

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MAIDE, L.L.C. D/B/A GENTLE SPRING  
CARE HOME; SOKHENA K. HUCH;  
MIKI N. TON,

Appellants,

v.

CORINNE R. DILEO AS SPECIAL  
ADMINISTRATOR FOR THE ESTATE  
OF THOMAS DILEO; THOMAS DILEO,  
JR., AS STATUTORY HEIR TO  
THOMAS DILEO; AND CINDY DILEO,  
AS STATUTORY HEIR TO THOMAS  
DILEO,

Appellees,

Supreme Court No.: 81804

District Court No. EA-19-797583-6  
Electronically Filed  
Feb 10 2021 05:14 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**APPELLANTS' APPENDIX VOL II**

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## APPELLANTS' APPENDIX

<b>Number</b>	<b>Date</b>	<b>Document</b>	<b>Volume</b>	<b>Page Number</b>
1.	6/27/2019	Complaint	I	APP. 00001-00010
2.	8/14/2019	Defendants Maide, LLC D/B/A Gentle Spring Care Home, Sokhena K. Huch, and Miki N. Ton's Answer to Plaintiff's Complaint	I	APP. 00011-00018
3.	9/13/2019	Maide, L.L.C., a Nevada limited-liability company d/b/a Gentle Spring Care Home; Sokhena K. Huch, an individual; Miki N. Ton's Motion to Compel Arbitration	I	APP. 00019-00026
4.	9/24/2019	Plaintiffs' Opposition to Defendants Maide, L.L.C., a Nevada limited-liability company d/b/a Gentle Spring Care Home's, Sokhena K. Huch, and Miki N. Ton's Motion to compel Arbitration	I	APP. 00027-00070
5.	10/10/2019	Maide, L.L.C, a Nevada limited-liability company d/b/a Gentle Spring Care Home; Sokhena K. Huch, an individual; Miki N. Ton's Reply in support of Defendants' Motion to Compel Arbitration	I	APP. 00071-00096
6.	01/28/2020	Transcript of Proceedings  Defendants' Motion to Compel Arbitration	I	APP. 00097-00109

7.	4/21/2020	Plaintiff's Motion for Rehearing on Defendants' Motion to Compel Arbitration	I	APP. 00110-00155
8.	4/22/2020	Notice of Entry of Order  Order on Defendants' Motion to Compel Arbitration	I	APP. 00156-00163
9.	5/5/2020	Maide, L.L.C., a Nevada limited-liability company d/b/a Gentle Spring Care Home, and Sokhena K. Huch, and Miki N. Ton's Opposition to Plaintiffs' Motion for Rehearing	I	APP. 00164-00204
10.	5/19/2020	Plaintiffs' Reply in support of Motion for Rehearing on Defendants' Motion to Compel Arbitration	II	APP. 00205-00253
11.	5/26/2020	Transcript of Proceedings  Plaintiffs' Motion for Rehearing on Defendants' Motion to Compel Arbitration	II	APP. 00254-00273
12.	8/14/2020	Notice of Entry of Order  Order Regarding Plaintiffs' Motion for Rehearing on Defendants' Motion to Compel Arbitration	III	APP. 00274-00283
13.	9/14/2020	Defendants' Notice of Appeal	III	APP. 00284-00334

## **CERTIFICATE OF MAILING**

I hereby certify that on this 10th day of February, 2021, I served the foregoing APPELLANTS' APPENDIX VOL. II upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:

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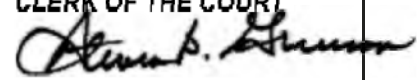
/s/ *Roya Rokni*

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An employee of LEWIS BRISBOIS  
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10



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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CORINNE R. DILEO as Special  
Administrator for the ESTATE OF THOMAS  
DILEO; THOMAS DILEO, JR. as Statutory  
Heir to THOMAS DILEO; and CINDY  
DILEO, as Statutory Heir to THOMAS  
DILEO

Plaintiffs,

vs.

MAIDE, L.L.C, a Nevada limited-liability  
company d/b/a GENTLE SPRING CARE  
HOME; SOKHENA K. HUCH, an individual;  
MIKI N. TON, an individual; DOE  
INDIVIDUALS 1–10, inclusive; ROE  
ENTITIES 11–20, inclusive;

Defendants.

Case No.: A-19-797533-C  
Dept. No.: 1

**PLAINTIFFS' REPLY IN SUPPORT OF  
MOTION FOR REHEARING ON  
DEFENDANTS' MOTION TO COMPEL  
ARBITRATION**

**Hearing Date: May 26, 2020**  
**Hearing Time: 9:00 AM**

Plaintiffs Corinne R. DiLeo, as Special Administrator for the Estate of Thomas DiLeo,  
Thomas DiLeo, Jr., as Statutory Heir to Thomas DiLeo, and Cindy DiLeo, as Statutory Heir to  
Thomas DiLeo (collectively, "Plaintiffs"), by and through their counsel of record, Jamie S.  
Cogburn, Esq. and Hunter S. Davidson, Esq. of Cogburn Law, hereby file their Reply in Support  
of Motion for Rehearing on Defendants' Motion to Compel Arbitration ("Reply").

This Reply is made and based upon the following Memorandum of Points and Authorities, the papers and pleadings on file herein, the exhibits attached hereto, and any oral argument this Court may entertain at the time of hearing on this matter.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiffs' underlying Motion respectfully submits that the Court's Order compelling Plaintiff Corrine R. DiLeo's Special Administrator claims into binding arbitration is clearly erroneous and, therefore, should be reheard. In addition to creating an additional, unnecessary use of resources, compelling the Special Administrator claims into binding arbitration runs contrary to NRS 597.995(1) and the *Fat Hat* Court's interpretation of the same. As demonstrated below, when the subject agreement and binding arbitration provision are compared to those agreements analyzed in *Fat Hat*, there can only be one conclusion: the subject binding arbitration provision does not satisfy NRS 597.995(1) and, therefore, is void and unenforceable.

### **II. LEGAL ARGUMENT**

#### **A. The Special Administrator's claims should not be compelled into binding arbitration because the arbitration provision was not specifically authorized as required by NRS 597.995(1) and *Fat Hat*.**

In their Opposition, Defendants contend that Plaintiff Corinne DiLeo's<sup>1</sup> signature on the separate "Bella Estate Care Home Resident Agreement Addendum"<sup>2</sup> amounts to specific authorization to the binding arbitration provision contained therein.<sup>3</sup> This analysis is inconsistent with the plain language of NRS 597.995 and *Fat Hat, LLC v. DiTerlizzi*, 385 P.3d 580 (Nev. 2016).

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<sup>1</sup> Plaintiff Corinne DiLeo executed all relevant documents pursuant to a power of attorney for Decedent Thomas DiLeo.

<sup>2</sup> See "Bella Estate Care Home Resident Agreement Addendum, attached hereto as **Exhibit 1**; see also Admission Agreement, attached hereto as **Exhibit 2**.

<sup>3</sup> See Defendants' Opposition to Plaintiffs' Motion for Rehearing, at pp. 4–5.

As outlined in Plaintiff's Motion, NRS 597.995(1) explicitly states:

[A]n agreement that includes a **provision** which requires a person to submit to arbitration any dispute arising between the parties to the agreement **must include specific authorization for the provision** which indicates that the person has affirmatively agreed to **the provision**.

(emphasis added).

In *Fat Hat, LLC v. DiTerlizzi*, the Nevada Supreme Court reviewed NRS 597.995(1) and upheld its strict interpretation. In *Fat Hat*, six plaintiffs challenged the validity of the binding arbitration provisions in their employment contracts, arguing that the provisions did not satisfy NRS 597.995(1)'s specific authorization requirement. 385 P.3d 580, at \*1 (Nev. 2016). For four of the six plaintiffs, the employment contracts were largely the same—they each included twenty-one, individually-numbered provisions. *See* Independent Contract Agreements for Michelle DiTerlizzi, Monica Klus, Sophia Monica, and Burgendy Kirtz, attached hereto as **Exhibits 3, 4, 5, and 6**, respectively. The last provision (i.e. the twenty-first) concerned binding arbitration and was immediately followed by a signature line. *Id.* As to these four employment agreements, the Nevada Supreme Court found that the signature line that followed the binding arbitration provision was a general signature line for the entire employment contract. 385 P.3d 580, at \*2. As such, the binding arbitration provision lacked NRS 597.995's specific authorization and was, therefore, void and unenforceable:

[T]he contracts for respondents DiTerlizzi, Klus, Monica, and Kirtz did not contain the "specific authorization" for the arbitration provision in their respective contracts that NRS 597.995 demands. Though the arbitration provision immediately preceded the signature line on the last page for all the contracts, that was a general signature line indicating consent to all the terms of the contract. Thus, those signatures do not qualify as specific authorizations for the arbitration provision. Although Kirtz initialed at the bottom of the page with the arbitration provision, she initialed at the bottom of every page; thus, her initials fail to demonstrate that she affirmatively agreed to the arbitration provision. Because Fat Hat's contracts with respondents DiTerlizzi, Klus, Monica, and Kirtz failed to include the specific authorization NRS 597.995 requires, the arbitration provisions in those four contracts are void and unenforceable, and we affirm the district court's order denying arbitration as to them.

1 385 P.3d 580, at \*2.

2 The remaining two plaintiffs executed separate arbitration agreements. *See* Arbitration  
3 Agreements for Megan Hebert and Plamena Mihaylova, attached hereto as **Exhibits 7 and 8**,  
4 respectively. As to these two plaintiffs, the *Fat Hat* Court held that the arbitration agreements were  
5 enforceable because, in addition to a signature line at the end of each arbitration agreement, both  
6 plaintiffs were required to write their name and address explicitly stating the arbitration agreement  
7 was effective:

8 Respondents Hebert and Mihaylova, on the other hand, signed identical  
9 “Arbitration Agreement[s]” with Fat Hat that complied with NRS 597.995. **In**  
10 **addition to a signature line at the end of the contracts, both Hebert and**  
11 **Mihaylova were required to fill in their names and addresses in the blank**  
12 **spaces of the provision, explicitly stating that the agreement to arbitrate was**  
13 **effective.** Thus, the arbitration provisions in Hebert and Mihaylova's arbitration  
14 agreements are valid and enforceable.

12 385 P.3d 580, at \*2 (emphasis added).

13 Here, Plaintiffs should not be compelled to binding arbitration because the arbitration  
14 provision within the “Bella Estate Care Home Resident Agreement Addendum” is not specifically  
15 authorized in accordance with NRS 597.995(1) and *Fat Hat*. The “Bella Estate Care Home  
16 Resident Agreement Addendum” faces the same flaw as the four employment contracts with  
17 arbitration provisions voided by the *Fat Hat* Court—it merely includes a general signature line  
18 below the arbitration provision rather than specific authorization that the arbitration provision is  
19 effective.

20 *Fat Cat*’s analysis in upholding the two separate arbitration agreements further  
21 demonstrates why the arbitration provision within the “Bella Estate Care Home Resident  
22 Agreement Addendum” is unenforceable. Specifically, the arbitration agreements upheld by *Fat*  
23 *Cat* included both a general signature line at the end *and* specific authorization in that “[the  
24 plaintiffs] were required to fill in their names and addresses in the blank spaces of the **provision**,  
25 explicitly stating that the agreement to arbitrate was effective.” (emphasis added). To reiterate, the

1 “Bella Estate Care Home Resident Agreement Addendum” lacks specific authorization; it only has  
2 the general signature line at the end. As such, the “Bella Estate Care Home Resident Agreement  
3 Addendum” does not comply with NRS 597.995(1) and the Special Administrator’s claims should  
4 not be compelled into binding arbitration.

5  
6 **B. The Special Administrator’s claims should not be compelled into binding**  
7 **arbitration because the arbitration provision does not comply with NRS**  
8 **597.995(1), regardless of whether the Court applies strict or substantial**  
9 **compliance.**

10 In their Opposition, Defendants further contend that the arbitration provision within the  
11 “Bella Estate Care Home Resident Agreement Addendum” is enforceable because Defendants  
12 “substantially complied”—rather than “strictly complied”—with NRS 597.995(1).<sup>4</sup> This argument  
13 runs contrary to *Fat Hat* and other Nevada Supreme Court decisions regarding statutory  
14 compliance.

15 As Defendants note, typically “time and manner” requirements must be strictly construed,  
16 while “form and content” requirements may be substantially construed. *Pawlik v. Shyang-Fenn*  
17 *Deng*, 134 Nev. 83, 89, 412 P.3d 68, 73 (2018). However, contrary to Defendants’ assertions,  
18 substantial compliance is insufficient if the subject statute or provision implicates notice. *See id.*  
19 (“[D]irectory provisions are those governing ‘form and content,’ which ‘dictate who must take  
20 action and what information that party is required to provide” **and ‘do not implicate notice.’**”)  
21 (emphasis added); *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664–65, 310 P.3d 569,  
22 572 (2013) (“**Because they do not implicate notice**, form and content-based rules are typically  
23 directory and may be satisfied by substantial compliance.”) (emphasis added). Surely, the Nevada  
24 Supreme Court has made exceptions, *see Las Vegas Plywood & Lumber, Inc. v. D & D Enterprises*,  
25 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982) (holding that substantial compliance was adequate

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<sup>4</sup> See Defendants’ Opposition to Plaintiffs’ Motion for Rehearing, at pp. 5–6.

