

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2019-CP-18-689
Appellate Case No. 2022-000077

Sake House IV, Inc. d/b/a Sake House IV
and Lei Jiang,

Appellants.

v.

The Shops at Wescott, LLC,

Respondent,

RECORD ON APPEAL

August 25, 2022

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Attorneys for Respondent

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SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2019-CP-18-689
	)	
The Shops at Wescott, LLC,	)	
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Sake House IV, Inc. d/b/a Sake House, and	)	
Lei Jiang,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court for a bench trial before the Honorable Diane Goodstein, on August 3, 2021. Present at the trial of this matter for Plaintiff was C. Brandon Belger, counsel for Plaintiff, and Brian Aiken, Plaintiff's representative. Present for Defendants was Evan Smith, counsel for Defendants, and Lei Jiang, individually and as a representative of Sake House IV, Inc. Based upon the evidence presented at the trial of this matter, the Court hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. That prior to March 21, 2016, a representative of Defendant Sake House IV, Inc. entered into negotiations with Plaintiff for the lease of the commercial space located at 9770 Dorchester Road, Suites 103 and 104, Summerville, SC (the "Property").
2. That on or about March 21, 2016, Defendant Lei Jiang, as representative of Sake House IV, Inc., entered into a Lease Agreement with Plaintiff for the rental of the Property.
3. That monthly rent under the Lease Agreement was set at six thousand nine hundred eighty-nine and 06/100 (\$6,989.06) dollars per month.

4. That Paragraph 27 of the Lease Agreement provides that Defendant Sake House IV, Inc. agreed to pay Plaintiff's expenses, including reasonable attorney's fees, arising from any action to enforce the Lease Agreement.
5. That on the same day, Mr. Jiang individually executed a Guaranty of Full Performance, guarantying Sake House IV, Inc.'s performance under the Lease Agreement.
6. That despite the language barrier, Mr. Jiang was provided with translation of the documents.
7. That, pursuant to the Lease Agreement, Defendants were provided with an upfit period that ran from April 1, 2016 until October 1, 2016, during which no rent was paid.
8. That rental payments by Defendants commenced on or shortly after October 1, 2016.
9. That sometime prior to November 1, 2017, Sake House IV, Inc., by and through its representative, began requesting a reduced rent.
10. That Plaintiff prepared a First Addendum to Lease Agreement, which offered to reduce Defendants' rental payments to the amount of five thousand and 00/100 (\$5,000.00) dollars for a period from November 1, 2017 to April 30, 2018, after which time the rent would increase to the rate set forth in the Lease Agreement.
11. That the First Addendum to Lease Agreement was never executed by Defendants.
12. That regardless of this fact, Plaintiff accepted the amount of five thousand and 00/100 (\$5,000.00) dollars for rent for the months between November 1, 2017 and April 30, 2018.
13. That following April 30, 2018, Defendants continued to only pay five thousand and 00/100 (\$5,000.00) dollars in rent for each subsequent month.
14. That Plaintiff informed Defendants, by and through their agent, that payment of five thousand and 00/100 (\$5,000.00) dollars was not sufficient under the Lease Agreement.

15. That Plaintiff initiated eviction proceedings against Defendant Sake House IV, Inc. on or about February 4, 2019.

16. That as a result of the eviction proceedings, Defendant Sake House IV, Inc. was required to vacate the Property.

17. That during the period that Defendants were vacating the Property, they caused substantial damage to the Property and also removed equipment that they were not authorized to remove from the Property.

18. That Plaintiff had to expend the sum of twenty-two thousand and 00/100 (\$22,000.00) dollars to repair the Property and to purchase replacements for the equipment which was removed.

19. That Plaintiff attempted to re-lease the Property from March 2019 until January 2020, when it ultimately succeeding in obtaining a new tenant for the Property.

20. That Plaintiff used Defendant Sake House IV, Inc.'s five thousand and 00/100 (\$5,000.00) dollar security deposit to offset some of its damages.

CONCLUSION OF LAW

1. That the Lease Agreement and Guaranty of Full Performance are valid and binding contracts as to the parties.

2. That there was no permanent modification of the Lease Agreement to allow for reduced rent.

3. That Defendant Sake House IV, Inc. breached the Lease Agreement by failing to pay the full rental amount as set forth therein.

4. That Defendant Lei Jiang breached the Guaranty of Full Performance by failing and/or refusing to pay all amounts owed by Sake House IV, Inc.

5. That Defendants breached their duty of care owed to Plaintiff when they damaged the Property.
6. That Defendants converted personal property belonging to Plaintiff when they wrongfully removed equipment from the Property.
7. That Plaintiff properly mitigated its damages through its attempt to re-lease the Property.
8. That Defendant Sake House IV, Inc. is liable to Plaintiff for breach of contract as follows:
 - a. For unpaid rent from May 2018 through February 2019 in the amount of fourteen thousand eight hundred twenty-five and 60/100 (\$14,825.60) dollars, which reflects Plaintiff's use of the security deposit;
 - b. For unpaid rent from March 2019 through December 2019 in the amount of sixty-nine thousand eight hundred sixty and 60/100 (\$69,860.60) dollars; and
 - c. For late fees at a rate of ten percent pursuant to the Lease Agreement in the amount of eight thousand nine hundred sixty-eight and 62/100 (\$8,968.62).
9. That Defendant Sake House IV, Inc. is liable to Plaintiff for its expenses including reasonable attorney's fees. However, the amount of attorney's fees to which Plaintiff is entitled to will be determined at a later hearing for attorney's fees, following notice to and an opportunity to cross examine by the Defendant.
10. That based upon the Guaranty of Full Performance, Defendant Lei Jiang is jointly and severally liable to Plaintiff for the amounts arising under the Lease Agreement.
11. That Defendants are jointly and severally liable to Plaintiff for negligence and conversion in the amount of twenty-two thousand and 00/100 (\$22,000.00) dollars.

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law,
judgment is hereby entered in favor of Plaintiff Shops at Wescott, LLC as follows:

Against Sake House IV, Inc. and against Lei Jiang as its guarantor of full performance:

\$115,654.82

IT IS SO ORDERED!

Hon. Diane S. Goodstein
Presiding Judge, First Judicial Circuit

_____, 2021

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-18-00689

Shops at Wescott, LLC

Sake House IV, Inc. d/b/a Sake House and Lei Jiang

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: C. Brandon Belger, Esquire

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Shops at Wescott, LLC	Sake House IV, Inc.	\$115,654.82
Shops at Wescott, LLC	Lei Jiang	\$115,654.82
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

n/a

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Dorchester Common Pleas

Case Caption: Shops at Wescott Llc VS Sake House IV Inc , defendant, et al
Case Number: 2019CP1800689
Type: Order/Other

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2021-10-11 14:26:18 page 8 of 8

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1800689

Shops at Wescott Llc
PLAINTIFF(S)

Sake House IV Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

The Defendants' motion to reconsider, alter, or amend the judgment is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/21/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Defendants' motion to reconsider, alter, or amend the judgment is denied.



Dorchester Common Pleas

Case Caption: Shops at Wescott Llc VS Sake House IV Inc , defendant, et al
Case Number: 2019CP1800689
Type: Order/Electronic Form 4

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2021-12-21 14:00:40 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2019-CP-18-00689
The Shops at Wescott, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	(Breach of Contract)
Sake House IV, Inc. d/b/a Sake House, and	)	(Negligence)
Lei Jiang,	)	(Conversion)
	)	
Defendants.	)	
	)	

COMES NOW Plaintiff The Shops at Wescott, LLC (hereinafter “Plaintiff”), by and through counsel, complaining of Defendants Sake House IV, Inc. d/b/a Sake House (hereinafter “Sake House”) and Lei Jiang (hereinafter “Jiang”)(Sake House and Jiang collectively “Defendants”), and would allege and show unto this Honorable Court as follows:

PARTIES/JURISDICTION

1. Plaintiff is a limited liability company authorized and existing pursuant to the laws of the State of South Carolina, and having its principal place of business in Dorchester County, South Carolina.
2. Defendant Sake House IV, Inc. d/b/a Sake House is a corporation authorized and existing pursuant to the laws of the State of South Carolina, and having its principal place of business in Dorchester County, South Carolina.
3. Defendant Lei Jiang is, upon information and belief, a resident and citizen of Dorchester County, South Carolina.
4. This action arises out of a lease agreement for real property located in Dorchester County, South Carolina.

5. Venue and jurisdiction are proper in this Court.

FACTUAL ALLEGATIONS

6. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.

7. On March 21, 2016, Plaintiff and Defendant Sake House entered into a lease agreement, attached hereto, pursuant to which Plaintiff would lease to Sake House certain retail space at 9770 Dorchester Road for use as a Japanese restaurant.

8. The lease agreement was personally guaranteed by Defendant Lei Jiang.

9. The payment under the lease was Seventy-Thousand Eight Hundred and Seventy-Five and 00/100 (\$70,858.00) Dollars per annum, payable at the rate of Five Thousand Nine Hundred and Six and 25/100 (\$5,906.25) Dollars per month.

10. Defendant Sake House was additionally obligated under the lease to pay its proportionate share of taxes, insurance, and common area expenses, as well as an additional One Thousand Eighty-Two and 81/100 (\$1,082.81) Dollars per foot of leased space.

11. The total monthly payments due from Defendant Sake House were Six Thousand Nine Hundred and Eighty-Nine and 06/100 (\$6,989.06) Dollars.

12. Commencing in November, 2017, Defendant began paying Five Thousand and 00/100 (\$5,000.00) Dollars in monthly rent, and refusing to pay the remainder of the rent.

13. The lease further provides that a penalty of Ten Percent (10%) of late or unpaid rent shall accrue.

14. The term of the lease was Five (5) years, commencing on October 1, 2016 and terminating on October 1, 2021.

15. Pursuant to the terms of the lease, fixtures on the premises, whether installed by Plaintiff or Defendant Sake House, were to remain the property of Plaintiff.

16. Pursuant to the terms of the lease, specialized trade fixtures, furniture, furnishings and signs installed and paid for by Defendant Sake House remained the property of Defendant Sake House, and were permitted to be removed at the termination of the lease period, provided Defendant was in full compliance with all terms of the lease, including payments, and repaired any damage caused by the removal of these items.

17. Defendant Sake House abandoned the premises on or about February 19, 2019.

18. At the time Defendant Sake House abandoned the premises, it owed Thirty-One Thousand Eight Hundred and Twenty-Four and 00/100 (\$31,824.00) Dollars in unpaid rent and other charges.

19. At the time Defendant Sake House abandoned the premises, there remained Thirty-One (31) months of the lease period.

20. At the time it abandoned the premises, Defendant Sake House removed certain fixtures and other items, including but not limited to the walk-in cooler, the bathroom doors and fixtures, the wall covering, countertops, ceiling lighting, portions of the ceiling tiles, destruction of portions of the ceiling grid, and removal of a 5 ton HVAC system.

21. At the time it abandoned the premises, Defendant Sake House left debris and failed to leave the premises in clean condition. Removal of the 5 ton HVAC unit has created roof damage and subsequent water intrusion.

22. The lease provided that Plaintiff had the right to apply any or all of Defendant Sake House's security deposit towards any default on the part of Defendant.

23. The lease provided that Plaintiff is entitled its reasonable attorney's fees and costs to enforce any conditions or provisions of the lease.

FOR A FIRST CAUSE OF ACTION
AGAINST SAKE HOUSE AND JIANG
(Breach of Contract – Rent, Fixtures, Lease Term)

24. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.

25. Defendant Sake House contracted with Plaintiff for the lease of the premises described in the lease agreement.

26. Defendant Jiang, as consideration for Plaintiff agreeing to lease the subject property to Sake House, agreed to personally guaranty Sake House's complete performance under the lease agreement.

27. Defendants have breached the lease agreement through their actions, including without limitation: failing to make all rent payments in a timely manner; abandoning the premises prior to the end of the lease period; removing substantial equipment and fixtures from the leased property; and leaving debris, trash, and dirt at the leased premises.

28. As a direct and proximate result of Defendants' breach of contract, Plaintiff has suffered actual, consequential, and resulting damages in an amount to be determined by the trier of fact.

29. Plaintiff is further entitled to recover its attorney's fees and costs pursuant to the lease agreement.

FOR A SECOND CAUSE OF ACTION
AGAINST SAKE HOUSE
(Negligence)

30. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.

31. Defendant Sake House owed a duty of care to Plaintiff when occupying the leased space to not cause damage or further diminish the value of the property.

32. Sake House breached that duty of care when it negligently, recklessly, willfully, and wantonly removed integral building systems from the leased premises, causing further damage in the process.

33. As a direct and proximate result of Sake House's negligence, Plaintiff has suffered actual, consequential and resulting damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
AGAINST SAKE HOUSE
(Conversion)

34. Plaintiff realleges the allegations of the preceding paragraphs as though fully restated herein.

35. Plaintiff had an interest in the materials, equipment, and fixtures removed from the Property by Defendant Sake House.

36. Sake House willfully converted the materials to its own uses without the permission of Plaintiff, and in a conscious indifference to Plaintiff's rights.

37. As a direct and proximate result of Defendant Sake House's conversion, Plaintiff has suffered actual, consequential and resulting damages in an amount to be determined by a trier of fact.

38. Plaintiff is also entitled to an award of punitive damages based upon Defendant Sake House's reckless and willful conduct performed in a conscious indifference of Plaintiff's rights.

WHEREFORE, Plaintiff The Shops at Westcott, LLC respectfully requests judgment in its favor, and against Sake House IV, Inc. d/b/a Sake House and Lei Jiang, individually, for an award of actual, consequential, resulting, and punitive damages, for its attorney's fees and costs, for penalties as prescribed in the lease agreement, and for such other relief as the Court may deem to be just and proper.

KOONTZ MLYNARCZYK, LLC

/s/ C. Brandon Belger
Wm. Mark Koontz, Esq. (S.C. Bar 68784)
C. Brandon Belger, Esq. (S.C. Bar 100020)
Scott Winograd, Esq. (S.C. Bar 103483)
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scott@kmlawsc.com
Attorneys for Plaintiff

January 8, 2020
North Charleston, South Carolina

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2019-CP-18-689

THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-18-689

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FOR A SECOND DEFENSE – Failure to State a Claim

Each and every cause of action asserted and/or pled in Plaintiff's Amended Complaint fails as a matter of law pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, on the grounds that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against the Answering Defendants.

FOR A THIRD DEFENSE – Acts of Others

7. Answering Defendants state that any injury and damage sustained by Plaintiff was due to and caused by sole and negligent acts or omissions of others, over whom Answering Defendants had no authority or control, and, therefore, Answering Defendants are not liable to Plaintiff under any theory or cause of action.

FOR A FOURTH DEFENSE – Credit and/or Setoff

8. To the extent that the Plaintiff has received any funds in connection with this lawsuit, this Answering Defendant is entitled to a setoff in the amount of funds received by Plaintiff from any third party on account of the loss described in the lawsuit.

FOR A FIFTH DEFENSE - Rule 8(c) Defenses

9. Answering Defendant raises all applicable affirmative defenses required by Rule 8(c) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE - Failure to Mitigate

10. Answering Defendants hereby state that all causes of action asserted by Plaintiff should fail as Plaintiff has failed to mitigate the alleged damages.

FOR A SEVENTH DEFENSE - Indemnity

11. If at the trial of this action it is determined that Answering Defendants were in any

manner negligent, or otherwise liable to the Plaintiff, which is explicitly denied, then it is alleged that the acts and omissions of other parties were the primary and active acts and omissions and were the proximate cause of the Plaintiff's damages, if any, and that the acts and omissions of Answering Defendants, if any, were secondary and passive and superseded by the acts and omissions of other parties, and that Answering Defendants are entitled to indemnity from such other parties.

FOR AN EIGHTH DEFENSE - Contribution

12. If at the trial of this action it is found that any act or omission of Answering Defendants was in any way a proximate cause of any injuries or damage to Plaintiff, which again is expressly denied, then it is alleged that other Parties are the true Defendants in this matter, and that the acts and omissions of the other Parties joined and concurred with the acts and omissions of Answering Defendants, if any, and under the doctrine of Contribution Answering Defendants are entitled to recover contribution from these other Parties with respect to any judgment, awards, costs, expenses, and attorney's fees that the Plaintiff or any other party may recover from Answering Defendants.

FOR A NINTH DEFENSE – No Proximate Cause

13. Answering Defendants state that all causes of action and theories of recovery against Answering Defendants asserted by Plaintiff must fail as a matter of law because the actions and/or omissions of Answering Defendants were not the proximate cause of any injury or damage to Plaintiff.

FOR A TENTH DEFENSE – Spoliation

14. Upon information and belief, Plaintiff or other parties working as their agent, have engaged in spoliation of evidence by their intentional destruction of evidence in their control before it was made available to Answering Defendants. Answering Defendants

are entitled to dismissal of some or all the claims of Plaintiff under the doctrine of Spoliation of Evidence.

FOR AN ELEVENTH DEFENSE – Unclean Hands

15. Plaintiff is precluded from recovering against Answering Defendants in this matter under the doctrine of unclean hands.

FOR A TWELFTH DEFENSE- Disclaimers and Limitations of Remedies

16. Answering Defendants state that Plaintiff's recovery, if any, is subject to the disclaimers provided in the contracts, agreements, work orders, or other documents binding Plaintiff and any other party.

FOR A THIRTEENTH DEFENSE – Accepted Work Doctrine

17. Answering Defendants are not liable in any way to Plaintiff as Answering Defendants completed their contractual duties to other parties, such other parties accepted such work by Answering Defendants, and Plaintiff, as a third-party, cannot hold Answering Defendants liable to Plaintiff for any damages.

FOR A FOURTEENTH DEFENSE - Waiver

18. Plaintiff is precluded from recovering against Answering Defendants in this matter under the doctrine of unclean hands.

FOR A FIFTEENTH DEFENSE – Laches

19. Plaintiff is precluded from recovering against Answering Defendants in this matter under the doctrine of laches.

FOR A SIXTEENTH DEFENSE – Estoppel

20. Plaintiff is precluded from recovering against Answering Defendants in this matter

under the doctrine of estoppel.

FOR A SEVENTEENTH DEFENSE – Adoption of Defenses by Reference

21. Answering Defendants hereby adopt and incorporate by reference as if fully rewritten herein any and all other affirmative defenses as asserted by any other party to this action to the extent that the facts of this matter support such adoption and such affirmative defense is applicable to Answering Defendants.

FOR AN EIGHTEENTH DEFENSE – Comparative Negligence

22. The injury and damage, if any, sustained by Plaintiff(s) may have been due to and caused by and may have been the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of other parties; such constitutes a complete defense to the claims of Plaintiffs against this Defendant, so recovery against Defendant should be barred.

FOR A NINETEENTH DEFENSE – Beneficial Use

23. That the damages claimed must be reduced by the proportionate value of the beneficial use provided by the alleged actions of Defendants.

FOR A TWENTIETH DEFENSE – Maintenance

24. Plaintiff was obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and Plaintiff may have failed to do so and to the extent such was/is the direct and proximate cause of the damages suffered by the Plaintiff, then such should limit, if not completely bar, the claims of the Plaintiff.

FOR A TWENTY-FIRST DEFENSE – Reservation of Right to Amend

25. Answering Defendants reserve the right to amend their Answer and to assert any additional affirmative defenses allowed by the South Carolina Rules of Civil

Procedure, depending on any evidence discovered in pursuit of this litigation.

FOR A COUNTERCLAIM – Attorney’s Fees, Costs and Suit Money

26. Defendants are informed and believe that they are entitled to an Order of this Court awarding them attorney’s fees, costs, and suit money, temporarily and permanently, and requiring Plaintiff to pay the same in a timely manner.

/s/ Evan A. Smith

Evan A. Smith, S.C. Bar No. 100991

Evan Smith Law Firm, LLC

P.O. Box 976

Charleston, SC 29402

Phone: (843) 804-8550

Fax: (843) 203-5708

Email: evan@evansmithlawfirm.com

ATTORNEY FOR DEFENDANTS

Charleston, South Carolina
March 30, 2020

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

2019-CP-18-0689

Shops at Wescott, LLC)

) TRANSCRIPT OF RECORD

-vs-

)

) August 3, 2021

Sake House IV, LLC)

) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge

A P P E A R A N C E S:

C. Brandon Belger, Esquire
Attorney for the Plaintiff

Evan Adam Smith, Esquire
Attorney for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
P-1	Lease Agreement	85	12
P-2	1st Lease Addendum	85	26
P-3	Checks to Plaintiff	85	31
P-4A	Photo of Bathroom	85	36
P-4B	Photo of Bar	85	36
P-4C	Photo of Kitchen	85	36
P-4D	Photo of Ceiling	85	36
P-4E	Photo of Roof	85	36
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1 THE COURT: Thank you so much, everyone
2 and good morning. Please be seated and thank you.
3 All right.

4 THE CLERK: Okay, Judge. The first case
5 up on today's non-jury trial roster is Shops at Wescott
6 v. Sake House.

7 THE COURT: All right. Are you all ready
8 to proceed?

9 MR. BELGER: Brandon Belger for the
10 Plaintiff, yes, Judge.

11 THE COURT: Great.

12 MR. SMITH: Evan Smith for the Defendant,
13 we are, Your Honor.

14 THE COURT: Wonderful. How long -- and
15 I think I saw in somebody's pre-trial brief it's going
16 to take about a half a day, you think.

17 MR. SMITH: That's my belief.

18 THE COURT: All right. What I would like
19 to do is just -- I think we have -- let me do the rest,
20 and then we'll take you guys, and you won't be rushed,
21 and you won't have people looking at you going tap, tap,
22 tap, tap, tap.

23 MR. BELGER: Thank you, Your Honor.

24 THE COURT: So just hang with us.

25 (Off the record.)

1 (Back on the record.)

2 THE COURT: Now, I have -- you all have been
3 so kind. I've got the -- I have reviewed the pre-trial
4 briefs and appreciative of that. It's my understanding
5 that you all are ready to proceed.

6 MR. SMITH: That's correct, Judge.

7 THE COURT: And that this is a -- involves
8 a rental property and allegations about some damages,
9 and there's a defense. There's a counterclaim,
10 am I correct?

11 MR. BELGER: On attorney's fees, Your Honor.

12 THE COURT: I got it. Okay. Very well.
13 And when you all are situated, I don't know that --
14 unless you all want to make an opening, I think your
15 briefs were great. I think I got the issues. Call your
16 first witness, please.

17 MR. BELGER: Your Honor, I do have a copy
18 of Plaintiff's proposing witness for the Court, if you
19 would like it.

20 THE COURT: I would love it. Have you shown
21 it to the other side?

22 MR. BELGER: He has it.

23 MR. SMITH: I've had a chance to --
24 I'm familiar with the exhibits from our depositions.
25 I'll review it as we go.

1 THE COURT: And as well, I don't want to see
2 them if there's any objections to the exhibits.

3 MR. BELGER: Let's just wait then,
4 Your Honor, if we could.

5 THE COURT: Okay. Absolutely. Counsel,
6 if you would identify yourselves for our record.

7 MR. BELGER: Absolutely. Brandon Belger
8 on behalf of the Plaintiff.

9 MR. SMITH: Evan Smith on behalf of the
10 Defendants.

11 (Pause.)

12 MR. BELGER: Your Honor, Plaintiff is ready
13 to proceed if the Court is ready.

14 THE COURT: When you're ready, I'm ready.
15 Yes, sir, Mr. Belger, if you'll call your first witness.

16 MR. BELGER: Absolutely. Thank you, Judge.
17 Plaintiff calls Mr. Brian Aiken.

18 THE COURT: All right. A-I-K-E-N,
19 Mr. Aiken?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Come on around, Mr. Aiken,
22 and you will be seated in what used to be the jury box.

