

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RECEIVED

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S.C. Supreme Court

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC.....Respondents,

v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and
WINGS OVER AMERICA, INC.....Petitioners.

APPENDIX
PETITION FOR CERTIORARI

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The South Carolina Court of Appeals

Richard H. Coen, Coen Capital, LLC,
and Lowcountry Capital, LLC,

Respondents,

v.

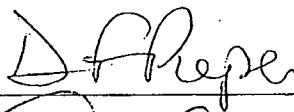
Diane Crowley, Cecil Crowley, Steve
Carroll, Individually and as Principals
and Agents of RedWing, LLC & Wings
Over America, Inc.; RedWing, LLC &
Wings Over America, Inc.,

Appellants.

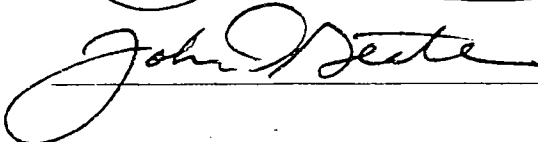
The Honorable J. C. Nicholson Jr.
Charleston County
Trial Court Case No. 2009-CP-10-00554

ORDER DENYING PETITION FOR REHEARING

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

 J.

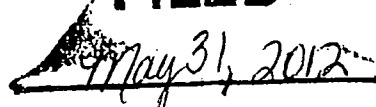
 J.

 J.

Columbia, South Carolina

cc: Andrew K. Epting Jr., Esquire
Michelle N. Endemann, Esquire
Hugh W. Buyck, Esquire

FILED



THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Richard H. Coen, Coen Capital, LLC, and
Lowcountry Capital, LLC, Respondents,

v.

Dianne Crowley, Cecil Crowley, Steve Carroll,
Individually and as Principals and Agents of
RedWing, LLC & Wings Over America, Inc.;
RedWing, LLC & Wings Over America, Inc.,

Appeal From Charleston County
J.C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-134
Submitted February 1, 2012 – Filed February 29, 2012

AFFIRMED

Andrew K. Epting, Jr. and Michelle N. Endemann,
both of Charleston, for Appellants.

Hugh W. Buyck, of Mount Pleasant, for
Respondents.

PER CURIAM: Dianne Crowley, Cecil Crowley, Steve Carroll, individually and as principals and agents of Redwing, LLC and Wings Over America, Inc. (collectively Redwing) appeal the trial court's denial of their motion to compel arbitration in a lawsuit filed against them by Richard H. Coen, Coen Capital, LLC, and Lowcountry Capital, LLC. **[1]** We affirm **[2]** pursuant to Rule 220(b)(1), SCACR, and the following authorities: Aiken v. World Fin. Corp. of S.C., 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007) ("The determination of whether a claim is subject to arbitration is subject to de novo review. Nevertheless, a [trial] court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings." (citation omitted)); Chassereau v. Global-Sun Pools, Inc., 363 S.C. 628, 632, 611 S.E.2d 305, 307 (Ct. App. 2005) ("Arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement." (quotation marks omitted)); id. at 633,

Appendix 002

611 S.E.2d at 307 ("[A] clause compelling arbitration for any claim 'arising out of or relating to this agreement' may cover disputes outside the agreement, but only if those disputes relate to the subject matter of that agreement." (quotation marks omitted)); Partain v. Upstate Auto. Grp., 386 S.C. 488, 491-92, 689 S.E.2d 602, 604 (2010) ("[W]hen deciding whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause.").

AFFIRMED.

PIEPER, BENDUROS, and GEATHERS, J conar.

[1] We decline to address Redwing's second issue regarding its motion to stay because the motion to compel arbitration issue is dispositive. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address appellant's remaining issues when its determination of a prior issue is dispositive).

[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC.....Respondents,

v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.....Appellants.

**APPELLANTS' PETITION FOR REHEARING
& REHEARING *EN BANC***

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SC Court of Appeals

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I. INTRODUCTION

This Court is the only party that continues to hold the opinion that the claims of the Respondents Richard Coen, Lowcountry Capital, LLC and CoenCo, LLC (collectively the “Coen Entities”) are not subject to arbitration. In open Court, Respondents’ Counsel, speaking for the same Coen Entities that are Respondent’s in this appeal, stated:

If you look at the wording of the arbitration order in which it says that these were to be matters decided, including parking issues, including matters then before the magistrate’s Court, including all the matters before the Court, you see that this case should never see a Jury. This case should be sent back to arbitration... (ROA 289).

There is no dispute; Respondents’ claims must be decided in arbitration.

II. STATEMENT OF THE CASE

Appellants seek rehearing of this Court’s Order affirming the lower court’s denial of Appellants’ Motion to Dismiss or Stay Pending Arbitration. The factual findings of the lower court regarding the scope of the arbitration agreement are not supported by South Carolina Law or any evidence in the record. The claims asserted against Appellants are within the scope of the “broadly worded” arbitration agreement found in the Consent Order to Arbitrate signed by the Honorable Roger M. Young.¹ The arbitration agreement at issue sends “...all disputes arising from the dealing or agreements between these parties” to arbitration. (ROA 3).

Respondents do not dispute that their current claims against Appellants “arise out of” and “result from” the parties agreements, specifically the lease agreement and Membership Interest Purchase and Sale Agreement (“MIPSA”)². Therefore, the lower court’s assertion that the arbitration agreement is not susceptible to *any interpretation* that covers the current dispute is

¹ See *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491-492, 689 S.E.2d 602, 604 (S.C. 2010) (A “Broadly-worded” arbitration clause is one which uses “arising out of” or “resulting from”). As the arbitration clause at issue states “...all disputes arising from the dealing or agreements between these parties to arbitration...” it is a “broadly-worded” clause. (ROA 3).

² For example, Respondents plead: “Despite repeated and numerous requests to refrain...Red’s Ice House by and through its employees and customers continue to utilize properties of the Plaintiffs in violation of the Red’s lease, MIPSA, and Order of Tom Wills, Esq. dated July 25, 2008.” (ROA 24).

unsupported by the facts. Further, the current claims against the Appellants bear a “significant relationship” to the agreements between the parties and the case in which the arbitration agreement is contained.

III. ARGUMENT

A. The Lower Court’s Factual Findings Regarding the Scope of the Arbitration Agreement and the Subject Matter of the Arbitration Agreement are not Supported by Evidence and are Contrary to SC Law

The lower court held Respondents’ claims are not subject to arbitration because: (1) “The prior Order was limited to matters contested between the parties as set forth within the pleadings then existing.” (ROA 1); and (2) “Many of the alleged events at issue occurred following the entry of the Arbitration Order.” (ROA 1). The Court’s interpretation of the scope of the Consent Order to Arbitrate contradicts the plain language of the agreement.

The Consent Order states, “This matter comes to me by agreement of the parties to refer *all disputes arising from the dealing or agreements* between these parties to arbitration before Tom Wills, Esquire.” (ROA 3) (emphasis added). The agreement to arbitrate reaches all disputes arising from the agreements or dealings of Richard Coen, Lowcountry Capital, LLC, Dianne Crowley, and RedWing, LLC. The present suit in its entirety concerns the dealings between these parties and arises out of the agreements between the parties, specifically the MIPSAs and the lease. (ROA 24 ¶¶ 14, 21, 24, 25, 28, 31). For example, paragraphs 8-14 (which are incorporated as if alleged verbatim under each cause of action) of the Coen Entities’ Complaint describe the lease and MIPSAs agreements between the parties and allege the Appellants are in violation of these agreements. Paragraphs 15-19 comprise a Breach of Contract claim alleging the Appellants breached the MIPSAs and lease agreements. A factual finding that the Coen Entities claims, which blatantly alleged the breach of the parties’

agreements, do not “arise from the dealings or agreements” between these parties is clearly erroneous.

The lower court narrowly construed the language in the Consent Order to Arbitrate to limit the scope of the arbitration agreement and did not base its interpretation of the arbitration agreement on any facts in the record. The law requires that arbitration be ordered if any interpretation of the arbitration agreement covers the dispute, and the facts bear out that Respondents’ claims arise out of the parties’ agreements, which are subject to arbitration. Thus, the lower court’s decision must be overturned and the parties’ dispute sent to arbitration.

B. There is a “Significant Relationship” Between Respondents’ Claims Against Appellants and the Parties’ Agreements, which are Plainly Subject to Arbitration

Even if a court finds that a claim is outside the scope of an arbitration clause, the clause may still apply. *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491-492, 689 S.E.2d 602, 604 (S.C. 2010). “A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained.” *Zabinski v. Bright Acres Associates*, 346 S.C. at 598, 553 S.E.2d at 119 (S.C. 2001), citing *Long v. Silver*, 248 F.3d 309 (4th Cir.2001).

The arbitration clause at issue sends, “*all disputes arising from the dealing or agreements between th[e] parties*” to arbitration. (ROA 3) (emphasis added). Thus, in the present case, a claim is subject to arbitration if it is encompassed by the language of the clause or if a “significant relationship” exists between the Respondents’ claim and the parties’ agreements. The lower court failed to conduct the necessary analysis of whether there is a “significant relationship” between Respondents’ claims and the parties’ agreements.

A review of Respondents’ Complaint illustrates the necessary “significant relationship”, especially considering Respondents’ first cause of action is for breach of the parties’ lease and

MIPSA agreements. (ROA 24). The remainder of the Respondents' claims are for trespass, nuisance, slander of title, defamation, and tortious interference all arising out of alleged parking abuses by the Appellants in violation of the parties' lease. (ROA 24).

In *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. 144, 152, 644 S.E.2d 705, 709 (S.C. 2007), the South Carolina Supreme Court articulated a rule for "determining whether a significant relationship exists between a dispute between parties to a contract and the underlying contract, thereby implicating an arbitration agreement in the contract." The Court stated, "In establishing the line for claims subject to arbitration, this Court does not seek to exclude all intentional torts from the scope of arbitration." *Id.* Rather, the Supreme Court held that it would "refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." *Id.* at 151, 709.

It is foreseeable that parking issues would arise between adjacent property owners. Indeed, the Coen entities have filed claims arising from the very same parking issues in several civil cases (case no. 2006-CP-10-3670 and case no. 2007-CP-10-1457) and several Magistrate Court proceedings. (See ROA 37, 412).

In case number 2007-CP-10-1457, Richard Coen, Lowcountry Capital, LLC and CoenCo, LLC (the same Coen Entities that are Respondents in this appeal) filed claims alleging Dianne and Cecil Crowley and their agents and employees (alluding to Steve Carroll who is an Appellant) caused the Coen Entities damage through the Crowleys' alleged intentional assertion of parking rights, violation of the lease agreement, and violation of the MIPSA agreement among other alleged violations. (ROA 91 ¶¶ 2-5; 92 ¶ 8). These claims bear a strong relationship to the Coen Entities current claims for breach of the MIPSA and the lease as well as the various tort claims arising out of alleged parking abuses by the Crowleys. (See e.g. ROA 24, ¶¶ 8-19).

The Coen Entities eventually agreed their counterclaims in 2007-CP-10-1457 were subject to arbitration, and this agreement was memorialized by Order of the Honorable Roger M. Young on January 18, 2011. (See Order Attached). It is axiomatic that if the Coen Entities' claims in 2007-CP-10-1457 are subject to arbitration, the current claims must be as well.

C. A stay of Judicial Proceedings Pending Arbitration Between the Parties to the Consent Order to Arbitrate Should Be Ordered Even Though the Dispute Involves Others Who Are Not Parties To The Agreement

As the Court held the current suit filed by the Coen Entities is not subject to arbitration, no decision was render on the issue the stay of the claims against non-party to the arbitration agreement. Appellants Cecil Crowley, Steve Carroll and Wings Over America, Inc. are not parties to the arbitration agreement, but argue, pursuant to S.C. Code Ann. §15-48-20 (1976)³ and the Supreme Court's holding in *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S. C. 631, 239 S. E. 2d 647 (S.C. 1977)⁴, that if arbitration is ordered as to those parties who are subject to the Consent Order to Arbitrate (RedWing, LLC, Dianne Crowley and the Coen Entities), the litigation should be stayed.

IV. CONCLUSION

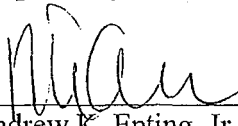
As all the Coen Entities' claims are within the scope of the "broadly worded" arbitration agreement, South Carolina law dictates arbitration must be ordered between those parties to the Consent Order to Arbitrate and the litigation stayed.

[signatures on following page]

³ Stating any action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or an application for arbitration has been made.

⁴ Holding a stay of judicial proceedings pending arbitration between parties to an arbitration agreement will be ordered even though the dispute may involve those who are not parties to the agreement.

Respectfully submitted,



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Charleston, South Carolina

On this 14 day of March 2012

Attorneys for Appellants

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-4675

DC & Sons, LLC

Richard H. Coen, Lowcountry Capital, & Coenco, LLC

PLAINTIFF(S)

DEFENDANT(S)

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
- ☐ **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:

By agreement of the parties, all matters between DC & Sons, LLC, Richard Coen, Coenco, LLC and Lowcountry Capital, LLC within this litigation, 2008-CP-10-4675 as consolidated with 2007-CP-10-1457, are submitted to binding arbitration before Tom Wills.

Dated at Charleston, South Carolina, this 14th day of January, 2011.

This judgment was entered on the 11/18/11 day of , 20, and a copy mailed first class this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

PRESIDING JUDGE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

FILED
2011 JAN 18 AM 9:24
JULIE J. ARMSTRONG
CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

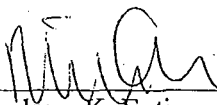
RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC.....Respondents,

v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.....Appellants.

PROOF OF SERVICE.

I certify that I have served the **Petition for Rehearing and Rehearing *En Banc*** on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on March 14, 2012, to Hugh Buyck, Esq., counsel for Respondents at the following address: PO Box 2424, Mt. Pleasant, SC 29465.



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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.
Circuit Court Judge

Case No. 2009-CP-10-5549

S.C. Ct. App. Op. No. 2012-UP-134, filed February 29, 2012

Richard H. Coen, Coen Capital, LLC,
And Lowcountry Capital, LLC,

Respondents,

v.

Dianne Crowley, Cecil Crowley,
Steven Carroll, individually and
as principals and agents of RedWing, LLC,
and Wings Over America, Inc.,
RedWing, LLC, and Wings Over America, Inc.,

Appellants.

Return of Respondents Richard H. Coen,
Coen Capital, LLC, and Lowcountry Capital, LLC
to Appellants' Petition for Rehearing

In a one paragraph, unpublished per curiam opinion, the Court has affirmed the trial court's order refusing to compel arbitration. The Appellants now petition the Court for rehearing and rehearing *en banc*. The Respondents submit that the petition should be denied because the Court has not overlooked or misapprehended either the law or the evidence of record. Rule 221(a), SCACR ("A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have

been overlooked or misapprehended by the court.”); Rule 219, SCACR (“A hearing or rehearing en banc is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.”)

1. **The scope of the Consent Order to Arbitrate executed in the then existing 2006-*Coen v. Crowley* controversy does not extend to the disputes, which form the basis of this new action.**

The Appellants argue that the claims asserted by the Respondents in this action are within the scope of a “broadly worded” arbitration agreement which sends “... all disputes arising from the dealing or agreements between the parties” to arbitration. However, it is the Appellants, not the Court, who overlook and/or misapprehend -- or simply ignore -- the context in which the arbitration agreement was reached and the actual language of the agreement.

As fully discussed in the Respondents’ brief, the agreement to arbitrate, upon which the Appellants base their motion, is not part of the 2004 Purchase and Sale Agreement; rather, the agreement to arbitrate was reached in the 2006 *Coen v. Crowley* litigation and incorporated into the Consent Order to Arbitrate that provides, in pertinent part:

This matter comes to me by agreement of the parties to refer all disputes arising from the dealings or agreements between these parties to arbitration before Tom Wills, Esquire. Tom Wills shall have authority to enter a final order. This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to finally resolve any and all remaining disputes. This includes matter related to parking and to decide this issue as if there had been no prior proceedings.

....

No collateral challenges to said final order from this arbitration shall be allowed, and no other additional actions shall be allowed between the parties for any acts or omission that predate this date of this arbitration.

The parties agree to an arbitration hearing as to all claims by the Plaintiffs and all claims by the Defendants ...

[3/19/08 Order of Judge Young, 2006-CP-10-3670; ROA 3-4.]¹

While policy generally favors arbitration, fundamentally, arbitration is a matter of contract and is subject to the general rules of construction and interpretation of contracts. *The Housing Authority of City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 588 S.E.2d 617, 620 (Ct. App. 2003). The Trial Court correctly held that the matters in controversy in this case were not within the scope of the Consent Order to Arbitrate that was signed by Judge Young in the 2006 *Coen v. Crowley* action. *Id.* at 621 (the trial court must determine whether the specific dispute, as laid out in factual allegations of the underlying claim, falls within the substantive scope of the arbitration agreement). Nor do the asserted claims bear “a significant relationship” to the Consent Order to Arbitrate as Appellants contend by citing to *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491-92, 689 S.E.2d 602, 604 (2010), and *Zabrinski*, *supra*.

The Appellants refuse to acknowledge the significance of the fact that the agreement to arbitrate is not part of the original 2004 agreement; rather, it was reached as part of the 2006 *Coen v. Crowley* litigation and, is expressly limited to the contested issues raised in that litigation. As the Trial Court noted, this action alleges causes of action for breach of contract, nuisance, civil trespass, tortious interference, slander of title and slander/defamation arising from events which occurred after Judge Young signed the Consent Order to Arbitrate the 2006 action. The Trial Court correctly

¹ Cecil Crowley, Steve Carroll, and Wings Over America, Inc. were not parties to the 2006 *Coen v. Crowley* action, asserted no claims, and did not agree to arbitration. Thus, the Trial Court properly held that they do not have standing to argue that the Consent Order to Arbitrate is applicable to their interests.

concluded that since many of the events at issue in this case occurred following the entry of Judge Young's order, "[t]he parties obviously did not mutually agree to arbitrate future torts not contemplated within their consent." Further, as found by the Trial Court, the Consent Order to Arbitrate "was limited to matters contested between the parties as set forth within the pleadings then existing." [5/11/10 Order, ROA 1-2.] Thus, it can be said with "positive assurance" that the consent order to arbitrate is not susceptible to any interpretation that would cover the disputes in this current litigation. See *Faltaous v. Anderson Ocean Club Dev., LLC*, 388 S.C. 45, 693 S.E.2d 434, 435 (Ct. App. 2010).

2. Any agreement to arbitrate reached between certain of these parties in other litigation is irrelevant in this action.

This is not the only action between these parties, and others. DC & Sons, LLC, an entity owned by Crowley, subsequent to the Consent Order to Arbitrate brought actions against these Coen Defendants (and others) in 2008-CP-10-4675 and 2007-CP-10-1457. These matters were consolidated. Initially, DC & Sons, LLC objected to arbitration of those actions, but following exhaustive discovery, there was a subsequent mutual agreement by all parties to refer those matters to binding arbitration. The Appellants have quoted from the transcript of a hearing in that litigation, in an apparent attempt to lead the Court to believe that the Respondents' counsel has made some concession that this case should be arbitrated, and the Appellants have submitted with their petition for rehearing, an order in the DC & Sons litigation, filed January 18, 2011.

First, the Respondents submit that the order in the DC & Sons actions is not properly before this Court because it was not submitted to the Trial Court and it is not found in the Record on Appeal. Moreover, the Appellants are quoting from a hearing transcript, which while it can be found in the Record on Appeal, is from a different civil

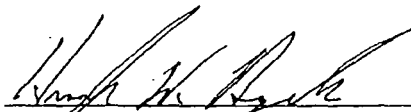
action, in which a Crowley entity, DC & Sons, LLC was arguing that it was not subject to arbitration within those matters, as they had intentionally carved the entity and the dispute from the prior Consent Order to Arbitrate.

The Respondents submit that the order and the quote from the transcript do not reasonably support any contention that these Plaintiffs/Respondents have made any concession that the disputes presented in this litigation are subject to arbitration under the terms of the Consent to Arbitrate order in the 2006 *Coen v. Crowley* action.

CONCLUSION

Wherefore, based on the forgoing, the Respondents respectfully submit that the Court properly considered the evidence and law in affirming the order of the Trial Court denying the motion to dismiss and/or stay this proceeding pending arbitration and the Petition for Rehearing should be denied.

Respectfully submitted,



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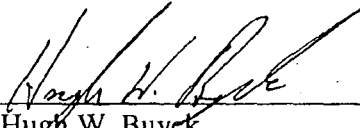
ATTORNEY FOR THE RESPONDENTS
Richard H. Coen, Coen Capital, LLC and
Lowcountry Capital, LLC

March 26, 2012

Certificate of Service

I certify that on this 26th day of March 2012, a copy of the foregoing Return was served on Appellants by depositing said copy in the U.S. Mail, with sufficient first class postage, addressed to their Counsel of Record of as listed below:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

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STATEMENT OF ISSUES ON APPEAL

- a) Whether the Court erred in failing to stay the litigation and compel arbitration as the plain language of the agreement to arbitrate covers the dispute?
- b) Whether, if arbitration is compelled, the litigation should be stayed pending arbitration despite the presence of those not parties to the arbitration agreement?

STATEMENT OF THE CASE

The present matter is before the Court on denial of Appellants' Motion to Dismiss or Stay Pending Arbitration. Appellants contend the asserted claims are within the scope of the "broadly worded"¹ arbitration agreement found in the Consent Order to Arbitrate signed by the Honorable Roger M. Young. There does not appear to be a dispute regarding a stay of this litigation should arbitration be ordered as, pursuant to S.C. Code Ann. §15-48-20 (1976), any action involving an issue subject to arbitration must be stayed if an order for arbitration has been entered. Accordingly, the primary issue for this Court is whether the lower Court erred in failing to compel arbitration.

STATEMENT OF THE FACTS

The parties to this case have a long and litigious history. In mid-2003, Richard Coen sought and obtained approval from the Town of Mount Pleasant ("TOMP") for the operation of a restaurant called Red's Ice House ("Red's") on Shem Creek. In October of 2003, Dianne Crowley and Richard Coen became business partners in RedWing, LLC, which operated Red's, and RedWing, LLC entered into the a lease with Lowcountry Capital, LLC (an entity owned by

¹ A "Broadly-worded" arbitration clause is one which uses "arising out of" or "resulting from". See *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491-492, 689 S.E.2d 602, 604 (S.C. 2010). As the arbitration clause at issue uses the phrase "arising from", it is a "broadly-worded" clause.

Mr. Coen and the landlord of Red's under the lease). Under the lease, RedWing leased not just the Red's Ice House building from Lowcountry Capital, LLC, but also parking rights required by the TOMP.

It soon became clear that the parties could not function as business partners, and Richard Coen elected to sell the business to Mrs. Crowley. On June 10, 2004, in order to accomplish this transaction, RedWing, LLC and Lowcountry Capital, LLC entered into a Membership Interest Purchase and Sale Agreement ("MIPSA") and a second commercial lease for the Red's space and parking.

In 2006, Richard Coen and Lowcountry Capital, LLC filed suit against RedWing, LLC and Dianne Crowley in a case styled, *Richard H. Coen and Lowcountry Capital, LLC v. Dianne Crowley and RedWing, LLC*; 2006-CP-10-3670 (the "First Litigation"). Plaintiff Coen claimed that under MIPSA, he had the right to buy Dianne Crowley out of the business she just bought from Coen in 2004. Lowcountry Capital, LLC sued because of its interest as landlord² in the lease with Red's.

The primary issues in the First Litigation were Mr. Coen's rights under the buy back and a parking dispute concerning Red's parking. (ROA 37). In the First Litigation, Mr. Coen contended the lease included only 35 parking spaces and did not include the parking as required by the TOMP and further alleged parking abuses on the part of Red's and Red's patrons. RedWing, LLC and Mrs. Crowley disputed the buyback rights of Mr. Coen and Lowcountry Capital LLC's claims concerning parking. A further issue arose related to bumper stickers and tee-shirts stating "Keep Shem Creek Dick Free", which Mr. Coen claimed slandered him and

were the work of Dianne Crowley and RedWing, LLC. (ROA 363, 377, 387, 402).

Richard Coen and Lowcountry Capital, LLC also filed several complaints in the Magistrate's Court for breach of the commercial lease, attempting to evict Red's so as not to have to pay for Red's under the buyout provision in the MIPS A agreement. (ROA 96, 127, 160, 205).

In 2007, DC & Sons, LLC, an entity owned by Dianne and Cecil Crowley filed suit against Richard Coen, Lowcountry Capital, and Pavilion Development Corp., inter alia, in case number 2007-CP-10-1457, for damages DC & Sons sustained arising from the inability to sell real property located on Shem Creek, which is separate and distinct from the Red's property. (ROA 412). The allegation in this litigation concerns the Coen entities interference with a real estate contract in which DC & Sons, LLC was the seller and Pavilion Development Corp. was the buyer. (ROA 79). This litigation is ongoing.

It is with this history that, in early 2008 the then counsel for Appellants and counsel for Respondents began negotiating an arbitration agreement. The Consent Order is between Respondents Richard H. Coen and Lowcountry Capital, LLC and Appellants Dianne Crowley and RedWing, LLC and states:

This matter comes to me by agreement of the parties to refer all disputes arising from the dealing or agreements between these parties to arbitration before Tom Wills, Esquire. Tom Wills shall have the authority to enter a final order. This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to finally resolve any and all remaining disputes. This includes matters related to parking and to decide this issue as if there had been no prior proceedings.

(ROA 3)(emphasis added). Arbitration was held before Tom Wills on June 3-6, 2008, and Mr. Wills

2 As of March 30, 2010, Richard Coen and his various entities are no longer Landlord as the lease to RedWing, LLC

issued his order on July 25, 2008.

On September 2, 2009, Richard Coen, Coen Capital, LLC and Lowcountry Capital, LLC filed this action, case no. 2009-CP-10-5549, against Dianne Crowley, Cecil Crowley, Steve Carroll, RedWing, LLC and Wings Over America, Inc. (an entity owned in part by Dianne & Cecil Crowley). The complaint alleges a cause of action for breach of the lease and the MIPS A agreement, as well as claims for trespass, nuisance, slander of title, and tortious interference –these causes of action relate to alleged parking abuses by Appellants. Respondents' complaint also alleges a slander/defamation cause of action related to the "Keep Shem Creek Dick Free" bumper stickers and tee-shirts.

Appellants filed a motion to dismiss or stay this litigation pending arbitration which was heard by the Honorable J. C. Nicholson, Jr. on March 26, 2010. Appellants received written notice of entry of Judge Nicholson's Order denying the motion on May 18, 2010. This appeal ensued.

STANDARD OF REVIEW

The determination of whether a claim is subject to arbitration is subject to de novo review. *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491-492, 689 S.E.2d 602, 604 (S.C. 2010). An order that favors litigation over arbitration, whether it refuses to stay litigation in deference to arbitration or refuses to compel arbitration is immediately appealable, even if interlocutory. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (S.C.App. 1999); S.C. Code Ann. § 15-48-200(a)(1976).

has been sold by Mr. Coen to a third party. (See Assignment).

ARGUMENT

1. Respondents Claims are Subject to Arbitration by the Plain Language of the Consent Order to Arbitrate

It is the policy of South Carolina to favor the arbitration of disputes. *Grant v. Magnolia Manor-Greenwood, Inc.*, 678 S.E.2d 435 (S.C. 2009). “A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable...” S.C. Code Ann. § 15-48-10(a) (1976). There is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes. *Herron v. Century BMW*, 693 S.E.2d 394 (S.C. 2010).

Any doubts concerning the scope of arbitration should be resolved in favor of arbitration. *South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (S.C. 1993). Further, unless a court can say with positive assurance that the arbitration clause is not susceptible to *any interpretation* that covers the dispute, arbitration should be ordered. *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. at 149, 644 S.E.2d at 708 (S.C.App. 2005), citing *Zabinski v. Bright Acres Associates*, 346 S.C. at 596-97, 553 S.E.2d at 118-19 (S.C. 2001) (emphasis added).

In the present matter, the lower Court held that Respondents’ claims are not subject to arbitration because (1) “The prior Order was limited to matters contested between the parties as set forth within the pleadings then existing.”(ROA 1) and (2) “Many of the alleged events at issue occurred following the entry of the Arbitration Order.” (ROA 1). The Court’s interpretation of the scope of the Consent Order to Arbitrate contradicts the plain language of the order.

The Consent Order states, “This matter comes to me by agreement of the parties to refer *all disputes arising from the dealing or agreements* between these parties to arbitration before Tom Wills, Esquire.” (ROA 3) (emphasis added). The agreement to arbitrate reaches all disputes arising from the agreements or dealings of Richard Coen, Lowcountry Capital, LLC, Dianne Crowley, and RedWing, LLC. The present suit concerns the dealing between these parties. The present suit in its entirety arises out of the agreements between these parties, the MIPSAs and the lease. (ROA 24 ¶¶ 14, 21, 24, 25, 28, 31). (For example, Respondents state: “Despite repeated and numerous requests to refrain...Red's Ice House by and through its employees and customers continue to utilize properties of the Plaintiffs in violation of the Red's lease, MIPSAs, and Order of Tom Wills, Esq. dated July 25, 2008.”³ (ROA 24).

The Consent Order to Arbitrate does not say to “arbitrate those matters raised in the pleadings in the First Litigation”. Nor does it state that the agreement to arbitrate has a temporal limitation “to arbitrate only those disputes occurring before the date of the Consent Order to Arbitrate”. Rather, it states all disputes arising from the dealing or agreements between the parties must be arbitrated.