1 for the limited purpose of a notice of mechanic’s lien, as provided under NRS 108.227), but the  
2 general rule is that statutes/provisions that implicate notice demand strict compliance. *Pawlik*, 134  
3 Nev. at 89, 412 P.3d at 78; *Markowitz*, 129 Nev. at 664–65, 310 P.3d at 572.

4 While Defendants are partially accurate in stating “NRS 597.995’s plain objective is to  
5 ensure that a signatory receives adequate notice . . . [of] an arbitration agreement,”<sup>5</sup> the plain  
6 language of NRS 597.995 and *Fat Hat*’s interpretation of the same shows the objective runs  
7 deeper. Specifically, it is not enough that a separate arbitration agreement is just signed; rather, if  
8 there is specific provision—even if it is within a greater arbitration agreement—that compels  
9 arbitration for “any dispute,” then *that provision* must be specifically acknowledged. *See* NRS  
10 597.995(1); *Fat Hat*, 385 P.3d 580, at \*2 (“In addition to a signature line at the end of the  
11 [arbitration] contracts, both [Plaintiffs] were required to fill in their names and addresses in the  
12 blank spaces of the provision, explicitly stating that the agreement to arbitrate was effective.”).

13 Here, Plaintiffs should not be compelled to binding arbitration because the arbitration  
14 provision within the “Bella Estate Care Home Resident Agreement Addendum” is not specifically  
15 authorized in accordance with NRS 597.995(1) and *Fat Hat*, regardless of whether this Court  
16 applies strict or substantial compliance. The flat reading of *Fat Hat*’s interpretation of NRS  
17 597.995(1) could not be clearer: general signature lines are insufficient, provisions compelling  
18 “any dispute” must be accompanied by specific authorization that, that provision is effective. This  
19 specific authorization is missing from the “Bella Estate Care Home Resident Agreement  
20 Addendum” and, therefore, the arbitration provision is void and unenforceable.

21 ///

22 ///

23 ///

24

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25 <sup>5</sup> *Id.* at p. 6, l. 2.

1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request the Court rehear Defendants'  
3 Motion to Compel Arbitration.

4 Dated this 19<sup>th</sup> day of May, 2020.

5 COGBURN LAW

6  
7 By: /s/Hunter S. Davidson  
8 Jamie S. Cogburn, Esq.  
9 Nevada Bar No. 8409  
10 Hunter S. Davidson, Esq.  
11 Nevada Bar No. 14860  
12 2580 St. Rose Parkway, Suite 330  
13 Henderson, Nevada 89074  
14 *Attorneys for Plaintiffs*  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR REHEARING ON DEFENDANTS' MOTION TO COMPEL ARBITRATION** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 19<sup>th</sup> day of May, 2020.

I further certify that I served a true and correct copy of the foregoing document as follows:

☒ Pursuant to NEFCR 9 & EDCR 8.05(a), electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:

John Orr, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH  
6385 S. Rainbow Blvd., Ste. 600  
Las Vegas, NV 89118  
*Attorney for Defendants*

/s/Elia Barrientos  
An employee of Cogburn Law

# Exhibit 1

## BELLA ESTATE CARE HOME

### Resident Agreement Addendum

#### Grievance and Arbitration

1. **Grievances:** Resident may voice reasonable grievances about services rendered by staff or other personnel and the Home shall record such grievances upon request to do so. In the event of a written grievances, the Home shall investigate it and make written reply to residents of the Home's findings with a reasonable period thereafter.

2 **Arbitration:** Any controversy, dispute or disagreement, whether sounding in tort or contract to law, arising out of or relating to this Agreement, the breach thereof, or the subject matter thereof, shall be settled exclusively by binding arbitration, which shall be conducted in (City, State) in accordance with American health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and which to the extent of the subject matter of the Arbitration, shall be binding of all parties to the agreement and judgment on the award rendered by the arbitrator maybe entered in any court having jurisdiction thereof. The parties shall agree upon a sole arbitrator of their choice and if they cannot agree on a single arbitrator there shall be three arbitrators with the neutrals arbitrator chosen by the parties' nominated arbitrators.

Corinne R. D. Co  
Resident Responsible Party

11/30/2015  
Date

A  
Resident Responsible Party

1/30/15  
Date

# Exhibit 2

## ADMISSION AGREEMENT

This is a adult group care Facility licensed by the Bureau of Licensure and Certification.

Facility shall provide the following basic services:

Thomas Dileo 052 28 4390 8/15/2034  
Name of Resident Social Security # Date of Birth

### 1) ADMISSIONS:

- a) Admissions to this facility are accorded to residents without discrimination because of race, creed, color, religion, or national origin.
- b) It is hereby understood and agreed upon that the resident's age, pre-admission appraisal information, emergency information, financial information, health history, physician's report, and any other misrepresentation or omission by the resident or responsible party shall render this agreement voidable at the option of the facility, with appropriate notice. In any time, the facility may request an updated copy of the above forms. The facility maintains the right to legal recourse for damages to misrepresentation during admission.

### 2) BASIC GENERAL SERVICES:

- a) Room: Private ☒ Semi-Private ☐
- b) Food Service: Three Nutritious meals daily. We have snack available for all residents but we serve formal setting snack in the afternoon only. Snacks maybe limited as per diet requirement of the individual. A fruit tray is available in the counter for anyone anytime during the day.

- c) Laundry Service: Facility is not responsible for dry cleaning & any other special laundering needs of the resident.
- d) Cleaning of the resident's room.
- e) Comfortable twin size bed. Linens changed bi-weekly or as often as needed.
- f) Bedside care for minor temporary illnesses.
- g) The facility will not be responsible for any cash resources and other belongings not entrusted to the facility. At the time of admission, facility shall provide Theft & Loss Policy.
- h) The facility maintains to contact the resident physician or in his absence an alternate physician or the paramedics at the expense of the resident. All expenses incurred shall be the resident's responsibility.
- i) If the resident becomes afflicted with a contagious disease or sustained an illness that would jeopardize the safety & health of the residents and the facility, or for which the facility is not allowed to provide care, the facility shall have the authority to relocate the resident to a hospital or an appropriate placement for such care at the expense of the resident or the resident's representative.

3) **ACCOMMODATIONS:**

- a) Furnishings such as twin size bed, dresser drawer, small chair and night stand shall be provided by the facility. The resident is permitted to personalize their individual accommodations by decorating and providing their own furnishings
- b) The resident agrees not to change the lock of said premises without prior consent of the facility.

4) **OPTIONAL SERVICES:** Other optional services may be agreed upon. The family shall be responsible for the payment of optional services.

- a) Cable TV.
- b) Incontinence & Skin Care Supplies (diapers, bed pads, creams, etc)
- c) First Aid Supplies – Minor wound creams, etc
- d) Beauty or Barber Shop
- e) Long Distance Phone Call – Clients may have telephone or cable TV on their own room at the resident's expense.
- f) Nourishment (Ensure, etc as ordered by the physician)

5) **MONTHLY COST:**

The monthly fee for basic services is \$ 1200, pro-rated on a daily basis, to be paid in advance by the 1<sup>st</sup> of each month. Bills not paid by the 5<sup>th</sup> of the month will be assessed a \$ 25.00. Habitual late payment (up to 3x) shall be a ground for eviction. A deposit of 30 days and first month rent shall be required on admission.

6) **OTHER FEES:**

A one time fee of \$250.00 for set up and administrative fee shall be assessed and payable on admission. This is non refundable regardless of how long the clients stay at the facility.

7) **REFUND POLICY:**

- a) The resident is required to give 30 days written notice of intent to move.
- b) Tenancy with ( Gentle Spring ) is a MONTH to MONTH tenancy; therefore resident/responsible party is completely responsible for the entire month whether resident leaves before the month is over for any reason such as HOSPITALIZATION, RELOCATION TO A NURSING HOME, RELOCATION TO ANOTHER GROUP CARE FACILITY, GOING ON VACATION, and AND DEATH.

8) **TEMPORARY ABSENCE:**

In cases of temporary absence the monthly rate remains the same. In case of absence due to hospitalization, family vacation or any other reason, daily rate will continue to incur until the resident's belongings are removed from the room.

9) **RATE INCREASES:**

The facility shall notify the resident 30 days prior to any change in the residents monthly rate as assessed that may be due to change in level of care and or other needs not determined during pre-placement.

10) **EVICTIOIN PROCEDURE:**

- a) The licensee/administrator upon 30 days written notice to the resident, evict the resident for any of the following reasons:
  - i) Non-payment of monthly fee within 5 days of the due date.

- ii) Failure of the resident to comply with state or local law after receiving written notice of the alleged violation.
- iii) Failure of the resident/representative to comply with the facility's policies and/or House Rules as signed on admission. The facility retains the right to revise the House Rules as needed to ensure safe and efficient services; the resident agrees to abide by the House Rules and any of its revisions.
- b) The licensee or administrator of the facility, upon obtaining written and/or documented telephone approval from the licensing agency, evict the resident upon 3 days written notice to quit. The licensing agency may grant approval for the eviction upon finding a good cause. 'Good cause' is engaging in a behavior which is a threat to the mental and physical health and safety to himself or to the other residents or to the staff.

**11) RESIDENT'S NEEDS:**

If a re-evaluation of a resident indicates that we were unable to provide appropriate care provided to applicable regulations, the resident and/or his representative will be notified and given ample time to relocate with a minimum of 15 days written notice.

**12) VISITING POLICY:**

The Visiting hours shall be ~~1000~~am to ~~7~~pm. Otherwise; advance arrangement with the facility may be needed. The Right to Privacy will be observed at all times, therefore, visiting in a shared room may not be allowed. Visitors are requested to sign the Visitor's Log Book. Resident and/or representative should log out when they are going out and should log in when they return in the Resident Absence Log Book.

- 13) PAYEE:** is the responsible party for paying the basic monthly rate. The above listed person shall make sure they or the resident:

- a) Pays the monthly fee by the first of the month
- b) Cooperate with the House Rules of the facility.

**14) FUNDING SOURCE:**

The resident's funding source is: Private ☒

Government ☒

WEAKC



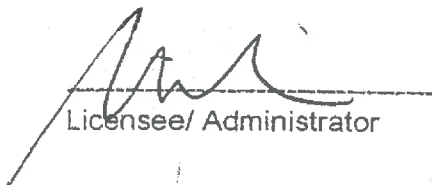
**15) INSPECTION RIGHTS:**

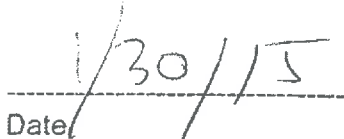
The BLC, licensing agency, to ensure the best of care the facility is providing them has the right to interview the resident and inspect the resident's record.

**16) COMPLAINT PROCEDURE:**

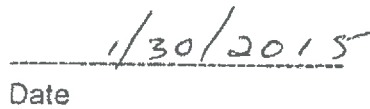
Should there be a problem or questions, the administrator could be contacted on the house or cell phone. Administrator may then suggest a meeting to discuss and resolve questions in the facility.

The licensee and resident or responsible party shall comply with all terms and conditions set forth in this agreement. My signature below as a resident or authorized representative indicates that I have read, or had read and explained to, the provisions of this agreement, and enter this agreement voluntarily.

  
\_\_\_\_\_  
Licensee/ Administrator

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Responsible Party

  
\_\_\_\_\_  
Date

## NO REFUND POLICY

I, Corrine Dileo (Resident), AND / OR Corrine Dileo Responsible Party) acknowledged the receipt of the Admission Contract, dated \_\_\_\_\_ Initial

cdl "NO REFUND POLICY" do not apply on the **SECURITY DEPOSIT**.

cdl The "NO REFUND POLICY" is binding upon the Heirs, Relatives, Assigned Friends, and Successors in interest to the parties.

cdl Tenancy with the group care facility is a **MONTH TO MONTH** Tenancy, therefore you are completely responsible for the entire month whether you leave before the month is over. In short, **NO REFUND** will be given for the remaining days of the month whether having left the facility due to **HOSPITALIZATION, RELOCATION TO A NURSING HOME, RELOCATION TO ANOTHER GROUP CARE FACILITY, GOING ON VACATION, OR DEATH**, or any other circumstances.

cdl No verbal agreements will enter into this written agreement.

By signing below, I (WE) acknowledge the No Refund Policy. The facility has fully explained to me or us the terms and conditions of the Admission Contract. It is very clear and explicit, **NO REFUNDS, NO EXCEPTIONS**. I (WE) have read, understood, and agreed to all the terms mentioned above.

Corrine R Dileo  
Signature of Resident or Responsible Party  
(Guardian, Guarantor, Conservator, or POA)

30/15  
Date

Corrine Dileo  
Print Name

[Signature]  
Facility Administrator

30/15  
Date

NO REFUND POLICY

## Facility Policy

Resident shall not be segregated or restricted on the grounds of race, color or National origin. (Non-discrimination policy is posted in the facility)

Residents admitted must:

- a. Have the physical and cognitive capabilities that meet the standards under which the facility is licensed.
- b. be at least 18 years of age
- c. be free of active TB
- d. not require restraint (either physical or chemical)
- e. not be required to be confined in locked quarters
- f. not require 24 hr. skilled nursing or medical supervision

The residential facility shall maintain conditions in which the residents may exercise the following rights:

- a. To be free from abuse, neglect and exploitation on the part of residential facility staff
- b. To be free from abuse and exploitation the part of other residents or visitors.
- c. To speak with advocates.
- d. To be treated with respect and dignity.
- e. To live in a safe and comfortable environment.
- f. Freedom to have social interaction and communication that are without restriction and to engage in private conversation.
- g. To be able to lodge a complaint or grievance and receive a response in a timely manner.
- h. To initiate an advance directive and/or power of attorney for healthcare decisions and to have the wishes contained in such documents complied.