23 THE WITNESS: Okay.

24 THE CLERK: Please raise your right hand.
25 State your full name for the record.

1 THE WITNESS: Brian Miller Aiken.

2 MR. BRIAN AIKEN was called as a witness,
3 being duly sworn, was examined and testified as follows:

4 THE CLERK: Thank you. Have a seat over
5 there.

6 THE COURT: All right. Your witness.

7 MR. BELGER: Thank you, Judge.

8 DIRECT EXAMINATION

9 BY MR. BELGER:

10 Q. Mr. Aiken, what is your relationship to the Shops
11 at Wescott, LLC?

12 A. I am the managing member along with one other
13 partner.

14 Q. And are you familiar with the day-to-day
15 operations of the company?

16 A. Yes, sir. I manage and lease the company.

17 Q. Okay. And, if you would, please just give
18 us a brief description of what the Shops at Wescott --
19 what does it do as a business?

20 A. As a business, we developed some multi-retail
21 centers next to a Wal-Mart on Dorchester Road commencing
22 in 2005. And, you know, I'm responsible for the
23 day-to-day management of the property and the tenants
24 and bringing in new tenants, et cetera, bookkeeping.
25 Pretty much, I handle 100 percent of it.

1 Q. Understood. So Shops at Wescott owns
2 a commercial rental strip?

3 A. Correct.

4 Q. Is that strip located at 9770 Dorchester Road?

5 A. Yes, sir. There's two physical addresses; 9770
6 and 9730.

7 Q. Okay. How many units are available for rent
8 in that space?

9 A. Currently not, zero. You're talking about how
10 many total?

11 Q. Yeah. How many could be rented?

12 A. In 9770, which I believe is the subject property,
13 there are five, five total units that could be rented
14 in that address.

15 Q. All right. Tell me about when you became aware
16 of Sake House IV, Inc?

17 A. I became aware of Sake House IV, Inc. -- you're
18 talking about a specific date?

19 Q. I'm sorry. I guess, how did you became aware
20 of Sake House?

21 A. Sake House as an entity is also a brand name,
22 a brand name which is a storefront name. And I became
23 affiliated with the person that I believe runs that
24 entity in 2008 or 2009 because part of my role as
25 a commercial real estate agent, I had helped Sake House

1 procure their location, located in Centre Pointe, North
2 Charleston, next to the Factory Outlet. So that's where
3 my relationship began.

4 Q. And you mentioned the person who owns that.
5 Who is that?

6 A. My only interaction with the entity of Sake House
7 was Colleen Lin. I think her last name is Lin. I just
8 know her as Colleen.

9 Q. Okay. And was it Colleen Lin who approached
10 you about opening a Sake House at 9770 Dorchester?

11 A. Yes, sir.

12 Q. Who did you negotiate or discuss the terms
13 of the lease with for Sake House IV?

14 A. Solely Colleen Lin.

15 Q. All right. When Colleen first approached
16 you, did she ever discuss it being a different entity
17 or a different owner?

18 A. No, we didn't discuss different ownership.
19 But it's not uncommon for multi-unit entities such as --
20 typically, if you've got three or four restaurants,
21 which I believe Sake House does, they're going to create
22 a separate LLC for each location. But as far as the
23 ownership, Colleen was the only person I ever had any
24 dealings with. And she did indicate that her -- what
25 I was told was her husband was going to be a part

1 of this new LLC, Sake House IV.

2 Q. And the gentleman you're discussing, is that
3 Mr. Lei Jiang?

4 A. That is his name. He did not speak very good
5 English, so Colleen -- I only met him one time. That's
6 when we signed the lease, and Colleen had to interpret
7 for him.

8 Q. Okay. And so you just referenced the lease.
9 Obviously, did Shops at Wescott enter into a formal
10 lease agreement with Sake House IV, Inc?

11 A. Yes, sir.

12 MR. BELGER: Permission to approach the
13 witness, Judge?

14 THE COURT: Yes.

15 MR. BELGER: Thank you. Mr. Aiken,
16 I'm going to hand you what we marked as Plaintiff's
17 Exhibit 1 for identification. Your Honor, would you
18 like it at this time?

19 THE COURT: Not until it's in evidence.

20 BY MR. BELGER:

21 Q. Mr. Aiken, do you recognize this document?

22 A. Yes, sir.

23 Q. And can you tell me what you're looking at?

24 A. I am looking at the lease that I drafted on
25 behalf of Shops at Wescott, LLC, as landlord, and Sake

1 House IV, Incorporated, doing business as Sake House,
2 as the tenant.

3 Q. Okay. And I believe you just stated that you
4 recognize this because you drafted this document?

5 A. Yes, sir.

6 Q. And, if you would, just flip to the signature
7 pages near the end.

8 A. Okay.

9 Q. You should be on Page 14.

10 A. I'm ready.

11 Q. Did you sign on behalf of the Shops at Wescott?

12 A. I did.

13 Q. And you've had a chance to look at proposed
14 Exhibit 1. Does this appear to be an accurate
15 reproduction of the lease that Shops at Wescott entered
16 into with Sake House IV, Inc?

17 A. Yes, I would say this is a reproduction of the
18 original.

19 Q. Thank you.

20 MR. BELGER: Your Honor, at this time we would
21 move to introduce this as Plaintiff's Exhibit 1 into
22 evidence.

23 THE COURT: Any objection?

24 MR. SMITH: No, Your Honor.

25 THE COURT: It is so entered.

1 (Plaintiff's Exhibit No. 1 was entered into evidence.)

2 THE COURT: Yes, please.

3 BY MR. BELGER:

4 Q. All right, Mr. Aiken, I would just like to spend
5 a little time taking a look at this lease. And I know
6 this has what we call, I guess, a terms sheet on Page 3.
7 Is that -- I don't know if I'm using the right lingo,
8 but ---

9 A. Yes. Yes, sir. The outline of the basic lease
10 provisions.

11 Q. Understood. Is it your recollection that this
12 lease was formalized on March 21st, 2016?

13 A. Yes, sir.

14 Q. When was the delivery date? When was the date
15 that the tenant could actually move in?

16 A. Upon mutual lease execution, we established
17 the first of April as the date for lease purposes
18 that tenant could occupy and begin their own upfit
19 of the space.

20 Q. What was the condition of the units -- we're
21 looking at suites 103 and 104; is that correct?

22 A. Yes, sir.

23 Q. So they rented two suites?

24 A. Uh-huh.

25 Q. What was the condition of those suites prior

1 to them moving in?

2 A. The condition of suite 103 was a restaurant,
3 okay? So it was upfit with a system and the upgraded
4 HVAC mechanical. It had walk-in cooler, walk-in
5 freezer, and we had to take that back because there
6 was a young guy that really wasn't experienced that
7 much in a restaurant, so we mutually parted ways.

8 And 104 was an adjacent unit, and it was just
9 in a shell condition, which in our industry a shell
10 condition just means four walls, ceiling, just kind
11 of a retail box.

12 Q. Okay. So as far as you knew, 103 that already
13 had -- prior to Sake House moving in already had some
14 restaurant equipment installed in place?

15 A. Correct.

16 Q. Now you mentioned that they were going to be able
17 to perform their own upfit?

18 A. Yes, sir.

19 Q. And what's the purpose of that?

20 A. We granted the Defendant a total of six months
21 to -- which is a little -- it's a long time to give free
22 rent, but we did it. And the purpose of that six months
23 is so they could go in and, you know, take the dividing
24 wall between the two units and do the work necessary
25 to create a Sake House, which is primarily sushi/hibachi

1 bar. So we gave them a considerable amount of time
2 to perform that work.

3 Q. And during this upfit period, the six months you
4 just mentioned, was Sake House required to pay any rent
5 at that time?

6 A. No, sir.

7 Q. So when was the date that rent was supposed
8 to commence for Sake House?

9 A. Upon the expiration of six months beyond April
10 1st. So without counting, I believe it was October 1st
11 of 2016.

12 Q. And on that Page 3, is that located in that
13 paragraph or that line, Line 7?

14 A. Yes, sir.

15 Q. What was the term of this lease? How long was
16 it?

17 A. It was five years from the date of rent
18 commencement, which means upon the tenant completing
19 their upfit and opening for business, which they were
20 able to open a little earlier than the six months,
21 which is okay, which is -- so they commenced on October
22 -- during the month of October of 2016.

23 Q. And the expiration date as listed on Line 8 was
24 September 30th, 2021?

25 A. Correct.

1 Q. And what was the rent supposed to be?

2 A. The rent was supposed to be a combination
3 of two numbers, which one would be the base minimum
4 rent. And then there's another rent charge called
5 additional charges. Tenants in these multi-unit
6 shopping centers pay their proportionate share of
7 expenses which would include Dorchester County taxes,
8 the insurance bills, the parking lot lighting,
9 landscaping, waste removal -- garbage. Excuse me.
10 So that number it totaled at the time of the lease
11 \$6,989.

12 Q. And is what you've just stated, is that also
13 set forth on Pages 4 and 5 under Sections 5 and 6?

14 A. Yes, sir.

15 Q. Does this lease provide for late payments
16 if a payment is not paid on time or in full?

17 A. It is a condition of the lease agreement that
18 the tenant has to pay on time or otherwise there's
19 a penalty, yes, sir.

20 Q. Is that set forth on Page 5 of the lease
21 agreement, at subparagraph B?

22 A. 5B, yes, sir.

23 Q. And what does the lease state the additional rent
24 would be for late or incomplete payment?

25 A. The lease states there's a ten percent penalty.

1 Q. Does the lease contemplate this upfit that
2 you were discussing, the construction that was going
3 to be performed by the tenant?

4 A. Could you clarify that a little bit?

5 Q. Sure. If you would, turn to Page 7. Take a look
6 at Section 8, subparagraph C.

7 A. Yes, sir.

8 Q. And so you've already explained to the Court what
9 your understanding of what they were going to be doing.
10 They were going to be coming in, doing their own
11 construction to make it -- make the space suitable
12 for their business?

13 A. For their purpose, yes, sir.

14 Q. Would you read the last sentence in subparagraph
15 C?

16 A. "At the end of occupancy, tenant will be
17 responsible for repairing any damage caused by such
18 removal."

19 Q. And this is discussing removal of a five-ton
20 unit?

21 A. Yes, sir. The -- Colleen had repeatedly asked --
22 because she was building out a larger restaurant,
23 she needed more air-conditioning. And it's not common
24 to allow a tenant to remove an air-conditioner from
25 a rooftop, and I honestly thought it would never happen.

1 But as long as she fulfilled her term, I granted her the
2 ability to remove that unit and provided that no damage
3 was caused and that it was repaired properly.

4 Q. Understood. If you would, turn to Page 9
5 of Exhibit 1.

6 A. Okay.

7 Q. So Section 12, does that discuss what happens
8 to trade fixtures and furniture that is installed
9 by the tenant, by Sake House?

10 A. Yes, it does.

11 Q. Okay. And what's your understanding of what
12 the lease states regarding what happens to the trade
13 fixtures and furniture that's installed by the tenant?

14 A. In our industry, there's a differentiation
15 between trade fixtures and permanent fixtures.
16 Permanent fixtures are affixed to the building
17 and become part of a building, and the removal
18 of such typically causes damage to the property.
19 And, you know, equipment and -- equipment that's
20 not attached to the building, you know, that's tenant's
21 property, and yes, they can remove that without
22 any recourse. Did that answer your question?

23 Q. Sure. And does the lease in paragraph --
24 I'm sorry. Section 12, sub-D, does that require that
25 if there are things removed from the space that repairs

1 be made to any damage caused?

2 A. Yes, sir, right under 12(d)(1). "Any such items
3 may be removed only if tenant repairs any damage caused
4 by such removal."

5 Q. Now what's the other caveat, because there's
6 a one and a two?

7 A. Well, the purpose of two, I believe, is tenants
8 shall have -- you know, faithfully performs their
9 requirements under the lease agreement.

10 Q. So is it your understanding -- does the lease
11 allow for the tenant to remove these trade fixtures
12 and other things if they owe rent under the lease?

13 A. No.

14 Q. So they are not allowed to remove these items
15 that they put in if they owe anything, any duty under
16 the lease?

17 A. Correct.

18 Q. Was there a security deposit paid?

19 A. Yes, sir, there was a \$5,000 security deposit
20 paid at the mutual execution of the lease agreement.

21 Q. What does the -- does the lease allow for Shops
22 at Wescott to charge that security deposit to anything
23 during the term of the lease?

24 A. It does. If the tenant fails to make a payment,
25 and they have been in monetary default, the security

1 deposit can and was used to help offset that monetary
2 default. And the lease also states that the tenant has
3 a certain time period that they must reestablish that
4 security deposit. But in this case, I did not pursue
5 that. I told her I was just going to use that to help
6 offset the future monetary default.

7 Q. When you say ---

8 A. I'm sorry.

9 Q. When you say monetary default, are you describing
10 what is set forth in Section 19 on Page 12 of the lease?

11 A. Yes, sir.

12 Q. And can you describe just briefly what monetary
13 default is?

14 A. It goes back to the basic minimum and additional
15 rent charges outlined in the lease agreement and also
16 ties into the late payments. If the tenant has not
17 paid and is not current up on their monetary obligation
18 under the lease agreement past the late fee stage,
19 and it's not cured, on numerous occasions I had
20 to go up to a demi -- I think it's Deming Way,
21 off 78, to the magistrate office and try to enforce --
22 try to enforce that the tenant cure that default.

23 Q. If you would, turn to Page 13. You see Section
24 26, subparagraph A, waiver?

25 A. Yes, sir.

1 Q. Would you just read the highlighted portion,
2 that should just be A?

3 A. Okay. "No waiver of any condition or legal right
4 or remedy shall be implied by the failure of landlord
5 to declare a forfeiture, or for any other reason,
6 and no waiver of any condition or covenant shall
7 be valid unless it be in writing signed by landlord.
8 No waiver by landlord with respect to one or more
9 tenants or occupants of the shopping center shall
10 constitute a waiver of or a breach of any condition
11 nor be claimed or pleaded as an excuse of a future
12 breach of the same condition or covenant."

13 Q. Thank you. Finally, if you would, turn to Page
14 14 of the lease agreement. Is it your understanding
15 that if you, and by you I mean the landlord, the Shops
16 at Wescott, they have to pursue legal action to enforce
17 the lease agreement, are they entitled to recovery
18 of attorney's fees?

19 A. Yes, sir.

20 Q. And is that called out in the lease itself?

21 A. It is, in Section 27.

22 Q. Thank you. What is your understanding of how,
23 if at all, this lease agreement could be modified?

24 A. Only in writing. Only in writing, and it has
25 to be signed by both parties.

1 Q. Okay. Is that set forth in Section 30?

2 A. Yes, sir.

3 Q. Now on Page 14, we have what you've already
4 testified was your signature. Do you recognize
5 the signature of your tenant?

6 A. I do. We did sign this lease at my office,
7 and that was Colleen's husband. Colleen was present,
8 and the witnesses are staff at our office.

9 Q. And you understood the gentleman who was signing
10 the lease to be Mr. Lei Jiang?

11 A. Yes, sir.

12 Q. Was there a personal guaranty by anyone on that
13 lease agreement for Sake House IV, Inc.?

14 A. Yes, correct. Yes, sir.

15 Q. And is that demonstrated on Page 15 of Exhibit 1?

16 A. Correct.

17 Q. What is your understanding of what the personal
18 guaranty calls for? What does that do?

19 A. Because the -- we call those single-asset
20 entities, the LLCs, okay? Because these single-asset
21 entities are typically -- I'm not an attorney,
22 but they're a limited liability company. We do get
23 personal guarantees, so we have the ability to do what
24 we're doing today, which is enforce the provisions
25 of the lease agreement.

1 Q. And so am I to understand that personal
2 guaranties on leases of this type, is that common
3 in the industry?

4 A. Very common.

5 Q. And did you see the personal guaranty? Was that
6 executed at the same time as the lease?

7 A. Yes, sir.

8 Q. And did you witness Mr. Jiang sign the personal
9 guaranty?

10 A. Yes, I did.

11 Q. So we've discussed the major terms of the lease
12 and that it was executed. Were you involved at all with
13 the upfit period for Sake House?

14 A. The upfit period?

15 Q. Correct.

16 A. Well, I did negotiate -- I did allow and
17 negotiate what Colleen asked for, which was six months.
18 That's the period. As far as the actual upfit --
19 because I manage the property and there are, you know,
20 other buildings on the parent tract there, I do visit
21 two to three times a week, and I did stop in and
22 I looked to see the progress.

23 Q. Do you happen to know who their contractor was?

24 A. Larry Bowman. That was the general contractor
25 that pulled the permit.

1 Q. And do you recall any problems that Colleen or
2 Mr. Jiang approached you or anyone at your office with
3 about the space during this upfit period, any problems?

4 A. No.

5 Q. So once the rent commenced under the lease,
6 did Sake House pay rent to Shops at Wescott?

7 A. They did.

8 Q. And was it -- how much did they pay in rent?

9 A. They paid the stated rent in the lease agreement.
10 I rounded it down to \$6,989.

11 Q. How did they pay? Physically, how did they pay?
12 Did they hand you a check; did they send it by some
13 electronic means?

14 A. Our office is about three minutes from the Sake
15 House at Tanger Outlets, and that's where Colleen
16 managed and spent her time. She would drop off a check
17 at the office. She would come to my office, drop off
18 a check.

19 Q. So if I understand you correctly, Ms. Colleen Lin
20 would come to your office and drop off a check on behalf
21 of Sake House IV, Inc.?

22 A. Correct.

23 Q. Was there any other -- when you say your office,
24 are you talking about Caldwell Banker?

25 A. I'm talking about Caldwell Banker Commercial;

1 it's on Montague.

2 Q. Is there any other reason for Ms. Lin to come
3 by Caldwell Banker?

4 A. She had other transactions with my partner
5 in the company, also partner in Shops at Wescott, LLC,
6 Mr. Brent Case. And they often did -- evaluated other
7 opportunities for Sake House -- for a Sake House
8 restaurant.

9 Q. Did Shops at Wescott receive payment in any other
10 method from Sake House IV, Inc., or was it always
11 a check delivered -- hand delivered by Colleen Lin?

12 A. To the best of my memory, I don't -- I never got
13 one in the mail. Interestingly, sometimes it would be
14 a cashier's check, and sometimes it was just a normal
15 personal -- not a personal check, but, you know ---

16 Q. A company check?

17 A. A company check.

18 Q. Did Mr. Jiang ever come and bring payment?

19 A. No, sir. I never met him after the lease
20 signing.

21 Q. So at some point I understand that Sake House IV
22 stopped making the full rent. Tell me about that.

23 A. I would say for approximately -- and I don't have
24 those records right in front of me. But approximately
25 -- rent commenced in October, Colleen would stop in my

1 office and plead for a rent reduction, and I resisted
2 for a while. And because of my relationship with her
3 and my past dealings and her friendship with my partner,
4 you know, I finally gave in, and I'm like, okay, I will
5 give you what you want, and I produced a document for
6 her to sign in writing to alter the lease.

7 MR. BELGER: Permission to approach the
8 witness?

9 THE COURT: You may.

10 MR. BELGER: Thank you.

11 BY MR. BELGER:

12 Q. Mr. Aiken, I'm going to hand you what was marked
13 as Plaintiff's Exhibit 2 for identification. Do you
14 recognize this document?

15 A. Yes, sir, I drafted it.

16 Q. So that's how you recognize it, is that you
17 drafted this document?

18 A. Yes, sir.

19 Q. And what is this?

20 A. This was an addendum to the lease agreement.
21 And the purpose of an addendum is to supercede language
22 contained in the original lease agreement and alter
23 the terms. And in this particular instance, I see
24 that this period work was to commence on November 2017.
25 So actually one year to the day since Sake House

1 commenced on rent payments to the landlord, we --
2 I granted a six-month period to reduce the base minimum
3 rent and the additional charges to a flat \$5,000 for
4 six months.

5 Q. And as you look at this, does this appear to be,
6 apart from the highlights which I have added for ease
7 for everyone, does this appear to be an accurate
8 representation of the document that you drafted?

9 A. Exactly. Yes, sir, 100 percent.

10 MR. BELGER: At this time, we move to enter
11 this as Plaintiff's Exhibit 2 into evidence.

12 THE COURT: Any objection?

13 MR. SMITH: None, Your Honor.

14 THE COURT: Very well. Plaintiff's Exhibit
15 2 is in evidence.

16 (Plaintiff's Exhibit No. 2 was entered into evidence.)

17 BY MR. BELGER:

18 Q. Mr. Aiken, I think you've already kind of told
19 us about this, but you stated that Colleen Lin would
20 come into your office and specifically request a rent
21 reduction. When did that start?

22 A. It probably started eight months into the
23 operation of the restaurant.

24 Q. And so when do you believe that you drafted the
25 document that we're looking at, Plaintiff's Exhibit 2?

1 A. The amendment -- the addendum to the lease
2 agreement?

3 Q. That is correct.

4 A. I drafted this -- I don't have the specific date,
5 but it was obviously late October because this rent
6 abatement -- this six-month rent abatement period
7 was to commence on November 1, 2017, which is exactly
8 one year after they opened.

9 Q. And I believe you already testified, but what
10 was the purpose of this first addendum to the lease?

11 A. The purpose was to -- the way I look at it is
12 Colleen had said they weren't doing as well as she
13 intended. We went back and forth a while, and I used
14 to go up there and eat lunch a good bit because at the
15 end of the day landlord and tenant, it's a business
16 partnership, okay?

17 So, I would go in there and eat and evaluate
18 what was going on. And, you know, unfortunately,
19 Colleen just didn't spend any time there, and I told
20 her she needed to be there to get the restaurant up
21 and running properly. And we had tried to discuss
22 that, and I told her my opinion on how the restaurant
23 was run, and she only wanted to devote her time to her
24 big restaurant at the factory outlets.

25 So in the interest of working together, I said,

1 Colleen, I will do this, but it's only for six months,
2 and I'm going to take your security deposit. So she --
3 she refused to sign it, and sort of started doing
4 whatever she wanted to do.

5 Q. Okay. So just so I'm clear, you drafted
6 this document to memorialize your offer -- of Shops
7 at Wescott's offer to reduce the rent to \$5,000, a flat
8 fee for six months, beginning on November 1st, 2017,
9 correct?

10 A. Yes, sir.

11 Q. And, ultimately, the \$5,000 security deposit was
12 -- you were asking that be used to offset some of those
13 reductions?

14 A. Yes. Six months, roughly a \$2,000-a-month
15 abatement, obviously \$12,000, and that's kind of,
16 you know -- the security deposit was there to help
17 offset that abatement.

18 Q. Now you said that she didn't sign. Did you
19 present this document to anyone with Sake House,
20 Exhibit 2?

21 A. Only Colleen, and I have that e-mail which
22 I sent you asking her to sign it as well. I didn't get
23 a response on that. But she did come into my office,
24 and I sat her down at our conference room table and went
25 over the terms with her, explained it to her, and she

1 wasn't angry, wasn't -- she just refused to sign it.

2 Q. And just to be clear, I believe I know the
3 answer to this, but at any point in time did Mr. Jiang,
4 or anyone else in a representative capacity with Sake
5 House IV, Inc., tell you that Colleen Lin was not the
6 representative that you should be discussing this with?

7 A. I only 100 percent of the time dealt with Colleen
8 Lin. And her partner, husband, whatever that may be,
9 I met him once when they came in to execute the lease
10 on behalf of tenant.

11 Q. Did you ever believe that Colleen Lin was not
12 acting on behalf of Sake House IV?

13 A. No, sir.

14 Q. So you said that she just -- obviously, it was
15 not executed. No one ever executed this first addendum,
16 did they?

17 A. No, it was never -- never executed.

18 Q. Did you accept rent -- did you, on behalf
19 of Shops at Wescott, accept rent for the six-month
20 period at the rate of \$5,000 a month?

21 A. I did. I honored my part of it and had the
22 belief that she would do her part at the end of that
23 six-month period.

24 Q. And so what happened, as far as rent is
25 concerned, at the end of the six-month period that

1 you had offered to abate that rent?

2 A. She continued to pay \$5,000 and, you know, we
3 would -- we would discuss that frequently. What I mean
4 by frequently is, you know, one to two times per month.

5 MR. BELGER: Permission to approach the
6 witness? Permission to approach, Judge?

7 THE COURT: I'm sorry. Yes. I'm taking
8 notes. Yes.

9 BY MR. BELGER:

10 Q. Mr. Aiken, I'm going to hand you what was marked
11 as Plaintiff's Exhibit 3 for identification. Do you
12 recognize what I've handed you?