³ The most compelling reason to return this matter to Tom Wills, outside of the parties' agreement to arbitrate all of their dealings, is that there will be disputes of what was and was not arbitrated concerning the lease and MIPSAs and the parties dealings. Best the arbitrator decide this where the arbitration was not transcribed. Judge Nicholson recognized this when he stated, “The allegations of the instant Complaint include, but are not limited to, the Order related to the prior arbitration and the Defendants' failure, despite this prior judicial determination, to abide by the

2. *A stay of Judicial Proceedings Pending Arbitration Between the Parties to the Consent Order to Arbitrate Should Be Ordered Even Though the Dispute Involves Others Who Are Not Parties To The Agreement*

As the lower Court held Respondents' claims were not subject to arbitration, it denied the motion to stay. However, the Court did find:

Finally, various Defendants named, including Cecil Crowley, Steve Carroll, individually and as principals and agents of RedWing, LLC & Wings Over America, Inc.; RedWing, LLC & Wings Over America, Inc. were not parties to the prior Consent Order of Arbitration. As such, they have no standing to argue that the Order is applicable to their interests. (ROA 1).

First, the lower Court erred in holding RedWing, LLC, who is a signatory to the Consent Order to Arbitrate, was not a party to the arbitration agreement. (ROA 3). Second, pursuant to South Carolina law, any action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or an application for arbitration has been made. *See* S.C. Code Ann. §15-48-20 (1976). Further, a stay of judicial proceedings pending arbitration between parties to an arbitration agreement will be ordered even though the dispute may involve those who are not parties to the agreement. *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S. C. 631, 239 S. E. 2d 647 (S.C. 1977). That Respondents have sued other parties in a representative capacity (to RedWing, LLC and the Crowleys) is no ground not to stay the entire action pending arbitration between the parties to the Consent Order to Arbitrate. Therefore if arbitration is ordered as to those parties who are subject to the Consent Order to Arbitrate, the litigation should be stayed.

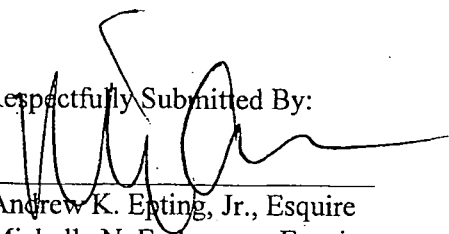
CONCLUSION

As all Respondents' claims are within the scope of the "broadly worded" arbitration

terms and conditions of the Arbitration Order." (ROA 1).

agreement, South Carolina law dictates arbitration must be ordered between those parties to the Consent Order to Arbitrate and the litigation stayed.

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Dated this 10 day of June, 2011
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
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Respondents,

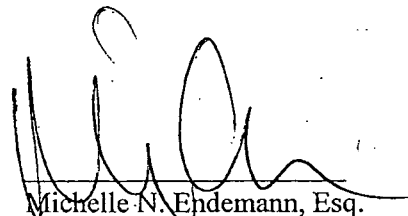
v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
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OVER AMERICA, INC.

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellants complies with Rule 211 (b),
SCACR.



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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Trial Court properly deny the motion to dismiss and/or stay pending arbitration because the scope of the Consent Order to Arbitrate in the then existing 2006-*Coen v. Crowley* controversy does not extend to the disputes which form the basis of this new action?
- II. Did the Trial Court correctly rule that Defendants Cecil Crowley, Steve Carroll, and Wings Over America, have no standing to rely upon the Consent Order to Arbitrate because they were not parties to that action?

STATEMENT OF THE CASE

This litigation was commenced by Richard Coen, Lowcountry Capital, and Coen Capital, LLC, with filing and service of a summons and complaint in the Court of Common Pleas for Charleston County on September 1, 2009, against Dianne Crowley, Cecil Crowley, Steve Carroll, individually and as principals and agents of RedWing, LLC & Wings Over America, Inc.; RedWing, LLC; and Wings Over America, Inc. An amended summons and complaint were filed on September 2, 2009, alleging facts to state causes of action for breach of contract, nuisance, civil trespass, tortious inference, slander of title, and slander/defamation. [Amended Complaint; ROA 24.]

Richard Coen is a principal of Lowcountry Capital, LLC and Coen Capital, LLC. In 2001, Lowcountry Capital entered into a 99-year ground lease agreement for property on Shem Creek in Mount Pleasant, South Carolina. The property, hereafter referred to as the "Snowwis property" is owned by Snowwis Properties, LLC and Mill Church Properties. Dianne and Cecil Crowley are principals of RedWing, LLC, and Wings Over America, Inc., which operate a restaurant and bar in Mount Pleasant, known as Red's Ice House. Red's Ice House is located on a portion of the Snowwis property under a then-existing sub-lease executed in 2004 between Lowcountry Capital, as landlord, and RedWing as tenant.

Coen previously held a 25% interest in RedWing, which Crowley purchased in 2004 under a Membership Interests Purchase and Sale Agreement, dated June 10, 2004.¹ [Agreement; ROA 51.] That 2004 Purchase and Sale Agreement contained a buy-out provision [Section 3] that gave Coen and/or Shem Creek Holdings the right to purchase 100% of the membership

¹ Shem Creek Holdings held the other 25%, which Crowley purchased at the same time, thereby acquiring 100% membership interest in RedWing.

interests if they have the opportunity to construct a major redevelopment project in the area of the lease property.

In 2006, Richard Coen and Lowcountry Capital, LLC, brought an action against Dianne Crowley and RedWing, LLC, seeking a declaratory judgment as to their rights under the buy-out provision and to recover actual, special, and consequential damages caused by Crowley's breach of the agreement. *Richard H. Coen and Lowcountry Capital, LLC v. Dianne Crowley and RedWing, LLC*, Case No. 2006-CP-10-3670. (hereafter referred to as the "2006-Coen v. Crowley" action.) [Amended Summons and Complaint, filed 1/22/2008; ROA 37.] By consent of the parties, the controversy in the 2006-Coen v. Crowley action was resolved through binding arbitration. [Consent Order to Arbitrate; ROA 3.] By order issued July 25, 2008, the arbitrator found that Crowley did not breach the buy-out provision because Coen did not show that he met a condition precedent to exercise the option. [Arbitration Order, p. 5; ROA 7.] At the request of the parties, the arbitrator also considered and ruled upon a parking dispute that had been proceeding through magistrate's court, and he found that RedWing was only entitled to use of 35 spaces as designated in the lease. [Arbitration Order, p. 13; ROA 10.]

Subsequent to the arbitration order in the 2006-Coen v. Crowley action, Coen and Lowcountry Capital instituted this new action alleging that Crowley and RedWing have breached the agreement (and the arbitration order) by parking beyond the 35 designated spaces, and allowing Red's customers to trespass on other portions of the leased Snowwis property. Nuisance and tortuous interference allegations are made that Crowley and RedWing, by and through its agents, have been interfering with the Plaintiffs' use and enjoyment of their other parcels of the Snowwis property, beyond those boundaries associated with the arbitration, and that the Defendants deliberately clouded the title to the property by making false claims to

interests beyond the sub-lease which thwarted Plaintiffs' attempts to negotiate a sale of the lease. The Coen Plaintiffs also assert a slander/defamation cause of action based on allegations that the Crowley Defendants have, with malice, made false and defamatory statements to embarrass and humiliate the Plaintiffs, including the procurement and distribution of promotional items reflecting the slogan "Keep Shem Creek Dick² Free."

The Defendants filed a motion to dismiss and/or to stay on October 14, 2009, arguing that the claims asserted by Coen and Lowcountry against Dianne Crowley and RedWing, were subject to arbitration pursuant to the Consent Order to Arbitrate, signed by Judge Young in the 2006 *Coen v. Crowley* action, C/A No. 2006-CP-10-3670. [Motion; ROA 31.] The motion to dismiss came before the Honorable J.C. Nicholson, Jr., Circuit Judge, for hearing on March 26, 2010. [3/36/10 Hearing Transcript; ROA 259.] The Trial Judge's order denying the defendants' motion was filed on May 11, 2010. [5/11/10 Order, ROA 1.] Defendants timely appealed.

² Referring to Plaintiff Richard Coen.

ARGUMENT

The Applicable Law Governing Arbitration

The South Carolina Arbitration Act, S.C.Code Ann. § 15-48-10(a) (Supp.2000), which governs arbitration agreements, provides, in pertinent part:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.

As a general policy rule, “[t]here is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. *The Housing Authority of City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 588 S.E.2d 617, 620 (Ct. App. 2003) (quoting *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839, 844 (Ct.App.1999)). However, fundamentally, arbitration is a matter of contract and is subject to the general rules of construction and interpretation of contracts. *Id.* at 621; *South Carolina Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.*, 312 S.C. 559, 437 S.E.2d 22, 25 (1993) (“Arbitration is a matter of contract and controlled by contract law. 5 Am.Jur.2d *Arbitration and Award* § 11. (1962)”).

The first step for a trial court presented with a motion to compel arbitration is to determine whether, as a matter of law and fact,³ an arbitration agreement exists between the parties. *Id.* (citing *Towles*, 524 S.E.2d at 844-45 (“Arbitration is available only when the parties involved contractually agree to arbitrate.”)). The second step is for the trial court to determine whether the specific dispute, as laid out in factual allegations of the underlying claim, falls within the substantive scope of the arbitration agreement. *Id.* at 621 (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110, 118 (2001) (“Arbitration rests on the agreement of

³ As the Trial Court correctly noted, “[u]nless the parties provide otherwise, the question of the arbitrability of a claim is an issue for judicial determination.” [5/11/2010 Order, p. 1 (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110, 118 (2001))].

the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement.”).

If there is any doubt concerning the scope of arbitrable issues, they should be resolved in favor of arbitration, and arbitration should be ordered unless the trial court can “say with positive assurance the arbitration clause is not susceptible to an interpretation that covers the dispute.” *Faltaous v. Anderson Ocean Club Dev., LLC*, 388 S.C. 45, 693 S.E.2d 434, 435 (Ct. App. 2010) (citing *Zabinski*, 553 S.E.2d at 118-19); see also *South Carolina Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.*, 312 S.C. 559, 437 S.E.2d 22, 25 (1993).

The trial court’s determination of arbitrability is subject to *de novo* review. However, the trial court’s factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Faltaous v. Anderson Ocean Club Dev., LLC*, 388 S.C. 45, 693 S.E.2d 434, 435 (Ct. App. 2010) (citing *MBNA Am. Bank v. Christianson*, 377 S.C. 210, 659 S.E.2d 209, 211 (Ct.App.2008)).

I. The scope of the Consent Order to Arbitrate executed in the then existing 2006-Coen v. Crowley controversy does not extend to the disputes which form the basis of this new action.

The Consent Order to Arbitrate, in the 2006-Coen v. Dianne Crowley action signed by Judge Roger M. Young on March 18, 2008, provides, in pertinent part:

This matter comes to me by agreement of the parties to refer all disputes arising from the dealings or agreements between these parties to arbitration before Tom Wills, Esquire. Tom Wills shall have authority to enter a final order. This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to finally resolve any and all remaining disputes. This includes matter related to parking and to decide this issue as if there had been no prior proceedings.

No collateral challenges to said final order from this arbitration shall be allowed, and no other additional actions shall be allowed between the parties for any acts or omission that predate this date of this arbitration.

The parties agree to an arbitration hearing as to all claims by the Plaintiffs and all claims by the Defendants ...

[3/19/08 Order of Judge Young, 2006-CP-10-3670; ROA 3-4.] As the basis of their motion to dismiss and/or stay, the Defendants argue that this agreement to arbitrate reaches all – any and all, present and future -- disputes arising from the agreements or dealings of Richard Coen, Lowcountry Capital, LLC, Dianne Crowley, and RedWing, LLL. [Appellants' brief, p. 6.] However, the Trial Court correctly held that the matters in controversy in this case were not within the scope of the Consent Order to Arbitrate that was signed by Judge Young in the 2006 *Coen v. Crowley* action.

As the Trial Court noted, this action alleges causes of action for breach of contract, nuisance, civil trespass, tortious interference, slander of title and slander/defamation arising from events which occurred after Judge Young signed the Consent Order to Arbitrate the 2006 action. The Trial Court correctly concluded that since many of the events at issue in this case occurred following the entry of Judge Young's order, "[t]he parties obviously did not mutually agree to arbitrate future torts not contemplated within their consent." Further, as found by the Trial Court, the Consent Order to Arbitrate "was limited to matters contested between the parties as set forth within the pleadings then existing." [5/11/10 Order, ROA 1-2.]

The Trial Court's ruling is well-founded in the statutory provision of Section 15-48-10, which contemplates two types of arbitration agreements: (1) arbitration clauses included as part of a written contract to settle future disputes to arbitration, and (2) agreements to submit existing controversies to arbitration even where there was no previous contract to do so. There is no arbitration clause in the initial agreements between any of these parties, thus, the Consent Order to Arbitrate upon which the Defendants rely falls into the second category as "[a] written agreement to submit any existing controversy to arbitration." As such, it is readily apparent that

the Consent Order to Arbitrate logically and necessarily extended only to the controversy existing at that time.

The Trial Court's ruling is also supported one of the basic rules of contract construction which is that a specific clause or exact language prevails over a general clause relating to the same subject matter. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) ("When words of particular and specific meaning are followed by general words, the general words are construed to embrace only persons or things of the same general kind or class as those enumerated."); see also Restatement (Second) of Contracts § 203(c) (1981). While the Defendants ground their argument in the broad language that the parties agreed "... to refer all disputes arising from dealings or agreement between these parties to arbitration ...," the Defendants ignore, not only the context of the agreement as a consent order to arbitrate an existing controversy, but also the more limiting language found in the Consent Order.

The more specific language very clearly evidences the Parties' intent to limit the scope of the arbitration agreement as found by the Trial Court. Most particularly, the Consent Order to Arbitrate, by its express language, limits the scope to matters set forth in the pleadings in the *2006-Coen v. Crowley*:

This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to resolve any and all remaining disputes.

To the extent that the language of the arbitration agreement refers to "matters related to parking," the Consent Order to Arbitrate also more specifically limits the parking matters to those then existing: "[N]o additional actions shall be allowed between the parties for any acts or omissions that predate the date of this arbitration." [Consent Order to Arbitrate; ROA 3-4.]

Given the limiting language of the Consent Order to Arbitrate and the context of the arbitration agreement as a consent order entered in a then existing controversy, the intent of the

parties is clear, and the court can say with “positive assurance” that the Consent Order to Arbitrate does not extend to the matters arising in this new action which are beyond the scope of the issues submitted to the arbitrator in the 2006-*Coen v. Crowley* action, and based on breaches of contract and torts that have occurred since the Arbitration Order was issued in that action. Therefore, the Trial Court properly denied the motion and his order should be affirmed.

II. Defendants Cecil Crowley, Steve Carroll, and Wings Over America, have no standing to rely upon the Consent Order to Arbitrate because they were not parties to that action.

The parties to the 2006 action were Richard N. Coen and Lowcountry Capital, LLC, as plaintiffs, and Dianne Crowley and RedWing, LLC,⁴ as defendants. They were the parties that consented to the order to arbitrate and agreed to resolve their claims: “The parties agree to an arbitration hearing as to all claims by the Plaintiffs and all claims by the Defendants.” [Consent Order to Arbitrate; ROA 4.] Cecil Crowley, Steve Carroll, and Wings Over America, Inc. were not parties to the 2006 action, asserted no claims, and did not agree to arbitration. Thus, the Trial Court properly held that they do not have standing to argue that the Consent Order to Arbitrate is applicable to their interests.

Defendants argue that the Trial Court erred, citing *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 641, 239 S.E.2d 647, 652 (1977), which holds that arbitration will not be denied because one of the litigation parties was not a party to the arbitration agreement. However, such holding is not inconsistent with the Trial Court’s ruling that the nonparties could not enforce arbitration. See *Moruzzi v. Dynamics Corp. of Am.*, 443 F. Supp. 332, 334 (S.D.N.Y. 1977) (“arbitration is a contractual right that may not be invoked by one who is not a party to the agreement and does not otherwise possess the right to compel arbitration”). In any event, the

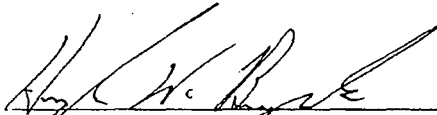
⁴ The Plaintiffs acknowledge that RedWing, LLC was a party to the 2006 action and Consent Order to Arbitrate.

Trial Court's denial of the alternative motion to stay proceedings should be affirmed because the Consent Order to Arbitrate from the 2006-*Coen v. Crowley* action does not cover any of the current claims made against any of these Defendants.

CONCLUSION

Wherefore, based on the forgoing, the order of the Trial Court denying the motion to dismiss and/or stay this proceeding pending arbitration should be affirmed.

Respectfully submitted,

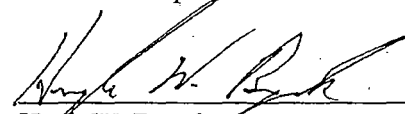


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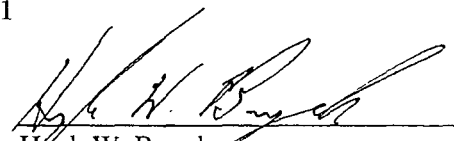
The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.


Hugh W. Buyck

Certificate of Service

I certify that on this 1st day of June 2011, a copy of the foregoing FINAL BRIEF was served on Appellants by depositing said copy in the U.S. Mail, with sufficient first class postage, addressed to their Counsel of Record of as listed below:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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REPLY OF APPELLANTS

The present matter is before the Court on denial of Appellants' Motion to Dismiss or Stay Pending Arbitration. Appellants contend the asserted claims are within the scope of the "broadly worded"¹ arbitration agreement found in the Consent Order to Arbitrate signed by the Honorable Roger M. Young. Respondents Richard H. Coen, Coen Capital, LLC, and Lowcountry Capital, LLC (hereafter the "Coen Entities") allege: 1) Plaintiffs' claims are outside the scope of the arbitration provision and 2) Respondents Cecil Crowley, Steve Carroll, and Wings Over America, Inc. are not parties to the arbitration agreement and "cannot enforce" it.

ARGUMENT

1. Respondents Claims are Subject to Arbitration by the Plain Language of the Consent Order to Arbitrate

Any doubts concerning the scope of arbitration should be resolved in favor of arbitration. *South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (S.C. 1993). Further, as Respondents concede "unless a court can say with positive assurance that the **arbitration clause is not susceptible to any interpretation that covers the dispute**, arbitration should be ordered." *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. at 149, 644 S.E.2d at 708 (S.C.App. 2005), citing *Zabinski v. Bright Acres Associates*, 346 S.C. at 596-97, 553 S.E.2d at 118-19 (S.C. 2001) (emphasis added); (See Initial Brief of Respondents, pg 6).

A. The Rules of Construction

The Coen Entities argue that the rule of construction which holds "a specific clause or exact language prevails over a general clause relating to the same subject matter" supports their

¹ A "Broadly-worded" arbitration clause is one which uses "arising out of" or "resulting from". See *Partain v. Upstate Automotive Group*, 386 S.C. 488, 491-492, 689 S.E.2d 602, 604 (S.C. 2010). As the arbitration clause at

position that only those matter existing at the time of the arbitration agreement were subject to arbitration. However, the Consent Order states, “This matter comes to me by agreement of the parties to refer *all disputes arising from the dealing or agreements* between these parties to arbitration before Tom Wills, Esquire.” (ROA 3) (emphasis added). The agreement to arbitrate reaches all disputes arising from the agreements or dealings of Richard Coen, Lowcountry Capital, LLC, Dianne Crowley, and RedWing, LLC. The present suit concerns the dealing between these parties. The present suit in its entirety arises out of the agreements between these parties, the MIPS A and the lease. (ROA 24 ¶¶ 14, 21, 24, 25, 28, 31).

Despite this the Coen entities state that the following “limiting language” supports their position: “This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to finally resolve any and all remaining disputes.” (ROA 3) (emphasis added). On its face, this sentence includes the matters set forth in the pleadings, but it does not limit the agreement to arbitrate to only those matters set forth in the pleadings in the First Litigation.

The Consent Order to Arbitrate does not say to “arbitrate those matters raised in the pleadings in the First Litigation.” Nor does it state that the agreement to arbitrate has a temporal limitation “to arbitrate only those disputes occurring before the date of the Consent Order to Arbitrate.” Rather, it states all disputes arising from the dealing or agreements between the parties must be arbitrated.

Further, and most importantly, the law in South Carolina states that any doubts concerning the scope of arbitration should be resolved in favor of arbitration and that unless a

issue uses the phrase “arising from”, it is a “broadly-worded” clause.

court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should be ordered. The lower Court narrowly construed the language in the Consent Order to Arbitrate to limit the scope of the arbitration agreement; the law requires that arbitration be ordered if any interpretation of the arbitration agreement covers the dispute.

B. Respondents' Tort Claims

Despite the "broadly-worded" arbitration agreement, the lower Court reasoned that because some of Respondents' claims are tort claims, they do not deal with the parties' agreements and thus are not subject to arbitration. The lower Court held, "The parties obviously did not mutually agree to arbitrate future torts not contemplated within their consent." (ROA 1).

First, the Order to arbitrate is not just of the parties' agreements but "disputes arising from the dealings of the parties." (ROA 3).

Secondly, even if the arbitration order only related to the parties' agreements, the Court failed to conduct the necessary analysis of whether there is a "significant relationship" between Respondents' tort claims and the parties' agreements, which are plainly subject to arbitration. In *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. 144, 152, 644 S.E.2d 705, 709 (S.C. 2007), the South Carolina Supreme Court conducted just such an analysis and articulated a rule for "determining whether a significant relationship exists between a dispute between parties to a contract and the underlying contract, thereby implicating an arbitration agreement in the contract." *Id.* The Court stated, "In establishing the line for claims subject to arbitration, this Court does not seek to exclude all intentional torts from the scope of arbitration." Rather, the Supreme Court held that it would "refuse to interpret any arbitration agreement as applying to

outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings.” *Id.* at 151, 709.

The Coen Entities have sued the Appellants for trespass, nuisance, slander of title, defamation, and tortious interference all arising out of alleged parking abuses by the Appellants. At a hearing in another case styled *DC & Sons, LLC v. Richard Coen, Lowcountry Capital, LLC, and CoenCo, et al*; case no. 07-CP-10-1457, in which the Coen Entities filed counterclaims alleging the same parking abuses and interpreting the very arbitration agreement at issue, Counsel for the Coen Entities stated,

If you look at the wording of the arbitration order in which it says that these were to be matters decided, including parking issues, including matters then before the magistrate's Court, including all the matters before the Court, you see that this case should never see a Jury. This case should be sent back to arbitration... (ROA 289).

It is foreseeable that parking issues would arise between adjacent property owners. In fact, it is clear that even Respondents’ agree their tort claims are within the scope of the arbitration agreement.

2. A stay of Judicial Proceedings Pending Arbitration Between the Parties to the Consent Order to Arbitrate Should Be Ordered Even Though the Dispute Involves Others Who Are Not Parties To The Agreement

In their Initial Brief, the Coen Entities claim that Cecil Crowley, Steve Carroll and Wings Over America, Inc. were not parties to the arbitration agreement and thus these parties cannot “enforce arbitration.” (Respondents’ Initial Brief, pg 9). Appellants do not dispute that Cecil Crowley, Steve Carroll, and Wings Over America, Inc. were not parties to the arbitration agreement.² Nor are “non-parties” to the arbitration agreement attempting to enforce it.

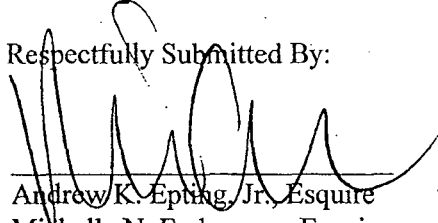
² To the extent that Steve Carroll and Cecil Crowley have been sued in their capacity as “principals and agents of RedWing, LLC, these parties do have the right to arbitration as it is undisputed that RedWing, LLC was a party to

Respondents simply argue, pursuant to S.C. Code Ann. §15-48-20 (1976)³ and the Supreme Court's holding in *Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S. C. 631, 239 S. E. 2d 647 (S.C. 1977)⁴, that if arbitration is ordered as to those parties who are subject to the Consent Order to Arbitrate (RedWing, LLC, Dianne Crowley and the Coen Entities), the litigation should be stayed.

CONCLUSION

As all Respondents' claims are within the scope of the "broadly worded" arbitration agreement, South Carolina law dictates arbitration must be ordered between those parties to the Consent Order to Arbitrate and the litigation stayed.

Respectfully Submitted By:



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On this 10 day of June, 2011
Charleston, SC

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the arbitration agreement.

3 Stating any action or proceeding involving an issue subject to arbitration must be stayed if an order for arbitration or an application for arbitration has been made.

4 Holding a stay of judicial proceedings pending arbitration between parties to an arbitration agreement will be ordered even though the dispute may involve those who are not parties to the agreement.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

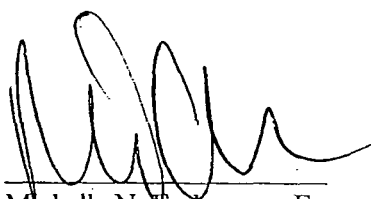
DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Reply Brief of Appellants complies with Rule 211

(b), SCACR.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
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The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

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& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

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Certificate of Appellant

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard H. Coen, Coen Capital, LLC and
Lowcountry Capital, LLC,

Plaintiffs,

Versus

Diane Crowley, Cecil Crowley, Steve Carroll,
individually and as principals and agents of
RedWing, LLC & Wings Over America, Inc.;
RedWing, LLC & Wings Over America, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) C/A No. 09-CP-10-5549

**ORDER
DENYING DEFENDANTS'
MOTION TO DISMISS**

BY

JULIE J. FARMSTRONG
CLERK OF COURT

2010 MAY 11 PM 2:30

FILED

This matter came before the Court for a hearing on March 26, 2010 on Defendant's Motion to Dismiss and/or Stay Plaintiff's Complaint. For the following reasons, the Motion is denied.

Plaintiff brought the instant matter through the issuance of a Summons and Complaint alleging causes of action of breach of contract, nuisance, civil trespass, tortuous interference, slander of title and slander/defamation for events occurring prior to and after July 25, 2008. Defendants argues that an Arbitration Order entered on or about June 3, 2008 by and between Richard H. Coen, Lowcountry Capital, LLC, Diane Crowley and Redwing, LLC precludes the current litigation.

Unless the parties provide otherwise, the question of the arbitrability of a claim is an issue for judicial determination. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596-97, 553 S.E.2d 110, 118-19 (2001). Although the policy of this State is to favor arbitration of disputes, arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute that he or she has not agreed to submit. Id. Because arbitration rests on the agreement of the parties, the range of issues that can be arbitrated is restricted by the terms of the agreement. Id. See also, Faltaous v. Anderson Ocean Club Developments, LLC, Davis Advance Sheet No. 17, Slip Op. 4679 (Ct. of Apps., April 28, 2010).

Thus, when deciding whether an arbitration agreement encompasses a dispute, it must be determined whether the factual allegations underlying the claim are within the scope of the arbitration clause. Based upon the arguments of the parties and pleadings before the Court, it is readily apparent that the matters in dispute are not within the Arbitration Order. Many of the alleged events at issue occurred following the entry of the Arbitration Order. The parties obviously did not mutually agree to arbitrate future torts not contemplated within their consent. Further, the prior Order was limited to matters contested between the parties as set forth within the pleadings then existing.

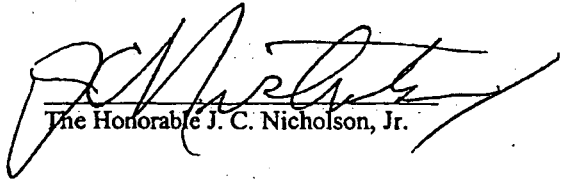
The allegations of the instant Complaint include, but are not limited to, the Order related to the prior arbitration and the Defendant's failure, despite this prior judicial determination, to abide by the terms and conditions of the Arbitration Order. Additional complaints focus on tortious actions occurring after the terms of the agreement to arbitrate. Thus, the range of issues currently before this Court could not have been contemplated by the parties upon entry of the Consent Order of Arbitration.

Finally, various Defendants named, including Cecil Crowley, Steve Carroll, individually and as principals and agents of RedWing, LLC & Wings Over America, Inc.; RedWing, LLC & Wings Over America, Inc. were not parties to the prior Consent Order of Arbitration. As such, they have no standing to argue that the Order is applicable to their interests.

For the Foregoing reasons, the Plaintiff's Motion to Dismiss is hereby DENIED.

IT IS SO ORDERED!

5/10, 2010
Charleston, South Carolina
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The Honorable J. C. Nicholson, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

RICHARD H. COEN AND)
LOWCOUNTRY CAPITAL, LLC)

PLAINTIFFS)

vs.)

DIANNE CROWLEY and)
REDWING, LLC,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

2006-CP-10-3670

CASE NO. 2006-CP-10-3670

CONSENT ORDER TO ARBITRATE

FILED
2008 MAR 19 PM 4:21
CLERK OF COURT
JULIE E. IRONIS

This matter comes to me by agreement of the parties to refer all disputes arising from the dealings or agreements between these parties to arbitration before Tom Wills, Esquire. Tom Wills shall have the authority to enter a final order. This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to finally resolve any and all remaining disputes. This includes matters related to parking and to decide this issue as if there had been no prior proceedings. The Plaintiffs and the Defendants have the right to amend their pleadings within 5 business days of this order, with responsive pleadings due in 5 business days. Tom Wills is directed to confer immediately with the parties to finally determine witnesses, experts, discovery, and trial so as to conclude this matter efficiently and timely.