All grievances shall be directed to the administrator and shall be responded to shortly. The facility shall maintain a record of grievances and the facility's response to the resident shall be documented.

Residents shall be the opportunity to attend religious services of his/her choice and participate in person and pastoral counseling.

Residents will be allowed to enter or leave the facility at any time (depending on Physical and mental abilities) and with prior notice to facility staff.

Residents allowed to rest in their room as desired.

Activities suited to resident interests and capabilities will be provided. Residents shall be encouraged to contribute to the planning activities.

Protective supervision and adequate staffing will be provided for residents at all times.

Residents to receive their own mail.

Evacuation plan will be posted in the facility and understood by employees and residents.

All residents will be instructed regarding the facility's evacuation procedures.

Resident signature: Lawrence R. Di Gen

Administrator signature: [Signature]

Facility Policies

Page 2

A list of emergency numbers will be posted by the facility telephone.  
(Fire Dept, paramedics (911) and physicians).

Residents admitted will have doctor statement describing their physical and medical conditions, medications and ambulating status.

Resident's personal physician will be notified in case of illness, injury or accident. This will be recorded in the resident file.

A written record of all accidents, injuries and illnesses of residents will be kept.

A temporary illness may be cared for in this facility if approved by the doctor.

The resident doctor must approve all medication, including over-the-counter meds.

All medication will be kept in the original container.

All ongoing list of meds taken and/or discontinued will be on file. An individual record will be kept daily to ensure that the resident has taken medication as prescribed.

The prescription bottle will identify the frequency of the medication. Changes in frequency will be documented in the file and validated by the doctor.

Refrigerated medications with resident name, kept in locked box.

Discontinued meds flushed into the toilet. This is documented in the resident's med record and signed by the administrator and a witness.

A current state license will be posted to validate compliance with state requirements for Group Care Home.

Ramps will be provided at exits for residents who use wheelchairs. Accessible bathrooms and bathing facilities will be provided for residents with wheelchairs or walkers.

Caregivers all trained in first aid and CPR. At least one caregiver on duty at all times.  
First aid kit available in the facility.

Laundry done on a daily basis.

An adequate linen supplies always available for weekly linen changes or more if necessary.  
Clean towels and washcloths provided for each bath.

Meal times are at follows: Breakfast: 7:30 am  
Lunch: noon  
Dinner: 5:00 PM

Snacks provided midafternoon and evening.

Telephone available for the residents use, local calls only.

Smoking permitted OUTSIDE ONLY.....

Facility Policies  
Page 3

Visiting hours are 6:00 AM to 7:00 PM.

Supervision provided at all times for residents at the facility.

I have read the facility policies.

Corrine R. Dyer  
Resident or Responsible Party

1/30/15  
Dated

[Signature]  
Administrator

1/30/15  
Dated

### **Resident's Money and Personal Property Notice**

This facility will not be responsible for money or personal property. We suggest that the resident keep no more than \$50.00 in the facility. No employee shall keep any personal belongings or money for any resident.

This facility will make arrangements for any resident to go to his/her bank or ATM machine to withdraw needed funds during normal business hours on each business day.

If a member of the staff of this facility receives a request from a resident to make a withdrawal of money in such an amount that the member of the staff has reason to believe the resident is being or has been exploited, the member of the staff shall report the transaction to:

**DIVISION OF AGING SERVICES, THE WELFARE DIVISION, CLARK COUNTY  
SENIOR PROTECTIVE SERVICES OR THE METROPOLITAN POLICE  
DEPARTMENT OF LAS VEGAS.**

The Administrator, Owner or Staff member shall not accept appointment as a guardian or conservator of the estate of any resident, become a substitute payee for any payments made to any resident or accept an appointment as attorney in fact for any resident.

If a resident whose only source of income is in the form of monthly checks is legally determined to be unable to manage this money and documentary evidence can be produced showing that efforts to obtain a legal guardian have failed, the facility will no longer be able to provide care for the resident.

**NO MONEY WILL BE HELD BY THIS FACILITY ON BEHALF OF ANY  
RESIDENT.**

**NO RESIDENT SHALL LEND MONEY TO AN EMPLOYEE OF THIS FACILITY.  
NO EXCEPTIONS!**

  
\_\_\_\_\_  
Signature of Resident/Responsible Party

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Administrator's Signature

  
\_\_\_\_\_  
Date

# Exhibit 3

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR FAT HAT, LLC d/b/a 1923 Bourbon & Burlesque**

THIS AGREEMENT, dated 5/23/14, is entered into between Fat Hat, LLC d/b/a 1923 Bourbon & Burlesque, a limited liability company organized and existing under the laws of the State of Nevada, (hereinafter referred to as "Company"), and Michelle DiTerlizzi (hereinafter referred to as "Independent Contractor" or "Artist").

WHEREAS, Independent Contractor is in the business of providing services as a ~~clapper, entertainer~~ and performing artist ("Services"); Company is engaging the services of Independent Contractor to provide such services because of his or her specific Services; and

WHEREAS, Company and Awesometown, Inc. desires to enter into this Agreement for the non-exclusive retention of Independent Contractor to provide the Services for the benefit of Company and its performance show "Bourbon and Burlesque" (the "Show") at the Company's location known as "1923" (the "Venue"), located at the Shoppes at Mandalay Place in the Mandalay Bay Hotel & Casino in Las Vegas, Nevada, under the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Duration. Company shall retain Independent Contractor and Independent Contractor shall perform non-exclusive services as an independent contractor, and not as an employee, for Company. The Agreement shall become effective on March 1st, 2014, and may be terminated at any time by either party, with or without prior notice.
2. Nature of Work. In performing the services, Independent Contractor and Company acknowledge and agree to the following rights and duties consistent with an independent contractor relationship:
  - a. Company will not dictate the hours for Independent Contractor's work performance except for the mandatory rehearsals and Show performance schedule. The hours Independent Contractor works on any given day will be entirely within Independent Contractor's control and Company will rely on Independent Contractor to work such hours as are reasonably necessary to provide the services;
  - b. Company does not have any right to tell Independent Contractor how to perform such services and the Independent Contractor uses his/her sole discretion to determine the manner or method for completing the services, provided however, the Independent Contractor will be provided guidance for the Services by Company and Awesometown;
  - c. Company will not expect oral or written reports from Independent Contractor regarding the manner or method in which services are performed;
  - d. Company understands that the services contracted for may be performed by Independent Contractor or Independent Contractor's employees (if any);
  - e. Independent Contractor shall perform all the services required by this Agreement for Company according to the usual and customary standards of care in his or her trade or profession;
  - f. Company shall not hire, supervise, or pay any assistants to help Independent Contractor; and





2. Independent Contractor shall not receive any training from Company in the skills necessary to perform the services required by this Agreement;

3. Availability to the Public. Independent Contractor and Company acknowledge and agree that Independent Contractor's services are available to the general public and Independent Contractor retains the right to perform services for others during the term of this Agreement.

4. Terms of Payment. Independent Contractor will be paid an amount determined by Company and Awsumbtown, Inc. for services in connection with rehearsals and performances.

5. Independent Contractor Status. The parties of this Agreement intend that the relationship between them created by this Agreement is that of a Company and an independent contractor. Independent Contractor is not an employee of Company and agrees not to hold himself or herself out to any Customer of the Company as an employee of Company. Company shall have no obligation for the withholding of income taxes or the payment and/or withholding of social security and other payroll taxes, workers' compensation, disability benefits, medical benefits, unemployment insurance, retirement benefits or any other benefits provided by Company, on its own accord or pursuant to law, to its employees. Independent Contractor holds or has applied for a federal employer identification number.

6. Indemnification. In addition to the services in the preceding paragraph 5, Independent Contractor agrees to indemnify and hold harmless Company for any liabilities, claims, or demands (including any costs, expenses, or attorneys' fees incurred on account thereof) that may be made on Company as a consequence of or arising from actions or omissions of Independent Contractor or Independent Contractor's employees rendering services for Company, including but not limited to negligence, personal behavior, work actions, injuries to persons, damages to property or for workers' compensation benefits. Both parties agree to notify the other of any claim or demand made against them for which the other may be liable.

8. No Company Insurance. Company shall not provide any insurance coverage of any kind for Independent Contractor. Independent Contractor shall maintain in good standing all applicable bond and insurance minimums that may be required by the State of Nevada, and, maintain its business in good standing with the Secretary of State of Nevada.

10. No Partnership, No Franchising, No Joint Venture, No Agency. This Agreement does not create a partnership, franchise or joint venture relationship between Company and Independent Contractor or any agency authority in Independent Contractor to act on Company's behalf. Independent Contractor shall not represent to third-parties that it has authority to bind the Company or act on its behalf.

11. Termination. Both Artist and Company may terminate this Agreement at any time and for any reason. Any intellectual property created for or with Artist while Artist is serving as an independent contractor under this agreement shall remain under Company and Awsumbtown, Inc. ownership and shall not in any way be offered to an outside party to replicate in any manner.

12. Artist's Likeness. The Artist acknowledges and agrees that the Company and Awsumbtown, Inc. may utilize any photographic images or video captures of the Artist for any and all purposes of promoting, advertising, marketing, merchandising or for any other Company's purpose, by any means utilized at the discretion of the Company, during the Term of this Agreement or any time thereafter, in perpetuity, regardless of whether the Artist is still performing for the Venue. The Artist will not receive any additional consideration or remuneration for the Company's use of the Artist's images or video captures.

15. W-9. Artist will complete and deliver an executed W-9 to the Company at the time of executing this Agreement. A copy of a W-9 is attached in this Agreement.



15. **Assignment.** Independent Contractor may not delegate, assign or subcontract any right or obligation under this Agreement, in whole or in part, without Company's prior written approval. Any attempted assignment, without such prior written, approval, shall be void. Company may delegate, assign or subcontract its rights and obligations hereunder to any bona fide business successor.

17. **Entirety of Writing.** No modification or waiver of this Agreement shall be valid unless in writing and signed by both parties. The failure of either party to insist upon the strict and literal performance of any provision of this Agreement shall not be construed a waiver thereof.


18. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Nevada.

19. **Severability.** In the event any portion or portions of this Agreement shall be found to be invalid or unenforceable by a final court of competent jurisdiction, such a finding shall in no way affect the validity or enforceability of the remaining provisions. Such a court shall also have the authority to modify any clause which is void or unenforceable so that the provisions valid under Nevada law.

20. **Entire Agreement.** This entire Agreement between Independent Contractor and Company supersedes any previous agreements and/or understandings of the parties as to the subject matter hereof.

21. **Arbitration.** Any dispute which cannot be mutually resolved by the parties shall be submitted to binding arbitration in the County of Clark, Nevada under the commercial rules of the American Arbitration Association. In the event of a breach of this agreement, the prevailing party obtaining this agreement will be entitled to reimbursement of its attorney's fees, expenses and costs, in whole and in appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

DATE: <u>May 2013</u>	DATE: <u>May 2013</u>
COMPANY:	CONTRACTOR/ARTIST:
FAT KAT, LLC	
aka 1225 Rainbow & Boulder	Name
BY: <u>Edwin Lopez</u>	Fed. ID #
Dr. <u>Marshall</u>	State ID #
	SSN #
	Copy of W-9 Attached

# Exhibit 4



**INDEPENDENT CONTRACTOR AGREEMENT  
FOR FAT HAT, LLC d/b/a 1923 Bourbon & Burlesque**

THIS AGREEMENT, dated May 20, 2014, is entered into between Fat Hat, LLC d/b/a 1923 Bourbon & Burlesque, a limited liability company organized and existing under the laws of the State of Nevada, (hereinafter referred to as "Company"), and MONICA Alexandra KIMS (hereinafter referred to as "Independent Contractor" or "Artist").