13 A. Yes, sir. These are rent payments made out
14 to Shops at Wescott, LLC, from the tenant?

15 Q. And do these appear to be copies of checks
16 that you personally received?

17 A. Yes, these were checks which I endorsed on
18 the back and deposited at our financial institution.

19 Q. And do these appear to be accurate
20 representations of the checks that you actually received
21 for rent payment from Sake House IV?

22 A. That is correct.

23 MR. BELGER: Your Honor, at this time
24 Plaintiff would move to introduce this, Exhibit 3,
25 into evidence as Plaintiff's Exhibit.

1 THE COURT: Any objection?

2 MR. SMITH: No objection, Your Honor.

3 THE COURT: Very well. So entered.

4 (Plaintiff's Exhibit No. 3 was entered into evidence.)

5 MR. BELGER: Thank you, Judge. Permission
6 to approach?

7 THE COURT: Sure.

8 BY MR. BELGER:

9 Q. Mr. Aiken, just taking a look at the first check
10 in Plaintiff's Exhibit 3, what's the date on that check?

11 A. May 8, 2018.

12 Q. And is that the first month after that abatement
13 period that you had agreed to offer to Sake House?

14 A. Yes, this is the first payment received after
15 the six-month expiration of the abatement.

16 Q. Okay. What is the amount of that check?

17 A. \$5,000.

18 Q. Is that -- is it actually \$5,035?

19 A. There was a bounced check which I asked her
20 to pay the bank fee on my behalf.

21 Q. Okay. So your understanding is this check
22 represented the \$5,000 rent payment and the \$35,000
23 [sic.] bounced check?

24 A. Yes, the insufficient fund fee.

25 Q. Understood. If you would, just take a quick

1 peruse over these checks. Do these represent the
2 payments that Sake House made to Shops at Wescott
3 for the remainder of the lease that they were actually
4 -- to the space?

5 A. Yes, sir. The rental payments continued
6 at \$5,000. And without going through every check,
7 it never altered, to my memory.

8 Q. What, if anything, did you discuss -- I know
9 you said you talked with Colleen on a few -- a few times
10 a month.

11 A. Yeah.

12 Q. What did you tell her about these \$5,000 rent
13 payments?

14 A. Well, she kept coming up with different, you
15 know, I don't want to call them excuses, but that's kind
16 of what they are. So towards the end of this period,
17 I believe -- I'm looking at a check dated February
18 of 2019 in the amount of \$5,000. Towards the end
19 of this, sir, the conversation -- the conversation
20 between Colleen and I did discuss monetary default.
21 It discussed eviction.

22 Q. Did you ever tell Ms. Colleen Lin that it was
23 acceptable to only pay \$5,000 in rent per month for Sake
24 House?

25 A. I did not.

1 Q. So why did you accept the \$5,000 from May until
2 February of 2019?

3 A. I know Colleen personally; I know she likes
4 to negotiate. I thought I could manage this and get
5 her to slowly, you know, I'm just going to say do what's
6 right. And I tried to let her know that the
7 ramifications of continuing that \$5,000 payment was
8 going to lead to legal action. And I thought that might
9 also get her to adhere to the legal agreement that she
10 signed.

11 Q. At any point in time, did you ever say that you,
12 on behalf of Shops at Wescott, would agree to modify
13 the lease to accept \$5,000 a month in rent?

14 A. No. Only -- that discussion was only had one
15 time and that was -- prior to the rent abatement period,
16 I had tried to resist. Finally, I did give in,
17 but after the rent abatement period expired, I never
18 said, hey, Colleen, it's okay, just give the landlord
19 \$5,000 a month.

20 Q. As I understand it, you would every month tell
21 her that it was unacceptable to just keep paying \$5,000,
22 and that it was going to lead -- you were going to be
23 forced to have to bring legal action?

24 A. Yes. The first month after the expiration of the
25 rent abatement period, I sent her a notice of default

1 outlining the stated base rent in the lease agreement
2 and additional charges due for taxes and insurance
3 and a late fee, and that was ignored.

4 Q. Did Shops at Wescott eventually file an eviction?

5 A. Yes.

6 Q. And what happened with that? Was that granted?

7 A. There were -- yes. We went to -- is it Deming
8 Way where the magistrate is? Yes. So, I did file
9 for eviction, I'm going to say a couple of times, sir.
10 And the first time was more of trying to let her know
11 that I was real serious. And the second time was the
12 end for me and we went to Deming Way, and the magistrate
13 granted the eviction to the landlord.

14 Q. Do you recall, was that in late February of 2019?

15 A. Yes, it was one day after my birthday.
16 I remember it well.

17 Q. Did Sake House, in fact, vacate the premises
18 following that?

19 A. The magistrate granted them, I want to say --
20 I want to say the magistrate granted them, and it's in
21 my files, but, like, two weeks -- ten days or two weeks
22 to vacate the premises.

23 Q. Did you personally visit the site on the day
24 or around the day that Sake House was moving out?

25 A. I visited -- I was -- you know, at this point,

1 I didn't really understand my legal rights, but I did
2 not go inside. But I was -- yes, I did visit several
3 times, and, you know, sort of watched what was going
4 on.

5 MR. BELGER: Permission to approach the
6 witness?

7 THE COURT: Sure.

8 MR. BELGER: Thank you, Judge.

9 BY MR. BELGER:

10 Q. Hand you what was marked as Plaintiff's Exhibit
11 4 for identification. Do you recognize what I've handed
12 you?

13 A. Yes, sir. I took these pictures.

14 Q. Okay. So am I to understand these are
15 photographs of the rental space at units 103 and 104?

16 A. Correct.

17 Q. And you took these photographs?

18 A. I did. They're -- and I made sure they were time
19 stamped.

20 Q. And what was the date of these photographs?

21 A. March 4th. And I say March 4th because that must
22 have been the approximate date that I was able to enter
23 the premise, I want to say legally, after they had
24 vacated the premise, per the magistrate's instruction.

25 Q. And do these appear to be an accurate

1 representation of the photographs that you took of ---

2 A. Yes, they are 100 percent accurate.

3 MR. BELGER: Your Honor, Plaintiff will move
4 to introduce Exhibit 4 for identification into evidence
5 as Plaintiff's Exhibit 4.

6 THE COURT: And how many photographs are
7 there?

8 THE WITNESS: A total of six, Your Honor.

9 THE COURT: All right. So this would be
10 exhibit?

11 MR. BELGER: Four.

12 THE COURT: Four A through D. There's six
13 you just said.

14 THE WITNESS: I'm sorry. There's two,
15 three ---

16 MR. BELGER: There's five.

17 THE WITNESS: There's five photos.

18 THE COURT: There's five. All right.

19 A through E. Any objections?

20 MR. SMITH: None, Your Honor.

21 THE COURT: Very well. So entered.

22 (Plaintiff's Exhibit Nos. 4A through E were entered into
23 evidence.)

24 MR. BELGER: Permission to approach?

25 THE COURT: Yes. And do you have any

1 objection to me indicating A and B?

2 MR. BELGER: Not at all, Judge.

3 THE COURT: Okay. All right. These are
4 what's going into evidence. You handed those to ---

5 MR. BELGER: He has them.

6 THE COURT: All right. Just as you handed
7 them to me, A and B and C and D and E.

8 BY MR. BELGER:

9 Q. Mr. Aiken, taking a look at 4A, the first
10 photograph, you stated that you took this photograph?

11 A. Yes, sir.

12 Q. Where's the location of this photograph inside
13 of the space?

14 A. This is one of the -- this seems to be the female
15 restroom.

16 Q. Okay. What -- can you tell me what that
17 is hanging down from the ceiling?

18 A. It's the removal of exhaust fans and lighting
19 fixtures and missing electrical wires, conduit and
20 exhaust piping.

21 Q. What was the condition of this area prior to
22 their move in -- prior to the moving in of Sake House,
23 what was the condition of this space that we're seeing
24 in photograph A?

25 A. Well, they did modify the restrooms. Is that

1 what you're asking, sir?

2 Q. Was this a restroom prior?

3 A. Correct.

4 Q. Was there a toilet in it?

5 A. Yes, sir.

6 Q. Was there a stall wall?

7 A. Yes, sir.

8 Q. Is that the same stall wall that was in the space
9 prior to Sake House moving in?

10 A. I can't say it's the same stall wall with the
11 door with 100 percent certainty, but I would assume
12 that -- I would say it's the same one.

13 Q. Okay. Now without getting into too much detail
14 yet, when looking at photograph A, did Shops at Wescott
15 have to make any repairs to anything -- repairs
16 or replacement to anything in photograph A?

17 A. Yes, we did.

18 Q. Okay. And can you tell me what you had to do,
19 what Shops had to do to repair or replace what we're
20 looking at in photograph A?

21 A. We had to purchase and re-install new bathroom --
22 we had to replace the door, the wall; we had to do
23 some electrical work; we had to replace the -- replace
24 some lighting that was taken out of the ceiling; we had
25 to replace portions of the ceiling grid that were

1 damaged when this was yanked out. And just, you know,
2 the picture doesn't capture everything, but the mirrors
3 were ripped off, you know, just a lot of cosmetic work,
4 in addition to this.

5 Q. Okay. All right. If you would, take a look at
6 photograph B. What are we looking at here in photograph
7 B?

8 A. This was their bar area. And the -- all of the
9 walls had been, for lack of a better term, ripped off.
10 And there was an existing bar, and that bar is sort
11 of -- in this picture, on the right-hand side, the bar
12 is pushed against the wall because it had been torn down
13 and portions taken apart.

14 Q. Okay. Did Shops at Wescott have to make any
15 repairs or replacement to anything that we're looking
16 at in photograph B?

17 A. Yes, sir. We had to repair all the walls which
18 ended up being a thin layer of -- did some sheetrock
19 work and sheetrock mud, fixed all the holes and paint.
20 And the bar that's on the floor was useless, so we had
21 to pay for that to be removed. There was some fixtures
22 underneath the bar that had been pulled out of the wall.
23 When I mean fixtures, I'm talking about hand sinks
24 and other fixtures that you would typically see under --
25 you would find under -- behind a bar.

1 Q. And as we look at photograph B, is this the
2 condition that the space was in prior to Sake House
3 moving in?

4 A. No. This area was from the prior tenant that
5 I discussed earlier, and they made some cosmetic
6 changes, but it wasn't like this. That's all I can
7 say. It wasn't destroyed.

8 Q. Taking a look at photograph C, what are we
9 looking at here?

10 A. Okay. From the prior tenant, there was a walk-in
11 cooler and freezer. And what we're looking at here
12 is the walk-in cooler and freezer can be taken apart
13 and removed. However, in this instance, you know,
14 they did take it out, and then they just started cutting
15 electrical that you see hanging from the ceiling,
16 and you see a lot of ceiling tiles that are missing.
17 So that property was a fixture. It was existing before
18 they even signed the lease.

19 Q. So that was property that was -- had become in
20 the ownership by Shops at Wescott that was in this space
21 prior to Sake House moving in?

22 A. Yes. By virtue of the definitions in the lease,
23 that is a fixture which is affixed to the real property.

24 Q. Was it ever the intention of Shops at Wescott
25 that Sake House was going to gain ownership of the

1 walk-in cooler and freezer?

2 A. No. They may have modified it somewhat but --
3 I don't have pictures of that. But, like I said,
4 all I know is that when they signed the lease agreement,
5 they inherited the right to use the existing walk-in
6 cooler and freezer.

7 Q. You said use?

8 A. Use.

9 Q. Did they have a right to own it?

10 A. No, sir.

11 Q. Did Sake House -- I'm so sorry. Did Shops
12 at Wescott have to make repairs or replacements
13 to anything that we're looking at in photograph C?

14 A. We -- well, I physically took some peels
15 and peeled all this mold and cleaned it up. And then
16 our contractor came in and had someone work on the
17 electrical, and there's -- in addition to what you
18 see here, sir, our contractor connected another walk-in
19 cooler and, you know, fixed the electrical.

20 And part of this electrical runs to the roof,
21 and there's a roughly \$2,500 piece of equipment called
22 make-up air, which I don't fully understand, but it's
23 required for the walk-in cooler/freezer to operate
24 properly.

25 Q. All right. If you would, take a look at

1 photograph D.

2 A. Okay.

3 Q. What are we looking at here?

4 A. What we're seeing in D is the ceiling had been
5 ripped apart, and the reason it was ripped apart was
6 because they not only took lighting fixtures out of
7 the ceiling and left exposed electrical, they dismantled
8 the air handler, which is part of the HVAC system.

9 The condenser is going to be on the roof,
10 and the air handler is going to be in the ceiling above
11 the ceiling tile and affixed to the ductwork, and it's
12 going to distribute the air from the air-conditioning
13 condenser on the roof. So this represents their removal
14 of the air handler in the premise.

15 Q. Did Shops at Wescott have to make any repairs
16 or replacements to anything that we're looking at in
17 photograph D?

18 A. Yes. In order to relet the space, the premise,
19 we had to buy another air-conditioner and fix the
20 ductwork, fix the ceiling grid, go back in and make
21 repairs to the electrical circuits which had been cut,
22 and obviously ceiling tiles and certain portions
23 of lighting.

24 Q. Now if you would, take a look at photograph E.
25 What are we looking at here?

1 A. That's me; that's my shadow. I'm looking at
2 the removal of the HVAC condenser, and there's two sets
3 of 4x4s there. The second would be the make-up air
4 that I referred to in the walk-in cooler and freezer
5 that was removed as well. So, yes, we had to replace
6 both the make-up air and the HVAC condenser rooftop unit
7 and the air handler.

8 Q. The name of the contractor who performed the work
9 -- who was your contractor?

10 A. Mr. Larry Bowman.

11 Q. Is that the same gentleman who performed
12 the upfit for Sake House?

13 A. He has a general contractor's license and Colleen
14 -- and Colleen does not have -- she has people that
15 do work for her, but they're not general contractors.
16 So, Mr. Bowman would help coordinate the construction
17 and pull the permits for Colleen.

18 Q. Now as far as the repairs that were made by
19 the Shops at Wescott, did Mr. Bowman do all of that
20 for Shops?

21 A. Yes, sir, he did. Larry Bowman has done --
22 I have worked with him for probably 15 years,
23 and I consider him a friend, and plus he knew the space
24 better than anyone. And, yes, we hired him to fix all
25 of the damage.

1 Q. Mr. Bowman is deceased; isn't that correct?

2 A. Yes, he passed in June.

3 MR. BELGER: Permission to approach the
4 witness?

5 THE COURT: Yes.

6 MR. BELGER: Thank you, Judge.

7 BY MR. BELGER:

8 Q. Mr. Aiken, I'm going to hand you what we've
9 marked as Plaintiff's Exhibit 5 for identification.

10 A. Yes, sir.

11 Q. Do you recognize this?

12 A. I do.

13 Q. And why is it that you recognize this?

14 A. I wrote these checks to Mr. Bowman to get started
15 on the -- fixing the space.

16 Q. Do these appear to be accurate representations
17 of the payments that Shops at Wescott made to Larry
18 Bowman?

19 A. Yes, sir. These are checks from the landlord's
20 operating account, signed by me, made payable to Larry
21 Bowman.

22 MR. BELGER: Your Honor, at this time
23 Plaintiff will move to enter Exhibit 5 for
24 identification into evidence as Plaintiff's Exhibit 5.

25 THE COURT: Any objection?

1 MR. SMITH: Your Honor, the only objection
2 we would object to -- I'll deal with it on cross.
3 No objection, Your Honor, as entered.

4 THE COURT: All right. Very well.
5 So entered, without objection.

6 (Plaintiff's Exhibit No. 5 was entered into evidence.)

7 MR. BELGER: Permission to approach?

8 THE COURT: All right. Sure.

9 BY MR. BELGER:

10 Q. Mr. Aiken, I believe you testified that
11 Mr. Bowman performed or facilitated all of the repairs
12 that you had just talked about when you were looking
13 at those photographs?

14 A. That's correct.

15 Q. And Plaintiff's Exhibit 5, does this represent
16 payments -- all of the payments made from Shops
17 at Wescott to Larry Bowman for those repairs
18 or replacements?

19 A. That's correct.

20 Q. It appears that this equals \$22,000. Is that
21 your understanding of the amount that was paid to Larry
22 Bowman for this work?

23 A. Yes, sir.

24 Q. Following Sake House moving out, did Shops
25 at Wescott try to re-lease the space?

1 A. Yes, sir, in a number of ways. First thing
2 we do is prepare some marketing material and distribute
3 that to the brokerage community, and we also put
4 that into what's called the Multiple Listing Service.
5 And, you know, I double as a commercial real estate
6 agent, so I did, you know, specifically target some
7 restaurateurs. So, yes, it was -- there was certainly
8 an attempt to re-lease the space.

9 Q. Did you follow -- did you personally -- the
10 attempt to re-lease, was that you or someone else?

11 A. Predominantly me, you know. We have a fairly
12 large office with agents and -- agents in our office.
13 But, yes, at the end of the day it all kind of came
14 through me, whatever interest there was, you know.
15 But I was the one that would spearhead the effort
16 to market the property and identify a proper fit,
17 so to speak.

18 Q. Okay. And was there anything that you would
19 normally do to re-lease a property after a tenant moves
20 out that you didn't do this time?

21 A. I want to make sure I understand the question.
22 Is there anything that I would normally do to re-lease
23 a property that I did not do in this instance?

24 Q. That's correct. Did you follow your normal
25 procedures for re-leasing property when you sought

1 to re-lease the property that Sake House had moved
2 out of?

3 A. No. It becomes a priority to re-lease a vacancy
4 like that. You know, it's -- it's roughly 3,400 square
5 feet, so, you know, that's a large loss of revenue.
6 The only thing that we did differently, or I did,
7 is it was tough to forecast and have a crystal ball into
8 the future. All we did was go in and have the debris
9 removed and the reason -- you know, just to clean it
10 up so it was presentable.

11 When I did take restaurant prospects in there,
12 you know, I basically would have to say, excuse the
13 ceiling. Obviously, we're going to fix that if we come
14 to terms. But I waited to do those repairs because
15 I could have gotten a call from, you know, let's just
16 call it J.D. Morgan Chase, maybe they're willing to put
17 a bank there. So you don't spend the money when you
18 don't know exactly what the end result is going to be,
19 so we have cleaned it up.

20 Q. So you said earlier that, in fact, re-leasing
21 this space actually had a priority over some of your
22 other work?

23 A. Certainly.

24 Q. And ultimately Shops was able to get a tenant
25 in the space, and that was around January of 2020;

1 is that correct?

2 A. I believe so. We did get an established
3 restaurant tenant, and we agreed to terms.
4 And I believe once we did that we commenced with making
5 the repairs and paying Mr. Bowman.

6 Q. And so that was the space -- was the space empty
7 from March of 2019 to the end of December 2019?

8 A. Yes.

9 Q. And throughout that period was Shops at Wescott
10 trying to re-lease the space?

11 A. Yes, we were. It was not very presentable.
12 It was kind of a catch-22 situation. You know, I didn't
13 want to go in there and spend all that money and then
14 have a really good retailer come in and be like, well,
15 I don't need all this restaurant stuff, you know.
16 So, I kind of had to do a wait and see. If it's going
17 to be a restaurant, then, yes, we'll fix it. And if
18 it's not going to be a restaurant, then we'll still have
19 to go in and alter the space.

20 Q. So if I understand correctly, then the damages
21 being sought today are the months from May of 2018
22 to February of 2019 when Sake House was paying \$5,000
23 instead of the full amount; is that correct?

24 A. Correct.

25 Q. Does that total \$19,860.60 for that period

1 of time?

2 A. I believe that's correct.

3 THE COURT: What was that again?

4 MR. BELGER: That is \$19,860.60.

5 THE COURT: Okay.

6 BY MR. BELGER:

7 Q. Is Shops at Wescott also seeking the loss rent
8 from the period that the space was empty from March 2019
9 through December 2019? And in that period those equal
10 \$69,860.60; is that correct?

11 A. Correct. That would represent an unexpired
12 term that was committed to under a legal agreement.

13 Q. Shops -- is Shops at Wescott also seeking the
14 ten percent late fee -- late/unpaid fee under the lease?

15 A. Yes.

16 Q. And you testified earlier that there were also
17 damages and removal of property, and Shops at Wescott
18 paid Larry Bowman \$22,000 for that work; is that
19 correct?

20 A. That's correct.

21 Q. Now, I believe you testified earlier, but I want
22 to make sure that we're correct on this, that the \$5,000
23 security deposit was credited, it was used towards some
24 of these payments that were not made?

25 A. Yes. Per the lease agreement, the landlord has

1 the right, but not the obligation, to liquidate the
2 security deposit and apply it towards monetary default.

3 Q. Forgive my math, but are the damages being sought
4 today \$115,654.82?

5 A. Yes, sir.

6 MR. BELGER: Thank you, Judge. I have no
7 further questions for the witness.

8 THE COURT: All right. We are going to take
9 about a 15-minute comfort break. Please be mindful
10 that you cannot discuss your testimony with anyone while
11 you're on the stand, so do not discuss your testimony.
12 You can certainly take a break as well.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: Fifteen minutes, everybody.

15 (Recess taken.)

16 (Back on the record.)

17 THE COURT: Thank you so much and please
18 be seated. Okay. Yes, sir, if you'll retake the stand,
19 please, sir, and we will have cross-examination.
20 Yes, sir, you may proceed.

21 MR. SMITH: May it please the Court.

22 THE COURT: Yes.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Aiken, you and your attorney discussed

1 a series of payments you made -- that were made
2 throughout the terms or the duration of this lease
3 from 2016 on through when the Defendant stopped making
4 payments; is that correct? Is that correct?

5 A. Would you explain series of payments?

6 Q. Okay. So we've discussed a series of payments,
7 some at the lease amount of \$6,989 and others at \$5,000,
8 correct?

9 A. Correct.

10 Q. Okay. And in order for the Court to best
11 understand the timeline, I need to address one
12 particular set of information that's been provided
13 to me by your attorney just to get clarification.

14 MR. SMITH: If I may approach the witness,
15 Your Honor?

16 THE COURT: Sure.

17 BY MR. SMITH:

18 Q. I was provided this, which appears to be some
19 sort of register of payments. Could you please identify
20 that document and tell me what that document is?

21 A. I have never seen this document before.

22 Q. Okay.

23 A. I kind of understand what the purpose is,
24 but I don't know who wrote it, and I'm not sure
25 if it's accurate.

1 Q. Okay.

2 A. I mean, if it's what I believe it to be, it's not
3 accurate.

4 Q. Okay. When do you believe that Sake House
5 started paying \$5,000 per month on the -- directly
6 to your company?

7 A. I believe that it was the -- I believe it was
8 November 1st of 2017.

9 Q. And so it's your testimony that up until that
10 point that they had paid the full amount; is that
11 correct?

12 A. I believe that is -- I believe they did pay the
13 stated lease rate. I don't have those records in front
14 of me, but that's my belief, my recollection.

15 Q. Okay. Why did you -- where did the number \$5,000
16 per month come from? How did you arrive at that number?

17 A. It was Colleen's request.

18 Q. Okay. And was that a number -- was any other
19 number discussed between the two of y'all, other than
20 \$5,000?

21 A. No, sir.

22 Q. Okay. So Colleen came to you, said, I would
23 like to pay \$5,000, and you said, yes; is that correct?

24 A. After about six months of saying no, I did
25 finally say yes, but I did provide the written

1 documentation to alter the lease, which was never
2 signed.

3 Q. Okay. And then, thereafter, you testified that
4 you -- that she then began at some point to continue
5 to pay \$5,000; is that correct?

6 A. Yes, sir.

7 Q. Okay. And you testified that you said, I thought
8 I could manage this; is that correct?

9 A. I believe I said I thought I could appease her,
10 let her, you know, get the business a little more
11 sustained. Maybe she would spend more time there;
12 maybe she would manage it. She never did, and I thought
13 I was doing a goodwill gesture.

14 Six months was what she wanted; I agreed to
15 that verbally. And I also discussed with her at the
16 expiration of those six months we had to go back to the
17 stated rent in the lease, and that's what I attempted
18 to get signed, and she continued to make the same \$5,000
19 a month payment.