By specific agreement of the parties, the results of said arbitration shall be binding and unappealable by any of the parties, their agents, representatives or assigns.

Execution of said final judgment shall be enforceable in the same fashion as a final order of the Supreme Court of South Carolina. Specifically, any willful or negligent failure of any of the parties to comply with said final order shall subject the violating party to the contempt

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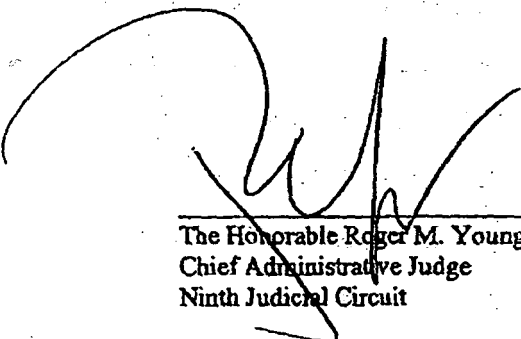
powers of the Court in any jurisdiction where said action for enforcement of the judgment is appropriate, except that the proven inability of a party to pay a monetary judgment shall not be subject to contempt, if such inability is determined by the Arbitor (Tom Wills) in a supplemental proceeding.

No collateral challenges to said final order from this arbitration shall be allowed, and no other additional actions shall be allowed between the parties for any acts or omissions that pre-date the date of this arbitration.

The parties agree to an arbitration hearing as to all claims by the Plaintiffs and all claims by the Defendants, with the liability portion of the arbitration period starting on May 19, 2008 and continuing on May 20, 2008.

If necessary, the arbitration hearing on the issue of damages will continue on June 3, 2008 through June 6, 2008. These dates are subject to each party providing a list of witnesses, experts, and documents in a timely fashion. Whether actions are timely is to be decided by Tom Wills; he also will have the authority to decide all other procedural and substantive matters, including lengthening of the liability arbitration hearing period or shortening of the damages arbitration hearing period.

IT IS SO ORDERED.

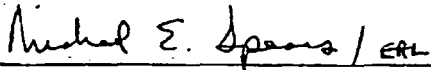


The Honorable Roger M. Young
Chief Administrative Judge
Ninth Judicial Circuit

March 18, 2008

Charleston, South Carolina

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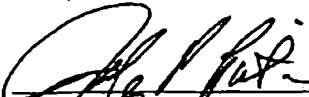
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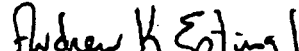


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March 14, 2008

VIA HAND DELIVERY

The Honorable Roger M. Young
Charleston County Courthouse
100 Broad Street
Charleston, SC 29401

Re: *Richard H. Coen et al. vs. Dianne Crowley et al., Case No. 2006-CP-10-3670*

Dear Judge Young:

The parties to the above-referenced matter have deliberated and have consented to the transfer of this case from the business court over to binding arbitration with Thomas J. Wills, IV, Esq. This is based upon a stipulation that the outcome of the arbitration proceeding will be accepted as final and is not subject to appeal.

To that end, we have prepared the enclosed consent order. I would respectfully ask that you review the consent order and, if it meets with your approval, enter it as an order of the court. Please do not hesitate to contact me should you have any questions.

With kindest regards, I remain

Sincerely,

Ellis R. Lesemann

ERL:clv

Enclosures

cc: Thomas J. Wills, IV, Esquire
Andrew K. Epting, Jr., Esquire
John P. Linton, Esquire
Michael E. Spears, Esquire
Keith M. Babcock, Esquire

CHARLOTTE, NC
COLUMBIA, SC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

CLT 1114221v1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

RICHARD H. COEN AND)
LOWCOUNTRY CAPITAL, LLC)

PLAINTIFFS)

vs.)

DIANNE CROWLEY and)
REDWING, LLC,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2006-CP-10-3670

ARBITRATION ORDER

FILED
2009 FEB 12 PM 4:42
JULIE J. ARISTON
CLERK OF COURT
BY

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JULIE J. ARISTON
CLERK OF COURT
BY

This matter is before me for arbitration pursuant to Consent Order signed by the Honorable Roger M. Young of the Charleston County Court of Common Pleas. The arbitration hearing was held June 3-6, 2008. The parties presented numerous witnesses and submitted large volumes of documents as exhibits. In addition, the parties submitted deposition transcripts for my review.

After having reviewed thousands of documents, hundreds of pages of testimony and listened to four days of sworn testimony, I have concluded the following:

The primary focus of the dispute between the plaintiff, Richard Coen (Coen) and defendant, Diane Crowley (Crowley) is the buy out provision contained in the Membership Interest Purchase and Sale Agreement (MIPSA) dated June 10, 2004. I find that the disputed language of the buy out provision constitutes an option which must be strictly construed and interpreted most favorably to the optionor (Crowley) and against the optionee (Coen). The language of the buy out provision, subject to interpretation under this legal standard, is the phrase, "opportunity to construct a major redevelopment project." I find that the phrase is

ambiguous. In construing this language most favorably to Crowley, as required by South Carolina law, the triggering event of an "opportunity to construct a major redevelopment project" did not occur. Therefore, Crowley did not breach the agreement by failing to comply with the buy out agreement during the time frame of the events that were the subject of this arbitration.

This case involves two astute business people, Coen and Crowley, who, throughout their relationship in this matter, attempted to keep their options open to protect their financial interests. Clearly, Coen intended to develop this property to its maximum financial potential. Crowley sought to protect her business from detrimental competition and sought to develop the Red's property into a profitable operation.

It was in Coen's best interests to have an agreement with Crowley that would allow him absolute freedom to take back the property at any time as quickly as possible. It was in Crowley's best interests to operate the restaurant (Red's) long enough to be profitable and to make her efforts worthwhile. The language of the buy out agreement reflects an attempted compromise of those positions. The correspondence and e-mails negotiating the attempted buy out reflect the efforts of both parties to protect those interests. Coen's e-mails and correspondence always fell just short of absolutely offering to buy back the business, and came up just short of making offers precisely pursuant to the terms of the agreement. This evidence reveals an effort to keep his options open; to determine whether and exactly when he wanted to exercise the option.



Crowley's testimony and the correspondence surrounding her efforts to resist the buy out reflect an effort to negotiate an arrangement she felt was fair under all the circumstances, even if the buy out option was not actually triggered. In his arbitration testimony, Coen took the

position that the "opportunity to construct a major development" existed when he, himself, determined that an opportunity existed. He did not take the position that the granting of entitlements by the Town of Mt. Pleasant was the triggering event. That did become the argument asserted by his attorneys and is certainly a more appealing position; however, the arguments of counsel do not constitute evidence.

In four days of testimony there was never a clear articulation, by any witness, of what constituted the triggering event. The only precise identification of the triggering event was that stated by Coen's counsel in his argument that it was the granting of entitlements by the Town of Mt. Pleasant; a position with which both Coen and his chief operating officer, Jim Grant, disagreed. Crowley expressed a different interpretation requiring the securing of financing and permitting. I conclude that the language of the buy out provision is ambiguous. I find that the plaintiff failed to prove that the buy out provision of the MIPSAs was triggered and, therefore, has failed to prove that the contract was breached. The triggering event not having occurred; there was no breach of the agreement by Crowley.

BACKGROUND FACTS

A. The Parcel

Snowwis Properties, LLC and Mill Church Properties ("Owners") own property located on Shem Creek ("Parcel"). Pursuant to a Real Property Lease ("Ground Lease"), Owners leased the Parcel to Plaintiff Lowcountry Capital, LLC ("Lowcountry") for a period of 99 years. Plaintiff Richard Coen owns and/or controls Lowcountry. The Parcel has been improved with numerous buildings and businesses, the owners of which lease portions of the Parcel from

Lowcountry. Lowcountry's Ground Lease was renewed, on substantially similar terms, in April of 2006.

B. Slightly Up the Creek

Slightly Up the Creek ("SUTC"), or 130 Mill Street, refers to three parcels of land located seaward of Red's Ice House. SUTC is comprised of two components: (i) two parcels bearing TMS Numbers 517-15-00-018 and 517-50-00-019 on which Cottage on the Creek is located ("018 and 019 Parcels"); and (ii) an undeveloped parcel bearing TMS Number 517-15-00-022 ("022 Parcel"). The Estate of Robert E. Magwood gifted two of the three SUTC parcels to the Episcopal Church of the Parish of Christ Church ("Church"). At the time of this gift, CoenCo, LLC ("CoenCo") was the lessee of the 018 and 019 Parcels, but not the 022 Parcel. The 022 Parcel was unencumbered at the time of sale to the Church. Cecil and Dianne Crowley purchased all three parcels comprising SUTC in May of 2005, under the name DC & Sons, LLC ("DC").

C. Red's and the MIPSAs

One of the buildings located on the Parcel is a restaurant known as Red's Ice House ("Red's"). Pursuant to an October 3, 2003 Operating Agreement, Crowley and Coen became 50% co-members in RedWing, LLC ("RedWing"), which owned and operated Red's. On the same date, Lowcountry and RedWing executed a Commercial Lease ("First Commercial Lease"), which leased the Red's building and a portion of the Parcel to RedWing for a monthly rent of \$5,000.00.

On June 10, 2004, Crowley, Coen and an affiliate of Coen executed a Membership Interests Purchase and Sale Agreement ("MIPSA"). In the MIPSAs, Coen and his affiliate agreed

to sell their total 50% membership interests in RedWing to Crowley. In return, Crowley agreed that RedWing would execute a new Commercial Lease ("Second Commercial Lease"), terminating the First Commercial Lease and increasing the monthly payment from \$5,000.00 to \$10,000.00. This additional \$5,000.00 per month represented the purchase price for Coen's membership in RedWing. If Crowley paid Coen the lump sum of \$550,000.00 (the total purchase price for Coen's ownership interest) during the Second Commercial Lease, the rent under the Second Commercial Lease would return to the original \$5,000.00 per month. At issue in this action, Section 3 of the MIPSAs is a "buy out" provision (the "Option"), which provided, in relevant part, that in the event Coen or a related entity had "the opportunity to construct a major redevelopment project" on the Parcel, he had "the right to purchase one hundred percent (100%) of the assets of RedWing ("Assets"), at a price determined by a formula.

ISSUES

1. Was the buy out provision contained in the MIPSAs triggered and, if so, did Crowley breach the agreement?
2. Is Red Wing, LLC entitled to parking rights beyond those set forth in the current lease between Lowcountry and Red Wing?
3. Is the defendant entitled to recover, under its counterclaims?

I. Crowley did not breach the Option because Coen has not shown an "opportunity to construct."

Coen has failed to prove a breach of the Option, because the condition precedent of an "opportunity to construct" never occurred. The Option provided that it could only be exercised in the event Coen or a related entity had "the opportunity to construct a major redevelopment

project" on the Parcel. Crowley asserts that the phrase "opportunity to construct" should be interpreted to require that Coen has achieved certain milestones toward redevelopment before the Option can be triggered. On the other hand, Coen interprets the Option as giving him a unilateral right to purchase the Assets whenever he believes the time is right. He does not believe that any conditions must be met before he can exercise his right to purchase. Under South Carolina law, the language of the Option must be construed strictly in favor of Crowley as the optionor. Cotter v. James L Tapp Co., 267 S.C. 647, 230 S.E. 2d 715 (1976). The facts and the law lead the arbitrator to find that neither Coen's conclusion that an opportunity to construct a major redevelopment project existed, nor was the granting of entitlement sufficient to trigger the buy out provision.

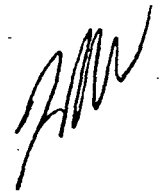
Even if the rules of construction did not require an interpretation favoring Crowley, the result would be the same. The language of the buy out provision is ambiguous; however, even if it was not, an interpretation that Coen had an unrestricted right to exercise the option when he alone determined he had opportunity is not a reasonable interpretation. "Interpretation of [a] contract is governed by the objective manifestation of the parties' assent at the time the contract was made. Blakely v. Rabon, 266 S.C. 68, 221 S.E. 2d 767 (1976). It does not depend on the subjective, after the fact meaning one party assigns to it." See, Bannon v. Knauss, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984). "The courts, in attempting to ascertain this intention, will endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into." See, Klutts Resort Realty, Inc. v. Down'Round Devel. Corp., 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977) (citing Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962)). "In the absence of anything indicating a contrary intention, where instruments are



executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will generally consider and construe them together, on the theory that the instruments are effectively one instrument or contract." See, 30 S.C. Jur., Contracts § 39 (2007); accord, Café Assocs., Ltd. v. Gerngross, 305 S.C. 6, 10, 406 S.E.2d 162, 164 (1991). ("The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the Court will consider and construe them together.").

"The subject matter and purpose of the contract are to [also] be considered in ascertaining the intention of the parties and the meaning of the terms they have used, and [] the dry words of the contract should, if possible, be so interpreted as to subserve, not subvert, such intention." See, Dibble v. Dibble, 248 S.C. 165, 181, 149 S.E.2d 355, 364 (1966) (citations omitted), cited in Stuckey v. University of S.C., 284 S.C. 295, 298, 325 S.E.2d 709, 711 (Ct. App. 1985).

Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract. Penton v. J.F. Cleckley Co., 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997). "However, if a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties." Koontz v. Thomas, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999). An ambiguous contract is a contract capable of being understood in more than one way or a contract unclear in meaning because it expresses its purpose in an indefinite manner. Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977).



See, HK New Plan Exchange Prop. Owner, LLC v. Coker, 375 S.C. 18, 23-24, 649 S.E.2d 181, 184 (Ct. App. 2007). "A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement. [Citation omitted.] The terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or

contemporaneous agreements not included in the writing." See, Wilson v. Landstrom, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984).

A reasonable interpretation of the parties' intent for the phrase "opportunity to construct" is that the plaintiffs must establish that they met the requirements to be able to construct in compliance with the Ground Lease, contract with the general contractor, obtain construction financing, bonding of the contractor, and obtain approval of final plans by Town of Mt. Pleasant. The parol evidence recited supports this as the meaning of "opportunity to construct." Moreover, because the agreement, and indeed the final language of the Option was drafted by the plaintiffs, any ambiguity must be resolved in favor of defendants. See, Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 8, 274 S.E.2d 423, 425 (1981). ("It is generally held that an ambiguity in a written contract should be construed most strongly against the drafters.").

Plaintiffs did not own the Parcel, but held a ninety-nine year Ground Lease. Section 7.3.1 of that ground lease provided that, prior to the commencement of any construction on the property or demolition, "Tenants shall furnish the landlord, in writing, with a true copy of a bonafide commitment letter accepted by Tenant or other proof of a good and sufficient construction loan or permit loan or other necessary financial commitments from a Mortgagee in an amount sufficient, when added to the equity of the Tenant, to ensure construction of any specific improvements on the property in accordance with the terms of the lease." Section 7.3.2 of plaintiffs' ground lease required payment and performance bonds for any such construction. The only reasonable interpretation of "opportunity to construct" requires that, at the bare minimum, Coen satisfy his obligations under the Ground Lease before such an "opportunity" could exist.



There is much in the testimony of Coen, Crowley and others, as well as the events leading up to the June 10, 2004 closing on the MIPSAs, evidencing the parties' intention as to the meaning of "opportunity to construct." For example, on June 6, 2004, James Grant sent an e-mail on behalf of Coen to Crowley, stating:

The purpose of the buy out provision is solely in case we have an opportunity to redevelop all of the property including Red's, The Trawler, the strip center, SUTC, etc. It is not to take Red's from you. If a redevelopment were to take place, we would offer you space in the new facility. If the opportunity comes that we are in a position to rebuild, we do not want a lease on the property to stop us from proceeding. We will change the buy out provision to a position that if we have an opportunity and decide to redevelop the property, the lease can be suspended or renegotiated when after the redevelopment you could lease 'new' space. Just like you, we do not want to be 'handcuffed'. Please consider this alternative and let us know your thoughts.

(See, Defs.' Ex. 4 (emphasis added)). Mr. Grant's use of the phrase "position to rebuild" would certainly require, at the very least, a construction loan, and construction drawings for a construction contract to be agreed upon under these circumstances.

Coen's interpretation of "opportunity to construct" is that he could buy back at any time if an "opportunity," in the most generic sense of the term, existed. Coen's interpretation ignores the words "to construct." Such an interpretation is strained and fails to accord any respect for Crowley's right not to have the Assets purchased prematurely. Most convincing are Coen's statement that he never wanted to be in the restaurant business, and Crowley's statement that she did not want Red's ever to be a competitor. If Coen's present interpretation of "opportunity to construct" is accepted, Coen could own a restaurant he did not want, pay in excess of \$1.45 million for the privilege and wind up in competition with Crowley, all without having even



completed 60% of construction drawings or arranged for financing for the project. Neither party intended this result.

The phrase "opportunity to construct" was inserted in the agreement after Crowley had rejected granting Coen an unfettered right to purchase the Assets at any time, as contained in a prior version. Indeed, Coen's lawyers' notes in their billing records establish that they were revising the draft of the MIPSAs to reflect Crowley's changes. The testimony of Crowley, Mast, and MacPhail concerning a June 7, 2004 meeting, to the effect that the Red's site would be required for the development and Red's would not be in competition with the Crowley's Wild Wings in Mount Pleasant, establishes that what was contemplated was some tangible and concrete intent toward development of the property. Mr. Grant, Coen's long-time CFO testified there was a big difference in an opportunity to construct and an opportunity to develop:

- Q: What was necessary to have an opportunity to redevelop under your understanding of that term?
- A: An opportunity to redevelop in my mind is a plan, a potential for success. It's an opportunity. . . .
- Q: Okay. So you believe that an opportunity to redevelop means that you have to have a plan and a potential for success; is that what your testimony is?
- A: That's what my testimony — my testimony stands as I stated it.
- Q: What do you understand is required to have an opportunity to construct a major redevelopment? . . .
- A: An opportunity to construct, you would need control of the land, you would need plans and funding, you would need a contractor. I mean — but there again, it's an opportunity, not a start of construction, so there are differences there.
- 

(See, March 25, 2008 Depo. of James S. Grant, Jr., at 16, 22).

Moreover, the inclusion of the 30-day closing provision of the Option only makes sense if there is an imminence to the need of the property, suggesting that "opportunity to construct" means much more than what Coen suggests it does. "Documents will be interpreted so as to give effect to all of their provisions, if practical." See, Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997). If "opportunity to construct" means that Coen need have little more than a concept years from fruition, the 30-day closing requirement would be unnecessary and meaningless. On the other hand, if a project is imminent, the Option's insistence on a closing within 30 days is logical and reasonable.

In light of the foregoing, Coen never had an "opportunity to construct" sufficient to trigger the Option. Coen attempted to prove two different scenarios of "opportunity to construct a major redevelopment." First is the luxury condominium hotel project. Although Coen spent a large amount of money marketing and designing this project, according to Coen's own testimony, no more than roughly 50-60% of the design construction drawings were completed. No construction financing was arranged. No contract was bid.



Coen admitted that lenders for the condominium hotel project would require 90 pre-sales (or enough pre-sales to cover construction costs). Coen did not achieve the first pre-sale with a non-refundable deposit. By August 1 (before the date of Letter Two), sales were exponentially more difficult than in June. Coen admitted that, if he did not have sufficient pre-sales by August 1, he was unlikely to have them by December. Naturally, he was hedging his bets as he did not want to be required to purchase Red's until the feasibility of his project was certain.

When his proposed joint venture partner, ELV, withdrew in October, it did so due to a collapsing condominium hotel market, the absence of pre-sales, and the desire to avoid unreasonable risk. Mr. Grant's e-mail in September, noting the budget needed to be increased by over \$5 million, had also concluded that the return was a meager 8.5%, clearly inadequate for the risk presented. Coen reached the same conclusion about six weeks later. The e-mails from Beachside Realty, which had been engaged in September, confirmed that there simply was no market. (See, Def. Exh. 11). Additionally, Coen acknowledged that his last sales launch was delayed due to printing problems with the brochures. The condominium hotel market collapse was precipitous, and all the testimony confirms that the condominium hotel market has not improved.

The circumstances surrounding the luxury condominium hotel project aptly convey why the "opportunity to construct" means more than simply the initial preliminary approval from the Town of Mt. Pleasant and construction drawings that are only 50-60% complete. Obviously, market contingencies frequently will dictate whether a project goes forward or not, as was the case in the condominium hotel endeavor. The parties' communications — in which, among other things, Coen reassured Crowley that he did not desire to operate Red's and would only purchase the Assets for a development — made clear that they intended for the Option to be exercised only after a potential project had proceeded to the funding and construction stage.

Coen's second alleged "opportunity to construct a major redevelopment" was the construction of a 160 unit upscale hotel. In January 2007, the plaintiff had a preliminary appraisal to consider the feasibility of a luxury hotel. This was for a luxury hotel, a Four Seasons type

project. Almost contemporaneous with that appraisal was the decision by Coen not to build a luxury hotel, but rather to scale back to an upscale hotel.

Only the most preliminary plans were conceived. No construction design drawings were completed. No construction bidding was done. No construction loan was secured or even applied for. In April, Coen wrote to Evans Construction that the reason he did not pursue this project was that the numbers did not work and he had too many front-loaded costs. Coen testified that he would not pursue the hotel unless it would repay him for all of his costs since 2001, apparently in excess of \$6 million. I conclude Coen has failed to carry his burden of proving that either of his proposed projects constituted an "opportunity to construct" under the Option.

II. I find that the second commercial lease does not grant Red's parking beyond the 35 parking spaces set forth in the lease.

The parties have requested that I rule on the parking issue that was before Magistrate Jeannette Harper, and was the subject of a hearing and order of December 15, 2006. This matter involves Lowcountry Capital, LLC and Red Wing, LLC and Dianne Crowley. Lowcountry Capital, LLC takes the position that Red Wing, LLC does not have a right to park or to access any parking spaces other than the 35 spaces in the current lease between Lowcountry Capital, LLC and Red Wing, LLC with regard to the parking for Red's Ice House. It appears from the record and from the testimony that Lowcountry Capital, LLC and Red Wing, LLC entered into a lease agreement which provided for 35 parking spaces. It also appears that Coen, on behalf of Lowcountry Capital, LLC, sought and received private parking plan approval from the Town of Mt. Pleasant that provided 50 spaces allocated for Red's Ice House. Although Coen may suffer some sanctions from the Town of Mt. Pleasant if a determination is made the misrepresentations



occurred, I find that based on the lease, Red Wing, LLC is entitled to the use of the 35 spaces referred to in the lease and that the plan approval by the Town of Mt. Pleasant does not convey upon Red Wing, LLC the right to use additional spaces.

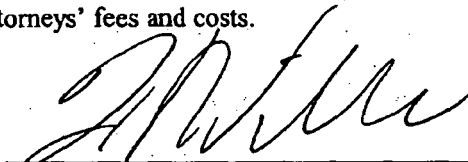
III. With respect to defendants' counterclaims for deprivation of quiet enjoyment and tortious interference with the contract, I find in favor of the plaintiff (Coen).

Neither the testimony nor the documentary evidence supports a finding that the defendants engaged in conduct that establish tortious interference with contractual relations or deprivation of quiet enjoyment of the tenant.

In summary, with respect to the plaintiff's (Coen) claim for breach of contract with respect to the buy out provision of the MIPSAs, I find in favor of the defendant (Crowley).

With respect to the issue of the number of parking spaces available for use under the current lease between Lowcountry Capital, LLC and Red Wing, LLC, I find that Red Wing, LLC is limited to the 35 parking spaces set forth in the lease.

With respect to the defendants' counterclaims, I find in favor of the plaintiff (Coen). I also find that the parties should bear their own attorneys' fees and costs.



Thomas J. Wills, Arbitrator
Wills & Massalon, LLC
134 Meeting Street, Suite 100
Charleston, SC 29401
(843) 727-1144
twills@wills-massalon.com

Dated: July 25, 2008
Charleston, South Carolina

WILLS & MASSALON, LLC

ATTORNEYS AT LAW

Telephone: (843) 727-1144

Facsimile: (843) 727-7696

Post Office Box 859
Charleston, South Carolina 29402

134 Meeting Street, Suite 100
Charleston, South Carolina 29401

August 18, 2008

Andrew K. Epting, Jr., Esq.
Andrew K. Epting, Jr. LLC
3 State Street
Charleston, SC 29401

Re: Richard H. Coen and Lowcountry Capital, LLC vs. Dianne Crowley, et al.
Charleston County Court of Common Pleas, Case No. 06-CP-10-3670
Our File No. 677-764

Dear Drew:

Tom has asked that I forward to you the original Arbitration Order issued in this case on July 25, 2008. He has left the decision to file this Order with the Court in your hands.

Thank you for your attention to this matter.

Respectfully,

Wills & Massalon, LLC



Pam Bickelhaupt
Legal Assistant to Thomas J. Wills

/pdb
Enclosure

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUN 01 2010

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

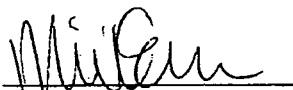
DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

NOTICE OF APPEAL

Dianne Crowley, Cecil Crowley, Steve Carroll, individually and as principals and agents of Redwing, LLC and Wings Over America, Inc., Redwing, LLC, and Wings Over America, Inc. appeal the order of the Honorable J.C. Nicholson, Jr. dated May 10, 2009 as, pursuant SC Code § 15-48-200 (1976), an order denying an application to compel arbitration and stay judicial proceedings is immediately appealable. Appellants received written notice of entry of this order on May 18, 2010.

May 18, 2010



Andrew K. Epting, Jr.
Michelle N. Endemann
3 State Street, Charleston, SC 29401
P: (843) 377-1871
F: (843) 377-1310
Attorneys for Appellants

Other Counsel of Record:
Hugh W. Buyck, Esquire
BUYCK LAW FIRM, LLC
PO Box 2424, Mt Pleasant, SC 29465
P: 843-377-1400
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

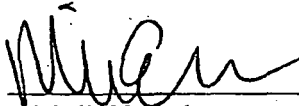
DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all Respondents by depositing a copy of it in the United States Mail, postage prepaid, on May 27, 2010, addressed to their attorney of record, Hugh W. Buyck, PO Box 2424, Mt Pleasant, SC 29465.

May 27, 2010



Michelle N. Endemann
3 State Street
Charleston, SC 29401
P: (843) 377-1871
F: (843) 377-1310
Attorneys for Appellants

RECEIVED

JUN 01 2010

SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Richard H. Coen, Coen Capital, LLC and	)	C/A No. 09-CP-10-5549
Lowcountry Capital, LLC,	)	
	)	
Plaintiffs,	)	AMENDED COMPLAINT
	)	(Jury Trial Requested)
Versus	)	
	)	
Diane Crowley, Cecil Crowley, Steve Carroll,	)	
individually and as principals and agents of	)	
RedWing, LLC & Wings Over America, Inc.;	)	
RedWing, LLC & Wings Over America, Inc.,	)	
	)	
Defendants.	)	

FILED
 2009 SEP -2 AM 11:40
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The Plaintiffs, Richard H. Coen, Coen Capital, LLC and Lowcountry Capital, LLC, complaining of the Defendants above-named, would respectfully show unto this Honorable Court as follows:

1. Plaintiff Richard H. Coen is an individual who reside in Charleston County, South Carolina. Richard H. Coen is a principal of the Plaintiff Lowcountry Capital, LLC.
2. Lowcountry Capital, LLC, and Coen Capital, LLC are limited liability companies organized and existing under the laws of the State of South Carolina, with their principle place of business in Charleston County.
3. Defendants Diane and Cecil Crowley, are individuals, who upon information and belief, reside in Beaufort County, South Carolina and, upon information and belief, are principals of Defendant RedWing, LLC and Wings Over America, Inc.
4. Steve Carroll is an individual, who upon information and belief, resides in Charleston County, South Carolina and serves as the manager of Red's Ice House. Mr. Carrol further acts as an agent and an employee of Redwing, LLC and Wings Over America, Inc.
5. RedWing, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, with its principle place of business in Charleston County, and, upon information and belief, is an operating and/or management entity of Red's Ice House.

6. Wings Over America, Inc. is a limited liability company organized and existing under the laws of the State of South Carolina, with its principle place of business in Charleston County, and upon information and belief, is an operating and/or management entity of Red's Ice House.

7. Venue and jurisdiction are properly before this Court.

8. On November 1, 2001, Lowcountry Capital, LLC, by and through its principal, Richard H. Coen, entered into a ninety-nine year lease for property within Mount Pleasant, South Carolina bounded by Coleman Boulevard, Church Street, Mill Street, and Shem Creek. This real property lease was executed between Snowwis Properties, LLP and Mill Church Properties, as landlord, and Lowcountry Capital, LLC as tenant.

9. Currently located on the leased property is a building and restaurant known as Red's Ice House. The Defendant, RedWing, LLC, entered into a commercial lease on or about June 10, 2004, with Lowcountry Capital, LLC to sub-lease certain portions of the Snowwis Properties as specifically designated within the lease for the operation of Red's Ice House. ("Red's lease").

10. On or about June 10, 2004, a Membership, Interest, Purchase, and Sale Agreement (MIPSA) was executed by and among Richard H. Coen, Shem Creek Holdings, LLC and Diane Crowley.