WHEREAS, Independent Contractor is in the business of providing services as a dancer, entertainer and performing artist ("Services"). Company is engaging the services of Independent Contractor to provide such services because of his or her specific Services; and

WHEREAS, Company and Awesometown, Inc. desires to enter into this Agreement for the non-exclusive retention of Independent Contractor to provide the Services for the benefit of Company and its performance show "Bourbon and Burlesque" (the "Show") at the Company's location known as "1923" (the "Venue"), located at the Shoppes at Mandalay Place in the Mandalay Bay Hotel & Casino in Las Vegas, Nevada, under the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Duration. Company shall retain Independent Contractor and Independent Contractor shall perform non-exclusive services as an independent contractor, and not as an employee, for Company. The Agreement shall become effective on March 1st, 2014, and may be terminated at any time by either party, with or without prior notice.
2. Nature of Work. In performing the services, Independent Contractor and Company acknowledge and agree to the following rights and duties consistent with an independent contractor relationship:
  - a. Company will not dictate the hours for Independent Contractor's work performance except for the mandatory rehearsals and Show performance schedule. The hours Independent Contractor works on any given day will be entirely within Independent Contractor's control and Company will rely on Independent Contractor to work such hours as are reasonably necessary to provide the services;
  - b. Company does not have any right to tell Independent Contractor how to perform such services and the Independent Contractor uses his/her sole discretion to determine the manner or method for completing the services, provided however, the Independent Contractor will be provided guidance for the Services by Company and Awesometown;
  - c. Company will not expect oral or written reports from Independent Contractor regarding the manner or method in which services are performed;
  - d. Company understands that the services contracted for may be performed by Independent Contractor or Independent Contractor's employees (if any);
  - e. Independent Contractor shall perform all the services required by this Agreement for Company according to the usual and customary standards of care in his or her trade or profession;
  - f. Company shall not hire, supervise, or pay any assistants to help Independent Contractor; and

g. Independent Contractor shall not receive any training from Company in the skills necessary to perform the services required by this Agreement;

3. Availability to the Public. Independent Contractor and Company acknowledge and agree that Independent Contractor's services are available to the general public and Independent Contractor retains the right to perform services for others during the term of this Agreement.

4. Terms of Payment. Independent Contractor will be paid an amount determined by Company and Awesometown, Inc. for services in connection with rehearsals and performances.

5. Independent Contractor Status. The parties of this Agreement intend that the relationship between them created by this Agreement is that of a Company and an independent contractor. Independent Contractor is not an employee of Company and agrees not to hold himself or herself out to any Customer of the Company as an employee of Company. Company shall have no obligation for the withholding of income taxes or the payment and/or withholding of social security and other payroll taxes, workers' compensation, disability benefits, medical benefits, unemployment insurance, retirement benefits or any other benefits provided by Company, on its own accord or pursuant to law, to its employees. Independent Contractor holds or has applied for a federal employer identification number.

6. Indemnification. In addition to the services in the preceding paragraph 5, Independent Contractor agrees to indemnify and hold harmless Company for any liabilities, claims, or demands (including any costs, expenses, or attorneys' fees incurred on account thereof) that may be made on Company as a consequence of or arising from actions or omissions of Independent Contractor or Independent Contractor's employees rendering services for Company, including but not limited to negligence, personal behavior, work actions, injuries to persons, damages to property or for workers' compensation benefits. Both parties agree to notify the other of any claim or demand made against them for which the other may be liable.

8. No Company Insurance. Company shall not provide any insurance coverage of any kind for Independent Contractor. Independent Contractor shall maintain in good standing all applicable bond and insurance minimums that may be required by the State of Nevada, and, maintain its business in good standing with the Secretary of State of Nevada.

10. No Partnership; No Franchise; No Joint Venture; No Agency. This Agreement does not create a partnership, franchise or joint venture relationship between Company and Independent Contractor or any agency authority in Independent Contractor to act on Company's behalf. Independent Contractor shall not represent to third-parties that it has authority to bind the Company or act on its behalf.

11. Termination. Both Artist and Company may terminate this Agreement at any time and for any reason. Any intellectual property created for or with Artist while Artist is serving as an independent contractor under this agreement shall remain under Company and Awesometown, Inc. ownership and shall not in any way be offered to an outside party to replicate in any manner.

12. Artist's Likeness. The Artist acknowledges and agrees that the Company and Awesometown, Inc. may utilize any photographic images or video captures of the Artist for any and all purposes of promoting, advertising, marketing, merchandising or for any other Company's purpose, by any means utilized at the discretion of the Company, during the Term of this Agreement or any time thereafter, in perpetuity, regardless of whether the Artist is still performing for the Venue. The Artist will not receive any additional consideration or remuneration for the Company's use of the Artist's images or video captures.

15. W-9. Artist will complete and deliver an executed W-9 to the Company at the time of executing this Agreement. A copy of a W-9 is attached to this Agreement.



16. Assignment. Independent Contractor may not delegate, assign or subcontract any rights or obligations under this Agreement, in whole or in part, without Company's prior written approval. Any attempted assignment, without such prior written, express consent, shall be void. Company may delegate, assign or contract its rights and obligations hereunder to any bona fide business successor.

17. Modification or Waiver. No modification or waiver of this Agreement shall be valid unless in writing and signed by both parties. The failure of either party to insist upon the strict and literal performance of any provisions of this Agreement shall not be considered a waiver thereof.

18. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Nevada.

19. Severance. In the event any portion or provision of this Agreement shall be found to be invalid or unenforceable by a final court of competent jurisdiction, such a finding shall in no way affect the validity or enforceability of the remaining provisions. Such a court shall also have the authority to modify any clause solely in order to render the provision valid under Nevada law.

20. Entire Agreement. This entire Agreement between Independent Contractor and Company supersedes any previous agreements and/or understandings of the parties as to the subject matter hereof.

21. Arbitration. Any dispute which cannot be amicably resolved by the parties shall be submitted to binding arbitration in the County of Clark, Nevada under the commercial rules of the American Arbitration Association. In the event of a breach of this agreement, the prevailing party enforcing this agreement will be entitled to reimbursement of its attorney's fees, expenses and costs, at trial and on appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

DATE: <u>5/20</u> , 2014	DATE: <u>5/20</u> , 2014
COMPANY:	CONTRACTOR/ARTIST:
FAT HAT, LLC	<u>Monica RIUS</u>
381 1923 Bourbon & Beresque	Name
BY: <u>Robert Gabes</u>	Fed. ID #
Its: <u>Manager</u>	State ID #
	SSN# <u>601 49 0094</u>
	Copy of W9 Attached

# Exhibit 5

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR FAT HAT, LLC d/b/a 1923 Bourbon & Burlesque**

THIS AGREEMENT, dated May 22 2014, is entered into between Fat Hat, LLC d/b/a 1923 Bourbon & Burlesque, a limited liability company organized and existing under the laws of the State of Nevada, (hereinafter referred to as "Company"), and Sophia Monica, (hereinafter referred to as "Independent Contractor" or "Artist").

WHEREAS, Independent Contractor is in the business of providing services as a dancer, entertainer and performing artist ("Services"). Company is engaging the services of Independent Contractor to provide such services because of his or her specific Services; and

WHEREAS, Company and Awesometown, Inc. desires to enter into this Agreement for the non-exclusive retention of Independent Contractor to provide the Services for the benefit of Company and its performance show "Bourbon and Burlesque" (the "Show") at the Company's location known as "1923" (the "Venue"), located at the Shoppes at Mandalay Place in the Mandalay Bay Hotel & Casino in Las Vegas, Nevada, under the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Duration. Company shall retain Independent Contractor and Independent Contractor shall perform non-exclusive services as an independent contractor, and not as an employee, for Company. The Agreement shall become effective on March 1st, 2014, and may be terminated at any time by either party, with or without prior notice.
2. Nature of Work. In performing the services, Independent Contractor and Company acknowledge and agree to the following rights and duties consistent with an independent contractor relationship:
  - a. Company will not dictate the hours for Independent Contractor's work performance except for the mandatory rehearsals and Show performance schedule. The hours Independent Contractor works on any given day will be entirely within Independent Contractor's control and Company will rely on Independent Contractor to work such hours as are reasonably necessary to provide the services;
  - b. Company does not have any right to tell Independent Contractor how to perform such services and the Independent Contractor uses his/her sole discretion to determine the manner or method for completing the services, provided however, the Independent Contractor will be provided guidance for the Services by Company and Awesometown;
  - c. Company will not expect oral or written reports from Independent Contractor regarding the manner or method in which services are performed;
  - d. Company understands that the services contracted for may be performed by Independent Contractor or Independent Contractor's employees (if any);
  - e. Independent Contractor shall perform all the services required by this Agreement for Company according to the usual and customary standards of care in his or her trade or profession;
  - f. Company shall not hire, supervise, or pay any assistants to help Independent Contractor; and



g. Independent Contractor shall not receive any training from Company in the skills necessary to perform the services required by this Agreement;

3. Availability to the Public. Independent Contractor and Company acknowledge and agree that Independent Contractor's services are available to the general public and Independent Contractor retains the right to perform services for others during the term of this Agreement.

4. Terms of Payment. Independent Contractor will be paid an amount determined by Company and Awesometown, Inc. for services in connection with rehearsals and performances.

5. Independent Contractor Status. The parties of this Agreement intend that the relationship between them created by this Agreement is that of a Company and an independent contractor. Independent Contractor is not an employee of Company and agrees not to hold himself or herself out to any Customer of the Company as an employee of Company. Company shall have no obligation for the withholding of income taxes or the payment and/or withholding of social security and other payroll taxes, workers' compensation, disability benefits, medical benefits, unemployment insurance, retirement benefits or any other benefits provided by Company, on its own accord or pursuant to law, to its employees. Independent Contractor holds or has applied for a federal employer identification number.

6. Indemnification. In addition to the services in the preceding paragraph 5, Independent Contractor agrees to indemnify and hold harmless Company for any liabilities, claims, or demands (including any costs, expenses, or attorneys' fees incurred on account thereof) that may be made on Company as a consequence of or arising from actions or omissions of Independent Contractor or Independent Contractor's employees rendering services for Company, including but not limited to negligence, personal behavior, work actions, injuries to persons, damages to property or for workers' compensation benefits. Both parties agree to notify the other of any claim or demand made against them for which the other may be liable.

8. No Company Insurance. Company shall not provide any insurance coverage of any kind for Independent Contractor. Independent Contractor shall maintain in good standing all applicable bond and insurance minimums that may be required by the State of Nevada, and, maintain its business in good standing with the Secretary of State of Nevada.

10. No Partnership; No Franchise; No Joint Venture; No Agency. This Agreement does not create a partnership, franchise or joint venture relationship between Company and Independent Contractor or any agency authority in Independent Contractor to act on Company's behalf. Independent Contractor shall not represent to third-parties that it has authority to bind the Company or act on its behalf.

11. Termination. Both Artist and Company may terminate this Agreement at any time and for any reason. Any intellectual property created for or with Artist while Artist is serving as an independent contractor under this agreement shall remain under Company and Awesometown, Inc. ownership and shall not in any way be offered to an outside party to replicate in any manner.

12. Artist's Likeness. The Artist acknowledges and agrees that the Company and Awesometown, Inc. may utilize any photographic images or video captures of the Artist for any and all purposes of promoting, advertising, marketing, merchandising or for any other Company's purpose, by any means utilized at the discretion of the Company, during the Term of this Agreement or any time thereafter, in perpetuity, regardless of whether the Artist is still performing for the Venue. The Artist will not receive any additional consideration or remuneration for the Company's use of the Artist's images or video captures.

15. W-9. Artist will complete and deliver an executed W-9 to the Company at the time of executing this Agreement. A copy of a W-9 is attached to this Agreement.

16. Assignment. Independent Contractor may not delegate, assign or subcontract any rights or obligations under this Agreement, in whole or in part, without Company's prior written approval. Any attempted assignment, without such prior written, express consent, shall be void. Company may delegate, assign or contract its rights and obligations hereunder to any bona fide business successor.

17. Modification or Waiver. No modification or waiver of this Agreement shall be valid unless in writing and signed by both parties. The failure of either party to insist upon the strict and literal performance of any provisions of this Agreement shall not be considered a waiver thereof.


18. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Nevada.

19. Severance. In the event any portion or provision of this Agreement shall be found to be invalid or unenforceable by a final court of competent jurisdiction, such a finding shall in no way affect the validity or enforceability of the remaining provisions. Such a court shall also have the authority to modify any clause solely in order to render the provision valid under Nevada law.

20. Entire Agreement. This entire Agreement between Independent Contractor and Company supersedes any previous agreements and/or understandings of the parties as to the subject matter hereof.

21. Arbitration. Any dispute which cannot be amicably resolved by the parties shall be submitted to binding arbitration in the County of Clark, Nevada under the commercial rules of the American Arbitration Association. In the event of a breach of this agreement, the prevailing party enforcing this agreement will be entitled to reimbursement of its attorney's fees, expenses and costs, at trial and on appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

DATE: _____, 2014	DATE: <u>XXII</u> <u>24</u> , 2014
COMPANY:	CONTRACTOR/ARTIST:
FATHAY, LLC	
dba 1923 Bourbon & Burlesque	Name _____
BY: <u>Robert Sabes</u>	Fed. ID # _____
Its: <u>Manager</u>	State ID # _____
	SSN # _____
	Copy of W9 Attached

# Exhibit 6



## INDEPENDENT CONTRACTOR ARTIST AGREEMENT

This Independent Contractor Artist Agreement, including the terms and conditions of the Artist Services Agreement attached to this Agreement as Exhibit "A", (collectively, the "Agreement") is entered into this 8 day of April, 2014 (the "Effective Date"), by and between Fat Hat, LLC, d/b/a 1923, a Nevada limited liability company (the "Company" or "Owner") and Burgundy White, an individual (the "Artist"). Company and Artist are sometimes collectively referred to as the "Parties" and individually as a "Party."