20 Q. Okay. So, I guess I'm still a little bit
21 confused. You brought the November -- you brought
22 this first addendum to her on November 1st of 2017;
23 is that your testimony?

24 A. No, I e-mailed it to her prior to that,
25 and she ended up coming to my office, and I don't know

1 -- it was sometime in October of '17. But the purpose
2 of that was, okay, going forward we're going to set
3 a defined six-month period, per your request, for
4 \$5,000. At the expiration of that defined period,
5 you're going up to the stated lease agreement rate.

6 Q. Okay. And then, thereafter, as it has been set
7 forth in evidence today, beyond the April 30th of 2018
8 end date, you continued to accept \$5,000 checks from
9 Sake House IV; is that correct?

10 A. I did accept, and I also sent default letters.

11 Q. Have you provided copies of those default
12 letters?

13 A. I have them; they're in the file.

14 Q. Okay. And so for one, two, three, four, five,
15 six, seven, eight, nine months after that April 30th
16 term, you accepted \$5,000 payments, correct?

17 A. Yes, we did accept and deposit those.

18 Q. Okay. And when did you send your first default
19 letter, to the best of your recollection?

20 A. At the expiration of the six-month period that
21 we had agreed upon verbally.

22 Q. Okay. At what point did you begin to anticipate
23 that they would default on their lease?

24 A. At the expiration of the six-month period,
25 the rent abatement period. I began to expect that

1 they were going to -- we had a lot of discussions,
2 Colleen and I, and because I thought she would --
3 I thought she would do what's right and come back
4 to the stated lease agreement.

5 Q. Okay. Where did those conversations take place?

6 A. She would call sometimes, but she came by the
7 office, like I said, to deliver rent. And more often
8 than not, she would see me or come down to my office
9 and tell me her new plan for making the business more
10 capable of paying the stated rent. So there was always
11 something that she was -- she kept promising. I kept
12 accepting and telling her those needed to end.
13 The favors are expired.

14 Q. Okay.

15 A. That's when ---

16 Q. Did you tell her that in writing at any point?

17 A. Well, I think the default letters would serve,
18 took that purpose.

19 Q. And I have a document here that has been provided
20 to your attorney as well. Could you please review that
21 document for me, please?

22 A. I know this document.

23 Q. When was that document presented to anyone
24 related to Sake House IV?

25 A. This was -- Colleen was in my office at the

1 conference room, and instead of going through a formal
2 eviction, I proposed that we just shake hands and walk
3 away because she was not going to do -- there were
4 reasons I needed the lease rate to go up because a
5 greatly reduced lease rate, in this particular instance,
6 if you capitalized \$24,000 a year in a potential sale
7 of a property, that's over -- that's about \$340,000
8 worth of proceeds, okay? It's called a capitalization
9 rate.

10 So she was unwilling to cooperate. I was still
11 willing to -- I asked that she not tear the place up,
12 not steal equipment, and I was going to let her walk.
13 She wouldn't sign this.

14 Q. When was she presented with this? I believe
15 that was my initial question.

16 A. Prior to the final eviction notice. I was --
17 I think that was in -- the final -- the magistrate
18 hearing was February 20th. So, I attempted to
19 peacefully part ways, and she reviewed this. And she
20 said, let me take it home. And I was out of effort
21 at that point, so I just went ahead with the eviction,
22 and my worst fears were realized, and the place was torn
23 up.

24 Q. Okay.

25 MR. SMITH: Move to have this admitted

1 as Defendant's Exhibit 1, Your Honor.

2 THE COURT: Any objection?

3 MR. BELGER: No, Your Honor.

4 THE COURT: All right.

5 (Defendant's Exhibit No. 1 was marked for
6 identification.)

7 (Defendant's Exhibit No. 1 was entered into evidence.)

8 BY MR. SMITH:

9 Q. Now this document here -- we're still discussing
10 this lease, this early termination. It has several
11 terms and conditions that modify the lease agreement,
12 correct?

13 A. No.

14 Q. How is that?

15 A. The terms and conditions only apply to the
16 amendment which would -- the amendment would supersede
17 the actual lease agreement. Part of this document
18 is missing, but it goes on to say in the beginning
19 of the document notwithstanding any language to the
20 contrary contained in this lease agreement between Sake
21 House IV and Shops at Wescott, LLC, the language in this
22 addendum shall supersede and control. All other terms
23 and conditions shall remain in full force and effect.

24 Q. Okay. So there's a piece of the document
25 missing?

1 A. This is ---

2 Q. Do you have a copy of the complete document?

3 A. I do.

4 Q. And did you just read from that?

5 A. No, I just know it in my head.

6 Q. But you don't have a copy of that?

7 A. I do have a copy of it, yes, sir.

8 Q. Who drafted this document?

9 A. I did.

10 Q. Okay. When did you draft the document?

11 A. Prior to February 20 when we went and -- I would
12 say it was in -- I would say it was probably in early
13 or late January because when I filed that last eviction
14 notice -- I mean, default notice and then the default
15 was not cured, and I came up to Deming Way, and I paid
16 for the magistrate to have a putout.

17 The Defendant reached up to the magistrate
18 and delayed the putout contingent upon a hearing with
19 the magistrate on February 20. And at that February 20
20 meeting with the magistrate, the magistrate ruled in
21 the Plaintiff's favor. So it was probably late January
22 when I -- well, you have 30 days to cure. I'm trying
23 to remember now, but let's just call it within a month
24 and a half prior to February 20.

25 Q. Okay. And you are -- you presented the document

1 that I'm still referencing to Colleen Lin; is that
2 correct?

3 A. I did.

4 Q. Okay. And so at that time, were you in any
5 discussions with any other tenants or potential tenants
6 about taking over the space?

7 A. I was not.

8 Q. Why not?

9 A. It's been a while. I don't know why I wasn't.
10 But again the purpose of me trying to get a market rate
11 rent goes back to my plans in the future to market the
12 asset and the income stream of the asset and capitalize
13 that income stream, and the difference of what she was
14 paying was grossly under market.

15 And within the shopping center, you've got to
16 remember there's 46,000 square feet in the shopping
17 center. There's probably, I want to say 30 individual
18 tenants next to Wal-Mart, and I would say that the
19 average rental rate in there is probably about \$21,
20 \$22 base rent, and she was paying \$12.

21 Q. So ---

22 A. And the rest of that money is taxes, insurance,
23 and common area maintenance, which flows directly
24 through expenses.

25 Q. So as somebody who does not work in the

1 commercial real estate world as you do, is it more --
2 isn't it accurate to say that you getting a new tenant
3 in at market rate would have been of beneficial interest
4 to you and your company?

5 A. Would it have been beneficial for me to get
6 a tenant at market rate?

7 Q. Yes.

8 A. Of course.

9 Q. Okay. And what efforts were made to do that in
10 the timeframe from you starting to notice default until
11 Sake House -- the Sake House lease was terminated?

12 A. There were no -- there were no marketing efforts
13 that went on during my relationship with Colleen.
14 My relationship with Colleen forced me somewhat to
15 believe in her and work with her, and I was not trying
16 to, you know -- there's a lot of effort and work
17 that goes into inducing a good tenant to take a space,
18 so there was no effort.

19 I just knew I was never going to change her mind,
20 and I didn't want to go and be where we are today with
21 the time, expense, and I did not want -- and the reason
22 that I drafted this early termination agreement with the
23 terms and conditions was as long as you don't tear this
24 place up and steal stuff that's not yours, that are
25 considered fixtures under the law, they're affixed to

1 the building -- I even asked for \$5,000 as a termination
2 fee.

3 We sat there at my conference table at Caldwell
4 Banker Commercial. I said, okay, make sure you take
5 your signs off the front and back because that's going
6 to cost me \$5,000. And even though I didn't initial,
7 that is my handwriting. So, I think I really tried over
8 and above what most landlords would do.

9 Q. Now this was a Japanese food restaurant,
10 Sake House IV; is that correct?

11 A. Correct. Yes, sir.

12 Q. I don't want to speak ---

13 A. Yes, sir.

14 Q. So Asian/Japanese, some sort of combination
15 thereof?

16 A. Sushi, hibachi, yes, sir.

17 Q. And did it have a sushi bar in it?

18 A. Yeah, sushi. It's kind of a glass showcase.

19 Q. Okay. And did it have a bar, a bar with stools
20 around it?

21 A. It did.

22 Q. Okay. And did it have adornments and certain
23 things that maybe another Japanese restaurant or Asian
24 restaurant would decorate with?

25 A. What was the term you ---

1 Q. Did it have adornments in the restaurant that
2 you would typically find in a Japanese/Asian food
3 restaurant?

4 A. Cosmetic upfitting?

5 Q. Sure. During the time in which, from what you
6 testified, May 2018 until February or March of 2019,
7 did you ever market the property to any other entity
8 that would be interested in putting a Japanese or Asian
9 food -- Asian restaurant in that space?

10 A. Not to my knowledge. You know, I think the
11 brokerage community -- no. I mean, specifically market,
12 no. But I knew there was -- I had already come to the
13 understanding that this situation was not going to end
14 with me getting stated rent. Maybe I had a discussion
15 with my partner or so, I don't know. But, no, it was
16 not listed for lease publicly.

17 Q. Okay. Did you make efforts to search the MLS
18 or any other sort of brokerage service to identify
19 a potential leasee of that type of Japanese/Asian food
20 restaurant during that time?

21 A. During my -- during Colleen's occupancy?

22 Q. Yes.

23 A. No.

24 Q. Okay. And that is -- I am correct in saying
25 that is an option within your listing service; is that

1 correct?

2 A. That's incorrect.

3 Q. Okay. How is that -- how would you identify
4 a potential leasee in your -- within your field
5 of expertise?

6 A. You really just -- you have to develop
7 relationship -- well, it's really market survey.
8 I mean, for example, Fuji, there's a handful
9 of different competitors that do the same thing.
10 I mean, you know, sushi houses and sushi restaurants
11 are Wasabi, Tsunami. Yeah, there's a bunch of them.
12 But you can't find that on the Multiple Listing Service.
13 That's -- you kind of have to have boots on the ground
14 to understand who potential tenants would be.

15 Q. Okay. And you did -- early in your testimony
16 you did state that it is typical of restaurants in
17 that sector, if you will, to have multiple locations,
18 correct?

19 A. The successful ones do typically have multiple
20 locations.

21 Q. And so -- and you specifically identified several
22 of those just now; Fuji, Wasabi. I can't recall the
23 other one.

24 A. Tsunami.

25 Q. Tsunami. Did you make any efforts between

1 the time of say -- between 2018 and the termination
2 of the lease, did you ever reach out to any of the
3 owners of those entities or those companies or anything
4 like that?

5 A. No, I did not. After the eviction took place,
6 I do have relationships with -- there are commercial
7 brokers that specialize in restauranteurs. Some
8 of them are my friends. Certainly I said, hey,
9 this space is now available. So, yes, I marketed
10 it after the eviction.

11 Q. But you made no effort to market it prior
12 to the eviction, correct?

13 A. No, I was attempting to work with Colleen
14 and rectify that situation.

15 Q. You presented as evidence today several --
16 a series of photos; is that correct?

17 A. Yes, sir.

18 Q. Okay. And now it is your testimony that those
19 photos depict damage, or I guess a result of damage
20 done by Sake House IV and that documentation was made
21 on March 4th of 2019; is that correct?

22 A. Yeah, most of these -- yeah, most of these
23 are time and date stamped. The one on the roof
24 is not time and date stamped. I probably had to bring
25 -- I did have a ladder that would reach the roof.

1 I might have done that the following day. I don't know.
2 But it's a 28-foot ladder, so it took a little work
3 to get up there.

4 Q. Okay.

5 A. I don't know the exact date that I took that,
6 but it was close to the 4th.

7 Q. Now the eviction hearing occurred on February
8 20th of 2019; is that correct?

9 A. Yes, sir, February 20th.

10 Q. And you and I met on that date, correct?

11 A. We met at the magistrate's office, yes, sir.

12 Q. Okay. And, thereafter, when did you go to the
13 property to inspect it?

14 A. I believe the first day -- I forget the specific
15 amount of time that the magistrate allowed them to
16 remove their personal belongings. But just rough math,
17 this looks like two weeks.

18 Q. Okay.

19 A. Right, sir? The 20th ---

20 Q. That would be my -- it's my recollection that
21 two weeks was agreed upon. We agreed that -- that Sake
22 House IV would agree to the eviction and that you would
23 agree to that amount of time; is that your recollection?

24 A. I don't think I ever agreed to it. I think
25 the magistrate, that was her ruling.

1 Q. Okay. But you were certainly aware of that
2 amount of time?

3 A. Certainly.

4 Q. Okay. And did you make any attempts to survey
5 the property, or to get any sort of update as to the
6 status of the move out between February 20th and March
7 4th?

8 A. You mean did I have a conversation with Colleen?

9 Q. No. Did you go to the property? Did you
10 physically go to the property?

11 A. Yes.

12 Q. How many times between February 20th and March
13 4th did you go to the property?

14 A. I averaged three times a week, but if there's
15 a problem -- I have other pictures which my attorney
16 has. But, you know, I have photographs of them removing
17 signage, you know. But I live 55 minutes from there,
18 so, you know, it's not like I can be there all the time.

19 Q. Okay.

20 A. But, yes, I did -- I did fear that I was not
21 going to be pleased, so to speak. But I didn't feel
22 like it was my legal right to go in there.

23 Q. Okay. So why is it that -- correct me
24 if I'm wrong, you have testified and allege and seek
25 damages for the removal of heavy equipment, correct?

1 A. Heavy equipment?

2 Q. Yes.

3 A. Well, it's not only heavy equipment,
4 it's destruction of the premise, like the whole ceiling
5 grid and the bathrooms, you know, it was kind of torn
6 apart. The bar, the walls.

7 Q. So is it your testimony that despite your
8 multiple visits to the property that between the final
9 -- your last visit or the visit immediately prior
10 to March 4th, that all this destruction would have
11 occurred?

12 A. Okay. Let me make sure I understand, sir.
13 So you're asking me that I am saying this damage
14 occurred between February 20th and March 4th?

15 Q. Yes.

16 A. Yes. March 4th was the first time that they
17 were not in the premise. I think what I did is I took
18 the magistrate's -- I think it's a ruling, and because
19 her ruling allowed me to take possession back of my
20 shopping center space on the 4th, I met my locksmith
21 there, had the keys -- the locks rekeyed and found this.

22 Q. Okay. So just to clarify your testimony, you're
23 saying you never went to the property between February
24 20th and March 4th; is that correct?

25 A. No, I did not say that. I visited several times.

1 Q. Okay. So do you recall how many days prior
2 to March 4th that you visited the property?

3 A. I made numerous visits, sir. I can't
4 specific recall what days they were, what date it was.
5 But I do have pictures in my folder that my attorney
6 chose -- did not -- I could probably time stamp it.

7 Q. Did you make any -- you testified on multiple
8 occasions today that you and Colleen had a regular
9 relationship. Did you ever extend her any message
10 about any concerns that you had between February 20th
11 and March 4th related to the condition of the property?

12 A. Yes, sir, I think I did. I think I expressed
13 my concerns in the olive branch that I extended
14 in the terms and conditions, provided you don't
15 tear up the property and steal fixtures, I will waive
16 all of our legal recourse.

17 Q. But that agreement was never signed, correct?

18 A. She would not sign it.

19 Q. I'm talking about did you make any effort;
20 phone call, e-mail, text message or otherwise, to reach
21 out to Colleen and say, I believe that you're destroying
22 the property or someone is destroying the property?

23 A. I was not -- I did not have a key to the interior
24 of the premise, to the doors of the premise.

25 And without consulting an attorney, which I did not,

1 my belief is that, you know, that property was still
2 the tenant's possession, and we had already been through
3 the hearing with the magistrate.

4 So, I did not know what the interior looked
5 like. So, I had no reason. I had a fear, but,
6 you know, there's not much I can do. My hands were
7 tied. Did I talk to Colleen anymore after that?
8 No. And the reason is because I was -- I had exhausted
9 all efforts.

10 I had extended olive branch after olive branch,
11 and we could have parted peacefully and probably still
12 had a relationship, but not after the destruction that
13 I had to go back in and deal with. So, no, I did not
14 reach out to Colleen during February 20th to March 4th.
15 It would have done no good. She was going to do what
16 she was going to do.

17 Q. Now Colleen appeared at that February 20th
18 hearing with counsel, correct?

19 A. With you?

20 Q. Yes.

21 A. Yes, sir.

22 Q. Did you ever reach out to me or my office about
23 any concerns that you had?

24 A. I never had your card.

25 Q. Okay. And you have submitted into evidence

1 multiple checks, correct, written to Larry Bowman?

2 A. Yes, sir.

3 Q. And I understand -- I do understand and
4 acknowledge that Mr. Bowman has passed away recently.
5 Did Mr. Bowman issue any invoices for service?

6 A. Invoices to me, to the landlord?

7 Q. To you, a representative of your company?

8 A. No, I've worked with Mr. Bowman for probably over
9 15 years. We met regularly on site, and he would tell
10 me what he had to go buy, and he would tell me how much
11 it cost. And he and I -- yes, he does have records
12 because he has receipts of what he bought.

13 Unfortunately, due to my relationship with him,
14 I didn't -- I did not need them. I trust him
15 explicitly. But we would go over the scope of work,
16 and I would ask him how much he needed, and I would
17 write him a check.

18 Q. Okay. Let's go through the checks. There's
19 a \$10,000 check. Do you recall what that was to repair,
20 or what work was performed based on that amount?

21 A. I think initially it was to replace the HVAC
22 and the make-up air unit from the walk-in cooler
23 and freezer, and that's about \$10,000.

24 Q. Okay. And now you've alleged a total amount
25 of damages of \$22,000. Is it your testimony today

1 that whatever was placed in there was a replacement
2 cost of the alleged damage?

3 A. Not real sure the purpose -- the meaning of the
4 question, sir. But my testimony is it took Mr. Bowman
5 and I \$22,000 in labor, profit and material cost
6 to replace the premise to a suitable state.

7 Q. At the time of the -- the first check here is for
8 October 2nd of 2019. When did you enter into the new
9 lease agreement with the tenant that started their next
10 term?

11 A. Well, sir, the reason that -- the reason
12 that I commenced the repairs is because I did have
13 an agreement with a new restaurant tenant that needed
14 things rebuilt the way they were. Do you understand
15 what I'm saying?

16 Q. Yeah. What type of tenant are they?

17 A. A restaurant tenant.

18 Q. Okay. What type of food?

19 A. It was ---

20 Q. What style?

21 A. It was more of a neighborhood pub; burgers,
22 chicken fingers, wings.

23 Q. And did they require a different configuration
24 than that was in place at the time of the Sake House
25 lease?

1 A. Configuration, no.

2 Q. Okay. In the second check, if you start top
3 to bottom, there's one written for \$7,500, and there's
4 a memo line that says upfit. What is your definition
5 of upfit under these circumstances?

6 A. Upfit in my industry can mean anything from
7 cosmetic to structural MP&E; mechanical, plumbing
8 and electrical. It can mean repairs. In this case,
9 upfit is just a general term for restoring space.
10 It's for construction. Construction might have been
11 a better word, but.

12 Q. Okay. Construction for the benefit of the new
13 tenant; is that correct?

14 A. Construction to repair the damage caused by the
15 Defendant.

16 Q. Okay. And the third check there for \$4,500
17 written on November 15, 2019, what's your recollection
18 of the work performed for that amount of money?

19 A. Well, sir, there were numerous things that had
20 to be repaired. Ceiling grid could be part of that,
21 removal of -- there was a ton of debris that was behind
22 the bar and in the kitchen. It was -- the scope of work
23 was not specific, but at this point we were repairing
24 the ceiling. We had to go and source out new hardware
25 for commercial restrooms, which is not cheap, the labor,

1 and, you know, the contractor also has to have money
2 to oversee all of this.

3 Q. Now you testified earlier that you kept the space
4 unlisted and unfilled from March of 2019 until later in
5 2019 for purposes of potentially obtaining a different
6 type of tenant; is that correct?

7 A. Okay, let me make sure I understand your
8 question. I -- you're saying -- you asked me that
9 I purposely left the space unlisted from March
10 post-eviction until what date?

11 Q. Well, I think I might have misspoke or, you know,
12 you misunderstood, but I'll clarify for you. They moved
13 out on March 4th, and there was, as you alleged,
14 destruction and debris, correct?

15 A. Yes, there was.

16 Q. And did you ever make any efforts to reach --
17 and is it correct to say that thereafter you ceased
18 all communication with Colleen Lin, Sake House,
19 Lei Jiang or anybody related to Sake House; is that
20 correct?

21 A. No further communication.

22 Q. Okay. So you never reached out to them about
23 cleaning up debris or making any efforts thereof?

24 A. I made no efforts for Colleen to come back
25 and clean up the mess she made. I would find that

1 fruitless. I have no control over her anymore from
2 a lease standpoint.

3 Q. So instead, it's your testimony that you decided
4 to wait, leave the debris as is, take people there
5 for showings, correct?

6 A. Some of the debris was cleaned up and --
7 by myself just to make it accessible. But to answer
8 your question, the marketing effort post-eviction was
9 100 percent. I wouldn't handle it any differently than
10 I would any other space. You reach out to the brokerage
11 community; you reach out to the web services, you know,
12 which were members of different things, Multiple Listing
13 Service would be one. So certainly why would I not
14 market it?

15 Q. Okay.

16 MR. SMITH: Your Honor, if I could have just
17 one moment?

18 THE COURT: Sure.

19 (Pause.)

20 MR. SMITH: Just a few more questions,
21 Your Honor.

22 THE COURT: All right.

23 BY MR. SMITH:

24 Q. Mr. Aiken, I believe it was your testimony that
25 you had a few conversations with Lei Jiang, or very few

1 conversations; is that correct?

2 A. That's incorrect.

3 Q. Okay. Can you clarify that testimony as it
4 relates to the amount of interaction you had with
5 Lei Jiang during the term of their lease?

6 A. I -- it's my understanding that Mr. Jiang does
7 not speak English. I met him -- I was -- he was
8 presented as Colleen's husband. And the only time
9 I met him was when we signed the lease at the conference
10 table in my office.

11 Q. Okay.

12 A. And that was not even a meeting. It was
13 introduction without any communication.

14 Q. Okay.

15 A. The default letters did go out in his name
16 to him because he signed the lease.

17 Q. Back to some testimony that you stated earlier,
18 the addendum to the lease agreement that you presented
19 as evidence today, you said that she would not sign
20 and accept the rent at \$5,000 a month, but you said,
21 "I honored my part of it"; is that correct?

22 A. That is correct. She would not sign it because
23 a condition for me to abate the rent for six months
24 was that I liquidate the security deposit. That's why
25 she wouldn't sign it, but my word is my word. I gave

1 her six months, and I waited to see what would happen
2 and went from there.

3 Q. So it's fair to say that throughout your
4 relationship with Colleen Lin, on behalf of Sake House
5 and really any other entity that she's involved with
6 through Brent Case or anybody else with your firm,
7 over that course many agreements were made, correct,
8 or understandings or modifications; is that correct?

9 A. That's incorrect.

10 Q. Okay. Now you are a member of Shops at Wescott,
11 LLC, correct?

12 A. Yes, sir.

13 Q. How many other members are there?

14 A. One.

15 Q. Okay. Who's that?

16 A. Brent Case.

17 Q. Okay. And how is Shops at Wescott, LLC,
18 affiliated with Caldwell Banker?

19 A. Zero affiliation.

20 Q. Okay. Did they have a relationship from
21 a leasing standpoint?

22 A. The single-asset entity LLC has hired Caldwell
23 Banker Commercial in the past to produce a listing
24 agreement to fill a vacancy. The management is done
25 solely by the single-asset entity LLC.

1 Q. Okay. And Mr. Case, Brent Case, is a broker
2 with Caldwell Banker, correct?

3 A. He's the president.

4 Q. He's the president of the company. Is it
5 Caldwell Banker Atlantic, is that what it's called?

6 A. Yes, sir. The legal name is Atlantic
7 International Incorporated.

8 Q. Okay. So is it correct to say that as the
9 president of Caldwell Banker Commercial, and as the
10 other member of Shops at Wescott, LLC, that Mr. Case
11 would have also had access to potential leasees,
12 marketplace interest, and the like, if trying to market
13 a property?