11. Section 5.8 of the MIPSA states "from and after the closing date, the company (Red's) shall be responsible for policing the Red's Ice House parking areas, which consists of the parking areas immediately adjacent to Red's Ice House and thirty parking spaces adjacent to Church Street, and will use its best efforts to prevent its customers, employees, and vendors from parking in any parking area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek that is not designated for use by Red's Ice House."

12. Section 5.1 of the agreement additionally provides "in no event shall the company utilize or permit to be utilized any portion of the dock that is located adjacent to the Trawler on Shem Creek. The company shall use its best efforts to prevent customers of Red's Ice House from docking their vessels in the floating dock space located adjacent to the Trawler."

13. A dispute previously arose pursuant to issues related to the MIPSAs and Red's lease and this dispute entered binding arbitration with Thomas J. Wills, Esquire serving as the arbitrator and providing an Order dated on or about July 25, 2008. Specifically within the Order of July 25, 2008, Mr. Wills judicially determined that Red's Ice House, its principals, agents, employees and customers do not have the right to park or to access any parking spaces other than the thirty-five spaces along Church Street as provided within the lease documents between Lowcountry Capital, LLC and RedWing, LLC and as set forth within the Order.

14. Despite repeated and numerous requests to refrain from utilizing the Snowwis Properties not included within the designations of the RedWing, LLC lease, Red's Ice House by and through its employees and customers continue to utilize properties of the Plaintiffs in violation of the Red's lease, MIPSAs, and Order of Tom Wills, Esq. dated July 25, 2008.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

15. The foregoing allegations of this Complaint are hereby incorporated as if alleged herein verbatim.

16. There exists a valid contract between Plaintiffs and Defendants, Redwing, LLC and Diane Crowely.

17. These Defendants have breached the terms and conditions of said contract.

18. As a direct and proximate result of Defendants' breach of said contract, Plaintiffs have incurred actual damages in an amount to be determined by the trier of fact.

19. Upon information and belief, as a direct and proximate result of Defendants' breach of said contract Plaintiffs, Richard H. Coen and Lowcountry Capital, LLC, are entitled to award of attorney fees pursuant to the terms of said contract.

FOR A SECOND CAUSE OF ACTION
(Nuisance)

20. The foregoing allegations of this Complaint are hereby incorporated as if alleged herein verbatim.

21. The Defendant, RedWing, LLC, by and through its employees, agents, and representatives and through the actions of its principals, has hurt, inconvenienced, and damaged the properties of the Plaintiffs through unlawful and unreasonable use of the Plaintiffs' adjacent property to Red's Ice House. Such use includes but is not limited to illicit parking activities, dumping of garbage, unlawful placement of garbage and restaurant equipment, misconduct of owners, management, employees, patrons and guests, and other matters within the control of the Defendants, both in their capacity as agents of the corporate Defendants and individually, having caused material annoyance, discomfort, and interference with business relationships of the Plaintiffs.

22. As a proximate result of the Defendants' unreasonable interference in the use and enjoyment of their property, Plaintiffs, Richard H. Coen and Lowcountry Capital, LLC, have been damaged and are entitled to actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Civil Trespass)

23. The foregoing allegations of this Complaint are hereby incorporated as if alleged herein verbatim.

24. The Plaintiffs, Richard H. Coen and Lowcountry Capital, LLC have legal possession of the properties and parking areas adjacent to Red's Ice House and the premises set forth within the Snowwis Properties lease.

25. The Defendants, individually and by and through their agents, employees, patrons and other responsible parties, have intentionally entered, trespassed onto the property of the Plaintiffs without license from the Plaintiffs, destroyed and vandalized property and have acted voluntarily and asserted rights to utilize the adjacent properties owned by the Plaintiffs without permission and have unreasonably remained on these properties despite prior notice of such trespass.

26. As a result of the Defendants' trespass upon their property, the Plaintiffs, Richard H. Coen and Lowcountry Capital, LLC, are entitled to actual and punitive damages as a result of wanton, willful, and reckless disregard of the Plaintiffs' rights.

FOR A FOURTH CAUSE OF ACTION
(Tortious Interference)

27. The foregoing allegations of this Complaint are hereby incorporated as if alleged herein verbatim.

28. The Defendants, Diane Crowley, Cecil Crowley, Steve Carroll, individually and RedWing, LLC and Wings Over America, Inc., by and through their agents, employees, and representatives are aware and know they have no rights to the properties and parking owned by the Plaintiffs. Defendants are also aware that the Plaintiff is engaged with various activities on the land including third-party leases, wedding events, special events, and other activities and the Defendants have tortiously and without justification interfered with the property, its tenants, and business activities.

29. The Plaintiffs have been damaged and despite notice and prior legal rulings, the Defendants continue to negligently and intentionally interfere with the activities of the Plaintiffs. Therefore, the Plaintiffs, Richard H. Coen and Lowcountry Capital, LLC, are entitled to actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Slander of Title)

30. The foregoing allegations of this Complaint are hereby incorporated as if alleged herein verbatim.

31. Diane Crowley and Cecil Crowley, individually and by and through their affiliates RedWing, LLC and Wings Over America, Inc., including their agents, employees, and representatives know that they have no claim to the properties adjacent to Red's Ice House owned by the Plaintiffs, but have nevertheless repeatedly asserted that they or their affiliates have an interest and have deliberately attempted to create a cloud on the title of the property.

32. Defendants made these representations in order to interfere with the sale, use, and rights to these properties, and these representations have contributed to refusals to close and purchase the lease interests owned by the Plaintiffs.

33. As a result of these false statements, Plaintiffs, Richard H. Coen and Lowcountry Capital, LLC, have suffered special damages in the form of the costs of maintaining the property, lost business opportunities, and the inability to sell a fully utilized property as well as profits from ongoing business activities.

FOR A SIXTH CAUSE OF ACTION
(Slander / Defamation)

34. The foregoing allegations of this Complaint are hereby incorporated as if alleged herein verbatim.

35. The Defendants, Diane and Cecil Crowley, Steve Carroll, RedWing, LLC and Wings Over America, Inc., by and through their individual actions and those of their agents, employees, and representatives have asserted various statements intended to impugn the Plaintiffs' reputation including but not limited to the following:

- a. Statements alleging impropriety or inadequacy concerning Mr. Coen's performance of his trade and profession;

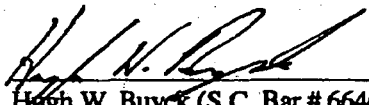
- b. Procurement and distribution of various literature, bumper stickers, and t-shirts reflecting "Keep Shem Creek Dick Free;"
- c. Defamatory statements to customers and suppliers concerning the activities of the Plaintiffs on Plaintiffs' own property;
- d. False and malicious written and oral statements concerning the Plaintiffs;
- e. Conduct displaying defamatory meanings towards the Plaintiffs; and
- f. Such other particulars as outlined during the scope of discovery.

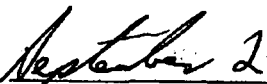
36. The Defendants have published with factual or implied malice the false and defamatory statements and these messages concern the Plaintiffs. As a result of the defamatory and libelous statements Plaintiffs have suffered damages and legally presumed damages including but not limited to embarrassment, humiliation, and mental suffering as a result of injury to reputation. As a result thereof, the Plaintiffs, individually and the corporate entities, have been damaged and are entitled to actual and punitive damages.

WHEREFORE, Richard H. Coen, Coen Capital, LLC and Lowcountry, LLC, seek judgment against the Defendants as set forth herein and for such further relief this Court deems just and proper.

Respectfully submitted,

BUYCK & SANDERS, LLC
 757 Johnnie Dodds Blvd., Ste. 100
 P.O. Box 2424
 Mt. Pleasant, SC 29465-2424
 Telephone: (843) 377-1400
 Facsimile: (843) 377-1403
 Email: hwb@buyckfirm.com


 Hugh W. Buyck (S.C. Bar # 66462)
 Attorney for the Plaintiffs
 Richard H. Coen, Coen Capital, LLC and
 Lowcountry Capital, LLC

 2009
 Mt. Pleasant, South Carolina
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Richard H. Cohen, Cohen Capital, LLC and
Lowcountry Capital, LLC

Plaintiffs,

Vs.

Diane Crowley, Cecil Crowley, Steve Carroll
Individually and as principals and agents of
RedWings, LLC & Wings Over America, Inc.,
RedWings, LLC & Wings Over America, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL NOTICE

Case No.: 09-CP-10-5549

MOTION TO DISMISS AND/OR
STAY

FILED
2009 OCT 14 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

TO: HUGH W. BUYCK, ESQUIRE, COUNSEL FOR THE PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the defendants will move,
at a time and place to be arranged by the Court, for an Order to Dismiss or Stay Plaintiff's Complaint.

This motion is based on the following grounds.

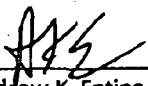
Certain parties have previously agreed, pursuant to the Order of the Honorable Roger M. Young
filed March 19, 2008, attached here as Exhibit A, to resolve "all disputes arising from the dealings or
agreements between these parties [by] arbitration". As to these parties arbitration should be ordered.
As to the remaining parties, this Court should exercise its discretion and stay said litigation pending a
ruling by the arbitrator.

WEREFOR, having shown the basis for dismissal of this action, Defendants respectfully request
that the Court dismiss and/or stay this action.

PLEASE BE PRESENT IF SO MINDED.

Signature on following page

Appendix 088



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Charleston, SC 29401
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ake@epting-law.com

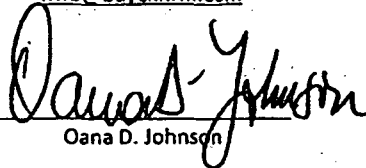
George J. Kefalos, Esquire
GEORGE J. KEFALOS, PA
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george@kefaloslaw.com

This 13th day of October, 2009
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 13, 2009, a copy of Defendants' Motion to dismiss was served via email and first class mail addressed as follows:

Hugh W. Buyck
Buyck Law Firm
Post Office Box 630
Charleston, SC 29402
hwb@buyckfirm.com



Oana D. Johnson

Signature on following page

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

RICHARD H. COEN, COEN CAPITAL, LLC and
LOWCOUNTRY CAPITAL, LLC

PLAINTIFFS,

VS

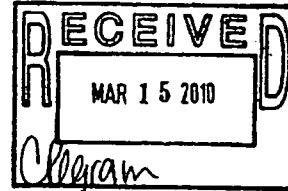
DIANNE CROWLEY, CECIL CROWLEY, STEVE
CARROLL individually and as principals and agents
of RedWing, LLC and Wings Over America, Inc.,
REDWING, LLC and WINGS OVER AMERICA, INC.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2009-CP-10-5549



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EXHIBIT A

TO DEFENDANTS' MOTION TO DISMISS OR STAY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

RICHARD H. COEN AND)
LOWCOUNTRY CAPITAL, LLC)

PLAINTIFFS)

vs.)

DIANNE CROWLEY and)
REDWING, LLC,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2006-CP-10-3670

CASE NO. 2006-CP-10-3670

CONSENT ORDER TO ARBITRATE

FILED
2008 MAR 19 PM 4:21
CLERK OF COURT

This matter comes to me by agreement of the parties to refer all disputes arising from the dealings or agreements between these parties to arbitration before Tom Wills, Esquire. Tom Wills shall have the authority to enter a final order. This is to include all matters that are contested between the parties, as set forth in the pleadings, and is intended to finally resolve any and all remaining disputes. This includes matters related to parking and to decide this issue as if there had been no prior proceedings. The Plaintiffs and the Defendants have the right to amend their pleadings within 5 business days of this order, with responsive pleadings due in 5 business days. Tom Wills is directed to confer immediately with the parties to finally determine witnesses, experts, discovery, and trial so as to conclude this matter efficiently and timely.

By specific agreement of the parties, the results of said arbitration shall be binding and unappealable by any of the parties, their agents, representatives or assigns.

Execution of said final judgment shall be enforceable in the same fashion as a final order of the Supreme Court of South Carolina. Specifically, any willful or negligent failure of any of the parties to comply with said final order shall subject the violating party to the contempt

B

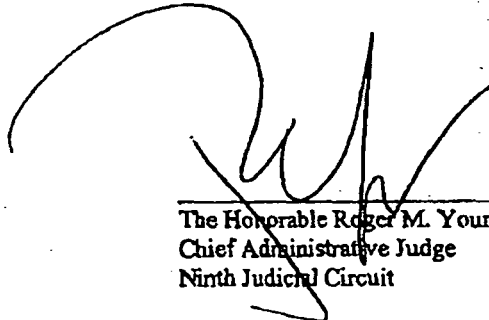
powers of the Court in any jurisdiction where said action for enforcement of the judgment is appropriate, except that the proven inability of a party to pay a monetary judgment shall not be subject to contempt, if such inability is determined by the Arbitor (Tom Wills) in a supplemental proceeding.

No collateral challenges to said final order from this arbitration shall be allowed, and no other additional actions shall be allowed between the parties for any acts or omissions that pre-date the date of this arbitration.

The parties agree to an arbitration hearing as to all claims by the Plaintiffs and all claims by the Defendants, with the liability portion of the arbitration period starting on May 19, 2008 and continuing on May 20, 2008.

If necessary, the arbitration hearing on the issue of damages will continue on June 3, 2008 through June 6, 2008. These dates are subject to each party providing a list of witnesses, experts, and documents in a timely fashion. Whether actions are timely is to be decided by Tom Wills; he also will have the authority to decide all other procedural and substantive matters, including lengthening of the liability arbitration hearing period or shortening of the damages arbitration hearing period.

IT IS SO ORDERED.

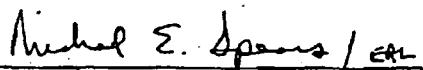


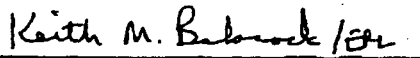
The Honorable Roger M. Young
Chief Administrative Judge
Ninth Judicial Circuit

March 18, 2008

Charleston, South Carolina

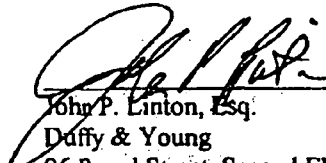
WE CONSENT:

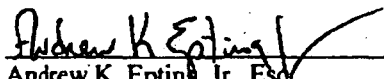

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COUNSEL FOR DEFENDANTS

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

RICHARD H. COEN AND LOWCOUNTRY)
CAPITAL, LLC,)

Plaintiffs,)

vs.)

DIANNE CROWLEY AND REDWING,)
LLC,)

Defendants.)

Case No. 2006-CP-10-3670

AMENDED COMPLAINT

FILED
2008 JAN 22 PM 4:13
CLERK OF COURT
JULIE E. STRONG

The Plaintiffs, Richard H. Coen ("Coen") and Lowcountry Capital, LLC ("Lowcountry Capital"), bring this action for declaratory judgment, and recovery of actual, special, and consequential damages against the Defendants Diane Crowley ("Crowley") and Redwing, LLC ("Redwing"), collectively the "Defendants," and state as follows:

PARTIES

1. Coen is an individual who resides in Charleston County, South Carolina and has certain contractual rights arising from a contract created in Charleston County regarding property located in Charleston County between parties who reside in Charleston County concerning a business which operates in Charleston County that are thereby enforceable within Charleston County, South Carolina.

2. Lowcountry Capital is a limited liability company that is organized and existing under the laws of the State of South Carolina with a principal place of business within Charleston County, South Carolina. As an affiliate and assign of Coen, Lowcountry Capital has contractual rights that are enforceable within Charleston County, South Carolina. Lowcountry Capital, as a Plaintiff landlord, is a party to a certain lease agreement ("Lease Agreement") with Defendant

CLT 1074563v1

Appendix 094

Redwing, as tenant. The premises leased by Plaintiff Lowcountry Capital to Defendant Redwing are a portion of a certain premises on which Lowcountry Capital holds a 99-year ground lease (the "Property").

3. Defendant Dianne Crowley is an individual who owns property and conducts business within Charleston County, South Carolina and has certain contractual obligations to Plaintiffs regarding property located in Charleston County through a contract created in Charleston County regarding a business being operated in Charleston County that are thereby enforceable within Charleston County, South Carolina.

4. Defendant Redwing is a limited liability company organized and existing under the laws of South Carolina that is owned and controlled by Defendant Crowley and currently is an affiliate through common ownership with Defendant Wings Over America and Defendant DC & Sons. The timely sale of Defendant Redwing's assets to Plaintiff Coen, the preservation of Defendant Redwing's current assets, and the determination and awarding of damages for Defendant Crowley's failure to honor her contractual obligations, along with a declaration of Plaintiffs' rights to purchase Redwing assets, are the primary subject matter of this action.

5. The purpose of this action is to allow Plaintiffs to obtain declaratory judgment and recover their actual, special and consequential damages relating to Defendant Crowley's failure to comply with a Buy Out Provision ("Buy Out Provision") which requires Defendant Crowley to sell Plaintiff Coen all of Defendant Redwing's assets due to the fact that Plaintiff Coen and/or his assigns had or have the continuing opportunity to pursue a major redevelopment project on the Property, which is the triggering event for Defendant Crowley's obligation to sell all of Defendant Redwing's assets to Plaintiff Coen. In accordance with S.C. Code Ann. § 15-53-20 and SCRCF, Rule 57, as set forth in *Robison v. Asbill*, 492 S.E.2d 400 (S.C. App. 1997), Plaintiffs may first obtain a declaratory judgment and then thereafter seek further relief.

6. The Buy Out Provision is set forth within the Membership Interests Purchase and Sale Agreement ("Purchase and Sale Agreement") that was entered into by Coen, Crowley, and Shem Creek Holdings, LLC ("Shem Creek Holdings") on July 10, 2004, a copy of which is attached hereto as Exhibit A. Shem Creek Holdings is a limited liability company organized and existing under the laws of South Carolina, but is not a party to this action as it is no longer involved with the Property.

7. Based on the subject matter of this action as well as the residency of the parties, this Court has jurisdiction in this matter and venue is proper.

FACTUAL BACKGROUND

8. On July 10, 2004, Coen, Crowley, and Shem Creek Holdings entered into the Purchase and Sale Agreement that allowed for Crowley to purchase the remaining partial membership interests in Redwing, LLC ("Redwing") from Coen and Shem Creek Holdings.

9. Defendant Redwing now leases and operates "Red's Ice House," a restaurant and bar located on Shem Creek in Mount Pleasant, South Carolina.

10. In accordance with the Purchase and Sale Agreement, Crowley purchased a 25% membership interest in Redwing from Coen and a 25% membership interest in Redwing from Shem Creek Holdings. By purchasing these remaining partial interests in Redwing, Crowley held and still holds a 100% membership interest in Redwing.

11. However, under the Buy Out Provision in Section 3 of the Purchase and Sale Agreement, Plaintiffs have a right to purchase 100% of Redwing's assets in the event that Plaintiffs had or have an "opportunity" to pursue a "major redevelopment project" in the area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek. The Buy Out Provision of the Purchase and Sale Agreement specifically provides that "time is of the essence."

12. Under the Buy Out Provision, the purchase price to be paid by Plaintiff to Defendant Crowley to acquire the Redwing assets is "the greater of the Aggregate Debt (defined below) of the Company or two times GAAP net income for the prior twelve (12) months." Within the Buy Out Provision, "Aggregate Debt" is defined to "include all notes, mortgages, and normal operating debts of the Company to unrelated third parties, accrued in the ordinary course of business, and to be substantiated upon buy-out."

13. Lowcountry Capital was formerly developing "The Landing," a major redevelopment project involving a luxury condominium hotel/conventional hotel to be built in the area located within the exact same area described in paragraph 11. The opportunity for development of The Landing was a major redevelopment project that triggered Plaintiffs' right to purchase the Redwing assets.

14. Since April 2006, Plaintiffs have informed Defendant Crowley that Plaintiffs were exercising their rights under the Buy Out Provision. A true copy of the April 2006 notice to Defendant Crowley is attached as Exhibit B and a true copy of the September 2006 notice to Defendant Crowley is attached as Exhibit C. However, Defendant Crowley has delayed the buy out process, attempted to inflate the purchase price in a manner that is contrary to the plain terms of the Purchase and Sale Agreement, and refused to honor her obligations in a manner that has caused significant damage to Plaintiffs. In an attempt to mitigate the damages caused by Defendant Crowley, Plaintiffs have also pursued other major redevelopment opportunities, but have also been continually hindered from these opportunities by the bad faith actions of Defendant Crowley.

15. In 2007, Plaintiffs issued additional notices that they would exercise their rights under the Buy Out Provision in order to mitigate their damages through an assignment of the leasehold interest to another entity that would then pursue the major redevelopment opportunity.

A true copy of the March 2007 notice to Defendant Crowley is attached as Exhibit D. Additional notices were also provided. Plaintiffs warned Defendant Crowley regarding the damages that would be incurred if she continued to breach the Purchase and Sale Agreement. However, as before, Defendant Crowley continued her wrongful refusal to honor her contractual obligations, which directly caused a loss of this prospective contractual opportunity.

16. Plaintiffs have made a continuing and good faith effort to exercise their contractual rights consistent with the terms of the Purchase and Sale Agreement. However, Defendant Crowley has improperly delayed and refused to allow Plaintiff to buy back the Redwing assets at terms that are consistent with the Buy Out Provision, while at the same time taking various actions to feign an intention to comply with the Buy Out Provision and thereby mislead Plaintiffs.

17. Defendant Crowley's actions have caused actual, consequential, and punitive damages to Plaintiffs, which unjustified harm and damages can never be recouped. These damages include actual damages, consequential damages incurred as a result of delayed, hindered and/or lost opportunities, lost profits arising from the delayed transfer of the Redwing assets, diminution of the Redwing assets, loss of unrecoverable costs, interest payments required due to the delay in the development opportunity, special damages, punitive damages, and other damages as to be determined by the trier of fact. Plaintiffs are also entitled, pursuant to Section 10 of the Purchase and Sale Agreement, to recover their attorneys fees and expenses incurred as a result of Crowley's actions.

AS A FIRST CAUSE OF ACTION

Declaratory Judgment pursuant to S.C. Code § 15-53-20 and SCRCP Rule 57 – Defendants Crowley and Redwing

18. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

19. As set forth above, Plaintiff Coen, Shem Creek Holdings, and Defendant Crowley entered into the Purchase and Sale Agreement, which was supported by mutual and valid consideration. Plaintiff Lowcountry Capital has enforceable rights under the Purchase and Sale Agreement as an affiliate and assign of Defendant Coen.

20. Section 3 of the Purchase and Sale Agreement provides as follows:

In the event that Coen, Shem Creek Holdings, or any of their affiliates or assigns have the opportunity to construct a major redevelopment project in the area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek, and notwithstanding anything else in this Agreement to the contrary, Coen, Shem Creek Holdings, or any of their affiliates or assigns have the right to purchase one hundred percent (100%) of the assets of the Company, including, but not limited to, those assets associated with Red's Ice House and Slightly Up the Creek, by a written offer to the Company. From the Closing Date going forward the purchase price shall be the greater of the Aggregate Debt (defined below) of the Company or two times GAAP net income for the prior twelve (12) months. Aggregate Debt includes all notes, mortgages and normal operating debts of the Company to unrelated third parties, accrued in the ordinary course of business, and to be substantiated upon buy-out.

The Parties agree to close any buy-out within third (30) days after determination of a purchase price. Time is of the essence. This provision shall be superior to any other article of this Agreement.

21. As set forth above, Lowcountry Capital was formerly developing "The Landing," a major redevelopment project including a luxury condominium hotel/conventional hotel to be built in the area located within the exact same area described in paragraph 11. The

opportunity for the development of "The Landing" was a major redevelopment project that triggered Plaintiffs' right to repurchase the Red Wing assets.

22. As set forth above, Plaintiffs attempted to exercise their rights under the buy-out provision, but Defendant Crowley has prevented them from doing so.

23. An actual controversy exists between the parties concerning the aforesaid buy-out provision of the Purchase and Sale Agreement.

24. The Plaintiffs seek a declaratory judgment determining that:

a) Coen, Shem Creek Holdings, or any of their affiliates or assigns had the opportunity to construct a major redevelopment project in the area located within the boundaries of Coleman Blvd., Church Street, Mill Street, and Shem Creek, as set forth in section 3 of the Purchase and Sale Agreement;

b) Coen, Shem Creek Holdings, or any of their affiliates or assigns had the contractual right to purchase 100% of the assets of Redwing, including but not limited to those assets associated with Red's Ice House and Slightly Up the Creek, as set forth in paragraph 3 of the Purchase and Sale Agreement;

c) A written offer to Redwing to purchase the assets of Redwing was made by or on behalf of Coen, Shem Creek Holdings, or any of their affiliates or assigns, as set forth in paragraph 3 of the Purchase and Sale Agreement;

d) The amount of the purchase price for the assets of Redwing, as set forth in paragraph 3 of the Purchase and Sale Agreement is the greater of the Aggregate Debt of Redwing, which includes all notes, mortgages and normal operating debts of Redwing to unrelated third parties (accrued in the ordinary course of business) or two times GAAP net income for the prior 12 months; and

e) Coen, Shem Creek Holdings, or any of their affiliates or assigns satisfied the requirements of section 3 of the Purchase and Sale Agreement and had the right to purchase the assets of Red Wing, as set forth in section 3 of the Purchase and Sale Agreement.

25. The Plaintiffs seek this declaratory judgment pursuant to S.C. Code Ann. § 15-53-20 and SCRPC Rule 57, specifically reserving their right to seek further relief in accordance with the case law of the State of South Carolina, as set forth in *Robison v. Asbill*, 492 S.E.2d 400 (S.C. App. 1997). Plaintiffs are also entitled to recover their attorney's fees and expenses pursuant to Section 10 of the Purchase and Sale Agreement.

AS A SECOND CAUSE OF ACTION

Breach of Contract – Defendant Crowley - Purchase and Sale Agreement

26. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim and seek the relief set forth herein as further relief following the declaratory judgment sought in the First Cause of Action.

27. The Purchase and Sale Agreement is an enforceable contract between Plaintiff Coen, Defendant Crowley, and Shem Creek Holdings that was supported by mutual and valid consideration. Lowcountry Capital has enforceable rights under the Purchase and Sale Agreement as an affiliate and assign of Plaintiff Coen.

28. Defendant Crowley has breached the Purchase and Sale Agreement by refusing to return the Defendant Redwing assets at terms that are consistent with the Purchase and Sale Agreement and by breaching the implied covenant of good faith and fair dealing.

29. Plaintiffs have been damaged and continue to be damaged by the breaches of the Purchase and Sale Agreement committed by Defendant Crowley, including actual and special

damages in the form of otherwise unrecoverable expenses, including but not limited to interest expense, lost profits from development opportunities, lost profits from the delay in the retransfer of the Defendant Redwing assets that have been improperly retained by Defendants, preclusion of attempts to mitigate damages, additional lost opportunities, and other forms of damages to be more specifically enumerated at the proper time.

30. In addition to damages already incurred by Plaintiffs, the continued breach of the Purchase and Sale Agreement by Defendant Crowley will cause significant additional damages through interference with the development of The Landing or a similar or different development. Under Section 10.2 of the Purchase and Sale Agreement, Defendant Crowley will be obligated to indemnify Plaintiffs for the full and substantial amount of these damages and attorney's fees and expenses incurred as a result of her conduct. Obviously, the "highest and best use" to which the Plaintiff could market the property and the profit that could more likely than not be derived therefrom is the proper measure to be used as of the time of the demand for "buy back" by the Plaintiff.

31. As a result of the actions and inactions of Defendant Crowley, Plaintiffs are entitled to recover damages in an amount to be proven at trial for breach of contract and to recover the attorney's fees incurred in bringing this action. In addition to the damages caused through the loss of certain monies expended by Plaintiffs in connection with the Landing and other redevelopment opportunities, the lost profits caused by the loss of certain redevelopment opportunities, the lost profits caused by the delay in the retransfer of the Redwing assets, prejudgment interest, and other damages. Plaintiffs are also entitled to recover their attorney's fees and expenses pursuant to Section 10 of the Purchase and Sale Agreement.

AS A THIRD CAUSE OF ACTION

Breach of Contract Accompanied by Fraudulent Act – Defendant Crowley

32. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim and seek the relief set forth herein as further relief following the declaratory judgment sought in the First Cause of Action.

33. The Purchase and Sale Agreement is an enforceable contract between Plaintiff Coen, Crowley, and Shem Creek Holdings that was supported by mutual and valid consideration. Lowcountry Capital has enforceable rights under the Purchase and Sale Agreement as an affiliate and assign of Plaintiff Coen.

34. Defendant Crowley has breached the Purchase and Sale Agreement with fraudulent intent by refusing to sell the Redwing assets at terms that are consistent with the Purchase and Sale Agreement.

35. After receiving notice from Plaintiffs that Plaintiffs were exercising their rights under the Buy Out Provision, Defendant Crowley fraudulently misrepresented to the Plaintiffs that she would adhere to the Buy Out Provision, but actually and admittedly, never intended to comply.

36. Defendant Crowley and other Defendants reluctantly and tardily provided information to Plaintiffs and took several actions that feigned an illusory intention on the part of Defendant Crowley and other Defendants to comply with the Buy Out Provision, when said compliance was never a true intent of the Defendants. Plaintiffs detrimentally relied on Defendant Crowley's misrepresentations and misleading actions and, as a result, proceeded in good faith with their efforts to effectuate the Buy Out, unaware that Defendant Crowley never had any intention of complying with the Buy Out Provision.