### RECITALS

WHEREAS, the Owner, which owns a nightclub, bar and lounge in Las Vegas, Nevada known as "1923" (the "Venue"), located at the Shoppes at Mandalay Place in the Mandalay Bay Hotel & Casino in Las Vegas, Nevada, has retained the services of Holly Madison and her company, Awesometown, Inc., ("Awesometown") for her performance show entitled "Bourbon & Burlesque" to be performed at the Venue; and

WHEREAS, Company, and Awesometown desire to retain Artist to provide artistic performance services at the Venue pursuant to and as set forth more fully in the terms and conditions of the Artist Services Agreement attached to this Agreement as Exhibit "A" (the "Services"); and

WHEREAS, Artist agrees to render Services to Company and Venue on the terms and subject to the conditions of this Agreement; and

WHEREAS, Artist represents and warrants that it has the ability, experience, expertise, and resources to provide the Services requested by Company.

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants and agreements, the Parties agree as follows:

### AGREEMENT

1. Engagement. Company hereby engages Artist to provide the Services. Artist shall have control over the manner and means by which it provides Artist's Services provided however that such Services will be rendered under the supervision of the Venue's Artistic Director, Awesometown, subject to Section 5 of this Agreement below and Exhibit "A". Artist agrees to comply with all applicable statutes, rules, regulations, or ordinances governing Artist's Services including, without limitation, licensing requirements. *NOTE: Artist's engagement pursuant to this Agreement is conditioned upon Artist having the legal right to work in the United States and Artist providing Company with written proof of Artist's legal status and legal right to work.*

2. Relationship of the Parties. The relationship between Company, Awesometown, and Artist shall be that of "independent contractor." Artist specifically recognizes and agrees that Artist shall not be construed as an employee of Company, the Owner or Awesometown. This Agreement also does not create any partnership or joint venture between Company, Awesometown and the Artist, or any other relationship other than client and independent contractor.

3. Limitation of Authority. Artist shall not have any authority to bind Company or the Owner for the payment of any costs or expenses without the express written approval of the CEO or CFO of the Company.

4. Artist's Warranties, Undertakings and Representations. Artist shall perform Artist's duties and discharge Artist's responsibilities diligently and conscientiously, to the best of Artist's ability, to maximize the business interest of Company and Owner. Artist shall utilize all professional techniques and engage in activities normally associated and undertaken by other Artists providing similar Services. Artist warrants and undertakes that there is no legal, commercial, contractual or other restriction that precludes or might preclude Artist from fully performing Artist's obligations under this Agreement.

5. Approval or Disapproval of Artist's Services. Company and Owner reserve the right to reasonably disapprove any portion of Artist's Services. In the event that any of Artist's Services are disapproved by Company or by Venue's Artistic Director Awesometown, Artist shall proceed, when requested by Company or by Venue's Artistic Director, with revisions to the Services to attempt to satisfy the objections. Artist acknowledges that any review or approval by Company or by Venue's Artistic Director of any Services performed by Artist pursuant to this Agreement shall not relieve Artist of Artist's responsibility to properly and timely perform such Services.

6. Compensation. In exchange for the Services to be rendered by the Artist under this Agreement, Artist shall receive the compensation set forth in Exhibit "A".

7. Federal and State Taxes. Company will not withhold nor pay any federal or state income tax, Social Security, or Medicare on Artist's behalf. Artist, therefore, will be solely responsible for the reporting and payment of all applicable federal, state, or local taxes. On reasonable request, Artist will provide Company with proof of timely payment. Artist agrees to indemnify Company and Owner (including Owner's Affiliates, as defined in Exhibit "A") for any claims, costs, losses, fees, penalties, interest, or damages suffered by Company and Owner (including Owner's Affiliates) resulting from Artist's failure to comply with this provision. Company will provide Artist each tax year with a Form 1099 summarizing the value paid for all Services provided by Artist.

8. Unemployment, Workers' Compensation. Except as otherwise set forth in Exhibit "B", Company and Owner will not make any state or federal unemployment compensation payments on behalf of Artist. Company and Owner will not pay nor make any Workers' Compensation insurance payments for Artist. Artist specifically acknowledges and agrees that neither it nor its representatives will be entitled to unemployment compensation benefits or worker's compensation insurance from Company in connection with Services performed under this Agreement.

9. No Other Benefits. Except as specifically set forth in this Agreement, Company and Owner are not responsible for providing and will not provide Artist with any benefits, including but not limited to health insurance, pension benefits or any other benefits Company or Owner might provide to its employees.

10. No Training Provided. Except as otherwise provided in the Artist Services Agreement, Company and Owner provide no training to Artist, and no further training is required beyond the knowledge held by Artist when it entered into this Agreement.



11. Term of Services. Unless earlier terminated in accordance with the provisions of this Agreement, this Agreement shall be for a period which begins on the Effective Date and ends as set forth in Exhibit "A" (the "Term").

12. Termination of Agreement. Except as otherwise set forth in Exhibit "A" to this Agreement, Company may terminate this Agreement by giving Artist written notice of termination at any time prior to the effective date of termination. Company may terminate this Agreement forthwith and without prior notice upon the occurrence of any of the following: (i) Artist breaches any material provision of this Agreement; (ii) Artist engages in dishonesty, theft, fraud, gross negligence, professional misconduct, or in any conduct that is deemed harmful to Company or Owner (including Owner's Affiliates); (iii) Artist fails to perform Artist's Services to the standards and requirements of or engages in misconduct in the performance of such Services, all of such facts to be determined by Company in its good faith judgment; or (iv) Company or Owner discontinues or ceases its business operations; or (v) any violation by Artist of the Section 31 Morality Clause set forth herein below.

- a. Artist hereby expressly waives Artist's rights to claim any damage, cost or expense from Company further to such termination (including without limitation loss of profit and opportunity). Artist hereby acknowledges and agrees that the amount payable under this Section 12, if any, is deemed to represent the full payment of the Consideration payable to the Artist under the terms of the Agreement.
- b. Artist's default: In the event Artist is in default of Artist's obligations and undertakings provided in the Agreement, Company shall have the right, at any time, to terminate the Agreement and the Artist shall not be entitled to the Consideration or any other payment of any nature whatsoever. Without limiting the generality of the foregoing, the inability to obtain, within the deadline required by Company or the inability to maintain a valid passport in accordance with the requirements of the Services is deemed a default of the Artist.
- c. Termination by Artist: In no event may Artist terminate this Agreement, unless Artist possesses physical or mental incapacity to provide the Services to Company's reasonable satisfaction. In the event Artist is incapable to provide the Services, Artist shall notify Company as soon as possible and in such case, Artist shall not be entitled to the Consideration or any other payment of any nature whatsoever.
- d. Artist's Recourse: The Artist acknowledges and agrees that the sole rights and remedies of the Artist under the terms of this Agreement, at law or in equity are: (i) in the event of any material failure by Company to perform its obligations hereunder, of its right to claim from Company any and all damages to remedy the damage caused to it by such a default, if any; or (ii) in the event of any termination of this Agreement, of its right to receive from Company the Consideration as adjusted, as applicable, and any other amount indicated, if any; the Artist expressly waiving any other right, remedy or recourse, in contract, equity or law, including any right to terminate, resolve or otherwise terminate this agreement or to restrain, enjoin or otherwise impair the creation, production, distribution, advertising, publicizing or exploitation of all or part of the Production or any Rights therein, including, in particular, the Intellectual Property.



a. **Survival:** For greater certainty, any termination of this Agreement for any reason whatsoever shall be, in all cases, subject to any grant, assignment (if applicable), authorization, transfer and waiver granted by the Artist in favour of Owner with respect to any Rights under this Agreement.

2. **Force majeure:** None of the Parties hereto shall be in default of performance of its obligations hereunder where such performance is delayed, suspended or prevented as the result of Force Majeure. "Force Majeure" is any cause beyond the control of a Party hereto, which it could not have reasonably foreseen and against which it could not have protected itself, including, but without limitation, any Act of God, strike, partial or complete stoppage of work, lock-out, fire, riot, pandemic, climatic disaster, intervention by civilian or military authorities, acquiescence to the regulations, by-laws or orders of any government authority and acts of war (declared or undeclared). Should an event of Force Majeure affecting the Artist which prevents him from performing the Services persist for a period which may, at the entire discretion of Company, endeavour the high quality of the Production, Company shall have the right to terminate this Agreement. Should Company so terminate the Agreement, Company and the Artist shall be released from any enforceable obligations that are incumbent on them under the terms of the Agreement, and Company shall pay, if any, the Consideration due to the Artist as of the termination date, provided to the Services provided at the date of termination, such amount shall be deemed to be the full payment of the Consideration payable to the Artist under the terms of the Agreement.

13. **Non-Solicitation Covenant.** At all times, the Parties covenant and agree not to, directly or indirectly, interfere with or harm, cause another to interfere with or harm, or attempt to interfere with or harm any relationship the Parties have with any individual or entity, including, without limitation, each of the other party's contractors or independent contractors.

14. **Non-Disparagement.** At all times, the Parties agree that they will not make any disparaging public comments or remarks about one another, including, without limitation, the other Party's current officers, members, managers, employees, representatives, or agents as applicable.

15. **Confidential Information.** Company and Artist recognize and acknowledge that in the course of performing and accepting Services for each other, each may have access to the other's confidential information, or to confidential information of the Owner, concerning its business affairs, finances, properties, method of operations, product plans, identities of licensors, distributors, joint ventures and other data. All such information is hereinafter not already known or in the public through no fault of Company or Owner or Artist shall collectively be referred to as "Confidential Information." For greater clarity, the content of this Agreement shall be deemed Confidential Information. Company and Owner and Artist agree that, except as directed by the other Party, the Parties will keep in strictest confidence, both during the Term of this Agreement and subsequent to termination of this Agreement, and will not during the Term of this Agreement or thereafter disclose or divulge to any person, firm or corporation, or use directly or indirectly, for its own benefit or the benefit of others, any Confidential Information. Except as directed by the other Party, the Parties will not permit any third-party, to examine and/or make copies of any intellectual property, including but not limited to, software, videos, programs, reports or any other materials or documents prepared by Company or Owner and Artist or that come into Company or Owner or Artist's possession or control by reason of Artist's Services hereunder, and that upon termination of this Agreement, Company and Owner and Artist will return to the other Party all Confidential Information it obtained during the performance of this Agreement.



16. Disclosure of Confidential Information Compelled by Law. In the event that Company or Owner or Artist becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigation demand, other demand or request by governmental agency or the application of statutes, rules and regulations under the federal securities laws or otherwise) to disclose any Confidential Information, the Party being compelled to produce shall provide Company and Owner and Artist with prompt written notice of such requirement prior to such disclosure to allow Company and Owner and Artist to seek a protective order or other remedy. In the event that a protective order or other remedy is not obtained, or that Company or Owner or Artist waives, in writing, compliance with the provisions hereof, Company and Owner and Artist agrees to furnish only that portion of Confidential Information that Company and Owner and Artist reasonably believes is legally required to be furnished.

17. Use of Trade Names and Trademarks. Artist's use of any trademark, trade name, service mark, insignia, slogan, emblem, symbol, design or other identifying characteristic owned by or associated with Company and Owner (including Owner's Affiliates) (collectively "Marks") shall be subject to the written approval of Company and Owner. Artist acknowledges that the use of such Marks by Artist is granted at the absolute discretion of Company and Owner, and such use shall terminate immediately upon written notice from Company and Owner. The use of any Marks in any advertising or any promotional material shall be subject to the prior approval of Company and Owner. Except as specifically authorized by this Agreement, Artist agrees to not use Marks or to imitate or infringe upon any of Marks in whole or in part. On the termination of this Agreement, Artist shall forthwith cease any use of such Marks in any advertising and promotional material. Artist shall take all actions that are necessary to maintain goodwill and reputation and agrees to cease utilizing, at Company and Owner's demand, any and all Marks.

18. Injunctive Relief. Company and Owner (including Owner's Affiliates) shall be entitled to any proper injunction, including, but not limited to, temporary, preliminary, or permanent injunction as well as a temporary restraining order to enforce or to prevent a breach or threatened breach of this Agreement by Artist and to enforce specifically the terms and provisions thereof without the necessity of proving actual damages or securing or posting any bond or providing prior notice, in addition to any other remedies available to Company and Owner (including Owner's Affiliates) at law or in equity. The covenants contained in this agreement are independent of any other obligations between the Parties, and the existence of any other claim or cause of action by Company and Owner (including Owner's Affiliates) or against the Artist is not a defense to enforcement of said covenants by injunction.

19. Blue Pencil of Covenants. If any court determines that any of the covenants, or any part thereof, are invalid or unenforceable, the remainder of the covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court determines that any of the covenants, or any part thereof, are unenforceable because of the duration or geographic scope of such provision, such court shall have the power to reduce the duration or geographic scope of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable and shall be enforced. Should, however, a court of competent jurisdiction deem any covenant to be impermissibly over-broad, it is the desire and intention of the Parties that the covenant be enforced to the greatest extent deemed to be enforceable.

20. Waiver and Survival of Covenants. No waiver by either Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by either Party of any right under this Agreement shall be construed as a waiver of any other right. Moreover, each of the



representations, covenants, warranties and agreements contained herein are separate and independent of any other covenants or obligations contained in this Agreement and they shall survive any breach thereof by any Party.

21. Indemnification. Artist hereby indemnifies and holds harmless Owner, Company, Awesometown, and their respective their parent, subsidiaries and affiliates and their respective owners, officers, directors, officials, agents, artists and attorneys from any damages, claims, liabilities, and costs, including reasonable attorney's fees, or losses of any kind or nature whatsoever which may in any way arise from the Services performed by Artist hereunder or are attributable to bodily injury, personal injury, sickness, disease or death of any person including injuries to Artist, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom. Company hereby indemnifies and holds Artist harmless from any negligent or wrongful act by Company in operation of the Venue.