14 A. He does a lot of leasing, a lot of different
15 things. Sure. I mean, that's what he does for nine
16 hours a day, every day.

17 Q. And at what point did you speak with him about
18 the concerns -- was he aware -- I'm sorry. Let me back
19 up. Was he aware of the default notices being sent
20 starting in May of 2019 to Sake House?

21 A. I don't recall, but it was -- I mean, sure,
22 we talk about a lot of things during the course
23 of the day. But he was -- I became friends with Colleen
24 through Brent. I wasn't going to bring him into it
25 because I own 90 percent of the single-asset entity LLC,

1 so I handled pretty much 100 percent of the problems,
2 unless I need his help.

3 Q. Okay. And how many entities does that LLC own?

4 A. It's a single-asset entity.

5 Q. I mean, how many spaces? I'm sorry. I should
6 have been more specific. How many spaces are typically
7 under management at a given time within that asset?

8 A. One shopping center.

9 Q. Okay. And how many tenants are typically
10 in there?

11 A. Well, in the scenario of this case, the building
12 occupied by the Defendant was only 9,000 square feet,
13 which originally had six tenants. And when Colleen
14 expanded into the adjacent space, 103 and 104, to this
15 date we have five tenants in that premise -- in that
16 shopping center.

17 Q. Okay. So just -- it's your testimony that
18 Mr. Case made no efforts to market the property or do
19 anything between May of 2019, and really the termination
20 of the Sake House lease, in order to maximize the
21 profitability of that company, which you testified
22 he owns ten percent; is that correct?

23 A. He owns ten percent of Shops at Wescott, LLC.

24 Q. Right, right. And he has -- as the president
25 of Caldwell Banker Commercial, it's his charge within

1 that company, I presume, to maximize the profitability
2 of that company, correct?

3 A. No, it's my charge, I would say. But the reason
4 Mr. Case did not get involved was because he was
5 Colleen's broker, okay? And Brent and I worked on
6 behalf of Colleen in 2008 to open up her main store
7 at Centre Pointe, so there's a long history there
8 and honestly a friendship. We had Christmas parties
9 at her sushi place for our corporate entity, Caldwell
10 Banker Commercial, and so that's why it was awkward.

11 Q. Okay.

12 MR. SMITH: I have nothing further at this
13 time. Thank you, Your Honor.

14 THE COURT: All right. Redirect?

15 MR. BELGER: Thank you, Judge, very briefly.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MR. BELGER:

19 Q. Mr. Aiken, there's just a couple of things that
20 Mr. Smith brought up I just want to make sure that we're
21 all clear on. He was asking you about whether or not
22 you had taken any steps to, I guess, market the property
23 for re-lease while Sake House was still in the unit.
24 Would that normally be something that Shops at Wescott
25 would do, actually try and re-lease a space that

1 is still occupied?

2 A. No, there's not -- there's not any circumstances,
3 and specifically this one, you know, an established
4 operation, you have an experienced operator, you have
5 a brand, and the landlord does not have legal possession
6 of the space, so, no. It doesn't make sense that
7 I would market it while she was still paying a portion
8 of her rent.

9 Q. Okay. Finally, the visit. You mentioned that
10 between the eviction hearing and March 4th, you visited,
11 correct?

12 A. Yes. We -- just to clarify, the building that
13 the Defendant occupied was 9,000. Adjacent to that
14 is 24,000, okay? So, I've always got a reason to visit.
15 Typically, a visit as part of what I do, is a property
16 management function. But a visit in this instance would
17 be a drive-by, you know, peek in the window. I don't
18 have a key to it. It wasn't my space, but, you know,
19 that's a visit.

20 Q. So from that period, from the eviction hearing
21 to March 4th, you did not go inside and inspect the
22 premises?

23 A. Did not have access.

24 Q. The first time that you were able to do that
25 was on March 4th?

1 A. At the expiration of the period of time granted
2 by the magistrate.

3 Q. And then Defense Exhibit 2 [sic.], had you --
4 had Shops at Wescott ever had problems with tenants,
5 other than the Sake House, other tenants causing damage
6 when they move out?

7 A. I've been doing this for 23 years, and I own
8 other shopping centers in other places, never seen this.

9 Q. But have you seen damage to some extent?

10 A. I've seen spaces not left broom clean, but I've
11 never seen intentional damage. So the answer to your
12 question is no, never seen that.

13 Q. Okay. So Defendant's Exhibit 1, we've confirmed
14 that this was something that you offered, but it was
15 never signed and never taken into effect as far as you
16 know?

17 A. The early termination offer?

18 Q. Yes, that is correct.

19 A. Yes, sir. It was -- it's confusing, but it was
20 not accepted.

21 Q. All right. Thank you.

22 MR. BELGER: That's all I have.

23 THE COURT: All right. Recross?

24 MR. SMITH: Briefly, Your Honor.

25 RECROSS EXAMINATION

1 BY MR. SMITH:

2 Q. You just stated, and I think as an incredibly
3 critical term or a phrase, which is intentional damage.
4 You've never seen such intentional damage.

5 A. Yes, sir.

6 Q. What proof have you presented today that
7 any damage that you've discovered which -- whether
8 or not that was valid damage, what proof do you have
9 that it's intentional?

10 A. Because stuff was ripped out. For example,
11 my counsel produced documentation of the -- like,
12 let's say we walked into a courtroom here, and a 10x12
13 area of the ceiling was hanging, and I would call that
14 intentional.

15 Q. Okay. And what proof -- what documentation have
16 you provided today that demonstrates the condition prior
17 to your March 4th photos?

18 A. I can only say that I ate lunch there, and it
19 was like this, just different colors. I mean, you know,
20 the restaurant was running. I don't think the ceiling
21 was ripped down and the air handler was ripped
22 out of the ceiling prior to the eviction, not upon
23 my experience.

24 MR. SMITH: Thank you. Nothing further,
25 Your Honor.

1 THE COURT: All right. Thank you, sir.
2 You can come down.

3 THE WITNESS: Thank you.

4 THE COURT: We will take a lunch break.
5 How many additional witnesses do you have?

6 MR. BELGER: None from the Plaintiff.

7 THE COURT: Very well. How many witnesses
8 will the defense have?

9 MR. SMITH: Very briefly from our side,
10 Your Honor. If we can -- if you don't mind, we could
11 wait, if the Plaintiff rests. Our, you know -- we would
12 -- I only have Mr. Jiang to call.

13 THE COURT: Great.

14 MR. SMITH: Very narrow.

15 THE COURT: Great. Well, we're going
16 to do that in one hour.

17 MR. SMITH: Perfect.

18 THE COURT: I will see everyone at 2:20.
19 Have a good lunch. And just to be clear, Mr. Aiken ---

20 THE WITNESS: Yes, ma'am.

21 THE COURT: --- you certainly can continue
22 to prepare now with your lawyer. You're not on the
23 witness stand, so I didn't want you to be concerned
24 about having a conversation with him as you continue ---

25 THE WITNESS: Okay.

1 THE COURT: --- to work on your case.

2 THE WITNESS: Okay, Your Honor. Thank you.

3 THE COURT: And now I don't know if that
4 was the exhibit that was put into evidence by the
5 defense or not.

6 MR. SMITH: I never -- I only put one in.

7 THE COURT: And it was marked?

8 MR. SMITH: That is correct.

9 THE COURT: All right. And all yours were
10 marked?

11 MR. BELGER: They have not been marked yet.
12 That was something I would like to do really quickly,
13 if we may.

14 THE COURT: Oh, Mr. Belger, Eve's not going
15 to do that now. She's got to go eat.

16 MR. BELGER: Okay.

17 THE COURT: You can do that after lunchtime.

18 MR. BELGER: All right. Fair enough.

19 THE COURT: If you can keep them organized
20 for her ---

21 MR. BELGER: I will do that.

22 THE COURT: --- that would be awesome.

23 And, gentlemen, I don't know how familiar you are
24 with Saint George, but I will help you. You could --
25 all your dining opportunities lie on Highway 78.

1 You do not have time to go back to Summerville.

2 You will go out to 78 and take a right.

3 With the exception of Main Street, it does
4 have a restaurant called The Bistro. Everything else
5 lies along Highway 78, like Hardees, McDonald's,
6 Kentucky Fried Children, that sort of thing. If you
7 come to the Taco Bell underneath I-95, you have come
8 to the end of your culinary opportunities. And I will
9 see you all at, let's say, a quarter after two. That's
10 a little bit shorter, 55 minutes, zip in and come back.
11 I'll see you then.

12 (Recess taken.)

13 (Back on the record.)

14 (Plaintiff's Exhibit Nos. 1 through 3, 4A through 4E
15 and 5 were marked for identification.)

16 THE COURT: Thank you and please be seated,
17 and thank you so much. All right. Call your first
18 witness, please.

19 MR. SMITH: Lei Jiang, please.

20 THE COURT: Okay.

21 THE CLERK: Please raise your right hand
22 and state your full name for the record.

23 THE WITNESS: Yeah.

24 THE CLERK: State your full name, please.

25 THE WITNESS: Lei.

1 THE CLERK: Your full name.

2 THE WITNESS: Lei Jiang.

3 MR. LEI JIANG was called as a witness,
4 being duly sworn, was examined and testified as follows:

5 THE CLERK: Do you understand?

6 THE WITNESS: Pardon? Sorry. No English.

7 THE CLERK: No English.

8 THE COURT: Do you promise to tell the
9 truth?

10 THE WITNESS: Yes.

11 THE COURT: All right. Now, I need you
12 to spell your full name for me, please, sir.

13 MR. SMITH: Spell your name.

14 THE WITNESS: Lei, L-E-I. Jiang, J-I-A-N-G.

15 THE COURT: Thank you so much, and you may
16 be seated. Your witness.

17 MR. SMITH: Thank you, Your Honor.
18 May it please the Court.

19 THE COURT: Yes.

20 DIRECT EXAMINATION

21 BY MR. SMITH:

22 Q. Lei, are you the owner of Sake House IV?

23 A. Yeah.

24 Q. Okay. And beginning in -- the Plaintiff put
25 checks in as evidence, okay? And beginning in May

1 of 2018, did your company write these checks? Can you
2 look at those for me and verify them, please?

3 A. Yeah, my friend.

4 Q. Your friend. And did he work for Sake House IV?

5 A. Yeah.

6 Q. Okay. And what is his name?

7 A. Hua Ming Liu.

8 Q. Can you spell that for the court reporter?

9 A. Umm ---

10 Q. Is it H-U-A M-I-N-G L-I-U?

11 A. Yeah.

12 Q. A guy named Liu?

13 A. Yeah, Hua Liu.

14 Q. Okay. And he worked for Sake House IV?

15 A. Yeah.

16 Q. And so he wrote the checks to give to the Shops
17 at Wescott?

18 A. Yeah.

19 Q. Okay. And so these -- all of these checks
20 in series were sent to or given to Shops at Wescott;
21 is that correct?

22 A. Yeah.

23 Q. Okay. All right. And that was okay with you?
24 You were okay with him writing those checks?

25 A. Yeah.

1 Q. Okay. All right. And at any time, Lei, did you
2 think that it was -- that the \$5,000 was not acceptable?
3 Did you think that that was okay?

4 A. Yeah, the \$5,000.

5 Q. And that's the amount that you thought was okay
6 until they started the eviction process; is that
7 correct?

8 A. Umm ---

9 Q. You thought that the \$5,000 was okay, was enough
10 money to keep ---

11 A. Yeah, yeah.

12 Q. --- to stay in the space; is that correct?

13 A. Just \$5,000, yeah.

14 Q. Yeah. Okay. And you had no reason to believe
15 otherwise, correct?

16 A. Yeah.

17 Q. Okay. Okay. And did you at any point -- during
18 moving out, did you ever intentionally damage the
19 property?

20 A. No.

21 Q. Okay. You just -- you moved out and you never
22 heard from them again; is that correct? After you moved
23 out, did anybody from Shops at Wescott try to reach out
24 to you?

25 A. No.

1 Q. Okay. You just closed up and left?

2 A. Yeah.

3 Q. You just closed and did not return; is that
4 correct? Okay. Now after you moved out, did you get
5 any bills or anything from Shops at Wescott for any
6 damages?

7 A. No.

8 Q. Did they send you any invoices from any
9 contractors that you were supposed to pay or anything
10 like that?

11 A. No.

12 Q. You just moved out and that was it; is that
13 correct?

14 A. We just moved out. We make ---

15 Q. That's okay. That's all I need.

16 MR. SMITH: Thank you, Your Honor.
17 Nothing further from this witness.

18 THE COURT: Okay. Cross-examination?

19 MR. BELGER: Thank you, Your Honor.
20 May it please the Court.

21 CROSS-EXAMINATION

22 BY MR. BELGER:

23 Q. Mr. Jiang, my name is Brandon Belger,
24 and I represent Shops at Wescott.

25 A. Yes.

1 Q. You said that the gentleman who was signing those
2 checks was issuing them with your permission on behalf
3 of Sake House; is that correct?

4 A. Yeah.

5 Q. Okay. And at no point in time did you ever
6 receive anything in writing that told you that it was
7 acceptable that you were paying less than the full rent,
8 did you?

9 A. Umm -- sorry?

10 Q. You don't have anything in writing, no document,
11 that says it's acceptable to only pay \$5,000 to Shops
12 at Wescott?

13 A. Yeah, I got it.

14 Q. You have something that says -- something from
15 Shops at Wescott that says that you can only pay \$5,000,
16 that that's acceptable?

17 A. Yeah, open the business, no good. I send just
18 \$5,000, okay, I'm -- no, okay. He said ---

19 Q. Okay. Did you ever speak directly with Mr. Brian
20 Aiken? Apart from the time that you came and signed
21 that lease, did you ever ---

22 A. Yeah, I signed.

23 Q. Right. On other times, okay, apart from the time
24 you signed the lease ---

25 A. Yes.

1 Q. --- did you talk with him?

2 A. (Witness makes writing motion with hands.) Yeah.

3 Q. You made a writing sign.

4 A. Yeah, I made a write.

5 Q. Okay. But what I'm asking is just ---

6 A. Just me owner, yeah.

7 Q. You're the owner.

8 A. Me owner, yeah.

9 Q. Did you agree to allow Colleen Lin to speak
10 on behalf of the company?

11 A. Yeah, just my friend, just help me.

12 Q. Okay. But you acknowledge that you signed
13 the lease on behalf of the company and yourself?

14 A. Yeah, me sign.

15 Q. And you understand that the lease requires
16 a larger amount of rent than \$5,000 a month?

17 A. Yeah, I know.

18 Q. You were asked about when you moved out and the
19 damages that you may have caused. Do you recall your
20 attorney asking you that? I would like to show you some
21 photographs we've already marked as Plaintiff's Exhibits
22 4A through E.

23 A. It's -- inside nothing. Everything --
24 the cooler, building, everything fall -- inside.
25 No heat ---

1 Q. Okay. As you look at these photographs ---

2 A. Yes.

3 Q. Let me just ask my question, please. As you look
4 at these photographs, do you recognize those as being
5 the representative of the condition of the space when
6 Sake House moved out? That's what it looked like,
7 right?

8 A. Yeah. That's -- yeah, that's me -- me make,
9 no ---

10 Q. That's what the space looked like when your
11 company moved out?

12 A. Yeah, that's ---

13 Q. Yes. Okay. And you were asked about being
14 reached out to by anyone from Shops at Wescott. Your
15 attorney said, did anyone contact you after you moved
16 out, and you said no, correct?

17 A. No. I say no.

18 Q. But obviously you were served with this lawsuit
19 that we're here about today, which was filed very
20 briefly after Sake House moved out.

21 A. Umm -- sorry?

22 MR. BELGER: Thank you, Judge. That's all
23 I have.

24 THE WITNESS: Sorry.

25 THE COURT: Very well. Any redirect?

1 MR. SMITH: Just briefly, Your Honor.

2 THE COURT: Okay.

3 REDIRECT EXAMINATION

4 BY MR. SMITH:

5 Q. Lei, did you -- did Colleen ever tell you, or did
6 you ever have any reason to believe, that you were going
7 to be evicted in early February of 2019?

8 A. Yeah, told me.

9 Q. But not until you were served with the eviction,
10 or before that?

11 A. Yeah.

12 Q. But you believed you could just walk away
13 and everything was going to be fine; is that correct?

14 A. Yeah.

15 MR. BELGER: Objection. Leading.

16 THE COURT: Yeah. Sustained.

17 MR. SMITH: Nothing further, Your Honor.

18 THE COURT: Nothing further?

19 MR. SMITH: Nothing further, Your Honor.

20 THE COURT: All right. Recross?

21 MR. BELGER: No, Judge.

22 THE COURT: All right. Very well.

23 Yes, sir, thank you. You can come back to sit at your
24 table, and you could leave the exhibit. I'll tell you
25 what, just bring it, and you can drop it on this little

1 table right here as you go by. Mr. Smith, if you will
2 help him with the exhibit.

3 MR. SMITH: Yes.

4 THE COURT: He can have a seat back
5 at counsel table. All right. Mr. Smith, any additional
6 witnesses?

7 MR. SMITH: None, Your Honor.

8 THE COURT: Any reply? Rebuttal?

9 MR. BELGER: No, Your Honor.

10 THE COURT: Okay. Very well. All right.
11 All right, Counsel. I'm prepared to rule, Counsel.
12 I have listened to the witnesses presented --
13 the witness presented by each side. I have had
14 an opportunity to review the lease, the guaranty
15 and the photographs.

16 The offer to reduce the rent for the six
17 months that was unsigned, the addendum that actually
18 never became an addendum, I've had a chance to review
19 that, and it is unsigned in the underlying lease itself.
20 And two or three places makes reference that the lease
21 cannot be altered unless it is signed by both sides,
22 and it was not signed by both sides.

23 It is apparent that a person that -- whose
24 name is Colleen that Mr. Aiken, on behalf of the
25 Plaintiff, understood to have a relationship with the

1 guarantor, either wife or significant other certainly,
2 is who he primarily dealt with. She came to the signing
3 of the lease.

4 And while it certainly appears today that
5 the Defendant, Mr. Jiang, does have difficulty with
6 English, Mr. Aiken talked about his having the benefit
7 of translation, and he signed the lease, and he signed
8 the guaranty.

9 And it appears that there was a six-month
10 period at the beginning of the lease that the Defendant
11 was not required to pay rent to allow the Defendant
12 an opportunity to invest in the renovation of the space
13 for the operation of a restaurant which occurred.

14 And it further appears that the -- shortly
15 after this period of time came to pay the full amount
16 of rent, which approximates about \$7,000 a month.
17 It is \$6,900 and some additional monies, very close
18 to \$7,000 a month when you include the contribution
19 towards the tax and insurance and the like, it appears
20 that there was a request that the rent be lowered
21 to \$5,000 a month.

22 And while there was certainly what
23 appears to be a fair amount of conversation about that,
24 the addendum was never signed. It was drafted; it was
25 presented. Yet, it was not signed. It was not executed

1 on behalf of the Defendant.

2 It also appears that the Defendant from the
3 point where the Defendant began to pay \$5,000 a month,
4 that the Defendant never paid any more than \$5,000
5 a month, with the exception perhaps of the month where
6 \$5,035 was paid, and that was for a returned check.

7 The eviction occurred, and it appears
8 that summary court judge allowed a period of time
9 for the Defendants to vacate the premises. From the
10 photographs presented by the Plaintiff, it does appear
11 that substantial damage was done and substantial items,
12 the cooler -- the walk-in cooler, the freezer, and the
13 air-condition equipment on the top of the building,
14 was removed.

15 It also appears that there was a substantial
16 amount of damage done to the internal area of the
17 restaurant. Specifically, substantial damage was done
18 to the ceiling grid, the ladies' bathroom, the petition
19 is removed, the area where the bar is, and the area
20 where the cooler was removed, there's substantial
21 damage. The checks presented, the testimony presented
22 of the work done, some \$22,000, appears very reasonable.

23 With regards to the issue of mitigation
24 which is, I gather, that the Defendant has concerns
25 about whether or not the Plaintiff mitigated

1 the Plaintiff's damages, I would note that it would
2 be inappropriate and potentially a violation of the
3 enjoyment of the tenant for a landlord to be leasing
4 the property while the landlord -- while the tenant
5 is still occupying the premises.

6 There was some discussion about whether
7 or not the Plaintiff should have somehow interceded
8 during the two-week period that the magistrate allowed
9 for the Defendants to vacate the premises, and I find
10 that the Plaintiff's conduct was appropriate.

11 Apparently, Mr. Aiken was trying to keep
12 up with what was going on, but did not believe that,
13 you know, it was appropriate for him to, I gather,
14 dash in and stop whatever might be going on inside.
15 And, quite frankly, he talks about respecting the
16 Court's order, and I think that was appropriate.

17 Now with regards to the guaranty, you know,
18 there is the guaranty, there could just be the guaranty
19 of payment, and this is clearly a guaranty of
20 performance, and it was duly executed by the individual,
21 Mr. Jiang. And the language consideration is as
22 inducement to the Plaintiff to enter into the lease
23 arrangement with Sake House IV, Inc.

24 Therefore, I do find that the Defendant,
25 Sake House IV, Inc., did violate the lease, failed

1 to pay the appropriate lease amounts, breached the lease
2 agreement, failed to pay the appropriate amount of rent,
3 and converted property, specifically, the item -- the
4 cooling item on the roof as well as the electronic
5 apparatus to operate the walk-in cooler and the freezer,
6 and the cooler and the freezer which were removed,
7 that those items were converted, the premises were
8 damaged in violation of the lease, and the other items
9 that I've already indicated is damaged that was done
10 to the premises. The condenser -- the HVAC condenser
11 was removed.

12 And, therefore, I enter judgment against
13 Sake House IV, Inc. with regards to damage to the
14 property, the lost rent. I find that the Plaintiff
15 appropriately mitigated the damages, and the rent --
16 the difference in the rent, which was paid, which was
17 \$19,860, the cost to Mr. Bowman to correct the damages
18 was \$22,000, the late fee of ten percent under
19 the contract the Plaintiff is entitled to. I find
20 that the \$5,000 deposit has been credited.

21 With regards to attorney's fees, is that
22 included in the amount requested?

23 MR. BELGER: Not as of yet. We were going
24 to request permission to file a motion after this.

25 THE COURT: I understand. Okay. And the --

1 obviously, the amount of rent for the period of March
2 through December, for the period of time in which the
3 premises was vacant, Plaintiff is entitled to that also.
4 And the -- I will ask that you set those out. I know
5 that you -- what you think the total amount of damages
6 would be, but I need to see that set out so that I can
7 verify that in your proposed order.

8 Now with regards to your attorney's fees,
9 if there is a request for attorney's fees and costs,
10 I would just note to you and remind you that the
11 language in the agreement says reasonable attorney's
12 fees, so be mindful of that also.

13 And if -- once you have prepared your
14 affidavit, I want you to send it to the defense.
15 And then, if need be, there will be a hearing with
16 regards to those attorney's fees to allow the defense
17 an opportunity for cross-examination before the award
18 of attorney's fees. So you will need to send that
19 affidavit and that request, and be sure, of course,
20 that you send that to the defense. Should the defense
21 wish an opportunity to cross-examine, we certainly
22 can for that purpose at that time.

23 MR. BELGER: Sure.

24 THE COURT: And I'll look for a proposed
25 order. Of course, please send it to the defense before

1 you forward it on to the Court.

2 MR. BELGER: Certainly. Your Honor,
3 just a clarification.

4 THE COURT: Yeah.

5 MR. BELGER: I know you said judgment
6 against Sake House IV, does that include the individual?

7 THE COURT: Let me move on to say
8 that because the grounds of liability are separate,
9 that is done -- the guaranty is a performance guaranty.
10 Once, obviously, the guaranty is signed, and I make
11 a determination that Sake House has failed to perform in
12 the ways that I've already enumerated, then the guaranty
13 becomes activated, and the judgment will likewise be
14 applicable to the individual guarantor on that basis.