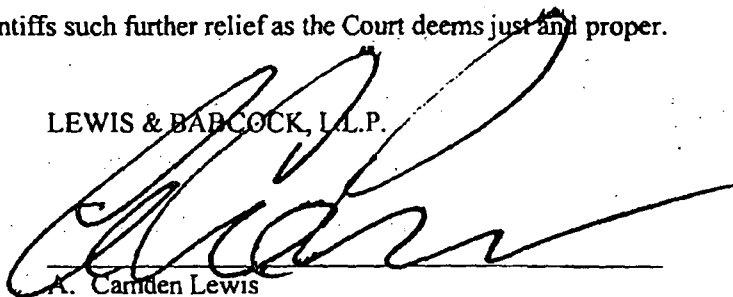
37. Additionally, after receiving notice of Plaintiffs' intention to exercise their rights under the Buy Out Provision, Defendant Crowley and other Defendants undertook other fraudulent actions, including but not limited to (1) attempted, irregular, and improper accounting changes that resulted in the diminution of Defendant Redwing's assets and improper transfers of assets, (2) inflation of the purchase price to be paid under the Buy Out Provision in an improper and fraudulent manner, (3) entering into an agreement and subsequent negotiation of the enforcement of said agreement with absolutely no intent to comply therewith, (4) enticing, delivering, and tricking the Plaintiff into believing compliance was forth coming, all of which was a sham. All of these actions were undertaken outside of the normal course of business by the Defendants and were intended to infringe, obstruct, or diminish the rights of Plaintiffs while unjustly enriching Defendants and their affiliates.

38. These above actions by Defendant Crowley and those under her direction or control evidence fraudulent intent on the part of Defendant Crowley that relates directly to the breach of the Purchase and Sale Agreement and constitute fraudulent acts accompanying the breach.

39. Plaintiffs have been damaged and continue to be damaged by the breaches of the Purchase and Sale Agreement committed by Defendant Crowley and the aforesaid fraudulent acts accompanying those breaches undertaken by Defendant Crowley and those under her direction and control, which have resulted in actual, special and consequential damages in the form of unrecoverable expenses, interest expense, lost profits from development opportunities, lost profits from the delay in the transfer of the Redwing assets that have been improperly retained by Defendants, preclusion of attempts to mitigate damages, additional lost opportunities, and other forms of damages. Furthermore, the willful and wanton actions of Defendant Crowley and those under her direction and control justify an award of punitive damages.

WHEREFORE, on the basis of these claims against Defendants, Plaintiffs respectfully pray that the Court enter a declaratory judgment as set forth in the First Cause of Action, thereafter provide the relief sought in the Second and Third Cause of Action, and award Plaintiffs their actual, special and consequential damages, prejudgment interest, and attorney's fees and expenses, and grant Plaintiffs such further relief as the Court deems just and proper.

LEWIS & BABCOCK, L.L.P.



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ATTORNEYS FOR THE PLAINTIFFS
RICHARD H. COEN AND
LOWCOUNTRY CAPITAL, LLC

Columbia, South Carolina
January 17, 2008

CLT 1074563v1

EXHIBIT A

**MEMBERSHIP INTERESTS
PURCHASE AND SALE AGREEMENT**

**BY AND AMONG
RICHARD H. COEN
AND
SHEM CREEK HOLDINGS, LLC
AND
DIANNE CROWLEY**

JUNE 10, 2004

#773646 v1 - Revised purchase and sale agreement

THIS MEMBERSHIP INTERESTS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this 0th day of June, 2004, by and among Dianne Crowley ("Crowley" or "Purchaser"), Richard H. Coen ("Coen"), and Shem Creek Holdings, LLC ("Shem Creek Holdings") (collectively Coen and Shem Creek Holdings are referred to as "Sellers").

RECITALS:

WHEREAS, pursuant to that certain Operating Agreement of RedWing, LLC, a South Carolina limited liability company, effective October 3, 2003 ("the Operating Agreement"), Crowley and Coen each owned fifty percent (50%) of the Membership Interests of RedWing, LLC, a South Carolina limited liability company ("the Company"); and

WHEREAS, pursuant to that certain Contract for Sale and Purchase by and between Lowcountry Capital, LLC, Coenco, LLC, Red's Trawler, LLC, Charleston Harbor Partners, LLC and Richard H. Coen and David M. Sidbury, effective March 17, 2004, Coen sold and David M. Sidbury purchased fifty percent (50%) of all of the Membership Interests of RedWing, LLC owned by Coen; and

WHEREAS, pursuant to that certain Assignment of Interest Agreement, effective simultaneously herewith, David M. Sidbury assigned all his interest in and to Lowcountry Capital, LLC, Coenco, LLC, Red's Trawler, LLC, Charleston Harbor Partners, LLC, and RedWing, LLC to Shem Creek Holdings; and

WHEREAS, as of the date of this Agreement Crowley owns fifty percent (50%) of the Membership Interests of the Company, Coen owns twenty-five percent (25%) of the Membership Interests of the Company, and Shem Creek Holdings owns twenty-five percent (25%) of the Membership Interests of the Company; and

WHEREAS, the Sellers wish to sell to Purchaser all of the Sellers' right, title and interest in and to all of their outstanding Membership Interests, and Purchaser wishes to buy all of Sellers' right, title and interest in and to Sellers' Membership Interests; subject to and upon the terms and conditions set forth herein; and

WHEREAS, the Purchaser will own one hundred percent (100%) of the Membership Interests of the Company after the execution of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid to each party by the other, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Purchaser and Sellers hereby agree as follows:

SECTION 1. PURCHASE AND SALE OF MEMBERSHIP INTERESTS AND CLOSING.

1.1 **Purchase.** Upon the terms and conditions set forth herein, Sellers shall sell to Purchaser, and Purchaser shall purchase from Sellers all of Sellers' right, title and interest in and to the Sellers' Membership Interests, which are identified as listed on Exhibit A hereto, free and clear of all liens, charges, encumbrances, claims, options, and other restrictions of any nature whatsoever.

1.2 **Delivery of Membership Interests and Purchase Price.** At Closing (as hereinafter defined) Sellers and Purchaser shall execute and deliver such instruments of conveyance, sale or transfer, and shall take or cause to be taken such further action as necessary to vest, confirm or evidence in the Purchaser good and marketable title to all of the Membership Interests intended to be conveyed, sold, transferred and delivered to the Purchaser hereunder, and Purchaser shall deliver to the Sellers the Purchase Price, as set forth in Section 2.1 below, and the other documents referred to herein.

1.3 **Closing Date.** The sale, transfer and delivery of the Membership Interests pursuant to the terms of this Agreement and the delivery of the Purchase Price (as hereinafter defined) shall take place as soon as practicable, but no later than June 10, 2004, at the offices of Nelson Mullins Riley & Scarborough, L.L.P., 151 Meeting Street, Suite 600, Charleston, South Carolina 29401 (the "Closing"). The date on which the Closing occurs is referred to herein as the "Closing Date."

SECTION 2. PURCHASE PRICE AND EXPENSES.

2.1 **Purchase Price.** In full payment and consideration for the Membership Interests, Purchaser hereby agrees as follows:

Purchaser covenants to execute the Commercial Lease by and between Lowcountry Capital, LLC and RedWing, LLC, dated simultaneously herewith ("Commercial Lease"). Under the Commercial Lease the Company covenants to pay as rental to Lowcountry Capital, LLC for the Premises (as defined in the Commercial Lease) the annual sum of One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and 00/100 (\$10,000.00). The Rent shall be paid for the Term of the Commercial Lease (as defined in the Commercial Lease). The Rent increases on the first anniversary of the Closing Date and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Purchaser pays Sellers the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Term of the Commercial Lease, the Rent shall decrease by Five Thousand Dollars (\$5,000.00) per month.

2.2 Costs and Expenses. The Purchaser and Sellers agree to split equally the attorneys' fees, costs and expenses incurred by the parties hereto in connection with this Agreement.

SECTION 3. BUY-OUT-PROVISION.

In the event that Coen, Shem Creek Holdings, or any of their affiliates or assigns have the opportunity to construct a major redevelopment project in the area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek, and notwithstanding anything else in this Agreement to the contrary, Coen, Shem Creek Holdings, or any of their affiliates or assigns have the right to purchase one hundred percent (100%) of the assets of the Company, including, but not limited to, those assets associated with Red's Ice House and Slightly Up the Creek, by a written offer to the Company. From the Closing Date going forward the purchase price shall be the greater of the Aggregate Debt (defined below) of the Company or two times GAAP net income for the prior twelve (12) months. Aggregate Debt includes all notes, mortgages and normal operating debts of the Company to unrelated third parties, accrued in the ordinary course of business, and to be substantiated upon buy-out.

The parties agree to close any buy-out within thirty (30) days after determination of a purchase price. Time is of the essence. This provision shall be superior to any other article of this Agreement.

SECTION 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLERS.

Each Seller, with respect only to its respective Membership Interests, hereby represents, warrants and covenants to Purchaser that the following statements are accurate and complete as of the date hereof and acknowledge and confirm that Purchaser is relying upon such representations, warranties and covenants in connection with the execution, delivery and performance of this Agreement.

4.1 Membership Interests. Each Seller has good and marketable title to its Membership Interests, and the right to sell, transfer and deliver its respective Membership Interests to Purchaser, free and clear of all liens, encumbrances, claims, security interests, pledges, agreements and rights of third parties, and upon delivery of each Seller's Membership Interests to Purchaser, Purchaser will hold good and marketable title to the Membership Interests free and clear of all liens, encumbrances, claims, security interests, pledges, agreements and rights of third parties whatsoever. To the best of each Seller's knowledge, the respective Seller's Membership Interests have been legally and validly issued and are fully paid and nonassessable. There are no outstanding rights, warrants, calls, commitments or agreements to which such Seller is a party or by which such Seller is bound which relate to the Membership Interests.

4.2 Binding Effect. This Agreement and each of the agreements and instruments contemplated hereby has been duly and validly executed and delivered by each Seller and constitutes the legal, valid and binding obligations of such Seller, enforceable in accordance with its terms.

4.3 Consents. There are no persons whose consent is necessary for the Sellers to consummate the transaction contemplated by this Agreement. Each party hereto agrees to cooperate with each other party to obtain the consents, approvals and authorizations of third parties and governmental authorities that any such party reasonably determines to be necessary to consummate the transaction contemplated by this Agreement.

4.4 Parking Areas Adjacent to Red's Ice House and Church Street. Lowcountry Capital, LLC, Coen, or either of their affiliates will be responsible for reconfiguring the parking area immediately adjacent to the backdoor of Red's Ice House in a manner that will provide access to the back door and dumpster of Red's Ice House. In addition Lowcountry Capital, LLC, Coen, or one of their affiliates will provide the Company with thirty parking spaces in an area adjacent to Church Street ("Thirty Parking Spaces"). The Thirty Parking Spaces are identified on a site plan attached hereto as Exhibit B. Section 5.9 provides the Company's responsibilities regarding the Thirty Parking Spaces.

SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF PURCHASER.

Purchaser hereby represents, warrants and covenants to the Sellers as follows, and acknowledges and confirms that the Sellers are relying upon such representations, warranties and covenants in connection with the execution, delivery and performance of this Agreement.

5.1 Authorizations and Binding Effect. This Agreement, including the Exhibits hereto, has been duly and validly authorized, executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms. All other requirements for the execution and delivery of this Agreement, and for the consummation of the transactions contemplated hereby, have been duly taken by Purchaser.

5.2 Consents. There are no persons whose consent is necessary for the Purchaser to consummate the transactions contemplated by this Agreement. Each party hereto agrees to cooperate with each other party to obtain the consents, approvals and authorizations of third parties and governmental authorities that any such party reasonably determines to be necessary to consummate the transactions contemplated by this Agreement.

5.3 Termination of Right of First Refusal. The Company's first right of refusal on all food and beverage opportunities which Richard H. Coen, or affiliates of Richard H. Coen, shall develop in the Shem Creek Area (as defined in Section 18 of the Operating Agreement), which right of first refusal was initially granted in Section 18 of the Operating

Agreement, has been terminated. Coen and/or his affiliates shall retain all right, title, and privilege to any and all food and beverage opportunities, either produced or procured, in the Shem Creek Area.

5.4 Commercial Lease with Lowcountry Capital, LLC. That certain Commercial Lease between Lowcountry Capital, LLC, a South Carolina limited liability company, and RedWing, LLC, a South Carolina limited liability company, effective October 1, 2003 ("the Lease"), shall be terminated. The Company and Lowcountry Capital shall execute simultaneously herewith a new Commercial Lease ("New Lease"), which New Lease shall replace the Lease and shall specify the rights, privileges and responsibilities of the Company and Lowcountry Capital, LLC from the Closing Date going forward.

5.5 Rent Payments to Lowcountry Capital, LLC have been brought current. By the Closing Date, all debts, payables, and liabilities, excepting Rent, owed by the Company to Lowcountry Capital, LLC, Coen, or any affiliate of either shall have been brought current to a balance due of zero dollars (\$0.00). By September 1, 2004, the accrued Rent owed by the Company to Lowcountry Capital, LLC in the amount of Thirty-thousand and no/100 Dollars (\$30,000.00) shall have been brought current to a balance due of zero dollars (\$0.00). Non-payment of such accrued Rent by September 1, 2004 shall result in termination of the New Lease between Lowcountry Capital LLC and the Company, dated simultaneously herewith.

5.6 Coen Debts Forgiven. Any and all debts, payables, liabilities, or other amounts alleged to be owed by Coen, Lowcountry Capital, LLC, or any affiliate of either to the Company, as depicted in Exhibit C, shall be forgiven. On the Closing Date, Coen, Lowcountry Capital, LLC, or any affiliate of either shall be deemed to have no outstanding debt, payable, liability, or amount owed to the Company or Purchaser. Purchaser acknowledges that Seller retains all right, title, and privilege to the Shem Creek Museum.

5.7 Costs Associated with Red's Ice House. From and after the Closing Date, the Company shall be solely responsible for paying any and all costs, fees, and taxes associated with Red's Ice House, including but not limited to all personal property, real property, payroll, and other ad valorem taxes and special assessments lawfully charged or assessed against Red's Ice House; licenses, fees, permits, franchise and other lawful taxes and fees charged or assessed against or on account of the operation of Red's Ice House, insurance premiums, costs for repairs, costs for maintenance, solid waste management fees, and all costs for water, sewer, electricity, gas, telephone, and other utilities used at Red's Ice House. From and after the Closing Date, Shem Creek Holdings, Coen, Lowcountry Capital, LLC, or either of their affiliates shall in no way be obligated, responsible, or liable for any costs, taxes, assessments, or fees associated with Red's Ice House.

5.8 Police Red's Ice House Parking Areas. From and after the Closing Date, the Company shall be responsible for policing the Red's Ice House parking areas, which consist of the parking area immediately adjacent to Red's Ice House and the Thirty Parking Spaces adjacent to Church Street, and will use its best efforts to prevent its customers,

employees, and vendors from parking in any parking area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek that is not designated for use by Red's Ice House.

5.9 Costs Associated with Thirty Parking Spaces Adjacent to Church Street. From and after the Closing Date, the Company shall be solely responsible for paying any and all costs and fees associated with the Thirty Parking Spaces adjacent to Church Street, including but not limited to the pro rata share of the property taxes, insurance premiums, costs for repairs, and costs for maintenance. Coco, Lowcountry Capital, LLC, or either of their affiliates shall in no way be obligated or responsible for any costs associated with the Thirty Parking Spaces adjacent to Church Street.

5.10 Dock at Red's Ice House. Lowcountry Capital, LLC retains all right, title, and privileges to the floating dock space located adjacent to Red's Ice House on Shem Creek ("Dock Space"). Such Dock Space is identified on Exhibit B. In its sole discretion, Lowcountry Capital, LLC may lease any portion of such Dock Space to any vessel. Lowcountry Capital, LLC shall retain all rents derived from such leasing of Dock Space. The Company shall have the right to use forty (40) linear feet of Dock Space as identified on Exhibit B.

In no event shall the Company utilize or permit to be utilized any portion of the dock that is located adjacent to The Trawler on Shem Creek. The Company shall use its best efforts to prevent customers of Red's Ice House from docking their vessels in the floating dock space located adjacent to The Trawler.

SECTION 6. TERMINATION OF RIGHTS AND OBLIGATIONS; RELEASE OF LIABILITY.

6.1 Termination of Rights and Obligations. Purchaser and the Sellers hereby acknowledge the termination of all of the respective rights, interests and obligations of each Seller as a Member of the Company, or otherwise under the Operating Agreement, effective upon the Closing Date.

6.2 General Release of the Sellers. Upon consummation of the transactions contemplated herein, Purchaser, for herself and her heirs, successors, agents, representatives, assigns and attorneys, does hereby remise, release and forever discharge the Sellers and the Sellers' assigns, employees, agents, representatives, and attorneys, (collectively hereinafter referred to as the "Sellers' Releasees") from any and all claims, actions, promises, causes of action, suits, debts, demands, or obligations of any kind or nature in law or in equity which Purchaser ever had, has claimed to have, now has, or may hereafter have or claim to have against any one or more of the Sellers' Releasees from the beginning of time to the undersigned date including, but not limited to, any and all claims, actions, promises, causes of action, suits, debts, demands, or obligations of any kind or nature in law or equity that could have been asserted by Purchaser in a lawsuit or which relate in any manner to Sellers'

relationship with the Company and Purchaser and the Sellers' Releasees or any other matter between Purchaser and the Sellers; provided, however, that Purchaser does not waive or release any rights or obligations created by this Agreement.

SECTION 7. PURCHASER BOUND.

The Purchaser hereby agrees to assume all the respective duties and obligations of the Sellers under the Operating Agreement and to be bound by and subject to all of the terms and conditions thereof.

SECTION 8. CONDITIONS TO OBLIGATIONS OF PURCHASER.

All of the obligations of Purchaser under this Agreement are subject to the fulfillment prior to or at the Closing of each of the following conditions, unless waived in writing by the Purchaser, and the Sellers shall exercise all reasonable efforts in good faith to satisfy such conditions:

8.1 Representations and Warranties. All representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects as of the date hereof, and such representations and warranties shall be true and correct in all material respects as of the Closing (as if made at and as of such time).

8.2 Performance of Agreements. Sellers shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

8.3 Magwood Lease. Simultaneously with the execution of this Agreement, Coenco, LLC, Coen, or any of their affiliates shall have delivered to the Company a Sublease for the property known as Slightly Up the Creek, being the same property that was included in the Lease Agreement between Robert E. Magwood, as Landlord, and Up The Creek, Inc. d/b/a L'Attitude South, as Tenant, dated March 30, 1995 ("Magwood Lease"), which Magwood Lease was assigned to Coenco, LLC by the Assignment of Lease by Tenant, entered into May 15, 2003 between Up The Creek, Inc. d/b/a L'Attitude South, as Assignor, and Coenco, LLC as Assignee. In addition within thirty (30) days of the Closing Date, Coenco, LLC, shall remove the dirt stockpiled in the parking lot associated with Slightly Up the Creek and shall grade and place gravel on the parking lot.

SECTION 9. CONDITIONS TO OBLIGATIONS OF SELLERS.

All of the obligations of the Sellers under this Agreement are subject to the fulfillment prior to or at the Closing of each of the following conditions, unless waived in writing by the Sellers, and the Purchaser shall exercise all reasonable efforts in good faith to satisfy such conditions:

9.1 Representations and Warranties. All representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date hereof, and such representations and warranties shall be true and correct in all material respects as of the Closing (as if made at and as of such time).

9.2 Performance of Agreements. Purchaser shall have fully performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by her prior to or at the Closing.

9.3 Material Adverse Change. There shall have been no material adverse change in the business, operations, equity, earnings, prospects or financial condition of the Company from the date of the most recent financial statements delivered to the members.

9.4 Financing. Purchaser shall have obtained the financing necessary to consummate the transactions contemplated hereby.

SECTION 10. INDEMNIFICATION.

10.1 Definition of Damages. As used in this Agreement, "Damages" shall mean all assessments, levies, loss, fines, penalties, liabilities, damages, costs and expenses, including reasonable attorneys' fees and expenses.

10.2 Purchasers Indemnification Obligations. Purchaser shall indemnify, save and keep harmless Sellers, and their affiliates against and from all Damages sustained or incurred by them as a result of or arising out of or by virtue of:

(a) any inaccuracy in or breach of any representation and warranty made by Purchaser to Sellers herein or in any closing document delivered to Sellers in connection herewith; or

(b) the breach by Purchaser of or the failure of the Purchaser to comply with, any of the covenants or obligations to be performed by the Purchaser under this Agreement.

(c) any Damages arising out of the relationship, prior dealings, or agreements between Sellers and Purchaser, Red's Ice House, or RedWing, LLC.

10.3 No Time Limitation on Certain Indemnification Obligations. Claims for indemnification made under Section 10.2 of this Agreement may be made indefinitely from the Closing Date.

SECTION 11. DEFINITIONS.

Unless defined in this Agreement, all capitalized terms shall have the meaning ascribed to them in the Operating Agreement or Management Agreement by and between RedWing, LLC and Wings Over America, Inc., dated October 3, 2003.

SECTION 12. DESCRIPTIVE HEADINGS.

The descriptive headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

SECTION 13. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

SECTION 15. GOVERNING LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without regard for its principles of conflicts of laws.

SECTION 16. NOTICES.

All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile, by nationally recognized private courier, or by United States mail. Notice shall be deemed to have been given and received when actually received or when delivery is refused. Notice given by the attorney for any party shall be as effective as if given by that party. This paragraph shall survive closing. All notices shall be addressed as follows:

If to Purchaser:

Dianne Crowley

Fax: _____

If to Coen:

Richard H. Coen
100 Haddrell Street
Mount Pleasant, SC 29464
Fax: 843.856.9182

With a copy to:

John B. Hagerty, Esq.
Nelson Mullins Riley and Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, SC 29461
Fax: 843.534.4356

If to Sherm Creek Holdings:

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704.342.0926

With a copy to:

Benjamin F. Sidbury Esq.
Alston & Bird, LLP
Bank Of America Plaza
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
Fax: (704) 444-1111

SECTION 17. WAIVERS AND AMENDMENTS.

Any term or provision of this Agreement may be amended or supplemented at any time by the mutual consent of the Members, except that any waiver of any term or condition, or any amendment or supplementation, of this Agreement must be in writing. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

SECTION 18. ENTIRE AGREEMENT.

This Agreement (including the Exhibits, agreements, documents and instruments referred to herein) constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them with respect to the subject matter hereof.

SECTION 19. SEVERABILITY.

In the event that any one or more of the provisions contained in this Agreement shall be declared invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

(the remainder of this page has been left blank intentionally.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

PURCHASER:
Dianne Crowley

Dianne Crowley

SELLER:
Richard H. Coen

Richard H. Coen

SELLER:
SHEM CREEK HOLDINGS, LLC

By: *David Sidbury*
David Sidbury, its Co-manager

By: *Debra Sidbury*
Debra Sidbury, its Co-manager

EXHIBIT A

1. All of Richard H. Coen's right, title and interest in and to all of his Membership Interests in RedWing, LLC, which represents twenty-five percent (25%) of the outstanding Membership Interests of RedWing, LLC.
2. All of Shern Creek Holdings' right, title and interest in and to all of its Membership Interests in RedWing, LLC, which represents twenty-five percent (25%) of the outstanding Membership Interests of RedWing, LLC.

#173646 v1 - Revised purchase and sale agreement

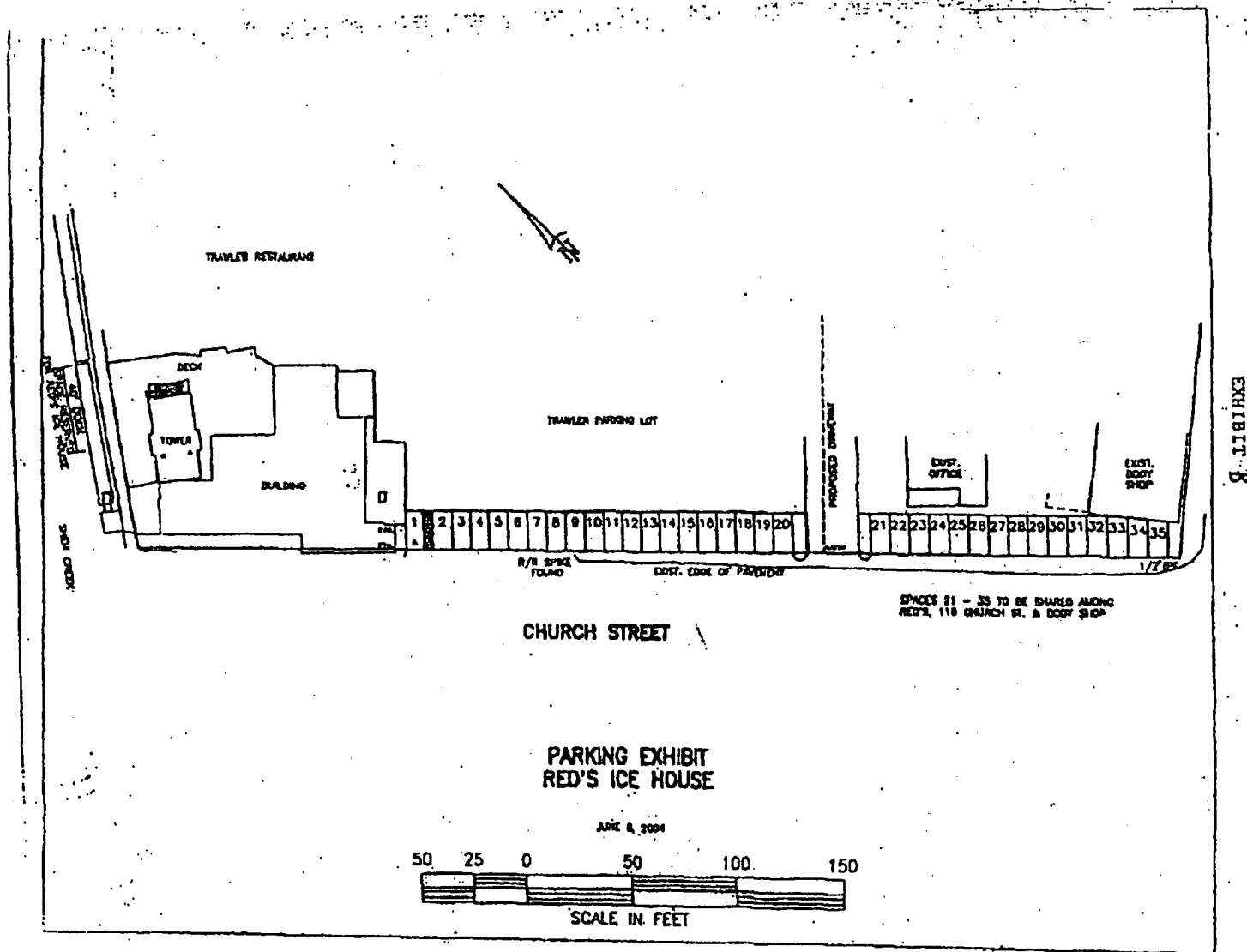


Exhibit C

3:48 AM
06/10/04
Accrual Basis

Red Wing, LLC
Transactions by Account
As of June 10, 2004

Type	Date	Num	Memo	Amount	Balance
2610 - Coen Capital Account					0.00
General Journal	10/31/2003		Tips to pay e...	-199.00	-199.00
General Journal	11/26/2003	112803	Coen contrib...	7,644.49	7,645.49
General Journal	11/30/2003		Tips to pay on	-91.36	7,554.11
General Journal	12/2/2003	120203	Coen contrib...	10,000.00	17,554.11
General Journal	12/12/2003	121203		10,000.00	27,554.11
General Journal	1/22/2004			-1,240.78	26,313.33
Total 2610 - Coen Capital Account				26,313.33	26,313.33
2820 - Crowley Capital Account					0.00
General Journal	11/13/2003	111303		10,000.00	10,000.00
General Journal	11/19/2003	111903		5,000.00	15,000.00
General Journal	12/5/2003	120503		10,000.00	25,000.00
General Journal	12/15/2003	121503		20,000.00	45,000.00
Total 2820 - Crowley Capital Account				45,000.00	45,000.00
TOTAL				71,313.33	71,313.33