22. Non-Liability. Artist agrees that in the event (i) there is any breach of this Agreement by Company or (ii) Artist has or may have any claim arising from or relating to the terms hereof, Artist shall not commence any lawsuit or otherwise seek to impose any liability whatsoever against Owner, its Affiliates, or Awesometown. Artist hereby further agrees that none of the Released Parties shall have any liability whatsoever with respect to the Agreement or any matters relating to or arising from the Agreement. Artist also agrees that Artist shall not assert or permit any party claiming through Artist, to assert a claim or impose any liability against any Released Parties, either collectively or individually, as to any matter or thing arising out of or relating to this Agreement or any alleged breach of this Agreement by Company. In addition, Artist agrees that none of the Released Parties, individually or collectively, is a party to this Agreement or is liable for any alleged breach or default of this Agreement by Company.

23. Attorneys' Fees. If either Party has to initiate any litigation or other proceeding in order to enforce this Agreement or the Services of the other Party in relation thereto, then the prevailing Party shall be awarded, in addition to any other relief to which it is entitled, its attorneys' fees and costs.

24. Governing Law. This Agreement has been executed and delivered in the state of Nevada, United States of America, and its validity, interpretation, performance, and enforcement shall be governed by the laws of such state, without regard to principles of conflicts of law. Any legal action or other proceeding involving this Agreement shall be initiated solely in Las Vegas, Nevada, USA.

25. Assignment. Neither this Agreement nor any right or interest hereunder shall be assignable by Artist without prior written consent of Company. However, nothing contained in this Agreement shall limit or restrict Company ability to: (a) freely assign this Agreement, including but not limited to an assignment to merge or consolidate or effect any similar transaction with any other entity, irrespective of whether Company is the surviving entity (including a split up, spin off or similar type transaction), provided that one or more of such surviving entities shall continue to be bound by the provisions hereof binding upon Company, to assign this Agreement in conjunction with a sale of all or substantially all of Company's assets or equity interest, or, (b) to assign this Agreement to an affiliate or any other entity, enterprise or individual identified by Company.

26. Amendment of Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by the Parties hereto.



27. Severability. If, for any reason, any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or lack of enforceability shall not affect any other provision of this Agreement not so determined to be invalid or unenforceable, and each such other provision shall, to the fullest extent consistent with applicable law, continue in full force and effect, irrespective of such invalid or unenforceable provision.

28. Entire Agreement. This Agreement represents the entire agreement and understanding between Company and Artist concerning the matters herein and supersedes any prior understandings or agreements between the Parties hereto.

29. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

30. Headings. The headings of paragraphs and sections herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

31. Neutral Construction. Each Party to this Agreement had the opportunity to retain counsel and to review and participate in the drafting of this Agreement and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed or used in any interpretation or enforcement of this Agreement.

31. Morality Clause. Artist shall not commit any act or do anything which, as reasonably determined by Company or Owner, might tend to bring Artist or Company or Owner (including its Affiliates) into public disrepute, contempt, scandal or ridicule, scorn, public hatred, or which might tend to reflect unfavorably on Artist or Company or Owner or its affiliates or on any person with whom Company or Owner or its affiliates has a Consulting Agreement, Management Agreement or Lease Agreement. Artist shall also not commit any act of dishonesty or moral turpitude or any act that otherwise would injure or adversely effect or impair, as determined by Company and Owner, the reputation of Company or Owner or its affiliates or any person with whom Company or Owner has an Artist Agreement, Management Agreement, Lease Agreement or any other agreement. Company may terminate this Agreement immediately in the event of any violation or breach of this Section by Artist.

32. Limitations of Liability and Damages. ARTIST'S EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF COMPANY FOR ANY REASON SHALL BE LIMITED TO THE AMOUNT PAID BY COMPANY FOR THE ARTIST'S SERVICES DURING THE PRECEDING THIRTY (30) DAY PERIOD. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION DAMAGES, DAMAGES FOR LOST BUSINESS, LOST DATA, LOST GOODWILL, LOST REPUTATION, LOST REVENUES, LOST PROFITS OR INVESTMENT OR THE LIKE) WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE) PRODUCTS LIABILITY OR OTHERWISE EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

33. Release Form. Prior to providing Services, Artist shall provide to Company a fully executed copy of the Release of Liability and Waiver of Legal Rights and Assumption of Risk (the "Waiver") attached to this Agreement as Exhibit "B".

34. Exclusivity and Non-Competition. During the time that Artist is providing Services for Company, Artist acknowledges that Company and Awesometown are not his/her primary contractor and Artist is permitted to provide services for other third-parties.

35. Validity and Authorization. Artist represents and warrants that, if Artist is an entity and not an individual, Artist is validly existing and in good standing under the laws of its state or nation of incorporation or formation. Artist, and the individual signing on behalf of Artist below, each warrant and represent that such individual has necessary power and authority to bind Artist as a party to this Agreement. Further, each individual who executes this Agreement on behalf of Artist agrees to be personally bound by the conditions and terms of Sections 13-20, 22, 25, 31, and 32-35 and 37 of this Agreement.

36. Insurance. The Company maintains general liability insurance for its employees but its policies may not provide coverage for independent contractors. The Company will not be providing worker's compensation insurance for independent contractors. Artist will be responsible to maintain its own liability, medical or other forms of insurance coverage that provides coverage for the Artist for any work performed at the Venue.

37. W-9. Artist will complete and deliver an executed W-9 to the Company at the time of executing this Agreement. A copy of a W-9 is attached to this Agreement.

38. Arbitration. Any dispute or difference of opinion between Artist and Company (or any affiliate, consultant or client of Company) involving the meaning, interpretation, and application, of any provision of this Agreement or any other dispute between the parties arising out of their relationship shall be adjudicated exclusively through binding arbitration in Las Vegas, Nevada, United States of America. Unless otherwise agreed by the parties, arbitration shall be pursuant to the American Arbitration Association ("AAA") National Rules for the Resolution of Disputes or JAMS Practice. Unless otherwise agreed by the parties, the AAA shall submit a panel of National Academy Arbitrators or JAMS shall submit a panel of neutrals residing in Las Vegas, Nevada from which the parties shall select a suitable arbitrator. The arbitrator shall have no authority, jurisdiction, or power to nullify or add to the provisions of this Agreement. The parties agree to refrain from filing any future lawsuits and to instead give one another an opportunity to resolve their claims in a fair and confidential manner by engaging in good faith in the proceedings set forth above. The parties agree there will be no press releases or public comments or comments to the press regarding one another and agree that the nature of the claims and proceedings and outcome will be kept strictly confidential.

[Signature Page to Follow]



IN WITNESS WHEREOF, the Parties have caused these presents to be executed as of the year and date first above written.

FAT HAT, LLC

ARTIST

By: \_\_\_\_\_

Bryndyl K. Kish  
By: 04-08-14

# Exhibit 7

### Arbitration Agreement

THIS AGREEMENT TO ARBITRATE ("Agreement") by and between Fat Hat, LLC doing business under the assumed name of 1923, 2930 Las Vegas Blvd. South Ste 200B, Las Vegas, Nevada 89119 ("Employer") and employee Merion Herbert, residing at 215 Sawdell Henderson, N., Nevada \_\_\_\_\_ ("Applicant") is effective on the latest date set forth below.

In consideration of the mutual agreements herein set forth, the parties agree as follows:

1. Except as set forth below, any and all controversies or disputes, of whatever nature, between or among the Employer and the Applicant with respect to the undersigned being an employee of Employer, cessation of being an employee of Employer, or personal claims either the Employer, or Employee may have against each other shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association by a sole arbitrator. The decision of the arbitrator shall be final, conclusive, and binding. With respect to such arbitration:
  - a. All questions as to the meaning of the above clause, or as to the arbitrability of any dispute under said clause, shall be resolved by the arbitrator, and the decision thereon shall be final and binding, and not subject to judicial review. The arbitrator shall also have the sole discretion to allow discovery as provided by the Employment Arbitration Rules of the American Arbitration Association (or other mutually approved arbitration organization) and the decision of the arbitrator with respect to discovery shall also be conclusive, final and binding and not subject to judicial review. The decision of the arbitrator shall be predicated on applicable law.
  - b. The arbitrator shall have the authority to award legal or equitable relief available under state or federal law or regulations promulgated by authorized agencies or political subdivisions thereof including, but not limited to, the right to award attorneys' fees, costs and expenses to the extent, and only to the extent, made and provided by state or federal law or regulations promulgated by authorized agencies or political subdivisions thereof. Except where specifically provided by statute, punitive damages shall not be awarded by the arbitrator.
  - c. The arbitration proceedings shall be in an office in Clark County, Nevada mutually agreed on by the parties, but if no agreement, then in the office of Employer's counsel. Employer and Employee each have the right to be represented by an attorney.
  - d. The arbitrator shall have at least 10 years of experience in dealing with employment related issues or shall be a retired judge. If the parties cannot agree on a sole arbitrator, the parties shall select the arbitrator from the panel provided by the American Arbitration Association which panel shall meet the qualifications above set forth. The award of the arbitrator may be entered in any court of appropriate jurisdiction pursuant


to Nevada Revised Statutes §§ 88.205, 35 seq., which statutes, relating to arbitration, are incorporated herein by reference.


- e. Employer and Applicant shall each pay to any agreed upon arbitration organization an arbitration fee equal to one-half the fee charged by such organization but in no event shall the fee to be paid to such organizations by the Applicant exceed the amount of the filing fee to be paid by the Plaintiff in Clark County District Court. Employer will pay all other costs of the arbitrator.
  - f. This agreement relates only to those controversies, claims or disputes which arise on or after the date hereof with respect to the employment of the Applicant or cessation of employment by the Applicant with the Employer.
  - g. Exception to which matters are submitted to arbitration are claims arising under Workers' Compensation Laws, Unemployment Compensation Laws, the Employee Retirement Security Act of 1974 ("ERISA"), disputes not involving recognized legal rights, claims not involving the personal claims of the Employee as to the Employer, disputes or claims which are covered under the insurance of the Employer whereby the terms of such insurance policy do not permit arbitration in a manner required by this Agreement, or obtaining equitable relief prior to appointment of an arbitrator.
2. The parties specifically understand that claims arising out of application for employment, employment or cessation of employment could include, but shall not be limited to, those claims, which arise under the employment and civil rights acts and statutes of the United States, as well as Nevada and/or Clark County law, including Nevada Revised Statutes Chapters 608 and 613, Federal Age Discrimination Employment Act, Americans with Disabilities Act of 1990, as amended, and The Older Americans Protection Act of 1980. The Employer agrees to provide the Applicant with a copy of any of the afore-referenced statutory acts and with a copy of the Arbitration Rules of the American Arbitration Association upon written request from the Applicant at any time within thirty (30) business days after such request is made to the Employer at no cost to the Applicant.
3. To insure this Agreement is carefully considered by the Applicant, Applicant has up to 21 days to consider whether to sign this Agreement. In addition, this Agreement may be rescinded within 16 days of the signing of the Agreement. In order to be effective, the rescission must be in writing and delivered to Employer by hand or mail. If delivered by mail, the rescission notice must be sent by certified mail, return receipt requested, post-marked within the rescission period and addressed to Director of Operations, Fat Hat, LLC, 3930 Las Vegas Blvd. South Ste 2005, Las Vegas, Nevada 89119, or if delivered by hand, delivery must be made within the rescission period to a Manager of Fat Hat, LLC at the same address.



4. The Applicant understands that entering into this Agreement is not a contract of employment not to be deemed any such contract of employment by either the Applicant or the Employer. If Applicant is hired he or she will be an "Employee at Will," and such employment can be terminated by either of the undersigned at anytime, with or without notice or cause. The Applicant hereby represents to the Employer that he/she is of legal age (18 years of age or older).
5. IT IS FURTHER UNDERSTOOD AND AGREED that the Applicant will not become an employee or remain an employee of the Employer unless this Agreement is executed and delivered by the Applicant and not recorded as herein permitted.
6. In the event all or any part of the Agreement is held by court of appropriate jurisdiction to be unenforceable, both the Employer and the Applicant agree and empower a court of appropriate jurisdiction to have the power to revise this Agreement so it is enforceable under applicable law. In the event that the part of the Agreement in which the Employer and the Applicant agree to arbitrate is held not to be enforceable, then the Employer and the Applicant each waives their respective rights to a jury trial in any court proceeding which involves any controversy or dispute of whatever nature which arises by virtue of the Applicant becoming an employee of the Employer or by reason of the cessation of employment by the Applicant (if an employee) with Employer in any court of appropriate jurisdiction.
7. THE APPLICANT BY THE APPLICANT'S SIGNATURE TO THIS AGREEMENT, acknowledges and agrees that the Applicant has carefully read and understood the terms of this Agreement, and that the Applicant has entered into this Agreement knowingly and voluntarily. Applicant further acknowledges that Employer has advised the Applicant to consult with counsel prior to signing this Agreement, and the Applicant acknowledges that the Applicant has consulted with or has had the opportunity to consult with legal counsel.