15 MR. BELGER: Thank you, Judge.

16 THE COURT: I will look for a proposed order
17 within 30 days.

18 MR. BELGER: Certainly.

19 THE COURT: Very well. Thank you,
20 gentlemen. Thank you very much.

21 MR. SMITH: Thank you, Your Honor.

22 MR. BELGER: Thank you, Your Honor.

23 THE COURT: All right.

24 (End of Transcript of Record)
25

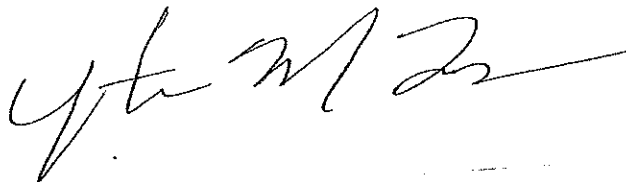
CERTIFICATE OF REPORTER

State of South Carolina)
County of Dorchester)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 3rd of August, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 2, 2022



Yvestre Torres

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO.: 2019-CP-18-689
The Shops at Wescott, LLC,	)	
	)	
Plaintiff,	)	DEFENDANTS' MOTION TO
v.	)	RECONSIDER, ALTER, OR
	)	AMEND THE JUDGMENT
Sake House IV, Inc. d/b/a Sake House, and	)	
Lei Jiang,	)	
	)	
Defendants.	)	
_____	)	

TO: PLAINTIFF, CARE OF ITS ATTORNEY:

YOU WILL PLEASE NOTICE that Defendants, by and through counsel, shall move before the Honorable Diane S. Goodstein on the _____ day of _____, 2021 at _____ AM/PM in courtroom ____ of the Dorchester County Court of Common Pleas, or soon thereafter as this matter may be heard. Defendants shall respectfully move this Honorable Court to reconsider its Order executed by the Court on October 11, 2021 and filed on the same day (the "Order"), pursuant to South Carolina common law and to Rule 59 of the South Carolina Rules of Civil Procedure. In support of their Motion, Defendants incorporate all pleadings, exhibits, and testimony before the Court to date, together with any memoranda, exhibits, and other items which they may provide to the Court in advance of a hearing on this matter. In further support of their Motion, Defendants state as follows:

1. Defendants' counsel received written notice of entry of the Court's Order (via email NEF) on Thursday, October 11, 2021. The present motion is therefore timely under Rule 59, SCRPC.

2. Defendants respectfully request that this Honorable Court reconsider its rulings of breach of contract and conversion as set forth in the Court's Order.

2. Further, Defendants respectfully request that this Honorable Court reconsider its ruling of total liability for breach of contract as set forth in the Court's Order. Specifically, Defendants request that the Court reconsider the issue of Plaintiff's mitigation of damages.

5. Plaintiff's representative supposedly "attempted to re-lease the Property from March 2019 until January 2020." However, at trial, Mr. Aiken was not able to specifically set forth the efforts that he made to re-lease the Property during the time period in question. Yet, he did testify that he had contacts specifically in the restaurant business which would have been suitable candidates for tenancy in the Property, but he stated that he did not make any effort to directly contact those entities and/or individuals. Certainly, it stands to reason that direct contact to qualified candidates would be a more likely path to a new tenant. Further, Mr. Aiken testified that his business partner in The Shops at Wescott, LLC had suitable contacts as well, but he did not utilize those contacts. Finally, Mr. Aiken did not put forth any listing documents or any other documents or evidence that would support the supposed attempt to re-lease the Property. As such, the entire amount of sixty-nine thousand eight hundred twenty-five and 60/100 (\$69,860.00) dollars cannot be considered a definite amount of actual damages. Further, the late fees in the amount of eight thousand nine hundred sixty-eight and 62/200 (\$8,968.62) dollars cannot be considered a definite amount of actual damages.

6. Additionally, Defendants respectfully request that this Honorable Court reconsider its ruling on the issue of the property damage values as set forth in the Court's Order. At the trial of this matter, Plaintiff put forth various documents demonstrating services supposedly rendered by the now-deceased contractor. However, Plaintiff failed entirely to put forth any evidence of the

services actually being rendered, i.e. receipts for materials, photographs of the projects completed, purchase orders, or anything else which would evidence actual costs incurred. Further, no witness related to the contractor was put forth to verify the documents and corroborate the Plaintiff's testimony. Therefore, the costs are not proven and the twenty-two thousand and 00/100 (\$22,000.00) dollars cannot be considered actual damages.

7. For the reasons set forth herein, Defendants respectfully request that this Honorable Court reconsiders its findings of facts in the Order and conclusions of law and modify its ruling on the issues addressed herein.

8. Defendants respectfully reserve the right to include any additional support for this Motion in any memoranda, affidavits, or exhibits provided to this Court prior to the hearing on this Motion.

WHEREFORE, Defendants herein respectfully request the following relief from this Honorable Court:

- A. Granting reconsideration of the Order as set forth herein;
- B. Pursuant to Rule 62 of the South Carolina Rules of Civil Procedure, for a stay of the proceedings to enforce the Court's Order pending the disposition of this Motion; and
- C. For such other and further relief as this court deems just and proper.

October 21, 2021
Mount Pleasant, South Carolina

s/ Evan A. Smith

Evan A. Smith
Evan Smith Law Firm, LLC
P.O. Box 976
Charleston, SC 29402
Phone: (843) 804-8550
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Email: evan@evansmithlawfirm.com

The Shops at Wescott
North Charleston, South Carolina

LEASE AGREEMENT

FROM: The Shops at Wescott, LLC
c/o Coldwell Banker Commercial
3506 W Montague Avenue, Suite 200
Charleston, South Carolina 29418
Phone: (843) 744-9877
Fax: (843) 744-9879
Fed ID # 43-2075654

"LANDLORD"

TO: Sake House IV, Inc. d/b/a Sake House

"TENANT"

Address: 5250 Mulholland Drive Summerville, SC 29485
Phone: 843-469-1792
Fax: 843-566-8864
SSN: 075-98-9664

**DISCLOSURE: AS REQUIRED BY SC REAL ESTATE LAW, A MEMBER OR MEMBERS OF
THE LANDLORD ARE LICENSED S.C. REAL ESTATE AGENTS WITH COLDWELL
BANKER COMMERCIAL**

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BASIC LEASE PROVISIONS

The following represents a summary of certain Lease provisions which are part of, and, in certain instances, referred to, in subsequent provisions of this Lease:

1	Date of Lease:	March <u>21</u> , 2016
2	Landlord's Name and Address:	The Shops at Wescott, LLC 3506 W Montague Avenue Charleston, SC 29418 Phone: (843) 744-9877 Fax: (843) 744-9879
3	Tenant's Name, Address, Phone# and Fax #:	5250 Mulholland Drive Summerville, SC 29485 Cell: 843-469-1792 Fax: 843-566-8864
4	Leased Premises:	The Shops at Wescott 9770 Dorchester Road Suite 103 & 104 Summerville, SC 29485
5	Term:	Five years from the date of rent commencement.
6	Initial Term/Delivery Date:	April 1, 2016
7	Rent Commencement Date:	October 1, 2016
8	Expiration Date:	September 30, 2021
9	Fixed Minimum Annual Rental:	
	Months 1-60	Monthly Base Rent: \$5,906.25 Yearly: \$70,875.00
10	Additional Charges:	The Additional Charges will be calculated at \$3.85 psf of leased space (as an estimate) for the first year of lease term, or a total of \$1,082.81 per month.
11	Initial Monthly Payment:	\$6,989.06 due at lease execution
12	Permitted Use:	Full service restaurant serving Asian themed food and sushi for on-site consumption and take-out / delivery.
13	Security Deposit:	\$5,000.00
14	Construction to be performed by the landlord:	N/A
15	Utility Charges:	Paid by Tenant
16	Guarantor:	Lei Jiang

LEASE FOR RETAIL SPACE

THIS LEASE, executed in Charleston, SC this 21 day of March, 2016 by and between The Shops at Wescott, LLC (hereinafter "LANDLORD"), with offices at 3506 W Montague Avenue, Suite 200, Charleston, SC 29418 and Sake House IV Inc. (hereinafter "TENANT") with offices at 5250 Mulholland Drive Summerville, SC 29485.

- W I T N E S S E T H -

SECTION 1. PREMISES

Landlord hereby leases to Tenant and Tenant leases from Landlord on the terms, covenants and conditions set forth herein, the "Leased Premises" as shown on Exhibit "A", attached hereto and made a part hereof, such space being within a one-story unit (without basement, balcony or mezzanine) and being approximately 3,375 (40) feet in width and (75) feet in depth as measured from the exterior face of any exterior walls and to the center line of common walls, being a total of 3,375 square feet.

Landlord reserves to itself the roof and exterior walls of the building, or buildings, comprising said shopping center (hereinafter the "Shopping Center"), and further reserves the right to place, maintain, repair, and replace utility lines, pipes, ducts, conduits, wires and tunneling and the like, in, over, under, upon and through the Leased Premises as may be reasonably necessary or advisable for the servicing of the Leased Premises or of other portions of the Shopping Center development in locations which will not materially interfere with Tenant's use of the Leased Premises.

SECTION 2. TERM

(a) Initial Term

This Lease shall have an initial term, as set forth in this Section 2a, as well as a term, as set forth in Section 2b. The initial term shall commence on Delivery Date (as defined below) and end on the Expiration Date or October 1, 2021. No rent shall be payable during the initial term, but all other terms, conditions, and obligations of this Lease shall apply during the initial term.

(b) Term

The term of this Lease shall be for a period of Five (5) years commencing on the Rental Commencement Date as hereinafter defined unless sooner terminated under the conditions hereinafter set forth.

Upon determination of the Rental Commencement Date of the term, Landlord and Tenant shall, upon the request of either party, execute a Memorandum of Lease in form for recording, setting forth the commencement and termination dates of the term of this Lease. However, this recording shall be limited to a Memorandum of Lease describing the property herein demised, giving the term of this Lease and renewal rights, if any, and referring to this Lease.

SECTION 3. RENTAL COMMENCEMENT DATE

The date upon which Tenant shall be obligated to commence the payment of Rent and all Additional Charges shall be known as the "Rental Commencement Date." "Rental Commencement Date" shall six (6) months from the date Landlord delivers the Leased Premise to Tenant or October 1, 2016.

SECTION 4. LEASE YEAR

"Lease Year" shall mean a period of twelve consecutive full calendar months. The first Lease Year shall begin on the Rental Commencement Date, if the date occurs on the first day of a calendar month, otherwise, the first Lease Year shall begin on the first day of the first calendar month after the Rental Commencement Date. Each succeeding Lease Year shall begin on the anniversary of the first Lease Year.

SECTION 5. RENT

(a) Minimum Rent

Tenant shall pay Landlord, at the office or such other place as Landlord may from time to time designate, as "Minimum Rent" for the Premises during the term of this Lease, without any deduction or setoff, the sum of \$70,875.00 in equal monthly installments of Five thousand nine hundred six dollars and 25/100 (\$5,906.25), in advance, on the first (1st) day of each calendar month for the initial term of this Lease. Subsequent lease year minimum base rents is as follows:

Months 13-60	Monthly Rent: \$5,906.25 Yearly: \$70,875.00
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Minimum Rent and the amounts to be paid by tenant pursuant to Sections 5 and 6 hereof shall be prorated on a per diem basis for any partial month, preceding the first Lease Year.

(b) Late Payments

If the minimum monthly rent and additional charges due pursuant to Sections 5 and 6 hereof are not paid within TEN (10) days of their due date. Additionally, there shall be an additional rent of 10% of the amount of rent then due.

(c) Renewal Option

Tenant shall have the option of renewing this lease for an additional two (2) five (5) year terms with a 10% increase over the previous term minimum base rental amounts.

In order to exercise said option period to extend this Lease, TENANT shall give LANDLORD written notice at least six (6) months prior to the then term of this lease.

SECTION 6. ADDITIONAL CHARGES

Tenant shall also pay the following charges (hereinafter "Additional Charges") which shall be considered for purposes of default, as additional rent:

The Additional Charges shall be \$3.85 per sq. ft. of leased space for the first year of lease term for a total of \$1,082.81 per month. The total payment due and payable, in advance including base rent will be \$6,989.06 per month. The Additional Charges for the remainder of the lease term and any renewals will be based on the actual "Additional Charges."

(a) Real Estate Taxes & Assessments

For each calendar year, or part thereof during the term of this Lease, Tenant shall pay its proportionate share of all real estate taxes and assessments, levied and assessed against the land, buildings and all other improvements within the Shopping Center. Tenant's proportionate share shall be the total amount of such taxes and assessments, multiplied by a fraction the numerator of which shall be the number of square feet of floor area within the Leased Premises, and the denominator of which shall be the number of square feet of rentable floor area within all the buildings in the Shopping Center at the time such taxes were levied or assessed.

Tenant shall pay said real estate taxes and assessments to Landlord in equal monthly installments on the first day of each calendar month during the term of this Lease. Said charges shall be based upon Landlord's estimated costs for the real estate taxes and assessments for the calendar year. The amount due for all partial calendar years shall be prorated on a per diem basis.

Within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant with a statement of the actual amount of Tenant's proportionate share of such real estate taxes and assessments for the preceding calendar year. Within fifteen (15) days after receipt of said statement by tenant, Tenant shall pay to Landlord any deficiency due Landlord. Any surplus paid by Tenant shall be credited against the next ensuing installment of Landlord's estimate for Tenant's proportionate share of such real estate taxes and assessments.

(b) Municipal, County, State or Federal Taxes

Tenant shall pay all taxes assessed against any leasehold interest of Tenant on any fixtures, furnishings, equipment, stock-in-trade, or other personal property of any kind owned, installed or used in or on the Leased Premises.

(c) Rental Taxes

Should any governmental taxing authority levy, assess, or impose any tax, excise or assessment (other than income or franchise tax) upon or against the rentals payable by Tenant to Landlord, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, Tenant shall pay any such tax, excise or assessment thereof.

(d) Insurance

Tenant agrees to reimburse Landlord his proportionate share (computed in the same manner as in Section 6(a) above) of the total cost of premiums for Landlord's insurance coverage (excluding the amount thereof attributable to insuring the Common Areas, for which provision has been made in Section 6(e) below).

Tenant shall pay said insurance reimbursements to Landlord in equal monthly installments on the first day of each calendar month during the term of this Lease. Said charges shall be based upon Landlord's estimated costs for the insurance reimbursements for the calendar year. The amount due for all partial calendar years shall be prorated on a per diem basis.

Within ninety (90) days after the end of each calendar year, Landlord shall furnish Tenant with a statement of the actual amount of Tenant's proportionate share of such insurance reimbursements for the

preceding calendar year. Within fifteen (15) days after receipt of said statement by Tenant, Tenant shall pay to Landlord any deficiency due Landlord. Any surplus paid by Tenant shall be credited against the next ensuing installment of Landlord's estimate for Tenant's proportionate share of such insurance reimbursements.

(e) Common Area Expenses

Tenant agrees to pay to Landlord in the manner hereinafter provided, Tenant's proportionate share of all costs and expenses of every kind and nature paid or incurred by Landlord in general building maintenance, operating, equipping, policing and protecting, lighting, providing sanitation and sewer and other services for, insuring, repairing, replacing and maintaining the Common Areas (as defined hereinafter) and all other facilities used in the maintenance or operation of the Building. Such costs and expenses shall include, but shall not be limited to, the cost of: illumination and maintenance of Common Area signs, refuse disposal, water, gas, sewage, electricity and other utilities (without limitation), including any and all usage, service, hook up, connection, availability and/or standby fees or charges pertaining to same; maintenance and operation of any temporary or permanent utility, compliance with rules, regulations and orders of governmental authorities pertaining to air pollution control, including the cost of monitoring air quality, landscaping, cleaning, lighting, striping and landscaping; curbs, gutters, sidewalks, drainage and irrigation ditches, conduits, pipes located on or adjacent to the Building; premiums for liability, casualty, and property insurance; personal property taxes; licensing fees and taxes; audit fees and expenses, supplies; depreciation of maintenance equipment used in the operation or maintenance of the Common Areas; a management fee paid to any third party management company managing the Building for Landlord; total compensation and benefits (including premiums for workmen's compensation and other insurance) paid to or on behalf of employees involved in the performance of the work specified in this Section and an administrative charge equal to Fifteen Percent (15%) of the aforementioned expenses.

~~Amortization, with interest, of capital expenditures made by Landlord after completion of the Building where such expenditures are for labor or energy saving devices or materials where such capital improvement is made to reduce operation expenses; legal and accounting services; hazard and liability insurance; real and personal property taxes; and all other costs and expenses of operating the building including the cost (amortized over such reasonable period of time which shall be determined by Landlord together with the interest at the rate of Twelve Percent (12%) per annum of the unamortized balance) of any capital improvements made to the Building by Landlord after the date of this Lease that are required under any governmental law or regulation that was not applicable to the Building at the time it was constructed, but shall not include: (1) leasing commissions; and (2) interest on debt or capital retirement of debt.~~

The proportionate share to be paid by tenant shall be that portion of the foregoing costs and expenses which the number of square feet of RENTABLE SQUARE FEET in the Leased Premises bears to the total number of gross RENTABLE SQUARE FEET of area of all buildings in the Shopping Center.

Tenant's proportionate share of such costs and expenses for each Lease Year shall be paid in monthly installments on the first day of each calendar month, in advance, in an amount estimated by Landlord from time to time. Subsequent to the end of each calendar year, Landlord shall furnish Tenant with a statement of the actual amount of Tenant's proportionate share of such costs and expenses for such period. If the total amount paid by Tenant under this Subsection for any such year shall be less than the actual amount due from Tenant for such year as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within ten (10) days after the furnishing of each such statement, and if the total amount paid by Tenant hereunder for any such year shall exceed such actual amount due from Tenant for such year, such excess shall be credited against the next installment due from Tenant to Landlord under this Section.

SECTION 7. UTILITIES

- a) Landlord shall provide as part of the original installation the necessary water lines, sanitary sewer service and electric conductors into the Leased Premises.
- b) Tenant will provide, at its own cost, all necessary facilities within the Leased Premises, except as otherwise provided in Exhibit "B". Except as otherwise provided in this Section or Exhibit "B" hereof, Landlord shall not be responsible for providing any meters or other devices for the measurement of utilities supplied to the Leased Premises. Where necessary, Tenant shall make application for and arrange for the installation of all such meters or other devices.
- c) Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said utility services or obligations hereunder is interrupted or terminated because of necessary repairs, installations, construction and expansion, non-payment of utility charges due, or any other cause beyond Landlord's reasonable control. No such interruption or termination of utility services shall relieve Tenant from any of its obligations under this Lease.

- d) Commencing with the date on which Landlord delivers the Leased Premises to Tenant, Tenant shall pay for gas, if the same is available to the Leased Premises, electric current and all other utilities required for the proper operation of Tenant's business.
- e) Tenant shall pay all water rents, all charges resulting from sprinkler system (if any) and sewer charges charged against the Leased Premises.

SECTION 8. CONSTRUCTION - N/A

(a) Landlord's Work

~~Landlord agrees to perform or cause to be performed, such work in the construction of the Leased Premises as may be set forth as Landlord's Work in Exhibit "B", attached hereto and made a part hereof, such work to be substantially completed in accordance with the specifications set forth in said Exhibit "B".~~

(b) Delivery and Acceptance of Leased Premises

Landlord agrees that Landlord's work shall be substantially completed on or before April 1, 2016 subject to delays caused by acts of God, government or public enemy, labor disputes, inability to obtain material or labor on reasonable terms, failure of Tenant to perform Tenant's obligations with respect to construction, or other cause beyond the control of Landlord. Under no circumstances shall Landlord be liable for any delay or failure to commence or complete its construction. Landlord shall provide 11 tons of HVAC in good working order. Landlord also grants Tenant permission to build sidewalk located behind the building.

~~Landlord shall notify Tenant in writing when Landlord considers the Premises substantially complete and ready for occupancy by Tenant. Within ten (10) business days after receipt by Tenant of such notice, Tenant and Landlord shall inspect the Premises. If Tenant fails to inspect the Premises within such ten (10) day period, then Landlord shall be deemed to have delivered and Tenant shall be deemed to have accepted the Premises on the eleventh (11th) business day after receipt by Tenant of Landlord's notice.~~

~~Within five (5) business days after inspection of the Premises as set forth above, Tenant shall notify Landlord in writing of any condition, deficiency, or incomplete items (collectively, the "Non-Conforming Items") which cause the Premises not to be in accordance with the requirements of this Lease at the time of delivery possession. If Tenant fails within such five (5) day period to notify Landlord in writing of any Non-Conforming Items, then Landlord shall be deemed to have delivered and Tenant shall be deemed to have accepted the Premises on the sixth (6th) business day after the inspection by Tenant and Landlord of the Premises.~~

~~If Tenant notifies Landlord of any Non-Conforming Item within the five (5) day period set forth above, Landlord shall promptly correct or complete any Non-Conforming Items, and give the Tenant written notice of such correction or completion. Landlord shall be deemed to have delivered and Tenant shall be deemed to have accepted the Premises on the date on which Landlord gives notice of such correction or completion to Tenant. In the event that a dispute shall arise as to whether or not Landlord has corrected the Non-Conforming Items, or as to whether any condition, deficiency, or incomplete item is a Non-Conforming Item, a certificate of Landlord's architect that construction is substantially completed in accordance with plans and specifications and in accordance with plans and specifications and in accordance with the requirements of this Lease at the time of delivery of possession, shall be conclusive and binding upon the parties hereto.~~

(c) Tenant's Construction

With the exception of the items specifically enumerated in Exhibit "B" as Landlord's Work, Tenant shall, at its own expense, obtain all permits required to perform all work and supply all installation described in Tenant's plans and specifications as submitted per Section 8(c) hereof, including, but not limited to furniture, furnishings, special equipment and other items necessary for the completion of the Leased Premises and the proper operation of Tenant's business. All items furnished by tenant shall be new and, if affixed to the Leased Premises, shall be free and clear of any lien or security interest. Tenant shall not undertake any construction, nor shall Tenant install any equipment, other than trade fixtures and personal property, without first obtaining Landlord's written approval of the tenants plans and specifications therefore, which plans and specifications shall be submitted to Landlord within thirty (30) days after Landlord's architect provides Tenant with shell plans for the Leased Premises. Thereafter, no changes shall be made in Tenant's plans and specifications without the consent of Landlord. Tenant shall pay to Landlord, upon demand, any additional cost incurred by Landlord as a result of changes requested by Tenant and approved by Landlord. Tenant shall not commence any work until Tenant delivers to Landlord a policy or policies of public liability and property damage insurance naming Landlord as an insured, in limits and with companies acceptable to Landlord. Tenant's construction shall be completed thirty (30) calendar days after delivery of the Leased Premises subject only to delays enumerated in Section 8(b) above. Tenant may install an additional 5 ton unit. Tenant will notify Landlord of the make and model number of the new unit and may remove said unit at the end of occupancy. Tenant will be responsible for repairing any damage caused by such removal.

(d) License to Enter Leased Premises

Landlord may, prior to its delivery of the Leased Premises, make said Leased Premises available to Tenant for its work and installations, at Tenant's sole risk, and so long as such work and installations do not interfere with the construction of the Leased Premises or other building improvements by Landlord. Tenant shall perform all of its obligations under this Lease (except its obligations to pay rent and other charges) from the date the Leased Premises are so made available to Tenant.

(e) Delays Caused by Tenant

Tenant understands and agrees that certain of the Landlord's Work can only be undertaken concurrently with or subsequent to work to be performed by Tenant. As a result, and notwithstanding any provision in this Lease to the contrary, (i) Landlord shall not be liable for delays in the completion of Landlord's Work resulting from delays in the prosecution or completion of Tenant's work ("Tenant Delays"), and (ii) Tenant shall have no right to terminate this Lease or assert claims against Landlord as result of Tenant Delays.