Exhibit C

9:48 AM
06/10/04
Accrual Basis

Red Wing, LLC Transactions by Account As of June 10, 2004

Type	Date	Num	Name	Memo	Amount	Balance
1150 - Due from Coen						0.00
Bill	8/3/2003	6183	Blue Moon Graphics		3,895.05	3,895.05
Bill	9/5/2003	9199	B & C Hospitality S...	thermal paper	84.80	3,979.85
General Journal	10/3/2003	100303	AMEX	A	561.17	4,541.02
General Journal	10/3/2003	100303	Discover	D	84.80	4,625.82
General Journal	10/3/2003	100303	VISA	V	5,823.87	10,249.29
General Journal	10/3/2003				-9,105.00	1,144.29
General Journal	10/4/2003	100403	AMEX	A	873.53	2,017.82
General Journal	10/4/2003	100403	VISA	V	6,620.07	8,637.89
General Journal	10/5/2003	100503	AMEX	A	508.75	9,346.64
General Journal	10/5/2003	100503	VISA	V	2,558.70	11,805.34
General Journal	10/6/2003	100603	AMEX	A	243.23	12,168.57
General Journal	10/6/2003	100603	VISA	V	1,342.20	13,510.77
General Journal	10/6/2003	100603	Discover	D	88.05	13,578.82
General Journal	10/7/2003	100703	AMEX	A	224.83	13,803.65
General Journal	10/7/2003	100703	VISA	V	1,278.24	15,079.89
General Journal	10/7/2003	100703	Discover	D	34.00	15,113.89
General Journal	10/8/2003	100803	Coen	A	293.33	15,407.22
General Journal	10/8/2003	100803	Coen	D	19.25	15,426.47
General Journal	10/8/2003	100903	Coen	A	375.65	15,802.12
General Journal	10/9/2003	100903	Coen	D	163.10	15,965.22
General Journal	10/10/2003	101003	Coen	A	1,036.08	17,001.30
General Journal	10/10/2003	101003	Coen	D	47.65	17,048.95
General Journal	10/10/2003	101003	Coen	extra charge ...	-30.00	17,018.95
General Journal	10/11/2003	101103	Coen	A	552.82	17,571.57
General Journal	10/11/2003	101103	Coen	D	18.00	17,587.57
General Journal	10/12/2003	101203	Coen	A	648.77	18,236.34
General Journal	10/12/2003	101203	Coen	D	277.00	18,513.34
General Journal	10/13/2003	101303	Coen	A	74.40	18,587.74
General Journal	10/14/2003	101403		Adjust to actual	-4,000.00	14,587.74
General Journal	10/14/2003	101403	Coen	A	188.00	14,775.74
General Journal	10/14/2003	101403	Coen	D	18.43	14,792.17
General Journal	10/15/2003	101503	Coen	A	496.70	15,288.87
General Journal	10/15/2003	101503	Ben Arnold- Sunbelt...		-14,044.64	1,244.23
General Journal	10/15/2003			Return of Ca...	-4,000.00	-2,755.77
General Journal	10/16/2003	101603	Coen	A	-300.00	-3,055.77
General Journal	10/16/2003	101603	Coen		613.83	-2,442.14
General Journal	10/16/2003	101603	Coen	Dawn & FICA	1,449.14	-993.00
General Journal	10/19/2003	101803		Harry's Funer...	-308.00	-1,301.00
General Journal	10/18/2003	101803		Buster's Adv...	-50.00	-1,351.00
General Journal	10/17/2003	101703	Coen	A	2,654.35	1,303.35
General Journal	10/18/2003	101803	Coen	A	899.47	2,202.82
General Journal	10/19/2003	101903	Coen	A	495.85	2,698.47
General Journal	10/20/2003	102003	Coen	A	164.16	2,862.63
General Journal	10/21/2003	102103	Coen	A	323.86	3,186.49
General Journal	10/22/2003	102203	Coen	A	577.58	3,764.07
General Journal	10/23/2003	102303	Coen	A	938.24	4,700.31
General Journal	10/24/2003	102403	Coen	A	564.00	5,264.31
General Journal	10/27/2003	102703		Coen contrib...	-10,000.00	-4,735.69
General Journal	10/30/2003	103003	Coen	Dawn & FICA	1,449.14	-3,286.55
General Journal	11/7/2003	110703	OBCO Chemical C...		3,715.02	428.47
General Journal	11/12/2003	111203	Saffron Bakery		44.98	473.45
General Journal	11/13/2003	111303	Coen	Dawn & FICA	1,449.14	1,922.99
General Journal	11/17/2003	111703	Coen	Portion of Re...	3,713.28	7,635.87
General Journal	11/27/2003	112703	Coen	Dawn & FICA	1,449.14	9,085.01
General Journal	11/28/2003	112803		Coen contrib...	-12,155.51	-3,070.50
General Journal	11/30/2003	113003	Snyder Party Rental		29.30	-3,041.20
General Journal	11/30/2003	113003	Crosby's Seafood	Invoice J065...	283.50	-2,757.70
General Journal	12/11/2003		Coen	Dawn & FICA	1,449.14	-1,308.56
Bill	12/17/2003	6857	Blue Moon Graphics		1,110.00	-198.56
General Journal	12/25/2003	122503	Coen	Dawn & FICA	1,449.14	1,250.56
Bill	12/30/2003	517-1...	Charleston County		3,720.00	4,970.56
General Journal	12/31/2003	123103	Blue Moon Graphics		-1,110.00	3,860.56
General Journal	1/8/2004	010804	Coen	Dawn & FICA	1,449.14	5,309.72
General Journal	1/23/2004	012204	Coen	Dawn & FICA	1,449.14	6,758.86
General Journal	1/22/2004				-1,240.78	5,518.08
General Journal	2/5/2004		Coen	Dawn & FICA	1,449.14	6,967.22
Bill	2/11/2004	acc n...	SC Employment Se...	Reds Ice Hou...	37.72	7,004.94

Page 1

9:48 AM
06/10/04
Accrual Basis

Red Wing, LLC
Transactions by Account
As of June 10, 2004

Type	Date	Num	Name	Memo	Amount	Balance
General Journal	2/12/2004	021204		Harry Fund	-133.00	6,671.94
General Journal	3/17/2004	031704		bestel supplies	81.59	6,953.53
Total 1150 - Due from Coen					6,953.53	6,953.53
TOTAL					6,953.53	6,953.53

Exhibit B

COEN CAPITAL LLC

April 26, 2006

Dianne Crowley
RedWing, LLC
202 Coleman Blvd
Mount Pleasant, SC

RE: Red's Ice House

Dear Dianne:

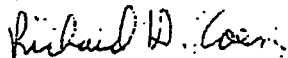
Lowcountry Capital, LLC is planning a complete redevelopment of the property bounded by Coleman Boulevard, Church Street, Mill Street and Shem Creek. Section 3 of the Membership Interests Purchase and Sale Agreement dated June 10, 2004 provides the right to purchase Red's Ice House in the event of such redevelopment. The purchase price is defined as the greater of the Aggregate Debt or two times GAAP net income for the prior 12 months.

Please provide the Aggregate Debt as well as the GAAP net income for the prior 12 months for the period ended March 31, 2006. Also, please provide financial statements and other documentation to substantiate those amounts. We will use this information only to determine the feasibility of purchasing Red's Ice House as part of the redevelopment.

We agree to keep all information confidential and use it only for the purposes stated above.

Thank you for your prompt cooperation with this request and please contact Jim Grant if you have any questions.

Sincerely,



Richard H. Coen
Manager, Lowcountry Capital, LLC

P.O. 20100, CHARLESTON, S.C. 29413 100 CHURCH STREET, MT. PLEASANT, SC 29464
843-856-9938 OFFICE 843-856-9182 FAX

Exhibit C



September 7, 2006

Three Wachovia Center
Suite 3000
401 South Tryon Street
Charlotte, NC 28202-1935
Telephone 704.372.9000
Fax 704.334.4706
www.parkerpoe.com

VIA HAND DELIVERY AND FEDEX

Ms. Dianne Crowley
RedWing, LLC
98 Church Street
Charleston, South Carolina 29464

RE: Buy Out Provision (the "Buy Out Provision") under that certain Membership Interest Purchase and Sale Agreement ("Agreement") dated June 10, 2004 by and among Richard H. Coen, Shem Creek Holdings, LLC, and Dianne Crowley

Dear Ms. Crowley:

As you know, Richard Coen has retained our firm to enforce his rights under the above referenced Agreement. By letter of August 8, 2006, we notified you of Mr. Coen's intent to purchase, pursuant to the Buy Out Provision, all assets associated with Red's Ice House and Slightly Up the Creek, including (i) the subleasehold interest of RedWing, LLC (the "Company") in the property at 98 Church Street (Red's Ice House), (ii) the lease at 130 Mill Street (i.e., the Cottage lease), (iii) the lease providing Red's Ice House access to parking spots at 130 Mill Street, and (iv) all other real and personal property owned by RedWing, LLC or otherwise associated with Red's Ice House and Slightly Up the Creek (collectively, the "Assets").

Mr. Coen is under no obligation to proceed with the purchase of the Assets. Based on the materials that you have provided to date, Mr. Coen has calculated the purchase price per the Buy Out Provision for the Assets as set forth on Exhibit A, attached hereto, and he is prepared to consummate the purchase of the Assets on these terms within 30 days. Notwithstanding the purchase price set forth on Exhibit A, (a) the purchase price will be decreased for the decrease in the book value of each Asset on Exhibit A as of date of purchase when compared to its book value on June 30, 2006, (b) such decrease will be calculated on each Asset individually and not netted against any increase in the book value of any other Asset, and (c) there will be no adjustment for any increase in the book value of any Asset. In furtherance of this objective, Mr. Coen will provide closing documents for your review next week.

In order to document the terms of the buyout, you and Mr. Coen must execute a purchase agreement. However, if you have not signified your agreement to sell the Assets pursuant to the terms outlined in this letter agreement and on Exhibit A and provided the requested financial information prior to 5:00 p.m. on September 11, 2006, Mr. Coen intends to immediately pursue all legal remedies available to him, including filing a lawsuit against you and your affiliates seeking (i) the equitable remedy of specific performance compelling the sale of the Assets on the

RWDC 00345

00548

Ms. Dianne Crowley
September 7, 2006
Page 2

terms set forth herein and on Exhibit A and (ii) compensation for damages in excess of \$19,000,000 resulting from your conduct during this process which is impeding Mr. Coen's planned development.

Nothing contained herein shall waive any rights or remedies that Mr. Coen has under the Agreement. If you are in the process of attempting to sell any portion of the Assets or the 130 Mill Street property, you are required to disclose the existence of the Agreement (including the Buy Out Provision), Mr. Coen's intention to purchase the Assets, and the fact that the 130 Mill Street property is encumbered by the Red's parking rights which Mr. Coen intends to purchase.

If you are in agreement with the terms set forth herein and on Exhibit A, please sign below and return this counter-signed letter agreement to my attention. We look forward to receiving your prompt response prior to Monday at 5:00 p.m.

Sincerely,



Matthew J. Norton, Esq.

cc: Richard H. Coen (via e-mail)
Jim Grant (via e-mail)
Gedney M. Howe, III (via e-mail)

The undersigned hereby (i) represent that they are duly authorized to sign this letter agreement, (ii) agree to the sale of the Assets to Mr. Coen or one of his affiliates pursuant to the terms set forth in this letter agreement and on Exhibit A attached hereto, and (iii) agree to consummate the sale of the Assets to Mr. Coen or one of his affiliates on or before October 6, 2006.

Dianne Crowley

REDWING, LLC

By: _____
Name:
Title:

RWDC 00346

00549

Appendix 129

Exhibit A

Terms of Asset Purchase

Purchase Price per Section 3 of the Purchase and Sale Agreement dated June 10, 2004.

Based on June 30, 2008 Information provided by Red Wing, LLC

	<u>Book Value</u>	
Aggregate Debt		
NBSC line of credit	174,159	
NBSC #1	873,783	
NBSC #3	452,697	
Accounts payable	72,213	
Sales tax payable	42,299	
Payroll withholding	11,054	
Accrued property taxes & fees	23,879	
Accrued payroll	-	Not enough information to determine The information provided includes unearned bonuses (3rd quarter) and related party amounts (which are not included in "Aggregate Debt").
Total Purchase Price	<u>1,450,084</u>	
Purchased Assets: (book value)		
Cash	48,633	
Inventory	49,338	
Prepays	25,582	
Advances	342,525	
FF&E (net)	1,158,288	
Other Assets	9,660	
Lease between Red's and 130 Mill Street property for parking rights	0	
	<u>1,632,006</u>	

Additional Information Requested:

Detail ledger for Sales Tax accrual for June 2008

Detail ledger for Accrued Expenses for June 2008

Sales tax returns for 6/30/2008

Detail payroll journal for June 2008

Copy of lease agreement with the property at 130 Mill Street

Copy of compensation agreements with managers and supporting calculations for accrued bonuses.

RWDC 00347

00550

Appendix 130

Exhibit D



THE LANDING

14 March 2007

VIA HAND DELIVERY AND CERTIFIED MAIL

Mrs. Dianne Crowley
RedWing, LLC
202 Coleman Blvd.
Mount Pleasant, SC 29464

Re: Notice of Intention to Purchase 100% Assets of RedWing, LLC

Dear Dianne:

I am writing to you to reiterate my continuing intention to purchase of 100% of the assets of RedWing, LLC ("Red's") pursuant to Section 3 of the Membership Interests Purchase and Sale Agreement dated June 10, 2004 ("Agreement").

I initially communicated this intention to you on April 26, 2006 and restated it to you in a letter from my attorneys on September 7, 2006. However, since that time, you have declined to proceed with the sale on terms that are consistent with the agreed-upon formula set forth in the Agreement. Your refusal led to the filing of litigation on September 19, 2006. In the time that has passed since the lawsuit was filed, as before, you have refused to comply with your obligations under the Agreement.

This matter is of specific urgency at this time, as I am in receipt of a letter of intent from RJS Properties, LLC ("RJS") to purchase the leasehold interest in the underlying property, including the shopping center and the sites of McClary's Body Shop, the Trawler, and Red's. RJS, as our assignee, is going to pursue the construction of a hotel on the site, which constitutes a major redevelopment project. It is a specific requirement of the buyer that the asset purchase of Red's be completed prior to the acquisition of the leasehold, such that your immediate compliance with the Agreement is necessary.

Although litigation is already pending between us, you have a continuing obligation to adhere to your obligations under the Agreement. I wanted to communicate directly with you so that you will be fully aware that, if you continue to refuse to sell the assets of Red's in accordance with the Agreement, you will cause me to forfeit the opportunity to sell the leasehold interest to RJS. I probably do not need to tell you that your liability will be significant if that were to occur. I do feel obligated to state that the damages caused will far exceed the temporary financial benefit that you might be receiving by delaying the inevitable sale of the assets and continuing to operate Red's. I say

P.O. Box 20100, Charleston, SC 29413 • 100 Church Street, Mt. Pleasant, SC 29464
Toll free 1.877.219.3888 • www.DIVINTHELANDING.com

00151

"temporary" because those amounts are also recoverable as damages in that the ownership of the assets of Red's should have already been transferred.

Please contact me immediately to confirm that you will proceed with the sale of the assets of Red's in accordance with the Agreement. We will close the sale within 30 days.

This letter is not a settlement offer. It is an additional notice of intention to purchase the assets of Red's relating to a separate major redevelopment project. Your failure to uphold your obligations at this particular time will cause an additional breach of contract beyond those that have already occurred.

Thank you for your time. I look forward to hearing from you immediately.

Sincerely,

Richard H. Coen
Richard H. Coen

00152

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2006-CP-10-3670

RICHARD H. COEN AND LOWCOUNTRY
CAPITAL, LLC,

Plaintiffs,

v.

DIANNE CROWLEY AND REDWING, LLC,

Defendants.

CERTIFICATE OF SERVICE

FILED

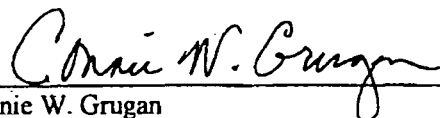
JAN 22 2008

~~FILED~~
~~CLERK OF COURT~~

I, Connie W. Grugan, secretary to the law firm of Lewis & Babcock, L.L.P., hereby certify that I have served the **Amended Complaint** upon opposing counsel, by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said opposing counsel at the following addresses:

Andrew K. Epting, Jr., Esquire
Andrew K. Epting, LLC
3 State Street
Charleston, South Carolina 29401

John Linton, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, South Carolina 29401



Connie W. Grugan

This 17th day of January, 2008.

LAW OFFICES
LEWIS & BABCOCK, L.L.P.
POST OFFICE BOX 11208
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: 803 / 771-8000
FAX: 803 / 733-3534
INTERNET: KMB@LEWISBABCOCK.COM

A. CAMDEN LEWIS
KEITH M. BABCOCK
MARY G. LEWIS
ARLAIL E. KING
PETER D. PROTOPAPAS
BRADY R. THOMAS
W. JONATHAN HARLING

STREET ADDRESS:
1513 HAMPTON STREET
COLUMBIA, SOUTH CAROLINA 29201

January 17, 2008

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, South Carolina 29401

Re: Richard H. Coen and LowCountry Capital, LLC v. Dianne Crowley and Redwing,
LLC, Civil Action No. 2006-CP-10-3670, Our File No. 07-161

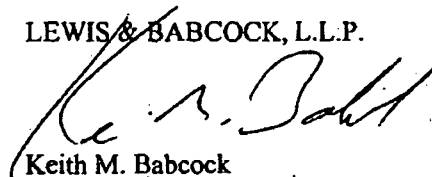
Dear Ms. Armstrong:

Enclosed please find an Amended Complaint in regard to the above-referenced matter for filing with your office. By copy of this letter, we are hereby serving same upon opposing counsel.

With best regards, I am

Very truly yours,

LEWIS & BABCOCK, L.L.P.



Keith M. Babcock

KMB:cg
Enclosure

cc: Andrew K. Epting, Jr., Esquire
John Linton, Esquire
Ellis R. Lesemann, Esquire
Michael E. Spears, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
DC & SONS, LLC,)
Plaintiff,)
vs.)
RICHARD H. COEN, LOWCOUNTRY)
CAPITAL, OCEAN 1 REALTY, JAMES R.)
MAULL, JR., LARRY MCNAIR, COENCO,)
LLC & PAVILION DEVELOPMENT CORP.)
Defendants,)

IN THE NINTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

Case No. 2008-CP-10-4675

**SECOND AMENDED ANSWER
AND COUNTERCLAIMS
OF DEFENDANTS
RICHARD H. COEN, LOWCOUNTRY
CAPITAL, LLC AND COENCO, LLC
TO COMPLAINTS OF
PLAINTIFF DC & SONS, LLC
AND
PAVILION DEVELOPMENT CORP.¹
(JURY TRIAL DEMANDED)**

(AS CONSOLIDATED WITH)

PAVILION DEVELOPMENT)
CORPORATION,)
Plaintiff,)
vs.)
DC & SONS, LLC, RICHARD H. COEN,)
COENCO, LLC & LOWCOUNTRY)
CAPITAL, LLC,)
Defendants,)

Case No. 2007-CP-10-1457

DC & SONS, LLC,)
Third Party Plaintiff,)
vs.)
OCEAN 1 REALTY, JAMES R. MAULL,)
Third Party Defendants,)

FILED
2010 JUN 29 AM 10:26
JULIE J. ARMSTRONG
CLERK OF COURT

¹ The case filed by Pavilion Development Corporation (No. 2007-CP-10-1457) and the case filed by DC & Sons, LLC have been consolidated and are pending in the business court with Judge Roger Young. All claims that are now pending are in this lawsuit and, upon information and belief, are reflected in the Answers to the Complaints herein.

Defendants Richard H. Coen, Lowcountry Capital, LLC and Coenco, LLC, ("Defendants"), by and through their counsel, answer the Complaint of Plaintiff DC & Sons, LLC and Pavillion Development Corp. ("Plaintiffs") as follows:

FOR A FIRST DEFENSE

Any allegation in the Complaints that is not specifically admitted within this Answer is hereby specifically denied.

AS TO THE COMPLAINT OF DC & SONS, LLC

1. Defendants admit, upon information and belief, to the allegations in Paragraph 1 of the Complaint.
2. Defendants admit the allegations in Paragraph 2 of the Complaint.
3. Defendants admit the allegations in Paragraph 3 of the Complaint insofar as Coen is a principal of Lowcountry Capital.
4. Defendants admit the allegations in Paragraph 4 of the Complaint.
5. In response to the allegations in Paragraph 5 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.
6. In response to the allegations in Paragraph 6 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.
7. In response to the allegations in Paragraph 7 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.
8. Defendants admit the allegations in Paragraph 8 of the Complaint.

9. Defendants admit, upon information and belief, the allegations in Paragraph 9 of the Complaint.

10. Defendants are without sufficient knowledge or information to respond to the allegations in Paragraph 10 and therefore deny the same.

11. As the allegations in Paragraph 11 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations and therefore deny the same.

IN RESPONSE TO THE FIRST CAUSE AS TO PAVILION
(Breach of Contract Accompanied by a Fraudulent Act)

12. Responding to the allegations contained in Paragraph 12 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

13. As the allegations in Paragraph 13 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

14. Responding to the allegations in Paragraph 14 of the Complaint, Defendants admit only that Pavilion has used false excuses for not closing on the subject property. Defendants are without sufficient knowledge or information to form a binding response or denial as to the remaining allegations, but further respond that Plaintiff is not entitled to damages.

15. Defendants deny the allegations in Paragraph 15 of the Complaint.

IN RESPONSE TO THE SECOND CAUSE AS TO PAVILION
(Abuse of Process)

16. Responding to the allegations contained in Paragraph 16 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

17. As the allegations in Paragraph 17 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

18. As the allegations in Paragraph 18 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations. However, to the extent that the use of the term "defendants" in this paragraph is intended to refer to Defendants, such allegations are denied.

19. As the allegations in Paragraph 19 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

20. As the allegations in Paragraph 20 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

IN RESPONSE TO THE THIRD CAUSE AS TO RICHARD COEN,
LOWCOUNTRY and COENCO
(Tortious Interference)

21. Responding to the allegations contained in Paragraph 21 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

22. Defendants deny the allegations in Paragraph 22 of the Complaint.

23. Defendants deny the allegations in Paragraph 23 of the Complaint.

24. Defendants deny the allegations in Paragraph 24 of the Complaint.

IN RESPONSE TO THE FOURTH CAUSE AS TO RICHARD COEN,
LOWCOUNTRY and COENCO
(Fraud)

25. Responding to the allegations contained in Paragraph 25 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

26. In response to the allegations in Paragraph 26 of the Complaint, Defendants admit only that they believe a property right exists based on a Membership Interests Purchase and Sale Agreement and deny all remaining allegations.

27. Defendants deny the allegations in Paragraph 27 of the Complaint.

28. Defendants deny the allegations in Paragraph 28 of the Complaint.

IN RESPONSE TO THE FIFTH CAUSE AS TO RICHARD COEN,
LOWCOUNTRY and COENCO
(Slander of Title)

29. Responding to the allegations contained in Paragraph 29 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

30. In response to the allegations in Paragraph 30 of the Complaint, Defendants admit only that they believe a property right exists based on a Membership Interests Purchase and Sale Agreement and deny all remaining allegations.

31. Defendants deny the allegations in Paragraph 31 of the Complaint.

32. Defendants deny the allegations in Paragraph 32 of the Complaint.

IN RESPONSE TO THE SIXTH CAUSE AS TO OCEAN 1 REALTY
& JAMES R. MAULL, JR.

33. Responding to the allegations contained in Paragraph 33 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

34. As the allegations in Paragraph 34 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

35. As the allegations in Paragraph 35 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

36. As the allegations in Paragraph 36 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

37. As the allegations in Paragraph 37 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

38. Defendants deny the allegations in Paragraph 38 of the Complaint.

IN RESPONSE TO THE SEVENTH CAUSE OF ACTION AS TO OCEAN 1 REALTY
& JAMES R. MAULL, JR.
(Tortious Interference)

39. Responding to the allegations contained in Paragraph 39 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

40. As the allegations in Paragraph 40 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

41. Defendants deny the allegations in Paragraph 41 of the Complaint.

**IN RESPONSE TO THE EIGHTH CAUSE OF ACTION AS TO OCEAN 1 REALTY
& JAMES R. MAULL, JR.
(Aiding and Abetting Pavilion's Conduct)**

42. Responding to the allegations contained in Paragraph 42 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

43. As the allegations in Paragraph 43 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

44. As the allegations in Paragraph 44 of the Complaint are directed at other parties, Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations.

AS TO THE COMPLAINT OF PAVILION DEVELOPMENT CORP.

1. Responding to Paragraph 1 and 2 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.

2. Defendants admit the allegations in Paragraph 3 and 4 of the Complaint.

3. Upon information and belief, Defendants admit the allegations in Paragraph 5, 6 and 7 of the Complaint.

4. Responding to Paragraph 8 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.

5. Defendants admit the allegations in Paragraph 9, 10 and 11 of the Complaint.

IN RESPONSE TO THE FIRST CAUSE OF ACTION
(Specific Performance)

6. Responding to the allegations contained in Paragraph 12 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

7. Responding to Paragraph 13, 14, 15, 16, 17, 18 and 19 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.

8. Upon information and belief, the allegations of Paragraph 20 of the Complaint do not apply to these Defendants so no response is required. To the extent that any such response may be required, these Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.

IN RESPONSE TO THE SECOND CAUSE OF ACTION
(Declaratory Judgment)

9. Responding to the allegations contained in Paragraph 21 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

10. Responding to the allegations in Paragraph 22 of the Complaint, Defendants admit only that certain parties either have had, do have, or have claimed to have leasehold interests in the Property and deny any remaining allegations. Defendants further respond and deny that Defendant Coen or Defendant Lowcountry Capital have ever asserted an interest in the Property in their own name. At one time, Coenco did hold an interest in the form of a long-term sublease for the Property in its own name but does not currently assert any such interest on its own behalf at this time as that interest was transferred.

11. Responding to Paragraph 23 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.

12. Defendants deny the allegations in Paragraph 24 of the Complaint.

IN RESPONSE TO THE THIRD CAUSE OF ACTION
(Action to Quiet Title)

13. Responding to the allegations contained in Paragraph 25 of the Complaint, Defendants reassert the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

14. Responding to the allegations in Paragraph 26 of the Complaint, Defendants admit only that certain parties either have had, do have, or have claimed to have leasehold interests in the Property and deny any remaining allegations. Defendants further respond and deny that Defendant Coen or Defendant Lowcountry Capital have ever asserted an interest in the Property in their own name. At one time, Coenco did hold an interest in the form of a long-term sublease for the Property in its own name but does not currently assert any such interest on its own behalf at this time as that interest was transferred.

15. Responding to Paragraph 27 of the Complaint, Defendants are without sufficient knowledge or information to respond to these allegations and therefore deny the same.

16. Upon information and belief, portions of Paragraph 28 state conclusions of law which require no response by these Defendants. To the extent that any response should be required or damages, costs or attorney fees are asserted against these Defendants, all such allegations are denied.

AFFIRMATIVE DEFENSES

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES

(Failure to State a Claim)

1. The Amended Complaint fails to state a claim for which relief can be granted and therefore should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES

(Unclean Hands)

2. Plaintiff's claims are barred by the equitable doctrine of unclean hands.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES

(Waiver/Estoppel)

3. Plaintiff's claims are barred by the doctrines of waiver and estoppel, both judicial and otherwise.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES

(No Proximate Cause)

4. That no actions of these Defendants were the proximate cause of any alleged damages claimed by the Plaintiff.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES

(Impossibility of Performance)

5. That the claims asserted and the contract at issue was impossible to perform as written and no action or inactions of these Defendants led to such impossibility.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES

(Contract Discharged/Unjust Enrichment)

6. That the contract at issue between the Plaintiff and the co-defendants has been fully discharged and all applicable remedies at law are included within the contract of those parties. Any additional damages awarded as to these Defendants would unjustly enrich the Plaintiff beyond the terms of the contractual agreements.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Good Faith Reliance upon Counsel)

7. That any assertions by these Defendants as to the property, which are specifically denied as alleged, were made with good faith reliance upon counsel and within the course of litigation between these Defendants and members of the Plaintiff's organization.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Qualified Privilege)

8. That any assertions by these Defendants as to the property, which are specifically denied as alleged, are provided a qualified privilege as such were made within the course of litigation between these Defendants and members of the Plaintiff's organization within this judicial process.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Legitimate Public Concern)

9. That any assertions by these Defendants as to the property, which are specifically denied as alleged, involved legitimate public concern, including but not limited to the effects of parking on adjacent and nearby establishments.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Good Faith and Reasonableness)

10. That any assertions by these Defendants as to the property, which are specifically denied as alleged, were made in good faith and in a reasonable manner.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Lack of Publication, Ill Will or Malice)

11. That any assertions by these Defendants as to the property, which are specifically denied as alleged, were not publicized or communicated to third parties with ill will or malice.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Limited in Scope or Purpose)

12. That any assertions by these Defendants as to the property, which are specifically denied as alleged, were limited in scope and made under proper occasion to proper parties.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Lack of Special Damages)

13. That the Plaintiff lacks special damages and has failed to demonstrate a clear injury.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Statute of Frauds)

14. Plaintiff's claims are barred by the legal doctrine of the statute of frauds.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Punitive Damages)

15. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate the Defendants' constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AFFIRMATIVE DEFENSES
(Reservation and Non-Waiver)

16. The Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

COUNTERCLAIMS BY THE DEFENDANTS
RICHARD H. COEN, LOWCOUNTRY CAPITAL, LLC and COENCO, LLC
AGAINST THE PLAINTIFF DC & SONS, LLC

FOR A FIRST COUNTERCLAIM
(Abuse of Process)

1. These Defendants do hereby reassert and reallege all prior allegations and affirmative defenses.

2. DC & Sons, LLC, by and through its members, have been involved in various litigation between the parties, including but not limited to those matters set forth within the Complaint bearing C/A #2006-CP-10-2670, entitled Richard H. Coen and Lowcountry Capital, LLC versus Dianne Crowley, Wings Over America, LLC, Redwing, LLC, DC & Sons, LLC and Cottage on the Creek and those matters previously before the Magistrate's Court, including actions for eviction related to parking rights of Red's Icehouse and a leasehold interest for additional parking on the Cottage on the Creek property.