The parties have executed this Agreement as of the dates below set forth.

Dated: April 3, 2014  
Employer: Fat Hat, LLC, doing business under the  
assumed name of 192B.  
Sign:   
Print: Candace Ewing

Dated: 4-3 - 2014  
Employee:  
Sign:   
Print: Megan Hebert

# Exhibit 8

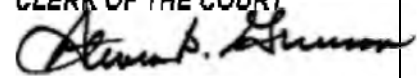
Arbitration Agreement

THIS AGREEMENT TO ARBITRATE ("Agreement") by and between Fat Hot, LLC doing business under the assumed name of 1923, 3920 Las Vegas Blvd. South Ste 2000, Las Vegas, Nevada 89119 ("Employer") and employee Alamara Mikhailova, residing at 8777 Simola Ave. Unit 3076 Las Vegas, Nevada 89149 ("Applicant") is effective on the latest date set forth below.

In consideration of the mutual agreements herein set forth, the parties agree as follows:

1. Except as set forth below, any and all controversies or disputes, of whatever nature, between or among the Employer and the Applicant with respect to the undersigned being an employee of Employer, cessation of being an employee of Employer, or personal claims either the Employer, or Employee may have against each other shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association by a sole arbitrator. The decision of the arbitrator shall be final, conclusive, and binding. With respect to such arbitration:
  - a. All questions as to the meaning of the above clause, or as to the arbitrability of any dispute under said clause, shall be resolved by the arbitrator, and the decision thereon shall be final and binding, and not subject to judicial review. The arbitrator shall also have the sole discretion to allow discovery as provided by the Employment Arbitration Rules of the American Arbitration Association (or other mutually approved arbitration organization) and the decision of the arbitrator with respect to discovery shall also be conclusive, final and binding and not subject to judicial review. The decision of the arbitrator shall be predicated on applicable law.
  - b. The arbitrator shall have the authority to award legal or equitable relief available under state or federal law or regulations promulgated by authorized agencies or political subdivisions thereof including, but not limited to, the right to award attorneys' fees, costs and expenses to the extent, made and provided by state or federal law or regulations promulgated by authorized agencies or political subdivisions thereof. Except where specifically provided by statute, punitive damages shall not be awarded by the arbitrator.
  - c. The arbitration proceedings shall be in an office in Clark County, Nevada mutually agreed on by the parties, but if no agreement, then in the office of Employer's counsel. Employer and Employee each have the right to be represented by an attorney.
  - d. The arbitrator shall have at least 10 years of experience in dealing with employment related issues or shall be a retired judge. If the parties cannot agree on a sole arbitrator, the parties shall select the arbitrator from the panel provided by the American Arbitration Association which panel shall meet the qualifications above set forth. The award of the arbitrator may be entered in any court of appropriate jurisdiction pursuant





TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

CORINNE DILEO, ET AL.,	)	
	)	CASE NO. A-19-797533-C
Plaintiffs,	)	
	)	
vs.	)	DEPT. NO. XIV
	)	
MAIDE, LLC, ET AL.,	)	
	)	<b>Transcript of Proceedings</b>
Defendants.	)	
	)	

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE  
**PLAINTIFFS' MOTION FOR REHEARING ON DEFENDANTS' MOTION TO  
COMPEL ARBITRATION**

TUESDAY, MAY 26, 2020

APPEARANCES:

For the Plaintiffs: HUNTER SHAW DAVIDSON, ESQ.  
[Via teleconference]

For the Defendants: JOHN M. ORR, ESQ.  
[Via Teleconference]

RECORDED BY: SANDRA ANDERSON, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript  
produced by transcription service.

1 TUESDAY, MAY 26, 2020 AT 9:49 A.M.

2

3 THE COURT: Page 6 is *Corinne DiLeo versus Maide,*  
4 LLC, and I'd like your appearances for the record, please.  
5 Hello? Can everyone hear me?

6 MR. DAVIDSON: Good morning, Your Honor. This is  
7 Hunter Davidson for plaintiffs.

8 THE COURT: I'm sorry. Can you restate -- repeat  
9 your name again, please?

10 MR. DAVIDSON: Hunter Davidson.

11 THE COURT: Okay. Very good. Good morning, Mr.  
12 Davidson. And --

13 MR. DAVIDSON: Good morning.

14 THE COURT: Go ahead. Opposing counsel here?

15 THE MARSHAL: Is Orr muted?

16 THE COURT: Are they on mute?

17 THE MARSHAL: We're checking now, Your Honor.

18 THE CLERK: Mr. Orr?

19 MR. ORR: Yeah. This is John Orr for defendants.

20 THE COURT: Okay. Good morning. All right. This  
21 is Plaintiffs' Motion for Rehearing on Defendants' Motion  
22 to Compel Arbitration. And I've read everything, but I'd  
23 like to hear, you know, your arguments. So, plaintiffs, go  
24 ahead.

25 MR. DAVIDSON: Absolutely, Your Honor. This is

1 Hunter Davidson, again, for the plaintiffs.

2           And plaintiffs' position would be that a rehearing  
3 would be warranted and justified because, respectfully, the  
4 Court's prior decision on this matter was clearly  
5 erroneous. The statute itself says that when you have an  
6 agreement or a provision regarding arbitration that removes  
7 any and all claims to arbitration, that there must be  
8 specific authorization. In other words, a signature,  
9 initial, address listed, next to that exact provision  
10 within the agreement. And that's within NRS 597.995.

11           And what we have here when you look at the nursing  
12 facilities' Agreement, Addendum, or whatever you would like  
13 to call it. I think in the Motions we call it the Bella  
14 Estate Care Home Resident Agreement Addendum, you don't  
15 have that specific authorization anywhere in that one page.  
16 And, again, the statute itself -- in *Fat Hat*, which the  
17 Nevada Supreme Court case that interpreted this very same  
18 statute, it's very clear that that provision submitting any  
19 and all claims needs to have the specific authorization  
20 next to it and that's just missing in this case.

21           When you compare that Agreement Agenda, and I know  
22 it's been knocked because it is just one page, there are  
23 two provisions in its entirety on that page. But, at the  
24 bottom, there's only a general signature line and you don't  
25 have the specific authorization next to the arbitration



1 provision within that one-page agreement. And when you  
2 compare that one-page agreement to the agreements that were  
3 evaluated, that were analyzed in *Fat Hat*, it shows that  
4 this agreement should be -- or the arbitration provision  
5 within the Agreement should be void. When compared to the  
6 agreements that were voided in *Fat Hat*, you had the same  
7 exact downfalls or fallacies here with this, sure that  
8 there is --

9 THE COURT: Excuse me, counsel. In *Fat Hat*,  
10 wasn't -- if I remember correctly, it was part of the  
11 general agreement. It wasn't --

12 MR. DAVIDSON: That's correct, Your Honor. For  
13 the --

14 THE COURT: [Indiscernible]. Go on. I'm sorry.  
15 I just wanted to -- okay. Go on.

16 MR. DAVIDSON: Sure thing. So there were really  
17 two -- generally, two types of agreements in *Fat Hat*. The  
18 ones that were voided were general agreements and the very  
19 last provision in that -- in those general agreements,  
20 employment agreements, independent contractor agreements,  
21 was the arbitration provision. And right below, because it  
22 was the last provision, there was a general signature line  
23 at the bottom of that and *Fat Hat* said, nevertheless, that  
24 even though there's a general signature line right below  
25 the arbitration provision, that's a general signature line

1 and, therefore, it doesn't amount to specific  
2 authorization. And that's, again, that's what we have  
3 here. We have this separate agreement with a general  
4 signature line at the bottom. It lacks the specific  
5 authorization, even though there's a signature line right  
6 below it. That's generally for the separate Agreement  
7 Addendum.

8           And, then, again, if you compare it to the other  
9 set of agreements that were, in fact, -- the ones that were  
10 upheld, yes, those were entire arbitration agreements,  
11 separate and apart, but, even then, *Fat Hat* only found that  
12 those agreements were -- the provision to bind them -- or  
13 put them into binding arbitration was valid and enforceable  
14 because it included both a general signature line at the  
15 bottom and, then, at the top, specific authorization,  
16 again, even though this was an entirely arbit -- entirely  
17 separate Arbitration Agreement. Specific arbitration or  
18 specific authorization at the top, where they filled in  
19 their name and their address that said, hey, look, this is  
20 a valid and enforceable agreement and we can be subject to  
21 binding arbitration. The real -- even in *Fat Hat*, when  
22 there was an entirely separate binding Arbitration  
23 Agreement, they still have the general signature line and  
24 then the specific authorization for the any and all claims  
25 must be submitted.

1           So, either way you look at it, this Agreement  
2 doesn't have what the agreements in *Fat Hat* had to be held  
3 enforceable and it's really synonymous or analogous to --  
4 or analogous to what was voided in *Fat Hat*, which is you  
5 have this long set of agreement -- or you have this  
6 agreement that [indiscernible] general signature line at  
7 the end. And, again, no specific authorization next to  
8 that provision that says: Any and all claims must be  
9 submitted to arbitration.

10           And, then, I know, lastly, defense counsel points  
11 out that, you know, perhaps the notice -- you know, the  
12 underlying purpose of the statute that, you know, you just  
13 want to be put on notice that your claims will be submitted  
14 to binding arbitration and that's the purpose of specific  
15 authorization, which, again, that is a large primary  
16 purpose of it. But we look at this separate Agreement  
17 Addendum and you have to wonder whether that -- you know,  
18 whether notice was so created. I mean, you have an  
19 entirely different defendant or nursing facility named at  
20 the top, it's in completely -- you know, incomplete  
21 agreement. It doesn't put the city and state for which  
22 jurisdiction will lie. There's typos about it. So, just  
23 based off of the -- respectfully, speaking of sloppiness of  
24 this Agreement Addendum, you have to wonder whether that  
25 same amount of sloppiness or lack of care was approached

1 when, again, they're locking down these agreements and  
2 signing off on them.

3 And, on that ground, I would say that, again, the  
4 prior decision that this Agreement had the specific  
5 authorization was in plain error and, therefore, we should  
6 be reheard.

7 THE COURT: Okay. Thank you, counsel.

8 MR. ORR: Thank you. May I make my arguments,  
9 Your Honor?

10 THE COURT: Yes.

11 MR. ORR: Thank you. Again, this is John Orr for  
12 Maide, LLC.

13 And, just for the record, you know, this is a  
14 technicality, but Maide, LLC, is not a nursing facility.  
15 It's a residential home for groups, which is -- I'm sure  
16 Your Honor is aware that's a very important distinction.

17 Anyway, so, you know, obviously, plaintiff has a  
18 heavy burden here. Although Your Honor did not hear this  
19 Motion initially, Your Honor did sign the Order and  
20 plaintiffs have to prove that no reasonable jurist could  
21 have arrived at the same conclusion. And I -- and I'll  
22 outline here in a minute, you know, I just don't think  
23 that's a tenable argument.

24 This case is nothing like *Fat Hat*. If you look at  
25 plaintiffs' exhibits in their Reply, those pages 3, 4, and

1 5, all those Arbitration Agreements in *Fat Hat* were buried  
2 in fine print -- well, let me back up for a second, Your  
3 Honor.

4 I think NRS 597.995 essentially encapsulates the  
5 common law principle of procedural unconscionability.  
6 Procedural unconscionability, one way something can be  
7 procedurally unconscionable is if the clause you're  
8 agreeing to is buried in fine print and there's just one  
9 sweeping authorization for the entire agreement. So, for  
10 example, just like in *Fat Hat*, you have the seven and  
11 eight-page agreements. The arbitration clause is buried on  
12 page 8, but you have to sign page 11. So, you can  
13 potentially breeze through the whole thing and never squint  
14 hard enough to see the Arbitration Agreement. So, *Fat Hat*  
15 makes a lot of sense from that perspective. And, so, NRS  
16 597, it says: Well, no. You need to put a signature line,  
17 something next to the arbitration provision that says this  
18 is specifically authorizing arbitration.

19 And, so, if you take a look at the Arbitration  
20 Agreement in this case, what Mr. Davidson is essentially  
21 saying -- and I invite Your Honor to take a look at the  
22 agreement with me while I'm explaining this. I think  
23 that's just -- makes it helpful.

24 So, what -- if I understand Mr. Davidson  
25 correctly, he's saying -- so there's paragraph 1 that says

1 grievances and, then, there's paragraph 2 that says  
2 arbitration. And there's a signature line an inch below  
3 the arbitration language. What he's saying is if you had  
4 basically taken out number 2, and just pressed backspace,  
5 and made this all one paragraph, that would have been good  
6 enough. That would have been a specific authorization.  
7 He's basically saying that the grievances paragraph foils  
8 the whole agreement.

9           And, like we've pointed out in our briefing,  
10 that's just -- it's a little bit absurd. And I don't mean  
11 that in the pejorative context, way, I just mean it's  
12 unreasonable to suggest that someone would look at this  
13 Agreement and be like: Oh, man, I just -- I can't see the  
14 Arbitration Agreement. It's just buried in fine print.  
15 You know, I had to sign like three pages later. I mean,  
16 it's right there. It says grievance and arbitration at the  
17 beginning. You know, I think the purpose of the grievances  
18 clause is we're alerting you that you can voice grievances,  
19 but any of those grievances are ultimately going to be  
20 subject to arbitration.