SECTION 9. COMMON AREAS

Landlord grants as a revocable license to Tenant and Tenant's customers and invitees the privilege to use, in common with all others to whom Landlord has, or may hereafter grant privileges to use the same, the Common Areas located within the Shopping Center. The term "Common Areas" as used in this Lease shall mean the parking areas, roadways, pedestrian sidewalks, loading docks, delivery areas, landscaped areas, and all other areas or improvements which may be provided by Landlord for the common use of tenants of the Shopping Center. Landlord hereby reserves the following rights with respect to the Common Areas, to:

- a) Establish reasonable rules and regulations for the use thereof;
- b) Use or permit the use by third parties;
- c) Close or restrict the use of all, or any portion of the Common Areas as Landlord may deem necessary; and
- d) Change the layout of such Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise.

SECTION 10. TENANT'S USE OF PREMISES

Tenant, and no one else, shall use the Leased Premises, and such use shall be limited to the following: retail sale of Asian themed food and sushi restaurant.

Tenant agrees to open its store for business, fully fixtured, stocked and staffed, and thereafter to continuously keep the Leased Premises fully fixtured, stocked and staffed, and to continuously conduct business in 100% of the Leased Premises, during normal business hours.

SECTION 11. TENANT'S COVENANTS WITH RESPECT TO OCCUPANCY

Tenant agrees to:

- a) Occupy the Leased Premises in a safe and careful manner and in compliance with all applicable laws, ordinances, rules, regulations and order of any governmental bodies and without committing or permitting waste;
- b) Neither do nor suffer anything to be done or kept in or about the Leased Premises, which contravenes Landlord's insurance policies or increases the premiums therefore;
- c) Permit no reproduction of sound, which is audible outside the Leased Premises, nor permit odors to be unreasonably dispelled from the Leased Premises;
- d) Place no signs or lettering on the exterior of the Shopping Center without the prior written consent of Landlord, and to maintain in good repair and promptly remove and repair any damage caused by any such permitted signs. (See Exhibit "C" regarding sign criteria);
- e) Place no merchandise, sign or other thing of any kind in the vestibule or entry of the Leased Premises or on the sidewalks or other Common Areas adjacent thereto or elsewhere on the exterior of the Leased Premises;

- f) Park Tenant's vehicles and to require all employees to park vehicles only in such places as may be designated from time to time by Landlord for the use of Tenant and its employees provided designated spaces shall be reasonably convenient;
- g) Keep any refuse in proper containers in the interior of the Leased Premises until the same is removed, and to permit no refuse to accumulate around the exterior of the Leased Premise;
- h) Promptly load and unload only from areas specified by Landlord;
- i) Conduct no auction, fire or going out of business sale without the prior written consent of Landlord;
- j) Permit Landlord free access to the Leased Premises at all reasonable times for the purpose of examining the same or making alterations or repairs to the Leased Premises that Landlord may deem necessary for the safety or preservation thereof;
- k) Adequately heat and cool the Leased Premises;
- l) Cause or permit no lien upon the Leased Premises and to suffer no matter or thing whereby the estate, right, and interest of Landlord in the Leased Premises, or any part thereof, might be impaired;
- m) Solicit no business in the Common Areas, nor distribute handbills or other advertising matter to customers nor place same in or on automobiles in the Common Areas;
- n) Comply with all reasonable rules and regulations, which Landlord may from time to time establish for the use, and care of the Leased Premises, the Common Areas, and other facilities and buildings included in the Shopping Center.

SECTION 12. REPAIRS, ALTERATIONS, MECHANIC'S LIEN:

- a) Tenant shall keep the entire Leased Premises and every part thereof (~~structural and otherwise~~) including, but not limited to, floor, ceiling, walls, roof and all fixtures, facilities or equipment contained therein, in good condition and repair, including but not limited to the heating, air conditioning, electrical plumbing, electrical fixtures, plumbing fixtures and sewer systems, the exterior doors, door hardware, window frames, and all portions of the store front area, and shall make any replacements thereof, and of all broken and cracked glass which may become necessary during the term of this Lease. Prior to undertaking the aforementioned repairs to roof, structural, floors or mechanical systems, Tenant shall notify Landlord of said repairs and the methodology to be used in effecting the repairs. Landlord shall have the right to approve said methodology and such approval shall not be unreasonably withheld, conditioned or delayed. If Tenant refuses or neglects to commence or complete repairs promptly and adequately, Landlord may make or complete said repairs and Tenant shall pay the cost thereof to Landlord.
- b) The Tenant shall obtain a service contract on HVAC system for the maintenance and repair of the system. The Tenant shall provide a copy of the service contract to the Landlord within 30 days of the commencement date of the lease.
- c) Tenant shall not, without Landlord's prior written consent, make nor permit to be made any alterations, additions, or improvements to the Leased Premises.
- d) All improvements by tenant shall become the property of Landlord and shall not be removed from the Leased Premises. All trade fixtures, furniture, furnishings and signs installed in the Leased Premises by Tenant and paid for by Tenant, unless they have been so affixed that they have become part of the Leased Premises, shall remain the property of Tenant and may be removed upon the expiration of the term of this Lease, provided however that:
 - 1. Any of such items may be removed only if Tenant repairs any damage caused by such removal;
 - 2. Tenant shall have fully performed all of the covenants and agreements to be performed by Tenant and no payments are due or will thereafter become due from Tenant to Landlord under the provisions of this Lease.

If Tenant fails to remove such items from the Leased Premises prior to the expiration or earlier termination of this Lease, all such trade fixtures, furniture, furnishings and signs shall become the property of Landlord unless Landlord elects to require their removal in which case Tenant shall promptly remove same and restore the Leased Premises to its prior condition.

SECTION 13. INDEMNITY AND INSURANCE

(a) Indemnification by Tenant

Tenant will indemnify and hold Landlord harmless from and against all loss, cost, expense and liability whatsoever (including Landlord's cost of defending against the foregoing, such cost to include attorney fees) resulting or occurring by reason of Tenant's construction, use, or occupancy of the Lease Premises.

(b) Public Liability Insurance

Tenant, at its own expense, shall provide and keep in force with companies acceptable to Landlord, public liability insurance covering the Leased Premises and Tenant's use thereof, with minimums of \$500,000 on account of bodily injuries to or death of one (1) person; \$1,000,000 on account of bodily injuries to or death of more than one (1) person as a result of any occurrence and \$50,000 coverage for property damage, and to deposit said policies (or certificates thereof) with Landlord prior to the date of any use or occupancy of the Leased Premises by Tenant. Such policy or policies shall name The Shops at Wescott, LLC as Landlord and Coldwell Banker Commercial as the Property Management Company, each as additional insured and shall bear endorsements to the effect the insurer agrees to notify Landlord not less than thirty (30) days in advance of any cancellation or modification thereof.

(c) Landlord's Liability

Landlord shall not be liable for any:

1. Damage to Tenant's property, including ceiling tiles or personal injury to Tenant, his employees or agents, or any third parties, located in the Leased Premises, nor
2. Acts or omissions of other tenants of the Shopping Center;
3. Condition of the Leased Premises whatsoever unless Landlord is responsible for the repair thereof, and has failed to make such repair after notice from Tenant of the need therefore, and expiration of a reasonable time for the making of such repair. The Tenant shall not withhold the payment of any portion of the rent relating to, nor as a remedy for, repairs to be made by Landlord.

(d) Fire & Extended Coverage Insurance

Landlord agrees to carry policies insuring the improvements on the Shopping Center against fire and such other perils as are normally covered by extended coverage endorsements in the county where the Shopping Center is located, in an amount equal to at least Eighty Percent (80%) of the insurable value of such improvements, together with insurance against such other risks (including loss of rent) and in such amounts as Landlord deems appropriate. Landlord agrees to pay the fire and extended coverage insurance subject to Section 6 of this Lease.

(e) Mutual Waiver of Subrogation

Landlord and Tenant each agree to cause to be included in their respective policies of fire and extended coverage insurance the agreement of the issuer thereof that said policies shall not be invalidated by a waiver of claim by the insured against the Landlord or Tenant, as the case may be, and each will furnish evidence thereof to the other. In addition to any other waiver herein, Landlord and Tenant each hereby waive any claim against the other for any loss resulting from any cause, including the negligence of the other, to the extent of the insurance proceeds available thereof.

SECTION 14. DAMAGE & DESTRUCTION

If the Leased Premises are damaged by any peril covered by standard policies of fire and extended coverage insurance to an extent which is less than Twenty-five Percent (25%) of the cost of replacement (as determined by Landlord's insurer) of the Leased Premises, the damages shall, except as hereinafter provided, promptly be repaired by Landlord, at Landlord's expense, but that in no event shall Landlord be required to repair or replace Tenant's stock in trade, trade fixtures, furniture, furnishings, equipment, personal property, or property, or leasehold improvements. If:

- a) The Leased Premises are damaged by any cause, to the extent of Twenty-five (25%) or more of the cost of replacement of the Leased Premises; or
- b) The buildings in the Shopping Center are damaged by any cause to the extent of Fifty Percent (50%) or more of the cost of replacement; or
- c) Any damage by any cause to the Leased Premises occurs during the last two (2) years of the term of this Lease, Landlord may elect either to repair or rebuild the Leased Premises or the buildings in the Shopping Center, as the case may be, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the event causing the damage.

If the casualty, repairing, or rebuilding shall render the Leased Premises untenable in whole or in part, a proportionate abatement of the Minimum Rent shall be allowed until the date Landlord completes the repairs or rebuilding. If Landlord is required or elects to repair the Leased Premises, Tenant shall repair or replace its stock in trade, trade fixtures, furniture, furnishings, equipment and personal property in a manner and to at least a condition equal to that prior to its damage or destruction and the proceeds of all insurance carried by Tenant shall be held in trust by Tenant for the purpose of such repair or replacement.

SECTION 15. UNIFORM COMMERCIAL CODE

To the extent, if any, this Lease grants Landlord any lien or lien rights greater than provided by the laws of the State of South Carolina pertaining to "Landlord's Liens", this Lease is intended as and constitutes a security agreement within the meaning of the Uniform Commercial Code. Landlord, in addition to the rights prescribed in this Lease, shall have a lien upon and an interest in Tenant's property now or hereafter located upon the Leased Premises which grants Landlord a Security Interest, as that term is defined, under this state's Uniform Commercial Code to secure the payment to Landlord of the various amount provided in this Lease. Tenant agrees to and shall execute and deliver to Landlord such "Financing Statements" and such further assurances as Landlord may, from time to time, consider necessary to create, perfect and preserve the lien described and all additions, substitutions, replacements and accessions thereto, and all proceeds of its or their sale or other disposition. Landlord, at the expense of Tenant, may cause such Financing Statements and assurances to be recorded and re-recorded, filed and re-filed, and renewed or continued, at such times and places as may be required or permitted by law to create, perfect and preserve such liens. In the event Tenant fails to promptly execute and return to Landlord such Financing Statements as Landlord may require to create, preserve and perfect its lien, Tenant shall and does hereby designate Landlord to act as Tenant's agent for the sole and limited purpose of executing such Financing Statements and any such execution by Landlord pursuant to this Lease shall be effective and binding upon Tenant as though executed originally by Tenant. Tenant's designation of Landlord as agent hereunder shall not be subject to revocation until this Lease is terminated.

SECTION 16. ABANDONMENT

Tenant shall not vacate nor abandon the Leased Premises at any time during the term of this Lease, nor permit the Leased Premises to remain unoccupied for a period longer than forty-five (45) consecutive days during the term of this Lease. If Tenant shall abandon, vacate or surrender the Leased Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Leased Premises shall, at the option of Landlord, be deemed abandoned and available to Landlord to use or sell to offset amounts due and payable. Should the Leased Premises be presumed to be vacated or abandoned, Landlord has the right, without being held as trespassing, to enter the Leased Premises.

SECTION 17. ASSIGNING AND SUBLETTING

Tenant, voluntarily, or involuntarily, shall not assign, convey, mortgage, encumber or otherwise transfer this Lease or any interest hereunder, nor shall Tenant allow any transfer hereof or any lien upon Tenant's interest hereunder by operation of law or otherwise, nor shall Tenant sublet the Leased Premises or any part thereof, or permit the use or occupancy of the Leased Premises or any part thereof by any person or entity other than Tenant, without the prior written consent of Landlord.

Any consent by Landlord shall not constitute a waiver of the necessity for such consent to any subsequent assignment, conveying, mortgaging, encumbering or otherwise transferring this Lease or any interest hereunder, or allowing any transfer hereof or any lien upon Tenant's interest hereunder by operation of law or otherwise, or subletting the Leased Premises or any part thereof, or permitting the use or occupancy of the Leased Premises or any part thereof by any person or entity other than Tenant, nor does it constitute a waiver of Landlord's right to accept the Leased Premises as set forth hereinabove.

SECTION 18. EMINENT DOMAIN

In the event the Shopping Center, or any part thereof, shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefore, including but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee, shall belong to Landlord without any deduction there from for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title and interest to such award. However, Tenant shall have the right to recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded to Tenant on account of interruption of Tenant's business and for moving and relocation expenses. In the event of a taking under the power of eminent domain of more than 25% of the Leased Premises or a sufficient portion of the Shopping Center so that after such taking less than 50% of the floor area within all buildings occupied by tenants (as constituted prior to such taking), either Landlord or Tenant shall have the right to terminate this Lease by notice in writing given within ninety (90) days after the condemning authority takes possession, in which event all rents and other charges shall be pro rated as of the date of such termination.

In the event of a taking of any portion of the Leased Premises not resulting in a termination of this Lease, Landlord shall use so much of the proceeds of Landlord's award for the Leased Premises as is required therefore to restore the Leased Premises to a complete architectural unit and this Lease shall continue in effect with respect to the balance of the Leased Premises, with a reduction of Minimum Rent in proportion to the portion of the Leased Premises taken.

SECTION 19. DEFAULT BY TENANT

Failure to pay any minimum rent or additional rent as stated in the Lease Agreement by the due date shall constitute DEFAULT BY TENANT. Landlord shall seek all remedies available by law including recovering monies due Landlord and applicable late fees and/or eviction of Tenant from the Premises. No additional written default notice shall be required by Landlord to Tenant in the event of monetary default and Landlord shall proceed with the Dorchester County Magistrate's Office to serve an Eviction Notice. Tenant shall have the right to cure the default.

Failure to comply with any other condition set forth in this Lease Agreement shall constitute a Default By Tenant and Landlord shall give written notice to Tenant to cure said default. Such non-monetary default must be cured within ten (10) business days unless an otherwise time period is mutually agreed upon by Landlord and Tenant.

If Tenant at any time shall fail to pay any taxes, assessments, or liens, or fails to make any payment or perform any act required by this Lease to be made or performed by it, Landlord, without waiving or releasing Tenant from any obligation or default under this Lease, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account of and at the expense of Tenant. All sums so paid by Landlord and all costs and expenses so incurred shall accrue interest at the present prime rate or Twelve Percent (12%), whichever is greater, from their due date until paid, said interest to be so much additional rent under this Lease and shall be paid to Landlord by Tenant upon demand. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

SECTION 20. SECURITY DEPOSIT

To secure the faithful performance by Tenant of the covenants, conditions and agreements set forth in this Lease to be performed by it, Tenant has deposited with Landlord the sum Five Thousand Dollars & no/100's (\$5,000.00) on the understanding that:

(a) Landlord shall not be obliged to but may apply such deposit or any portion thereof to the curing of any default that may exist, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied which shall be added to the security deposit so the same will be restored to its original amount;

(b) Should the Shopping Center be transferred by Landlord, the security deposit or any balance thereof may be turned over to Landlord's successor or transferee for such application or return;

(c) Landlord or its successors shall not be obligated to hold the security deposit as a separate fund, but may co-mingle it with other funds;

(d) In no event shall Landlord be obliged to apply the security deposit against amounts due during or on account of the final month of the term; and

(e) If tenant shall faithfully perform all of the covenants and agreements in this Lease contained on the part of the Tenant to be performed, the security deposit, or any then remaining balance thereof, shall be returned to Tenant, without interest, within thirty (30) days after the expiration of the term hereof.

Notwithstanding anything aforementioned to the contrary, Tenant hereby agrees not to look to the mortgagee, as mortgagee, mortgagee in possession, or successor in title to the property, for accountability for any security deposit required by Landlord hereunder, unless said sums have actually been received by said mortgagee as security for Tenant's performance of this Lease.

SECTION 21. NOTICES & PAYMENTS

Any notice or consent required to be given by or on behalf of either party to the other shall be deemed given when mailed by registered or certified mail, return receipt requested, addressed to Landlord and Tenant at the addresses hereinabove specified, or the Leased Premises, or at such other address as may be specified from time to time by notice in the manner herein set forth. Minimum Rent and Additional Charges payments shall be considered delivered on the date actually received.

SECTION 22. MORTGAGE SUBORDINATION & ATTORNMEN

This Lease shall be subordinate to the lien of any first mortgage which may now or hereafter affect the real property of which the Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. In confirmation of such subordination, Tenant shall execute promptly any subordination agreement that Landlord may request. Tenant hereby constitutes and appoints Landlord the Tenant's attorney-in-fact to execute any such subordination agreement or agreements for and on behalf of Tenant.

Tenant shall attorn to any foreclosing first mortgagee, purchaser at a foreclosure sale or purchaser may deed in lieu of foreclosure, but no such mortgagee or purchaser shall be (a) liable for any act or omission of Landlord, (b) bound by any payment of rent, (Additional Rent) or other charge made more than ten (10) days in advance of the due date thereof, or (c) bound by any assignment, surrender, termination, cancellation, amendment or modification of this Lease made without the express written consent of such mortgagee or purchaser.

SECTION 23. CERTIFICATES OF LEASE INFORMATION

At any time and from time to time, Tenant agrees to execute and deliver to Landlord, for the benefit of such persons as Landlord requests, a statement in writing, satisfactory to Landlord certifying such facts are true and ascertainable. Failure to comply shall constitute default.

SECTION 24. QUIET ENJOYMENT

Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Leased Premises without any manner of let or hindrance from Landlord or any person or persons lawfully claiming the Leased Premises. Landlord warrants to tenant during landlord's ownership, premises will be professionally maintained.

SECTION 25. LIABILITY OF LANDLORD

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title and interest of Landlord in the Shopping Center as the same may then be encumbered and neither Landlord, nor if Landlord be a partnership, any of the partners comprising such partnership, shall be liable for any deficiency. It is understood that in no event shall Tenant have any right to levy execution against any property of Landlord other than its interest in the Shopping Center as expressly provided herein. In the event of the sale or other transfer of Landlord's right, title and interest in the Leased Premises of the Shopping Center, Landlord shall be released from all liability and obligations hereunder.

SECTION 26. MISCELLANEOUS PROVISIONS

(a) Waiver: No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Landlord. No waiver by Landlord with respect to one or more tenants or occupants of the Shopping Center shall constitute a waiver of or a breach of any condition nor be claimed or pleaded as an excuse of a future breach of the same condition or covenant. (b) Surrender & Holding Over: Tenant shall deliver up and surrender to Landlord possession of the Leased Premises upon the expiration of the Lease, or its termination in any way, in as good condition and repair as the same shall be at the commencement of said term (damage by fire and other perils covered by standard fire and extended coverage insurance and wear and decay only excepted). Should Tenant remain in possession of the Leased Premises after any termination of this Lease, no tenancy or interest in the Leased Premises shall result there from but such holding over shall be subject to immediate eviction and removal, and Tenant shall, upon demand, pay to Landlord, as liquidated damages, a sum equal to double the Minimum Rent as specified herein for any period during which Tenant shall hold the Leased Premises after the stipulated term of this Lease may have terminated.

(c) Transfer of Landlord's Interest: Landlord shall be liable under this Lease only while the owner of the Shopping Center, and if Landlord should sell or otherwise transfer Landlord's interest in the Shopping Center upon an undertaking by the purchaser, or transferee, to be responsible for all of the covenants and undertakings of Landlord, Tenant agrees that Landlord shall thereafter have no liability to Tenant under this Lease or any modification or amendment thereof, except for such liabilities which might have accrued prior to the date of such sales or transfer of Landlord's interest.

(d) Landlord's Lien: Tenant, if permitted by the laws of the state governing this Lease, grants to Landlord, and Landlord shall have a lien and/or valid security interest upon Tenant's fixtures, machinery, equipment, goods, wares, merchandise, and other personal property for the performance of the obligations of Tenant under this Lease. Landlord, in addition to any other remedies permitted by law, shall have the right, upon fifteen (15) days prior written notice to Tenant, to enter the Leased Premises to enforce said security interests. Tenant hereby agrees to execute such financing statements and other instruments necessary or desirable in Landlord's discretion to perfect the security interest hereby created. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto.

(e) Brokers Commissions: Tenant represents and warrants that there are no claims for brokerage commissions or finders fees in connection with the execution of this Lease other than Coldwell Banker

Commercial and agrees to indemnify Landlord against and hold it harmless from all liabilities arising from any such claim, including the cost of attorney fees.

(f) Successors & Assigns: This Agreement inures to the benefit of, and shall be binding upon the parties, their heirs, successors, assigns and legal representatives, subject only to the provisions restricting assignment and subleasing.

(g) Joint & Several Liability: The parties to this Lease, as shown on the face plate and Page 1, are jointly and severally liable under all terms, conditions, and covenants of this Lease.

SECTION 27: ATTORNEY'S FEES

Should it become necessary for Lessor to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rents or gaining possession of the Premises, Lessee agrees to pay all expenses so incurred, including a reasonable attorneys' fee.

SECTION 28. FINAL EXPRESSION OF PARTIES' AGREEMENT

This Lease is the final expression of the parties' agreement. All other prior written or oral agreements and understandings, if any, are superseded. Tenant and Landlord warrant and agree that no promises, representations, waivers, or courses of conduct not set forth herein have been made or are being relied upon. This Lease may be modified only by a writing signed by Landlord and Tenant.

SECTION 29. SPECIAL CLAUSES

- Tenant shall provide Landlord within thirty (30) days of Lease Execution, an HVAC service maintenance agreement.
- Tenant shall provide Landlord within thirty (30) days of Lease Execution, a contract for hood exhaust cleaning for a minimum of three (3) times per calendar year.
- Tenant shall obtain a separate dumpster for all construction debris to be placed at a mutually agreeable location by both Parties.

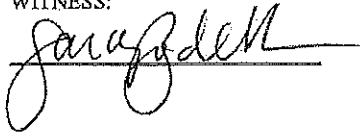
SECTION 30. FINAL EXPRESSION OF PARTIES' AGREEMENT

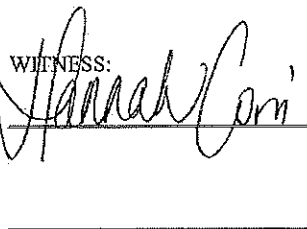
This Lease is the final expression of the parties' agreement. All other prior written or oral agreements and understandings, if any, are superseded. Tenant and Landlord warrant and agree that no promises, representations, waivers, or courses of conduct not set forth herein have been made or are being relied upon. This Lease may be modified only by a writing signed by Landlord and Tenant.

IN WITNESS WHEREOF, each party has caused this lease to be executed under seal by its duly authorized representative.

Signed in the Presence of:

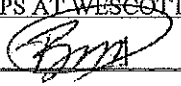
WITNESS:



WITNESS:


LANDLORD:

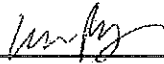
THE SHOPS AT WESCOTT, LLC

BY: 

ITS MEMBER

DATE: 3/21/16

TENANT:

BY: 

BY: _____

DATE: 3/14/16

GUARANTY OF FULL PERFORMANCE

THIS GUARANTY is made and entered into at Charleston, SC, this 15th day of March, 2016, Lei Jiang (hereinafter referred to as "GUARANTOR").

WITNESSETH:

WHEREAS The Shops at Wescott, LLC as Landlord (hereinafter referred to as "LANDLORD"), and Sake House IV Inc. as Tenant (hereinafter referred to as "TENANT"), have entered into a Lease Agreement (hereinafter "LEASE") dated the 15th day of March, 2016, a copy of which LEASE is attached hereto and incorporated herein; and

WHEREAS, as an inducement for LANDLORD to enter into said LEASE, GUARANTOR has agreed to guaranty the full performance of all obligations of TENANT, as lessee, under said LEASE.