3. DC with the deliberate and ulterior purpose of interfering with the legitimate business goals of the Defendants and to perpetuate litigation to its advantage, including but not limited to seeking additional parking rights despite the findings of the arbitration and to cause additional costs and damages to Mr. Coen personally, did enter into certain agreements, including but not limited to an Agreement to Binding Arbitration in the above-referenced matter.

4. Despite the agreements of the parties, including the manners utilized to induce the signing of the Arbitration Agreement, and other conduct, the Defendant did willfully institute the use of the instant process not in the proper or regular conduct of the proceedings.

5. Additionally, the Plaintiff knowingly and intentionally refused to enter into a written cancellation of the leasehold interests of RedWing, LLC in the property at issue to alert the Defendants and general public of such a cancellation in a manner that would meet the

applicable statute of frauds. When in fact, the Plaintiff, by and through its principals and agents, did knowingly advise the Defendant that such a leasehold interest then existed. Further, following an Arbitration to decide such issues, the Plaintiff in bad faith and through an abuse of process subsequently filed the instant matter approximately 20 days following the arbitration award.

6. As a result of Plaintiff's actions, these Defendants have been damaged and are entitled to actual and punitive damages for the conduct of the Plaintiff, its agents and principals.

FOR A SECOND COUNTERCLAIM
(Civil Conspiracy)

7. These Defendants do hereby reassert and reallege all prior allegations and affirmative defenses.

8. The Plaintiff, by and through a combination of its principals, Dianne and Cecil Crowley and others, including Plaintiff's agents and employees, as well as Red's Icehouse and its agents and employees did through natural and reasonable inference, act in concert for the intent and purpose of causing injury to these Defendants. These actions include but are not limited to:

- a) Willful withholding and failure to disclose leasehold rights of Red's Icehouse in the property at issue in this litigation to avoid appropriate legal process, code compliance and other material matters;
- b) Failure to provide any specific documentation of a written cancellation, annulment or abandonment of the leasehold interest at issue in order to gain tactical advantages and to pursue future litigation against these Defendants in the name of DC & Sons;
- c) Failure to disclose to the Town of Mount Pleasant abandonment of parking rights in order to gain a tactical advantage in the instant litigation as well as future plans for the property and investments of the coconspirators;
- d) Intentional misrepresentation by the Plaintiff and its coconspirators in order to induce these Defendants to enter a Consent Order of Arbitration to decide "all matters that are contested between the parties, as set forth within the pleadings, and is intended to finally resolve any and all remaining disputes. This includes matters related to parking and to decide this issue as if there had been no prior proceeding.";

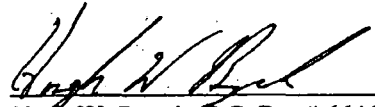
- e) Intentional assertion of parking rights by the Plaintiff and its coconspirators on these Defendants' adjacent properties in order to subvert the prior Arbitration Order and to interfere with these Defendants use and enjoyment of the property despite knowledge and judicial decree that the Plaintiff and its coconspirators had no such rights;
- f) Intentional interference and subversive actions by the Plaintiff and its coconspirators to interfere in the sale and repurchase of all assets of RedWing, LLC pursuant to a then existing Membership Interests Purchase and Sales Agreement;
- g) In perpetuating litigation and seeking for ulterior purpose to have counsel for Pavilion, by and through its coconspirators, write and place the blame on Mr. Coen personally for the failure of the sale of the property at issue; and
- g) By such other methods and matters disclosed during discovery and the trial of this action.

9. As a result of the Plaintiff's civil conspiracy these Defendants have been caused special damages, including but not limited to the incurrence of significant legal fees, interference with the Defendant's investments and property rights, and interference with the Defendants reputation in the community, and other special damages.

10. As a result of Plaintiff's actions these Defendants are entitled to actual and punitive damages from the Plaintiff.

WHEREFORE, having fully answered Plaintiff's Complaint and asserted its Counterclaims herein, Defendants request that the Court dismiss the Complaint, award Defendants their costs and fees incurred, and grant Judgment to these Defendants for actual and punitive damages with such further relief as the Court deems just and proper.

BUYCK & SANDERS, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: hwb@buyckfirm.com



Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendants
Richard H. Coen, Lowcountry Capital, LLC
and Coenco, LLC

June 29, 2010
Mt. Pleasant, South Carolina

T:\9.0\DC & Sons v. Coen\Pleadings\amended Answer and Counterclaims To ComplaintS (6.29.10).DOC

CERTIFICATE OF SERVICE

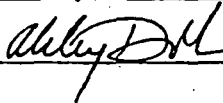
I certify that a copy of the foregoing **SECOND AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANTS RICHARD H. COEN, LOWCOUNTRY CAPITAL, LLC AND COENCO, LLC TO COMPLAINTS OF PLAINTIFF DC & SONS, LLC AND PAVILION DEVELOPMENT CORP** has been served on counsel of record by United States mail or by accepted E-mail at the addresses below:

Andrew K. Epting, Esquire
3 State Street
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vst@epting-law.com
Attorney for Plaintiff

George J. Kefalos, Esquire
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Attorney for Plaintiff

Dan M. David, Esquire
757 St. Andrews Blvd.
Charleston, SC 29407
Email: dan@charlestonlegal.com
Attorney for Defendants
Pavilion Development Corp. and Larry McNair

This 29 day of June, 2010.



BY _____

2010 JUN 29 AM 10:26
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CASE # 2006-CI-72-1293

Lowcountry Capital, LLC

IN THE MAGISTRATE'S COURT

**AFFIDAVIT AND APPLICATION
FOR EJECTMENT AND RULE TO
VACATE OR SHOW CAUSE**

PLAINTIFF

PHONE: (843) 727-2662

VS

RedWing, LLC and Diane Crowley

DEFENDANT

DATED November 13, 2006

I, the Plaintiff in this action, being sworn, state that I am counsel for the Landlord/Lessor of the premises herein described. I further state that the premises are within the magisterial jurisdiction of Beaufort County located at:

98 Church Street, Mount Pleasant, SC 29464

and that a landlord-tenant relationship exists between the parties described as evidenced by the following facts:

A Commercial Lease, attached as Exhibit A, and a Notice of Default, attached as Exhibit B.

Grounds for this ejectment are one or more of the following:

() The tenant fails or refuses to pay the rent when due or demanded; or
(xx) The term of tenancy or occupancy has ended; or
(xx) A term of condition of the contract has been violated, to-wit: The tenant is in breach of the attached lease agreement by failing to secure sufficient parking for its operations, failing to properly police the parking areas, and operating in violation of town ordinances. Tenant was notified of this default and given 30 days within which to cure the default, but failed to take any action. Due to the continuing default, the tenancy is ended and Tenant should be ejected from the premises.

SWORN TO BEFORE ME THIS 14TH
DAY OF NOVEMBER, 2006

Melody Hoover
NOTARY PUBLIC OR MAGISTRATE
MY COMMISSION EXPIRES 1/2014

Ellis R. Leemann

ELLIS R. LESEMANN, COUNSEL FOR PLAINTIFF

Upon application for ejectment, above, filed by the Plaintiff, you the Defendant and lessee of the premises noted above must request a hearing at 1189 Iron Bridge Road, Suite 300, Mount Pleasant, SC 29464 within ten (10) days from the date of service of this affidavit and rule why you should not be ejected from said premises. **FAILURE TO VACATE THE PREMISES OR TO RESPOND TO THIS COURT WITHIN THE TIME PERIOD SET ABOVE, MAY RESULT IN THE ISSUANCE OF A WARRANT OF EJECTMENT.**

Nov 15, 2006
DATED

J. M. Hall
MAGISTRATE

EXHIBIT A

STATE OF SOUTH CAROLINA)
) COMMERCIAL LEASE
COUNTY OF CHARLESTON)

THIS COMMERCIAL LEASE ("Lease") is made and entered into this 10th day of June, 2004 ("Effective Date") by and between LOWCOUNTRY CAPITAL, LLC., a South Carolina limited liability company ("Landlord") and REDWING, LLC., a South Carolina limited liability company ("Tenant") (Landlord and Tenant may be referred to individually as a "Party" or collectively as the "Parties").

WHEREAS, the Parties entered into a Termination of Commercial Lease, dated simultaneously herewith, which terminated the prior Commercial Lease between Lowcountry Capital, LLC and RedWing, LLC dated October 3, 2003; and

WHEREAS, the Parties desire to enter into a new Commercial Lease.

WITNESSETH:

In consideration of the covenants and agreement of the respective Parties herein contained, the Parties hereto, for themselves, their heirs, successors, distributees, executors, administrators, legal representatives and permitted assigns, do hereby agree as follows:

A. LAND LEASE:

Landlord leases the land which contains the Demised Premises (as defined in Exhibit A ~~and depicted in Exhibit B~~) from Snowmill, LLC as successor to Snowwis Properties, LLP and Mill Church Properties, LLC pursuant to that land lease dated October 1, 2003 ("Land Lease"). Said premises are situate, lying and being in the State of South Carolina, County of Charleston, located at Church Street and Shem Creek in Mount Pleasant, SC, consisting of a restaurant building and improvements known now as Red's Ice House and the non-exclusive right for parking in those designated spaces in Exhibit ~~A~~ A. J. M. W. C. R. H.

B. TERM AND DELIVERY OF DEMISED PREMISES:

The term of this Lease shall commence on the Effective Date and shall terminate on September 30, 2018 ("Expiration Date") unless this Lease is earlier terminated pursuant to Section D hereof ("Initial Term").

C. OPTION TO RENEW:

At the expiration of the Initial Term of this Lease and at the expiration of any renewal term or extension of this Lease, with the approval of Landlord, approval not to be unreasonably withheld, Tenant may renew this Lease for an additional, five-year term. Tenant shall exercise its right to renew the Lease by providing Landlord at least one hundred twenty (120) days written notice of its intent to do so prior to the expiration of the existing Lease term.

The Rent for the first year of any renewal term shall be negotiated between Landlord and Tenant beginning within one hundred twenty (120) days of the expiration of the Initial Term. During any renewal term, the Rent shall escalate 2% annually (in the manner described in Section D (1)).

D. COVENANTS AND CONDITIONS OF LEASE:

This Lease is made on the following covenants and conditions which are expressly agreed to by Tenant and Landlord:

1. RENT:

Tenant covenants to pay as rental to Landlord the annual sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00), in advance of the first (1st) day of each month, and mailed to Landlord, or to such other address as Landlord may designate in writing to Tenant from time to time. The Rent is due on the first (1st) day of each month and shall not be withheld for any reason whatsoever. The Rent increases on the first anniversary of the Lease, and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Tenant pays the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Initial Term, the Rent shall decrease by Five Thousand and 00/100 Dollars (\$5,000.00) per month.

Each monthly rental payment, as set forth above, is due in advance on the first (1st) day of the calendar month. The parties agree that Tenant shall have a ten-day grace period within which the Landlord may receive the monthly advance rental payment without default; however, if the Landlord does not receive the monthly rental payment by six o' clock p.m. on the tenth day of the calendar month, the Tenant shall be in default without further notice, and the Landlord may, at its option, exercise its remedies provided herein for default, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month. Tenant shall not be in default for nonpayment of rent until the later of the tenth (10th) day of the calendar month or five (5) days after receiving written notice of the non-payment of rent from Landlord.

2. LEASE AS IS:

The Property is to be leased "as is". Tenant shall have sole responsibility for any and all improvements of the Property.

3. AUTHORIZED USE:

Tenant agrees not to abandon or vacate the Demised Premises and shall use the Demised Premises for the following purpose, and for no other purpose whatsoever, without the written consent of Landlord first had and obtained:

Tenant will use the Demised Premises for a restaurant and bar and for any other lawful purpose in the ordinary course of operating its business. Tenant shall have the right to seasonal closings of the Demised Premises.

Tenant will not permit or suffer anything to be done nor keep anything in or about the Demised Premises, which would render the insurance thereon void or voidable or cause cancellation. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Demised Premises, any article or material which is prohibited by law or by standard property insurance policies of the kind customarily in force with respect to premises of the same general type as those covered by this Lease.

4. INSURANCE/INDEMNITY:

- A. EXCEPT AS TO INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENCE OR WILLFUL ACTS OF LANDLORD FOR WHICH LANDLORD IS LEGALLY LIABLE, TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM ALL CLAIMS (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST SUCH CLAIMS) (I) ARISING OR ALLEGED TO ARISE FROM ANY ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES OR CONTRACTORS, OR (II) RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO THE PROPERTY OF ANY PERSON OCCURRING DURING THE TERM OF THIS LEASE IN THE DEMISED PREMISES. TENANT AGREES TO USE AND OCCUPY THE DEMISED PREMISES AND OTHER FACILITIES OF THE BUILDING AT ITS OWN RISK AND HEREBY RELEASES LANDLORD, ITS AGENTS OR EMPLOYEES, FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO THE FULL EXTENT PERMITTED BY LAW. THE INDEMNIFICATION PROVISION HEREIN SHALL SURVIVE ANY TERMINATION OF THIS LEASE BY LAPSE OF TIME OR OTHERWISE.
- B. Tenant shall maintain property insurance on the Property and such additions and improvements by Tenant, which have become or are to become the property of Landlord at the termination of the Lease. Such insurance shall be maintained with such companies and in such amounts desired by Landlord, and suitable for coverage of the Property and Demised Premises. Landlord shall also maintain commercial general liability insurance to afford such protection and with such companies as desired by Landlord. Tenant shall maintain at its expense (i) property insurance on all of its personal property and removable trade fixtures located in the Demised Premises and on all additions and improvements made by Tenant, (ii) commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence

covering the Demised Premises, (iii) property insurance coverage adequate to pay one hundred percent (100%) of the Rent to Lessor for the period of time in which Lessee is unable to operate its business as a result of sustained property damage, and (iv) building ordinance coverage insurance. Tenant's commercial general liability insurance shall list the Landlord, Landlord's Agent, and Snowmill, LLC as additional insured parties and provide that it is primary over any insurance carried by Landlord.

- C. Anything in this Lease to the contrary notwithstanding, the Parties hereto hereby waive any and all rights of recovery, claim, action or cause of action, against each other, their respective agents, officers and employees for any loss or damage that may occur to the Demised Premises, the Property and to all property, whether real, personal or mixed, located in or at the Demised Premises or the Property, by reason of fire, the elements, or any other peril as defined in the basic peril property insurance policy approved for use in South Carolina from time to time regardless of cause or origin, including negligence of the Parties hereto, the respective agents, officers and employees. Since the above mutual waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each Party hereto agrees immediately to give each insurance company which has issued to it property insurance policies, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such coverage by reason of said waivers.
- D. Each of the insurance policies referred to in this paragraph shall provide (if provision is obtainable), that it shall not be canceled without at least thirty (30) days prior written notice to Landlord and Tenant. In addition, the Parties shall furnish to one another certificates or copies of each of the insurance policies, which each Party is required to maintain promptly after obtaining such insurance.
- E. The Parties mutually agree that they shall not be responsible or liable to each other, their employees, agents, customers, or invitees for bodily injury (fatal or nonfatal) or property damage occasioned by the acts or omissions of any other tenant or such tenant's employees, agents, contractors, customers, or invitees within the Property.

5. CONDITION OF THE DEMISED PREMISES:

All improvements, alterations and additions to the Demised Premises desired by Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Landlord. Landlord's approval of the plans, specifications and working drawings for Tenant's alterations and/or Landlord's approval of Tenant's plans for Landlord's work shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or

compliance with all laws, rules and regulations of governmental agencies or authorities. If the improvements, alterations, or additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. All improvements and additions made by or for the Tenant and permanently attached to the Demised Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Demised Premises and shall be surrendered to Landlord at the Expiration Date or earlier termination of this Lease. Tenant has inspected and accepts the Demised Premises in the same condition they are in at the time of execution of this Lease. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Demised Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Demised Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance or regulation applicable thereto.

Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that it has granted its prior consent to Tenant for the material alteration of some or all of the Demised Premises, in Tenant's sole reasonable discretion. Tenant shall be responsible for payment of the costs of any such alterations provided the total cost of such alterations.

Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that all photographs located in or attached to the Demised Premises are the personal property of Richard H. Coen and have been temporarily loaned to the Tenant for use in Tenant's business. During the term of this Lease, Tenant shall not damage or take possession of such photographs nor permit any other party to damage or take possession of such photographs. Tenant shall use its best efforts to keep such photographs in good repair. Upon the termination or expiration of this Lease, Tenant shall return such photographs to Richard H. Coen in good repair.

6. REPAIR AND CARE OF PROPERTY:

- A. Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain the Demised Premises in good order and repair. Tenant shall maintain the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for leakage, cleaning, and other customary periodic maintenance. Tenant agrees to return the Demised Premises to Landlord at the expiration or prior termination of this Lease in as good a condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted.
- B. Tenant shall keep and maintain the foundations, roof, and structural portions of the exterior walls of the Demised Premises in good condition and repair. Landlord gives to Tenant exclusive control of the Demised Premises and shall be under no obligation to inspect the Demised

Premises. Landlord shall not be obligated to make any repair or replacement.

7. PAYMENT OF TAXES AND OTHER ASSESSMENTS:

Landlord shall pay annually all real estate taxes on the Demised Premises. Tenant shall pay its Pro-Rata Share (as defined below). Further, Tenant shall be responsible for and shall pay before delinquent all municipal, county, federal or state taxes coming due during or after the terms of this Lease against any leasehold interest or personal property of any kind owned or placed in, or about the Demised Premises by Tenant. Tenant shall pay all Solid Waste Disposal User Fees for Tenant's waste. Landlord and Tenant acknowledge and agree that Tenant's Pro-Rata Share of the real estate taxes under this Lease is One Hundred percent (100%) ("Pro Rata Share") of Charleston County TMS # 517-15-00-003 plus one hundred percent (100%) of the real estate taxes related to the spaces designated in Exhibit A *Amended CC plat*

Both Parties agree that if Tenant must pay real estate taxes directly to obtain tax incentives, that Tenant may pay Tenant's share of taxes directly, providing proof of same to Landlord.

8. PAYMENT OF UTILITIES:

Tenant shall contract for and pay, at its own expense and without damage or threat of damage to the Property or any part of the Property, electrical power and any other utilities or services required for its use of the Demised Premises, including, but not limited to, telephone service, electric power and connections for Tenant's equipment, and water and sewer. Landlord shall cause an electrical meter to be installed for the Demised Premises. Tenant shall keep such meter, or any other meters measuring the electricity consumed at the Demised Premises, in good order and repair.

9. SERVICES

Landlord shall not be liable for loss or damage arising from failure to provide utilities or services as a result of strike, casualty, repairs, or other causes beyond Landlord's reasonable control, nor shall any such failure relieve Tenant from the obligation to pay the full amount of Rent herein set forth, nor shall any such failure constitute or be construed as a constructive or other eviction of Tenant. Should Tenant desire any additional services beyond those described in Paragraph 7, above, Landlord may, at Landlord's option, upon reasonable advance notice from Tenant to Landlord, furnish such services. Tenant agrees to pay Landlord upon demand the cost for such additional services as Additional Rent.

10. COMPLIANCE WITH LAWS:

During the term of this Lease, Tenant and Landlord shall, at their own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and city governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto or any part thereof.

11. ALTERATION OF PROPERTY AND INSTALLATION OF FIXTURES AND
OTHER APPURTENANCES:

Tenant may, with the prior written consent of Landlord, in Landlord's sole discretion, but at its own cost and expense and in a good and workmanlike manner, make such alterations and repairs in the Demised Premises as Tenant may require for the conduct of its business. Any alterations or improvements to the Demised Premises, shall at the option of Landlord become the property of Landlord at the expiration or sooner termination of this Lease.

Any and all work performed by Tenant or its contractors, shall be with workmen and contractors approved in advance in writing by Landlord and in a manner and upon terms and conditions and at times satisfactory to and approved in advance in writing by Landlord. Landlord will not unreasonably withhold such approval. All work shall be approved by and in compliance with any and all laws, rules, and regulations of governmental agencies or authorities and in compliance with all building codes.

Unless otherwise agreed in writing by Landlord, prior to and at all times during the performance of the work by any of Tenant's contractors or subcontractors, Tenant shall require such contractors to provide, and shall require all subcontractors of every tier to provide, the insurance coverages described below, with deductibles for their own accounts, on policy forms acceptable to Landlord and with limits not less than those shown below, all of which shall be provided at no cost to Landlord:

	TYPE OF INSURANCE	MINIMUM LIMITS
I.	Workers' Compensation Employer's Liability	Statutory \$100,000
II.	Commercial General Liability (Including Products/Completed Operations)	Per Occurrence \$1,000,000
III.	Automobile Liability (All Owned, Non-Owned and Hired)	Combined Single Limit \$1,000,000

Tenant shall require that such contractors' Workers' Compensation insurance be endorsed to provide that the underwriter waives its right of subrogation against Landlord, its Affiliates and Agents. In addition, Commercial General Liability and Automobile Liability policies shall be endorsed specifically to name Landlord, its Affiliates and Agents as Additional Insured parties and be endorsed to provide that they are primary coverages, not in excess of any other insurance available to Landlord, its Affiliates and Agents to insure Landlord, its Affiliates and Agents against claims arising from such work. Evidence of such specific

endorsements shall be furnished to Landlord prior to commencement of such work. IN THE EVENT TENANT FAILS TO OBTAIN SUCH SPECIFIC ENDORSEMENTS, TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD, ITS AFFILIATES AND AGENTS HARMLESS FROM ANY AND ALL LOSSES, CLAIMS, DAMAGES, AND EXPENSES WHICH WOULD BE COVERED BY SUCH SPECIFIC ENDORSEMENTS THAT LANDLORD MAY INCUR, INCLUDING THOSE BASED IN WHOLE OR IN PART ON THE IMPUTED, JOINT, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ONE OR MORE OF THEM, INCLUDING (WITHOUT LIMITATION) COSTS OF DEFENSE AND ATTORNEYS' FEES: Tenant shall furnish to Landlord, prior to any such contractor or subcontractor commencing work hereunder, certificates evidencing that the required insurance is in force. The certificates shall provide that in the event of cancellation or material change, thirty (30) days' prior written notice shall be given to Landlord. If requested to do so by Landlord, Tenant shall also furnish the originals or certified copies of any such contractor's insurance policies for inspection. Such policies shall be subject to the approval of Landlord as to adequacy. Should Tenant fail to procure evidence of any such contractor's insurance or to require any such contractor to maintain in force the insurance specified herein, Landlord may secure such insurance and the cost thereof shall be borne by Tenant. Tenant agrees to reimburse Landlord as Additional Rent the cost of any such insurance plus a five percent (5%) administrative charge within ten (10) days after billing by Landlord. Any sum and financing unpaid fifteen (15) days after billing by Landlord shall bear interest at the rate of eighteen percent (18%) per annum until paid to Landlord. Compliance with the provisions of this subparagraph by Tenant for each such contractor and the limits of liability shown for each of the insurance coverages to be provided by Tenant for all such contractors shall not be deemed to constitute a limitation of Tenant's liability for claims or in any way limit, modify or otherwise affect Tenant's indemnification obligations. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for such contractor or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive or invalidate any of the provisions of this Lease. Where used herein, "Affiliates" shall mean any corporation, partnership, joint venture, division or other legal entity, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Landlord, its employees, agents, and representatives.

12. SUBORDINATION OF LEASE, ATTORNMENT AND ESTOPPEL CERTIFICATE:

Tenant agrees to subordinate this Lease to any mortgages, the Land Lease and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust pursuant to a Subordination, Non-Disturbance and Attornment Agreement. Tenant also agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at sale pursuant to any foreclosing or deed-in-lieu thereof, and to the Lessor in the event of a termination of the Land Lease.

Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord a statement certifying any facts that are then true with respect to this Lease, including without limitation (if such be the case) that this Lease is in full force and effect, that there are no modifications or amendments to the Lease except as disclosed, that Tenant is in possession of the Demised Premises, that Tenant has commenced the payment of Rent, that no Rent or

other sums have been paid to Landlord in advance, and that Tenant claims no defense or off-set to the due and full performance of its obligations under this Lease, and other such reasonable facts requested in tenant estoppel certificate.

13. CONDEMNATION:

If the whole of the Demised Premises, or such portion thereof as will make the Demised Premises unusable for the purpose herein leased be condemned by any legally constituted authority, this Lease shall terminate on the date when possession thereof is taken by public authorities, and Rent shall be accounted for as between Landlord and Tenant as of that date. In the event only a portion of the Demised Premises is acquired by condemnation as will leave the remaining Demised Premises, after alterations and repairs, in condition suitable for use by Tenant including comparable square footage space, type and quality of space, similar entrances/exits, and comparable parking, the monthly rental payments from the day of such acquisition to the end of the original or extended term of this Lease shall be continued, and Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required to restore the Demised Premises to a reasonably similar location within the Property. All sums awarded by the condemning authority for the taking of the interest of Landlord or Tenant, whether as damages or as compensation, will be the property of Landlord or Tenant as awarded. The Parties agree to notify the Other Party within two working days of notice by any legally constituted authority of its intent to condemn the Demised Premises.

14. RIGHT OF ENTRY BY LANDLORD:

Tenant, at any time during the term of this Lease, shall permit inspection of the Demised Premises at any reasonable time, by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Demised Premises or in order for the Landlord to show the Demised Premises to prospective Tenants. Landlord shall use its best efforts to minimize any interference to Tenant's use of the Demised Premises in such event. Ninety (90) days prior to the expiration of this Lease, Landlord may post suitable notices on the Demised Premises that the same are "For Rent" and show the Demised Premises to prospective tenants at reasonable times.

15. ASSIGNMENT, SUBLETTING, AND CHANGE IN OWNERSHIP:

Tenant shall not sublet, assign, mortgage or encumber this Lease, or license, or permit the Demised Premises or any part thereof to be used by others, whether voluntarily or by operation of law or otherwise, without the prior written consent of Lessor in each instance. Landlord shall not unreasonably withhold consent to such sublease, assignment, mortgage or encumbrance. The sale or transfer of membership interest, if Tenant be a limited liability company, shall be deemed an assignment of this Lease. It is understood that one hundred percent of Tenant's membership interest is currently owned by Dianne Crowley, and that transfer of any of her membership interest in Tenant to others shall be deemed an assignment. In the event this Lease or any interest herein is assigned or the Demised Premises or any part thereof sublet without Landlord's prior express written consent, Tenant shall remain fully liable under the terms, covenants, and other conditions of this Lease. Landlord shall thereupon have the right and option to cancel and terminate this Lease effective upon fifteen (15) days

notice to Tenant given by Landlord at any time thereafter either as to the entire Demised Premises or as to only the portion thereof which Tenant shall have attempted to assign or sublease or otherwise permitted some other party's occupancy without Landlord's prior express written permission; and if Landlord elects to cancel and terminate this Lease as to the aforesaid portion of the Demised Premises, then the Rent and other charges payable hereunder shall thereafter be proportionately reduced. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

16. DAMAGE OR DESTRUCTION:

If the Property or the Demised Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty covered by Tenant's policy of fire and extended coverage insurance, then Tenant shall replace the Demised Premises with a building conforming to the specifications of the building which was destroyed or an equivalent building satisfactory to Landlord and Tenant, as soon as possible after the insurance adjustment, or at its option, and after giving written notice to Landlord within thirty (30) days after the occurrence of said casualty or destruction, Tenant may turn all insurance proceeds over to Landlord, Landlord's mortgagee, if any, as their interests may appear, and terminate this Lease free of all further liabilities except those incurred prior to termination. In the event that Tenant replace the Demised Premises, Tenant shall remain responsible for the Rent due the Landlord.

17. SURRENDER OF DEMISED PREMISES:

Tenant agrees to deliver all keys and to surrender the Demised Premises at the expiration of the term of this Lease. If Tenant should remain in possession of the Demised Premises after the expiration or termination of this Lease, without the execution by Landlord and Tenant of a new lease or a written renewal or extension of the term of this Lease, then Tenant shall be deemed to be holding over in the Demised Premises. Such holding over shall, unless otherwise agreed in writing, constitute a month to month tenancy only, and Tenant shall pay, as monthly rental, the existing monthly Rent plus fifty percent (50%) and all Additional Rent.

18. QUIET ENJOYMENT:

If Tenant shall pay the Rent and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment of the Demised Premises without interference from Landlord or any person lawfully claiming through Landlord, subject, however to the terms of this Lease and any mortgages or deeds of trust provided for in Paragraph 12 above.

19. WAIVER OF COVENANTS:

It is agreed that the waiving of any of the covenants of this Lease by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision contained herein. No forbearance by either Party to seek a

remedy for any breach of this Lease shall be deemed a waiver by such Party of its rights or remedies with respect to such a breach.

20. DEFAULT BY TENANT:

A. This Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to wit: (a) failure to timely pay any installment of Rent when due, (b) failure to timely pay any installment of taxes or any other sums required to be paid by Tenant hereunder, or if any part thereof, shall at any time be in arrears and unpaid by Tenant for a period of seven (7) days, or (c) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless said default cannot reasonably be cured within thirty (30) days and Tenant shall have commenced to cure said default within thirty (30) days and continues diligently to pursue the curing of same within ninety (90) days from the occurrence of such default), or, (d) any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceedings by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall abandon or vacate the Demised Premises, Landlord shall have the option to pursue any one or more of the following remedies:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in Rent or Rent for the remainder of the lease term, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise.

(2) Enter upon and take possession of the Demised Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, without being liable for prosecution or any claim for damages therefore, and relet the Demised

Premises and receive the Rent therefore; and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting.