21           So, from that perspective, there is no specific  
22 authorization on this specific page. *Fat Hat* is concerned  
23 with 25, 10-page, multi-page agreements that have signature  
24 lines at the very end and not right next to the arbitration  
25 clause.

1           And it's important -- and I think Mr. Davidson  
2 kind of omits this, Mrs. DiLeo, she signed a five or six-  
3 page Residency Agreement and then she signed this one  
4 separately, when it says arbitration in bold letters right  
5 at the top. And there's no suggestion -- Mr. Davidson and  
6 Mrs. DiLeo didn't submit any evidence to the Court saying  
7 that she was hoodwinked towards -- or, you know, that she  
8 wasn't aware of this. To me, it's like they're trying to  
9 dive into the minutia of the statute to really just kind of  
10 capitalize on the cheap technicality.

11           And going into -- and this is the last point I'll  
12 make. Going to the strict compliance versus substantial  
13 compliance, you know, I think Mr. Davidson in his briefing,  
14 he just kind of pulls a quote out of this caselaw saying,  
15 when a statute implicates notice, then that means subject  
16 to strict compliance. But if you look at all the cases  
17 that he cited, like those cases don't even say that.  
18 There's plenty -- two of the three cases, actually, state  
19 that even with a notice requirement, substantial compliance  
20 was sufficient. And that's what this Court has to consider  
21 when assessing whether strict or substantial compliance  
22 applies is the equity of the situation.

23           What the Nevada Supreme Court has said is that  
24 when a statute invokes time and place requirements, then  
25 strict compliance applies, which makes sense. So, it



1 generally applies. You have -- you know, case by case  
2 analysis. So, you know, the timing with which you serve a  
3 notice, how much time you have to wait before serving a  
4 notice, those sorts of things. So, when you're talking  
5 about form and content, that's when substantial compliance  
6 applies. And that's exactly what this is. This isn't --  
7 NRS 597.995 isn't a time and manner -- it's not saying this  
8 is when you have to provide someone with an agreement or it  
9 doesn't invoke those time and manner provisions. It's a  
10 pure form and content provision.

11           And, so, going back to that, my prior point, Mr.  
12 Davidson is trying to say, oh, because it says grievances  
13 and it's a separate paragraph, that somehow, you know,  
14 misled Mrs. DiLeo. And there's no evidence of that. And I  
15 -- honestly, I don't think anyone could look at this and  
16 say, oh, there's no way I could see this arbitration  
17 clause. It's just too hard to see. I mean, that's just  
18 not reasonable.

19           And, so, based on that, even if -- so, even if  
20 Your Honor said, well, the grievances clause, you know,  
21 technically is a separate provision and so the signature  
22 line, technically, could apply to arbitration and  
23 grievances, that's just kind of an absurd result because  
24 it's like, well, look, the arbitration clause is on a  
25 separate agreement, separate signature line, and it's not

1 hidden anywhere.

2           And, so, based on all of that, you know, given  
3 we're here on reconsideration, you know, I think this  
4 Agreement does comply with NRS 597.995 and the Court's  
5 ruling was, you know, correct to begin with.

6           One last thing that I just thought of. Mr.  
7 Davidson did make some kind of, you know, offhanded  
8 comments about the sloppiness of the Agreement and the fact  
9 that it says Bella Estate Care Home. None of those issues  
10 are presently before the Court. The only arguments the  
11 plaintiff made relate to the statute. In fact, the Court,  
12 -- you know, the fact that it doesn't say the jurisdiction  
13 and all that, the Court already ruled on those issues, and  
14 those aren't -- those weren't briefed at all. And, so, I  
15 don't think those arguments are properly before the Court.

16           But, anyway, I appreciate the Court's time and  
17 I'll turn it back over to you, Your Honor. Thank you.

18           THE COURT: Thank you. Mr. Davidson.

19           MR. DAVIDSON: Just a couple of brief points, Your  
20 Honor. Again, however defense counsel wants to interpret -  
21 - this Court wants to interpret NRS 597.995, the statute's  
22 explicitly clear in what it requests. And what we have  
23 here, again, is that second arbitration provision falls  
24 right within the confines of what's referenced in 597.995.  
25 The arbitration provision in this case starts out with:

1 Any controversy, dispute, or disagreement. And that,  
2 again, falls right within the statute. And the statute  
3 mandates -- you know, of course it could lead to some  
4 absurd results, but the statute mandates that that specific  
5 provision needs to be recognized and authorized. And, of  
6 course, it makes sense because the implications of sending  
7 your claims into binding arbitration is a huge deal and is  
8 a -- and is going to change the posture of an entire case.

9 Defense counsel's reference that, you know, *Fat*  
10 *Hat* had these arbitration provisions tucked away or that  
11 was the whole purpose of the statute isn't necessarily true  
12 either. Again, the agreements in *Fat Hat* that were voided,  
13 the very last provision was the arbitration provision. It  
14 was bolded and it had a signature line right below it.  
15 Well, again, the purpose of NRS 597.995 might be to avoid  
16 tucking these arbitration provisions away, that wasn't what  
17 *Fat Hat* had. *Fat Hat* had no problem with it even though  
18 the general signature line was right below, you know,  
19 centimeters, an inch below the general signature line.  
20 It's still void and unenforceable because it's not  
21 specifically authorized.

22 On top of that, I think the call for strict versus  
23 substantial compliance goes against what's mandated in the  
24 statute. Again, 597.995 is very clear in what it requests.  
25 *Fat Hat* doesn't go into any strict or substantial

1 compliance analysis. You either have the specific  
2 authorization next to that provision or you don't, and  
3 that's not what we have here.

4 And, then, lastly, I would just close out that  
5 while there is a policy that favors, you know, setting  
6 things into arbitration, contract interpretation goes  
7 against the drafters. And, my plaintiffs, they had no deal  
8 in drafting this Agreement Addendum. You know, the  
9 interpretation of this Agreement Addendum should go against  
10 the Bella Estate Care Home or really Maide, LLC.

11 And, on that, I have no further points, Your  
12 Honor.

13 THE COURT: Was the issue that the entity changed  
14 names or was subsumed by another, excuse me, agency.

15 MR. DAVIDSON: My understanding -- this is Hunter  
16 Davidson.

17 THE COURT: Different name. Thank you. Mr.  
18 Davidson, go ahead.

19 MR. DAVIDSON: My understanding is that it was --  
20 Bella Estate Care Home was another care home that is owned  
21 by similar entities. Maybe Mr. Orr could actually explain  
22 it better than I can, because I don't want to misrepresent  
23 anything.

24 MR. ORR: Yeah, I'm happy to do that, Your Honor.  
25 So, yeah, Maide, LLC, owns a couple of different

1 group homes in -- under, obviously, some different DBAs.  
2 This is Maide, LLC, DBA Gentle Spring Care Home. They have  
3 another one called Maide, LLC, DBA Bella Estate Care Home.  
4 At the time this happened -- at the time of the execution  
5 of this Agreement, and Mrs. Ton, who is the Operations  
6 Manager submitted a Declaration in the original briefing  
7 that I incorporated and referenced in my briefing here, she  
8 explained that at this time, you know, they -- they had  
9 basically just run out of copies of the Arbitration  
10 Agreement that had the Gentle Spring Care Home at the top  
11 of it, so they used the Bella Estate Care Home. But, you  
12 know, at the time of the execution, Mrs. DiLeo was inside  
13 Gentle Spring Care Home and so there was never any  
14 suggestion that, oh, she wasn't even aware of, you know,  
15 the parties she was dealing with. It's not like she didn't  
16 know her husband was going into the Gentle Spring Care  
17 Home.

18           So, it's the same LLC, essentially, is kind of the  
19 long and short of it.

20           THE COURT: I'd like you to both speak to the --  
21 in *Fat Hat* where the Court discussed that either -- on  
22 every page or [indiscernible], the parties initialed and  
23 how they distinguish that. I'd just like to hear that from  
24 the parties, please.

25           MR. ORR: Your Honor, this is John Orr. Would you

1 like me to go first or would you like Mr. Davidson to go  
2 first?

3 THE COURT: Yeah. Go ahead, and then I'd like to  
4 hear from both of you, obviously.

5 MR. ORR: Yes. This is John Orr, again.

6 So, in *Fat Hat*, like I said, and I think it's very  
7 helpful if you look at the agreements in *Fat Hat*, which are  
8 attached to Plaintiffs' Reply. It -- in those cases, you  
9 had to initial -- you know, so for example, if it was a 10-  
10 page agreement --

11 [Pause in proceedings]

12 THE COURT RECORDER: Uh oh. Okay. How do we get  
13 them back? There we go.

14 MR. ORR: -- and, so, the Court said: Well, you  
15 initial all the pages. You know, so that doesn't account -  
16 - that doesn't -- just because you initialed every single  
17 page that had dozens of different provisions on it, that  
18 doesn't constitute the specific authorization. That stands  
19 in contrast to -- the Court said, well, but the ones that  
20 they did find enforceable, in those instances, the parties  
21 had to sign and date right next to the arbitration  
22 provision.

23 And that's exactly what we have here is the --  
24 Mrs. DiLeo signed right next to the arbitration provision  
25 on the separate Arbitration Addendum. And that's kind of -

1 - it goes back to -- and I think that's the key distinction  
2 here, is Mr. Davidson is saying, well, because it said  
3 grievance and arbitration, the grievance clause apparently  
4 -- you know, it means, oh, well, she had to -- she was  
5 authorizing both of those provisions, both the Agreement  
6 and the arbitration provision. But the problem with that  
7 argument is it's -- it's just -- it leads to this absurd  
8 result because it's like you're saying the -- the purpose  
9 of the Court's -- the *Fat Hat* Court's holding is saying:  
10 Well, look, you initialed an eight or nine-page document  
11 with fine print and hundreds and hundreds of words, so  
12 there's just -- just because you initialed, that doesn't  
13 mean you specifically saw the arbitration clause. But if  
14 you look at the Maide, LLC, Addendum, I mean, that  
15 arbitration clause is front and center, right in your face.  
16 I mean, it said arbitration in bold lettering at the top.  
17 And, so, -- and that is -- so, her signature on that  
18 Agreement is a specific authorization. It wasn't just some  
19 document she had to initial, you know, that was in a stack  
20 of, you know, 10 or 11 other documents.

21 THE COURT: Thank you, counsel. Go on.

22 MR. DAVIDSON: Yes. Hunter Davidson again for  
23 plaintiffs' counsel.

24 When you look at the agreements that were  
25 collectively provided to Ms. DiLeo, who is the power of

1 attorney, upon the admission, you had the same kind of  
2 issues as that with the initials at the bottom of each page  
3 I think that you have in *Fat Hat*. Again, this is -- what  
4 counsel's represented, it was provided, I think, in Exhibit  
5 A of their Reply brief for the underlying Motion as being  
6 reconsidered. And, you know, in there, they've got the  
7 Admission Agreement, the No Refund Policy, the Facility  
8 Policy, some Resident Notice, and then the Agreement  
9 Addendum here concerning grievances and arbitration.

10           And, again, each -- many of those are one to two  
11 pages long and they're followed by, you know, the quick  
12 signature and the date of the signature. And I think those  
13 kind of circumstances are very synonymous or very similar  
14 in what you have *Fat Hat* where, look, they're breezing  
15 through these multiple agreements, one-page Agreement  
16 Addendums, quickly signing off on them and dating them.  
17 And what happens is that you have, again, something of, you  
18 know, very serious circumstances, a binding arbitration  
19 provision that, again, could get slipped in there among  
20 these five or so policies or agreements that you're signing  
21 off on quickly. Hopefully not so quickly, but, again,  
22 that's some of the surrounding circumstances that happen.

23           And that being said, that's the whole purpose of,  
24 again, making sure that that provision for binding  
25 arbitration is specifically authorized because when you're



1 presented with, you know, a Resident Agreement and four or  
2 five other Addendums that all require a signature and a  
3 date, you want that one binding arbitration provision to be  
4 recognized, acknowledged, and specifically authorized. And  
5 that's what *Fat Hat* wants.

6 THE COURT: Okay.

7 MR. DAVIDSON: And, again, I think that falls  
8 squarely within the reason why *Fat Hat* found that those  
9 initials at the bottom were not sufficient. Those initials  
10 in this -- or in *Fat Hat* are similar to the quick signature  
11 and dates on the various agreements that were provided upon  
12 admission in this case.

13 THE COURT: Okay. Thank you, counsel. I've taken  
14 a look at everything. I am going to spend a few more  
15 minutes after court or after this hearing this morning to  
16 take a look at the Agreements after your argument and it's  
17 -- I will get this out in the form of a minute order. And  
18 I hope you have a good day.

19 MR. ORR: Thank you, Your Honor.

20 MR. DAVIDSON: Thank you, Your Honor.

21 THE COURT: Okay.

22  
23 PROCEEDING CONCLUDED AT 10:13 A.M.

24 \* \* \* \* \*

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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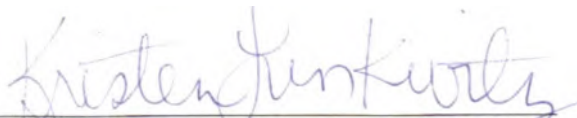
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20 KRISTEN LUNKWITZ

21 INDEPENDENT TRANSCRIBER

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