:

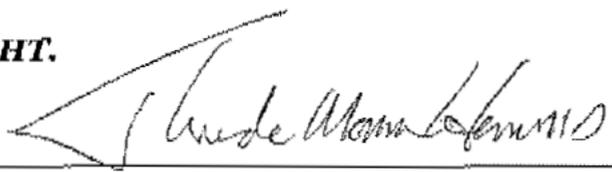
- a. Wyant Woods Care Center failed to appropriately assess and reassess Myrtle Brooks for her risk of falling, and she should have been considered a high fall risk and appropriate interventions put in place rather than a moderate fall risk as is documented in the records.
- b. Wyant Woods Care Center failed to use appropriate interventions to reduce Ms. Brooks' risk of falling.
- c. Wyant Woods Care Center failed to appropriately train its staff on how to assess residents for risk of falling, implement appropriate fall prevention interventions, and interact with and address agitated dementia patients.
- d. Wyant Woods Care Center was insufficiently staffed to meet the care needs of its resident population, including Ms. Brooks.
- e. Wyant Woods Care Center failed to appropriately address ms. Brooks' dementia and dementia-related behavior.

10. Each of the above the violations of the standard of care was a direct cause of Ms. Brooks' falling on numerous occasions, including the final fall on August 4, 2017, which caused Ms. Brooks' death.

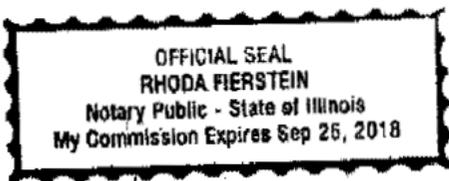
11. The Summit County Ohio Medical Examiner Dr. Lisa Kohler, M.D. determined that Ms. Brooks' death was caused by the fractured left femur Ms. Brooks suffered in the August 4, 2017 fall at Wyant Woods. I agree with Ms. Kohler's determination.

12. In light of Ms. Brooks' numerous prior falls, it can only be said that as of August 4, 2017 Wyant Woods Care Center and its staff were well aware of Ms. Brooks' likelihood of falling and the substantial risk of serious injury that would occur if additional preventative measures were not taken. Wyant Woods Care Center's failure to intervene was in conscious disregard for the rights and safety of Ms. Brooks with the substantial likelihood of causing serious injury to her.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
THEODORE MORRISON HOMA, M.D.

SWORN TO BEFORE ME and subscribed in my presence this 31<sup>st</sup> day of March 2018.



*Rhoda Fierstein*  
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NOTARY PUBLIC