NOW THEREFORE, in consideration of the execution and delivery of the LEASE by LANDLORD, and other valuable consideration, receipt of which is hereby acknowledged, GUARANTOR, hereby guarantees the full and prompt payment of rent and other leasehold charges required to be paid by TENANT pursuant to the LEASE, together with the full performance and observance of all covenants and agreements contained in said LEASE and to be performed on the part of TENANT.

This Guaranty is absolute and unconditional and shall not be released, or deemed to be release, prior to the expiration of the term of said LEASE, and any extensions thereof, unless released by LANDLORD, by written instrument.

Demand and notice of non-payment or non-performance, diligence in collection and notice of acceptance of this Guaranty are hereby expressly waived.

The undersigned acknowledged that LANDLORD may, from time to time, at his discretion, without prior notice to or consent of the undersigned, and without in any way impairing or affecting GUARANTOR'S liability created hereby:

- a) Change the manner, place or term of the payment or performance under said LEASE or extend the time of payment or performance, subject to Tenant's consent;
- b) Settle or compromise with TENANT as lessee, any liabilities arising under said LEASE to such extent as it may determine without affecting the liability of GUARANTOR.

GUARANTOR certifies that he has full authority to enter into this Guaranty and that the same is his free act and deed.

IN WITNESS WHEREOF, GUARANTOR has set his hand the day and year first written above.

Signed in the Presence of:

GUARANTOR:

BY: 
Lei Jiang

BY: _____

DATE: 3/15/16

EXHIBIT "A"

Leased Premises outlined in blue.

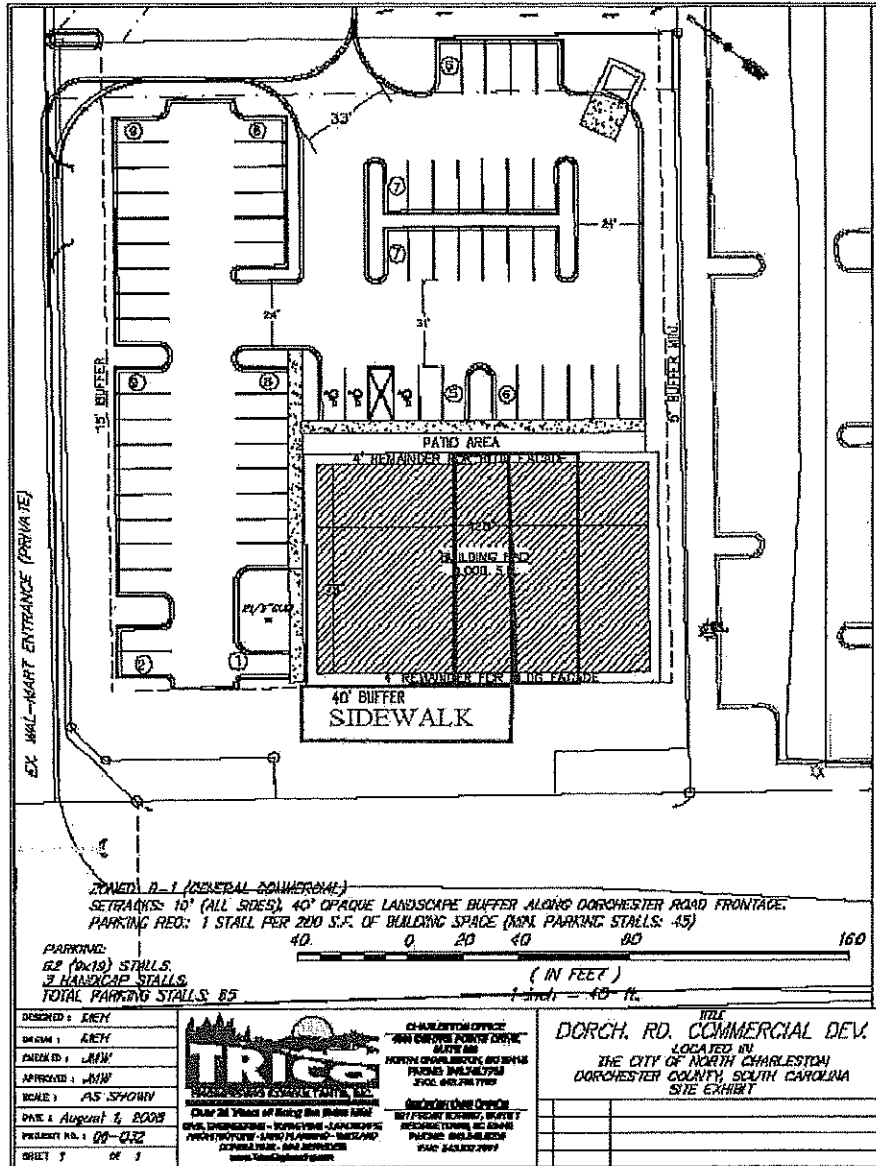


EXHIBIT "B"

Not Applicable.

EXHIBIT "C"
SIGNAGE CRITERIA
THE SHOPS AT WESCOTT

1. Signage must be approved by The City of N. Charleston and receive a permit from the municipality.
2. Signage must be approved by Landlord. Landlord approval shall not be unreasonably withheld.
3. Tenant shall remove all signage from and repair the facade within ten (10) business days from the end of Tenant's initial term or any renewal period.

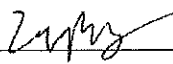
All signage shop drawings shall be submitted to Landlord in care of:

Shops at Wescott, LLC
3506 W Montague Avenue, Suite 200
Charleston, SC 29418
Attn: Brian M. Aiken

brianmaiken@yahoo.com

Signatures:

Landlord:  Date 3/21/16

Tenant:  Date 3/15/16

FIRST ADDENDUM TO LEASE AGREEMENT

Notwithstanding any language to the contrary contained in the Lease Agreement dated March 21, 2016, by and between The Shops at Wescott, LLC (Landlord) and Sake House IV, Inc. dba Sake House (Tenant) for premises located at 9770 Dorchester Road, N. Charleston, SC, the language contained in this Addendum shall control.

RENT ABATEMENT. Landlord and Tenant agree to a one-time rent abatement period commencing November 1, 2017 and ending April 30, 2018. The minimum base rent and additional charges shall be Five Thousand Dollars and no/100's.

Beginning May 1, 2018, the minimum base rent shall revert to the terms outlined in the Lease Agreement and any subsequent changes in Additional Charges as outlined in the Lease Agreement.

SECTION 20. SECURITY DEPOSIT. Landlord and Tenant acknowledge that a Security Deposit in the amount of Five Thousand Dollars and no/100's was paid by Tenant and received by Landlord at the time of mutual execution of the Lease Agreement for the faithful performance of Tenant's obligations under the Lease Agreement.

Landlord and Tenant desire to liquidate the Security Deposit in its entirety for the benefit of Landlord.

Tenant shall have no Security Deposit remaining under the Lease Agreement.

All other terms and conditions of the lease remain unchanged and are in full force and effect. The undersigned acknowledge these changes by signing below.

Landlord: The Shops at Wescott, LLC

Tenant: Sake House IV, Inc.

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

Witness: _____

Witness: _____

Name: _____

Name: _____

BAKE HOUSE IV INC
8770 DORCHESTER RD UNIT 100
SUMMITVILLE NC 27446

DATE 5/8/2018

1088

PAY TO THE ORDER OF The Shoppers at Westcott LLC \$ 5035.00

Five thousand thirty five DOLLARS

Bank of America

FOR Wing May Lim

⑆001088⑆ ⑆05390463⑆ 223023478221⑆

Check: 1088 Amount: \$5,035.00 Date: 5/9/2018
Run: 1002, Batch: 14, Seq: 245, Source: C21-Vertex

0532040084 2610208
FIRST RELIANCE BANK
6004 2

1088

PAY TO THE ORDER OF WING MAY LIM \$ 5035.00

Five thousand thirty five DOLLARS

First Reliance Bank

FOR Wing May Lim

⑆001088⑆ ⑆05390463⑆ 223023478221⑆

Check: 1088 Amount: \$5,035.00 Date: 5/9/2018
Run: 1002, Batch: 14, Seq: 245, Source: C21-Vertex

SAKE HOUSE IV INC
9770 DORCHESTER RD UNIT 106
SUNNYSVILLE SC 29445

1122

DATE 6/13/2018

PAY TO THE ORDER OF the shoppes at westcott INC \$ 6000.00
Five thousand and no/100

Bank of America

FOR hwa ming LM

⑈001122⑈ ⑆053904483⑆ 223023478221⑈

Check: 1122 Amount: \$5,000.00 Date: 6/13/2018
Run: 1002, Batch: 12, Seq: 61, Source: C21-Vertex

⑆053208008⑆ 20180613
FIRST RELIANCE BANK

DEPOSIT ONLY

Check: 1122 Amount: \$5,000.00 Date: 6/13/2018
Run: 1002, Batch: 12, Seq: 61, Source: C21-Vertex

SAKE HOUSE IVINC
8700 DORCHESTER RD UNIT 100
SLACKVILLE VA 22446

1138

DATE 7/2/2018

PAY TO THE ORDER OF the shoppes at westcott INC \$ 5000.00
FIVE thousand 00 DOLLARS

Bank of America

FOR hua ming hu

⑈001138⑈ ⑆053904183⑆ 22302347822⑆

Check: 1138 Amount: \$5,000.00 Date: 7/6/2018
Run: 1001, Batch: 20, Seq: 30, Source: C21-Vertex

⑆053904183⑆ 22302347822⑆
FIRST RELIANCE BANK
5001 32

1138

DATE 7/2/2018

PAY TO THE ORDER OF the shoppes at westcott INC \$ 5000.00
FIVE thousand 00 DOLLARS

Bank of America

FOR hua ming hu

⑈001138⑈ ⑆053904183⑆ 22302347822⑆

Check: 1138 Amount: \$5,000.00 Date: 7/6/2018
Run: 1001, Batch: 20, Seq: 30, Source: C21-Vertex

Check: 1167 Amount: \$5,000.00 Date: 8/6/2018
Run: 1002, Batch: 20, Seq: 126, Source: C21-Vertex

Check: 1167 Amount: \$5,000.00 Date: 8/6/2018
Run: 1002, Batch: 20, Seq: 126, Source: C21-Vertex

SAKE HOUSE IV INC 9775 OGDON STREET RD UNIT 502 SUMMERTOWN, NC 28413-7041		1194 11/10/2018
DATE <u>9/13/2018</u>		11/10/2018
PAY TO THE ORDER OF <u>THE SHOPPES AT WILSON TNC</u>		\$5,000.00
Five thousand and 00/100		DOLLARS
Bank of America		FOR
MICR LINE: ⑈001194⑈ ⑈053904483⑈ 223023478221⑈		SIGNATURE: <u>[Signature]</u>

Check: 1194 Amount: \$5,000.00 Date: 9/10/2018
 Run: 1002, Batch: 20, Seq: 66, Source: C21-Vertex

FIRST RELIANCE BANK 5001 34		1194 11/10/2018
DATE <u>9/13/2018</u>		11/10/2018
PAY TO THE ORDER OF <u>THE SHOPPES AT WILSON TNC</u>		\$5,000.00
Five thousand and 00/100		DOLLARS
IF MOBILE DEPOSIT		FOR
MICR LINE: ⑈001194⑈ ⑈053904483⑈ 223023478221⑈		SIGNATURE: <u>[Signature]</u>

Check: 1194 Amount: \$5,000.00 Date: 9/10/2018
 Run: 1002, Batch: 20, Seq: 66, Source: C21-Vertex

SAKE HOUSE IV INC
8770 DOCK STREET RD UNIT 102
SUMMITVILLE, MO 65486-7641

1218

DATE 9/1/2018

FOR the Shoppes at Westcott LLC \$ 5000.00
Five thousand 00/100 DOLLARS

Bank of America

huan my lvn

⑈001218⑈ ⑆053904483⑆ ⑆2302347822⑈

Check: 1218 Amount: \$5,000.00 Date: 10/4/2018
Run: 1001, Batch: 14, Seq: 21, Source: C21-Vertex

⑈07320804⑈ ⑆053904483⑆ ⑆2302347822⑈

FIRST RELIANCE BANK

1218

DATE 9/1/2018

FOR the Shoppes at Westcott LLC \$ 5000.00
Five thousand 00/100 DOLLARS

Bank of America

huan my lvn

⑈001218⑈ ⑆053904483⑆ ⑆2302347822⑈

Check: 1218 Amount: \$5,000.00 Date: 10/4/2018
Run: 1001, Batch: 14, Seq: 21, Source: C21-Vertex

SAKE HOUSE IV INC 9778 DORCHESTER RD UNIT 103 SUMMERSVILLE, SC 29406-7541		1244 STANDARD NO 175
DATE <u>11/1/2018</u>		
PAY TO THE ORDER OF <u>The Shopper at Westcotts Inc</u>	\$ <u>5000.00</u>	
<u>Five thousand & no/100</u>	DOLLARS	
Bank of America ACH DEPOSIT	<u>Wm's LLC</u>	
MICR: ⑈001244⑈ ⑈053904483⑈ 223023478221⑈		

Check: 1244 Amount: \$5,000.00 Date: 11/7/2018
 Run: 1002, Batch: 7, Seq: 127, Source: C21-Vertex

⑈001244⑈ ⑈053904483⑈ 223023478221⑈	1244 STANDARD NO 175
DATE <u>11/1/2018</u>	
PAY TO THE ORDER OF <u>The Shopper at Westcotts Inc</u>	
\$ <u>5000.00</u>	
DOLLARS	
<u>Wm's LLC</u>	

Check: 1244 Amount: \$5,000.00 Date: 11/7/2018
 Run: 1002, Batch: 7, Seq: 127, Source: C21-Vertex

Check: 1263 Amount: \$5,000.00 Date: 12/6/2018
Run: 1001, Batch: 13, Seq: 94, Source: C21-Vertex

Check: 1263 Amount: \$5,000.00 Date: 12/6/2018
Run: 1001, Batch: 13, Seq: 94, Source: C21-Vertex

SAKE HOUSE IV INC
1770 DORCHESTER RD UNIT 101
SUMMERSVILLE, MO 65462-7641

1286

DATE 1/7/2019

FOR THE ORDER OF the Shoppe at Westcott Inc \$ Five thousand

Bank of America

FOR Summy, L

⑆001286⑆ ⑆053904483⑆ 223023478221⑆

Check: 1286 Amount: \$5,000.00 Date: 1/7/2019
Run: 1002, Batch: 7, Seq: 19, Source: C21-Vertex

⑆053904483⑆ 20190107
FIRST RELIANCE BANK
5004 12

⑆053208008⑆ 6004 12 01/07/19

CHECK HERE IF MOBILE DEPOSIT

⑆001286⑆ ⑆053904483⑆ 223023478221⑆

Check: 1286 Amount: \$5,000.00 Date: 1/7/2019
Run: 1002, Batch: 7, Seq: 19, Source: C21-Vertex

Check: 1316 Amount: \$5,000.00 Date: 2/4/2019
Run: 1002, Batch: 19, Seq: 110, Source: C21-Vertex

Check: 1316 Amount: \$5,000.00 Date: 2/4/2019
Run: 1002, Batch: 19, Seq: 110, Source: C21-Vertex

P. J. J. J. J.

THE
NEW
YORK

Polite



7-2005-01100

Six nine quadrats of nine and 10 pollards in each

THE

2000-2001

[illegible]

Check number: 1088 | Amount: \$512.99

One hundred twenty three and 12/100

BankAmerica

FOR

10031274 4033914434 220110017006

Dejepto

Check number: 1133 | Amount: \$6,989.00

DATE DEPOSITED BY BNC

11/25/16

1133

Pay to the order of Wesley LLC \$ 6,989.00

Sub one hundred ninety nine and 12/100

BankAmerica

FOR

10011334 4033914434 220110017006

Wesley LLC

⑆00134⑆ ⑆05390483⑆ ⑆230⑆1007808⑆

Check number: 1345 | Amount: \$6,989.00

SALE HOUSE, INC.
7701 DICKINSON RD. SUITE 100
HUNTSVILLE, AL 35894

11/5/17
1345
\$6,989.00

Pay to the order of Wesley \$ 6,989.00
Six thousand nine hundred and 89/100

Bank of America

Wesley

⑆00134⑆ ⑆05390483⑆ ⑆230⑆1007808⑆

FOR DEPOSIT ONLY

Deputy

Check number: 1400 | Amount: \$5,000.00

DATE: 10/13/13

10/13

2013 The Deputy at Sheriff's Office

Five thousand and no/100

Deputy

FOR DEPOSIT ONLY

Check number: 1402 | Amount: \$1,567.50

Bank of America

FOR DEPOSIT ONLY

Deputy

Check number: 1511 | Amount: \$6,989.00

DATE: 10/13/13

10/13

2013 The Deputy at Sheriff's Office

Six thousand nine hundred and eighty nine and no/100

Deputy

FOR DEPOSIT ONLY

Check number: 1513 | Amount: \$5.00

Five hundred fifty five and 00/100 \$550.00

Bank of America

To: 12/1/07

⑆0001455⑆ 60539014036 22021007000⑆

David C

Check number: 1457 | Amount: \$5,000.00

Bank of America

To: 12/1/07

⑆0001455⑆ 60539014036 22021007000⑆

David C





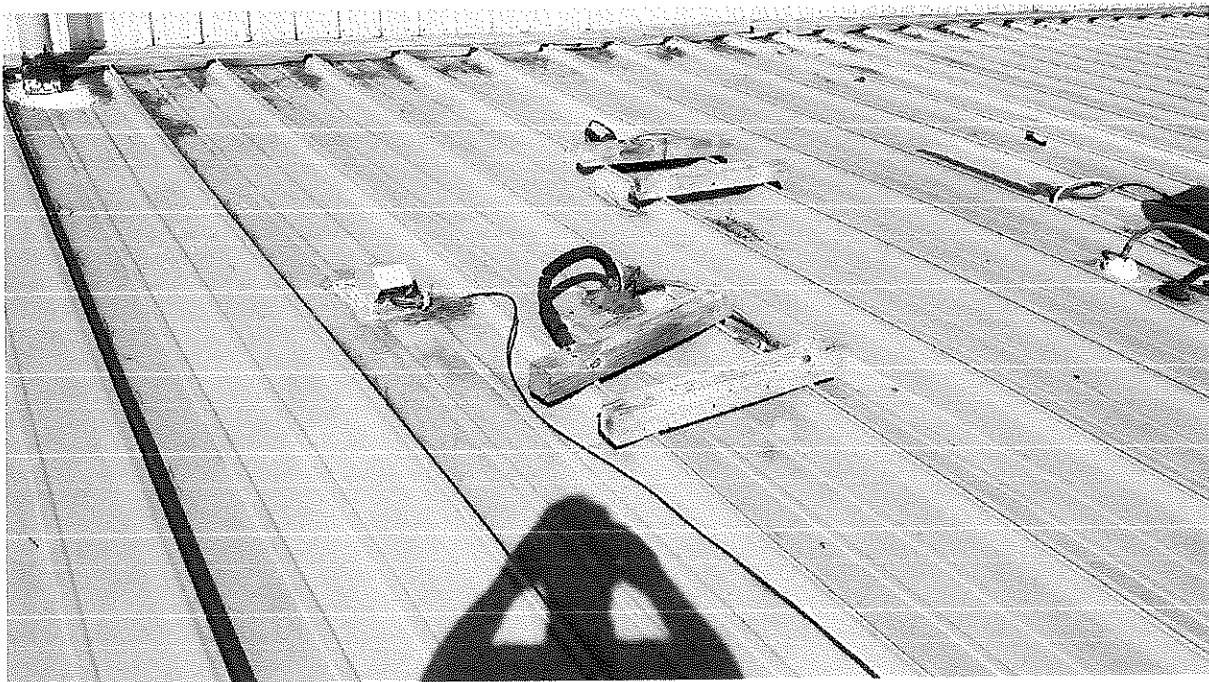
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E

SHOPS AT WESCOTT, LLC
P.O. BOX 80610
N. CHARLESTON, SC 29418-0610
(843) 744-9977

FIRST RELIANCE BANK
CHARLESTON, SC 29401
87-400-432

10-2-19

PAY TO THE ORDER OF LARRY BOWMAN \$10,000.00
TEN THOUSAND & NO/100 DOLLARS

MEMO

⑈002142⑈ ⑈053208008⑈04100002408⑈

Check: 2142 Amount: \$10,000.00 Date: 10/3/2019
Run: 1000, Batch: 2, Seq: 339, Source: C21-Fed

Blank check image with handwritten notes on the right margin.

Check: 2142 Amount: \$10,000.00 Date: 10/3/2019
Run: 1000, Batch: 2, Seq: 339, Source: C21-Fed

SHOPS AT WESCOTT, LLC
P.O. BOX 80610
N. CHARLESTON, SC 29418-0610
(843) 744-9977

FIRST RELIANCE BANK
CHARLESTON, SC 29401
87-400-432

11-7-19

PAY TO THE ORDER OF LARRY BOWMAN \$7,500.00
Seven thousand five hundred DOLLARS

MEMO UPAT

⑈002151⑈ ⑈053208008⑈04100002408⑈

Check: 2151 Amount: \$7,500.00 Date: 11/8/2019
Run: 1002, Batch: 10, Seq: 283, Source: C21-Vertex

Blank check image with handwritten notes on the right margin.

Check: 2151 Amount: \$7,500.00 Date: 11/8/2019
Run: 1002, Batch: 10, Seq: 283, Source: C21-Vertex

SHOPS AT WESCOTT, LLC
P.O. BOX 80610
N. CHARLESTON, SC 29418-0610
(843) 744-9977

FIRST RELIANCE BANK
CHARLESTON, SC 29401
87-400-432

11-15-19

PAY TO THE ORDER OF LARRY BOWMAN \$4,500.00
Four thousand five hundred & NO/100 DOLLARS

MEMO

⑈002163⑈ ⑈053208008⑈04100002408⑈

Check: 2163 Amount: \$4,500.00 Date: 11/15/2019
Run: 1001, Batch: 19, Seq: 86, Source: C21-Vertex

Blank check image with handwritten notes on the right margin.

Check: 2163 Amount: \$4,500.00 Date: 11/15/2019
Run: 1001, Batch: 19, Seq: 86, Source: C21-Vertex

Pursuant to the Lease Agreement dated March 21, 2016, by and between Sake House IV, Inc. hereinafter (TENANT) and Shops at Wescott, LLC hereinafter (LANDLORD) and both Tenant and Landlord shall collectively be hereinafter the (PARTIES); the Parties desire to amend certain terms and conditions of the Lease Agreement as further described below.

EARLY TERMINATION OF THE LEASE AGREEMENT: The Landlord and Tenant desire to peacefully and mutually terminate the Lease Agreement and all monetary and performance responsibilities outlined in the Lease Agreement owed to each Party under the following terms and conditions to be performed by Tenant. Provided that Tenant shall meet and perform all "Terms and Conditions" outlined below to meet the early termination of the Lease Agreement, Landlord shall surrender all legal recourse provided Landlord in the Lease Agreement against Tenant.

TERMS AND CONDITIONS

1. Tenant shall leave walk-in cooler in the Premise and shall be in good condition.
2. Tenant shall leave all HVAC and hood exhaust systems on the roof of the Premise.
3. Tenant shall leave the hood ventilation system that currently exists in the kitchen area in the Premise.
4. Tenant shall be allowed to remove any furniture or kitchen equipment that is not affixed to the Premise.
5. Tenant shall not destroy, vandalize or otherwise harm any portion of the Premise. Tenant and Landlord shall inspect the Premise upon a mutually agreed upon date to the satisfaction of the Landlord that the Premise has been left in good condition. Tenant shall turn over all keys to the Premise at said inspection.
6. Tenant shall ~~pay to Landlord a termination fee of \$5,000.00 in the form of a cashier's check payable to Landlord.~~ REMOVE BOTH FACADE SIGNS

CONGTINGENCY

This First Addendum to Lease Agreement shall be contingent upon all Terms and Conditions listed above. Failure for Tenant to perform any of the above conditions shall make this First Addendum to Lease Agreement null and void.

The Parties hereby agree to this First Addendum to Lease Agreement by affixing their respective signatures below.

Tenant:

Sake House IV, Inc.

By: _____

Printed Name:

Its: _____

Date: _____

Witness: _____