(3) Enter upon the Demised Premises without being liable for prosecution or any claim for damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expense which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action.

(4) Acceptance of possession of the Demised Premises by Landlord from Tenant shall not constitute an acceptance of a surrender of the Demised Premises as such unless Landlord shall specifically acknowledge the same in writing.

(5) Except as otherwise provided by statute or rule of law, pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided for herein or any other remedies provided by law, all of which may be enforced cumulatively, nor shall pursuit of any remedy provided for herein constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violation or breach of any of the terms, provisions and covenants herein contained.

B. If Tenant shall not remove its property from the Demised Premises upon termination of this Lease, Landlord may, at its option, remove the same or any of the same in any manner that the Landlord may choose and store the same without liability to the Tenant for loss thereof, and Tenant will pay the Landlord, as Additional Rent, on request, any reasonable expenses incurred in such removal and also for storage of the said effects for any length of time during which the same shall be in the Landlord's possession.

C. In case of any such default, re-entry, expiration and/or dispossession: (1) the Rent due hereunder for the entire term of the Lease shall thereupon become due and payable, and no receipt of money by Landlord from Tenant after termination of this Lease or after the giving of any notice thereof shall reinstate, continue or extend the term of this Lease; (2) Landlord may re-let the Demised Premises or any part or parts or parts thereof, either in the name of the Landlord or otherwise, upon terms and conditions deemed appropriate by Landlord, and for a term or terms which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free Rent, provided, however, that

Landlord shall retain only Five Thousand and no/100 Dollars (\$5,000.00) per month of Tenant's accelerated Rent and return the balance of the monthly Rent to Tenant; (3) As Additional Rent due hereunder, Tenant agrees to pay all reasonable costs and expenses and all reasonable attorneys fees incurred by Landlord in enforcing any of the obligations of Tenant under this Lease, and; (4) Tenant or the legal representatives of Tenant shall in addition to any other remedies contained herein, pay Landlord, as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants herein contained, any deficiency between the Rent hereby reserved and/or covenanted to be paid and the net amount of the Rents collected on the account of the Lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. In computing such liquidated damages, there shall be added to the said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, including but not limited to costs, reasonable attorneys fees, brokerage fees and preparation of the Demised Premises for re-letting as may be deemed appropriate by Landlord, and there shall be deducted the amount of any security deposit held by and forfeited to Landlord. Any such liquidated damages shall be payable immediately upon written demand therefore given by Landlord to Tenant, and the acceptance of partial payment by Landlord shall in no way prejudice Landlord's rights or affect Tenant's responsibility for the payment of the total balance owed. Landlord, at its option, may make such reasonable alternations, repairs, replacements and/or decorations in the Demised Premises as Landlord, in its reasonable judgment, considered advisable or necessary for purposes of re-letting the Demised Premises; and the making of such reasonable alternations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid, and Tenant hereby expressly agrees to pay any reasonable costs incurred in connection therewith as Additional Rent.

- D. If Tenant at any time shall fail to pay any taxes, assessments, or liens, or 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 and at the expense of Tenant. All sums so paid by Landlord and all costs and expense so incurred shall accrue interest at the rate of eighteen percent (18%) per annum from the date of payment or incurring thereby by Landlord and shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.
- E. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or

in equity. For the purpose of any suit brought by Landlord or based on this Lease, this Lease shall be construed to be a divisible contract to the end that successive action may be maintained as successive periodic sums shall mature under this Lease and it is further agreed that failure to include in any suit any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums omitted.

- F. Thirty days notice does not apply to Tenant's failure to pay timely rent, which is governed instead by Section D.1 of this Lease, providing for automatic default after the ten-day grace period, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month.

21. DEFAULT BY LANDLORD:

This Lease is made upon the condition that Landlord shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth.

22. FAILURE TO PERFORM COVENANT AND NON-WAIVER:

Any failure on the part of either Party to this Lease to perform any obligation hereunder or any delay in doing any act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or other similar cause beyond the control of the Party so failing to perform, to the extent and for the period that such continues, save and except that the provisions of this paragraph shall not excuse a non-payment of Rent, taxes, Additional Rent, and other sums due hereunder on its due date.

Neither acceptance of Rent by Landlord nor failure by Landlord to complain of any action, non-action or default of Tenant shall constitute a waiver of any of Landlord's rights hereunder. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default.

23. RIGHTS OF SUCCESSORS AND ASSIGNS:

The covenants and agreements contained in this Lease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, their heirs, successors, distributees, executors, administrators, legal representative, assigns, and upon their respective successors in interest, except as expressly hereinbefore provided.

24. LIENS:

Other than that leasehold mortgage from Tenant to NBSC in the approximate amount of One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00), as amended from time to time to include a refinancing of the terms or an extension of the maturity thereof, Tenant must obtain Landlord's consent to create any other leasehold mortgage, equity line, loan, or any other form of indebtedness secured by Tenant's interest in the leasehold or the Demised Premises. Furthermore, Tenant shall not allow or permit the creation of any liens for

labor or material on or against the Demised Premises, the Property, or any part thereof, and all persons either contracting with Tenant or furnishing and/or rendering labor and/or materials to Tenant, shall be notified in writing by Tenant that they must look only to Tenant to secure the payment of such labor or materials. Tenant agrees to provide such written notice as may be required, pursuant to S.C. Code Ann. §29-5-80 to all persons performing services or furnishing materials of Landlord's non-responsibility for payment for such services or materials. Should any mechanics', materialmens' or other liens be filed against the Demised Premises, the Property, or any part thereof, for any reason whatsoever relating to the furnishing of labor or materials associated with improvements to the Demised Premises for which Tenant is responsible for payment, Tenant shall cause the same to be cancelled and discharged of record by statutory bond or otherwise within ten (10) days after notice and demand for such cancellation and discharge by Landlord. In the event any lien continues undischarged after such ten (10) day period, Landlord shall have the right, at its sole election and discretion without any obligation, to pay the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid, including all costs and expenses, shall be deemed Additional Rent under the Lease and shall be due and payable on demand. FURTHERMORE, TENANT SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, ITS AFFILIATES AND AGENTS FROM AND AGAINST CLAIMS AND FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS TO TENANT IN CONNECTION WITH THE DEMISED PREMISES, OR ANY PART THEREOF, BY ANY OF TENANT'S CONTRACTORS AND THEIR SUBCONTRACTORS OF EVERY TIER. LANDLORD SHALL BE RESPONSIBLE, HOWEVER, FOR THE SATISFACTION OF CLAIMS FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS IN CONNECTION WITH THE DEMISED PREMISES, THE PROPERTY, OR ANY PART THEREOF, WHICH FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS OCCURRED ON OR BEFORE OCTOBER 1, 2003.

25. CONSTRUCTION OF LEASE:

The word "Landlord" as used herein shall refer to the individual, individuals, partnership or corporation called "Landlord" at the commencement of this Lease, and the word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant." Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plurals when sense requires.

26. PARAGRAPH HEADINGS:

The paragraph headings are inserted only for convenience and for reference and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

27. COMMISSIONS:

The Parties represent and warrant that they have dealt directly with and only with each other in connection with this Lease and that insofar as they know, no broker(s) negotiated this Lease or is entitled to any commission in connection therewith and the execution and delivery of this Lease by the Parties shall be conclusive evidence that they have relied upon the foregoing representation and warranty. The Parties shall defend and hold each other harmless for any claims which arise from the failure of this mutual warranty.

28. RULES AND REGULATIONS:

Tenant agrees that Tenant, its agents, employees, and invitees will abide by the Rules and Regulations as set forth on Exhibit "D" attached hereto, which may be amended from time to time by the Landlord. Such Rules and Regulations shall be those necessary in the sole opinion of the Landlord to provide for the uniform service, maintenance and peaceful enjoyment of the common areas and the outside common areas. Landlord shall notify Tenant in writing of changes in the Rules and Regulations from time to time and Tenant agrees to assist Landlord in the enforcement of such Rules and Regulations.

Landlord agrees that the Rules and Regulations as set forth on Exhibit "D", as amended from time to time, shall be applied uniformly to any and all tenants on the Building.

29. NOTICES:

It is agreed that the legal address of the Parties for all notices required or permitted to be given hereunder, or for purposes of billing, process, correspondence and any other legal purposes whatsoever, shall be deemed sufficient if given by a communication in writing by United States Mail, postage prepaid, and certified, and addressed as follows:

If to the Landlord:

Lowcountry Capital, LLC
100 Haddrell Street
Mt. Pleasant, SC 29464
Attn: Richard H. Coen

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704-342-0926

If to the Tenant:

RedWing, LLC.
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attn: Cecil Crowley

30. HAZARDOUS MATERIALS:

- A. Tenant shall not cause or permit any Hazardous Materials (hereinafter defined) to be stored, used or disposed of in or about the Demised Premises or the Property by Tenant, its agents, employees, contractors or invitees, nor shall the use which Tenant makes of the Demised

Premises result in any Hazardous Materials Contamination (hereinafter defined). For purposes of this Lease, the following terms shall have the meanings herein specified:

1. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. § 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.), as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (iii) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended from time to time, and regulations promulgated thereunder ("TSCA"); (iv) pesticides specifically regulated under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 135 et seq.), as amended from time to time, and regulations promulgated thereunder ("FIFRA"); (v) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance; (vi) the presence of oil, petroleum products, and their by-products; (vii) any substance the presence of which in or about the Demised Premises or the Property is prohibited by any governmental authority or which is hereafter classified by any governmental authority as a hazardous toxic waste, material, substance or similar phraseology; and (viii) any substance which by any governmental authority requires special handling notification of any governmental authority in its collection, storage, treatment, or disposal.
 2. "Hazardous Materials Contamination" shall mean the spillage, leakage, emission or disposal of Hazardous Materials (whether presently existing or hereafter occurring) in or about the buildings, facilities, soil, groundwater, air or other elements in or about the Demised Premises, or the Property or any other property as a result of Hazardous Materials at any time emanating from the Demised Premises or the Property.
- B. Notwithstanding the foregoing, Tenant shall be permitted to store, use and dispose of de minimus amounts of Hazardous Materials which are incidental to Tenant's business. Such Hazardous Materials and all containers therefore, shall be stored, used and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Materials. Tenant shall be liable for all costs and expenses related to the storage, use and disposal of such de minimus amounts of Hazardous Materials incidental to Tenant's business.

- C. At the commencement of each "Lease Year" (the term "Lease Year" as used in this Lease shall mean any twelve (12) month period beginning with the Commencement Date and each twelve (12) month period beginning on any anniversary date thereof), Tenant shall disclose to Landlord the names and approximate amounts of all Hazardous Materials which Tenant intends to store, use or dispose of in or about the Demised Premises in the coming Lease Year. In addition, at the commencement of each Lease Year (beginning with the second Lease Year), Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials that to Tenant's knowledge were actually stored, used or disposed of in or about the Demised Premises, if such materials were not previously identified to Landlord at the commencement of the previous Lease Years.
- D. Tenant shall give written notice to Landlord immediately upon Tenant's acquiring knowledge of the presence of any Hazardous Materials in or about the Demised Premises (subject to the provisions of subparagraph B. hereof) or of any Hazardous Materials Contamination with a full description thereof. Landlord shall have the right, but not the obligation, without in any way limiting Landlord's other rights and remedies under the Lease, to enter onto the Demised Premises or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Demised Premises or the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Demised Premises or the Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Demised Premises or the Property, or other action and/or which, in Landlord's sole opinion, could jeopardize Landlord's security under the Lease.
- E. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD; ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES DURING TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAG. (REAL OR

PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH E SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES TENANT MAY HAVE TO LANDLORD AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

- F. TO THE BEST OF LANDLORD'S KNOWLEDGE, LANDLORD REPRESENTS AND WARRANTS THAT THE DEMISED PREMISES ARE AND SHALL BE FREE OF HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION AS OF THE COMMENCEMENT DATE. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SEYFLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND) OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES PRIOR TO TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH F SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES LANDLORD MAY HAVE TO TENANT AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

31. SECURITY DEPOSIT:

The Tenant shall deposit with the Landlord the sum of Five Thousand and No/100 Dollars (\$5,000.00), as security for the performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed, which sum shall be returned to Tenant after the expiration of the term hereof, provided Tenant has fully performed hereunder. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant and if the amount so applied shall not be re-instated and replaced by the curing of any such

default, Tenant shall immediately upon written demand by Landlord, replace the amount applied by Landlord to cure any such default so that the Landlord shall have the full deposit on hand at all times during the term of this Lease. In the event of a sale of the Property or a lease of the Property, subject to this Lease, Landlord shall have the right to transfer the security to the buyer or lessee, and Landlord shall thereupon be released from all liability for the return of such security and Tenant shall look to the new Landlord solely for the return of said security and this provision shall apply to every transfer of assignment made of the security to a new Landlord. The security deposited under this Lease shall not be assigned or encumbered by Tenant without the written consent of Landlord and any such assignment or encumbrance shall be void. The security deposited by Tenant hereunder shall not bear interest. In no event shall said security deposit be deemed or treated as prepaid Rent for any Rental installment due hereunder, whether the last monthly installment or otherwise. If Tenant shall default under this Lease more than three (3) times in any twelve (12) month period, irrespective of whether or not such default is cured, then the Security Deposit shall, within ten (10) days after demand by Landlord, be increased by Tenant to an amount equal to the greater of (i) three (3) times the aforesaid amount or (ii) three (3) months' Rent.

E. LIMITATION OF LANDLORD'S LIABILITY:

The term "Landlord" shall mean the tenant under the Land Lease and in the event of the transfer by such owner of its interest in the Demise Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. All liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Property existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review.

F. NO OFFER:

The submission of this document for examination does not constitute an option or offer to lease space in the Property. This document shall have no binding effect on the Parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.

G. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT OF 1990.

Any other provision of this Lease notwithstanding, the Parties hereby agree that the Demised Premises may be subject to the terms and conditions of the Americans with Disabilities Act (ADA). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, such as compliance may be required to operate as long as the Demised Premises are in full compliance with the ADA on the Commencement Date as warranted by Landlord in this paragraph 34. Landlord warrants and represents that the Demised Premises are and shall be in full compliance with the ADA on the Commencement Date. Each Party agrees to indemnify and hold the Other Party harmless for any claims which may arise out of the Other Party's failure to comply with the provisions of this paragraph, regardless whether such claim arises before or

after the Commencement Date. Tenant has no obligation to independently verify that the Demised Premises are in compliance with the ADA as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless against any claims which may arise out of Tenant's use or alteration of the Demised Premises which results in their failure to comply with the ADA. Such indemnification by Landlord and Tenant shall include, but not necessarily be limited to: reasonable attorneys fees, court costs, and judgments as a result of said claims. A Party shall notify the other Party immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee, or governmental authority regarding the ADA.

35. GOVERNING LAW:

This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina.

36. TIME OF THE ESSENCE:

It is understood and agreed between the Parties hereto that time is of the essence in all of the terms and provisions of this Lease.

37. NATURE AND EXTENT OF AGREEMENT:

This Lease, including the exhibits attached hereto, contains the complete agreement between the Parties regarding the terms and conditions of the lease of the Demised Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease may be modified only by written instrument duly executed by both Parties or their respective successors in interest.

38. NON-EASEMENT:

It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Demised Premises are situated.

39. LANDLORD'S LIEN:

To secure the payment of all Rent due and to become due hereunder and the faithful performance of all the other covenants of this Lease required by Tenant to be performed, Tenant hereby gives Landlord an express contractual lien on and security interest in all property, chattels, or merchandise which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of damage to or destruction of any such property. Such lien is, however, subordinate to the perfect security interest of any secured creditor of Tenant, whether now existing or hereafter arising. All exemption laws are hereby, waived by Tenant. This lien and security interest, are given in addition to the Landlord's statutory lien(s) and will be cumulative thereto. Upon request, Landlord will subordinate its landlord's lien to security interests on Tenant's personal property on the Premises from Tenant's vendors, all on a form satisfactory to Landlord.

40. INTERPRETATION PRESUMPTION:

This Lease has been negotiated by the Parties hereto and by the respective attorneys for each Party. The Parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease, and in the event of a dispute concerning the interpretation of this Lease, each Party hereby waives the doctrine that an ambiguity should be interpreted against the Party which has drafted the document.

41. LIMITATION OF LIABILITY:

The obligations of the Landlord hereunder shall be binding upon Landlord and each succeeding owner of the Landlord's interest hereunder only during the period of such ownership and Landlord and each succeeding owner shall have no liability whatsoever except for its obligations during each such respective period. Landlord hereby agrees for itself and each succeeding holder of the Landlord's interest, or any portion thereof that any judgment, decree or award obtained against the Landlord or any succeeding owner of the Landlord's interest, which is in any manner related to this Lease, the Demised Premises or the Tenant's use and occupancy of the Demised Premises or the common areas of the Property, whether at law or in equity, shall be satisfied out of the Landlord's equity in the land and Property owned by the Landlord to the extent then owned by the Landlord, and landlord's liability policy, and such assets and to no other assets of the Landlord, or such succeeding owner, for satisfaction. Neither Landlord, nor any officer thereof, nor any subsequent Landlord, shall have any personal liability hereunder.

42. TRANSFER OF LANDLORD'S INTEREST:

The term "Landlord" as used in this Lease means only the owner for the time being or the Mortgagee, in possession for the time being of the Demised Premises. Each time the Demise Premises are sold, the selling Landlord shall be entirely relieved of all obligations and liability under this Lease. Any person who owns the Demised Premises and leases his reversionary interest in the Demised Premises subject to the lien of this Lease shall be relieved of all liability under this Lease.

43. REPRESENTATIONS AS TO CORPORATE ORGANIZATION:

The Tenant hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Tenant is a representative of Tenant who is duly authorized to execute and deliver this Lease. Tenant shall furnish Landlord with suitable evidence of the above if requested by Landlord.

The Landlord hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, registered to do business and in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated

hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Landlord is a representative of Landlord who is duly authorized to execute and deliver this Lease. Landlord shall furnish Tenant with suitable evidence of the above if requested by Tenant.

44. JURISDICTION:

In connection with this Lease, Tenant hereby submits to the jurisdiction and venue of the State Courts of Charleston County, South Carolina in connection with any matter pertaining to this Lease and agrees that service may be had by mailing the same, postage prepaid, addressed to Tenant at Tenant's Notice Address as set forth in Paragraph 29 of this Lease, it being agreed that service shall be deemed to have been made three (3) days after mailing.

45. MEMORANDUM OF LEASE:

Landlord and Tenant hereby agree to make and execute a memorandum of lease in recordable form so as to give public notice of the execution of this Lease and a statement therein as to the commencement date of the term of this Lease. All recording fees, documentary stamps or taxes relating to this Lease or its recording shall be borne by Tenant.

IN TESTIMONY HEREOF, the Parties hereto have executed this Lease to be effective as of the date aforesaid.

WITNESS:

Matthew D. Lincoln
[Signature]

WITNESS:

Matthew D. Lincoln
[Signature]

[Signature]
[Signature]

TENANT:

RedWing, LLC.

By: [Signature]
Name: Dianne Crowley
Its: Manager

LANDLORD:

LOWCOUNTRY CAPITAL, LLC

By: [Signature]
Name: Richard H. Coen
Its: Co-manager

By: SHEM CREEK HOLDINGS, LLC
Its: Co-manager

By: [Signature]
David Sidbury, Its Co-manager

By: [Signature]
Debra Sidbury, Its Co-manager

see loc
RAC

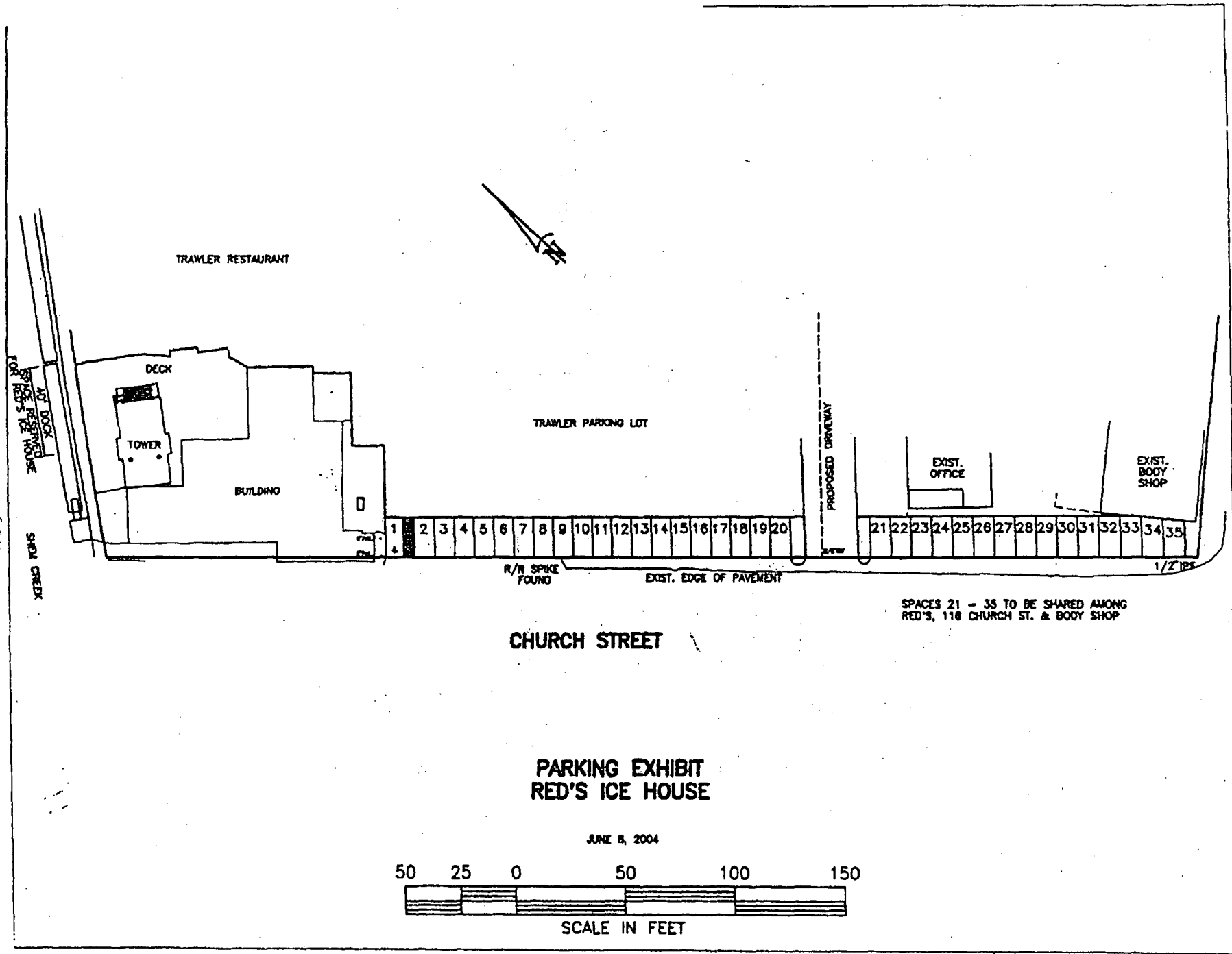


EXHIBIT "D"

RULES AND REGULATIONS

1. No advertisement or other notice shall be inscribed, painted or affixed on any part of the outside or inside of the Property, except upon the doors, and of such order, size and style, and at such places as shall be designated by Landlord.

2. Tenant shall not do or permit to be done in the Demised Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Property, or obstruct or interfere with the rights of other tenants or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or conflict with any of the rules and ordinances of the Board of Health. Tenants, theft agents and employees, shall maintain order in the Property and shall not interfere in any way with other tenants or those having business with them. Nothing shall be thrown by tenants, their agents or employees, out of the windows or doors, or down the passages of the Property. No rooms shall be occupied or used as sleeping or lodging apartments at any time. No part of the Property shall be used or any way appropriated for gambling, immoral, or other unlawful purposes.

EXHIBIT B

October 4, 2006

NOTICE OF DEFAULT

VIA FEDERAL EXPRESS

RedWing, LLC
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attention: Dianne and Cecil Crowley

RE: Lease Agreement dated June 10, 2004 (the "Lease") between Lowcountry Capital, LLC, a South Carolina limited liability company, as landlord ("Landlord") and RedWing, LLC, a South Carolina limited liability company, as tenant ("Tenant") for Red's Ice House; all capitalized terms used in this letter which are not expressly defined herein are used in the same manner as ascribed to them in the Lease

Dear Dianne and Cecil;

Notice is hereby given to Tenant that Tenant is in default under the Lease as described below. Landlord hereby demands that Tenant immediately remedy the defaults and damages caused thereby.

Tenant is in default under Section 10 of the Lease for failure to comply with the requirements of the Town of Mount Pleasant regarding the number of parking spaces to be provided for customers. As you are aware, Red's must provide at least forty-seven parking spaces for its customers. Currently, Red's has legal access to only thirty-five parking spaces for customer parking. Landlord had been informed by Tenant on August 16, 2006 that Tenant had entered into a Lease with Cottage on the Creek for access to the additional parking spaces that are needed for compliance. However, Landlord was subsequently notified by Tenant in a letter dated September 11, 2006 that Tenant has no parking rights on either the Mill Street or Cottage on the Creek properties.

Assuming that this most recent representation is true, Tenant no longer has use of sufficient parking spaces necessary to comply with the requirements of the Town of Mount Pleasant. As a result, Tenant is in default under the Lease.

Landlord hereby demands that Tenant cure the above referenced default as soon as possible, but no later than thirty (30) days from receipt of this letter. The primary means of curing this default is for Tenant to provide Landlord with proof that Tenant does in fact have a

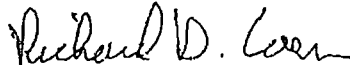
Mr. and Mrs. Cecil Crowley
October 4, 2006
Page 2

lease for the use of parking spaces ("parking lease") on the Cottage on the Creek property, which we believe to be the case. If this parking lease does exist and is intended to serve as a basis for curing this default, Tenant must provide a copy of the lease to Landlord along with a certification from the lessor that the parking lease remains in effect.

If Tenant fails to cure the foregoing default within the prescribed time period, Landlord shall have no choice but to pursue any and all appropriate remedies under the Lease, at law, and/or in equity, and Tenant must vacate the Premises and remove all of Tenant's property from the Premises at once.

Please note that nothing contained in this letter shall be construed to release Tenant from any of its obligations or liabilities under the Lease or waive any rights or remedies Landlord has, or shall have, against Tenant, or waive any other default by Tenant under the Lease.

Sincerely,


Richard H. Coen

RHC/hch

cc: James S. Grant
Andrew K. Epting, Jr., Esq.
Richard J. Brownyard, Esq.
Matthew J. Norton, Esq.
Ellis R. Lesemann, Esq.

CLT 989595v1

Appendix 183

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CASE # 146

Lowcountry Capital, LLC

IN THE MAGISTRATE'S COURT

AFFIDAVIT AND APPLICATION
FOR EJECTMENT AND RULE TO
VACATE OR SHOW CAUSE

PLAINTIFF

PHONE: (843) 727-2662

VS

RedWing, LLC

DEFENDANT

DATED February 6, 2007

I, the Plaintiff in this action, being sworn, state that I am counsel for the Landlord/Lessor of the premises herein described. I further state that the premises are within the magisterial jurisdiction of Charleston County located at:

98 Church Street, Mount Pleasant, SC 29464

and that a landlord-tenant relationship exists between the parties described as evidenced by the following facts:

A Commercial Lease, attached as Exhibit A, Notice of Default, attached as Exhibit B, and a prior order of this Court dated December 18, 2006, attached as Exhibit C.

Grounds for this ejectment are one or more of the following:

- () The tenant fails or refuses to pay the rent when due or demanded; or
(xx) The term of tenancy or occupancy has ended; or
(xx) A term of condition of the contract has been violated, to-wit:

The Tenant Redwing, LLC is in breach of the attached agreements by failing to secure sufficient parking for its business operations and operating in violation of town ordinances. The Landlord Lowcountry Capital, LLC notified RedWing of this default in writing in October 2006 and by the filing of a prior Application for Ejectment with this Court. Despite ample notice and time to cure, RedWing has not cured its default and is continuing to operate in violation of town ordinances, which constitutes a breach of the Commercial Lease. As a result, RedWing should be ejected from the premises.

SWORN TO BEFORE ME THIS 6TH
DAY OF FEBRUARY, 2006

Melody Reeves
NOTARY PUBLIC OR MAGISTRATE
MY COMMISSION EXPIRES 5/1/2011

Ellis R. Leemann
ELLIS R. LESEMANN, COUNSEL FOR PLAINTIFF

Upon application for ejectment, above, filed by the Plaintiff, you the Defendant and lessee of the premises noted above must request a hearing at 1189 Iron Bridge Road, Suite 300, Mount Pleasant, SC 29464 within ten (10) days from the date of service of this affidavit and rule why you should not be ejected from said premises. FAILURE TO VACATE THE PREMISES OR TO RESPOND TO THIS COURT WITHIN THE TIME PERIOD SET ABOVE, MAY RESULT IN THE ISSUANCE OF A WARRANT OF EJECTMENT.

Feb 7, 07
DATED

J. Muller
MAGISTRATE

EXHIBIT A

Appendix 185

The Rent for the first year of any renewal term shall be negotiated between Landlord and Tenant beginning within one hundred twenty (120) days of the expiration of the Initial Term. During any renewal term, the Rent shall escalate 2% annually (in the manner described in Section D (1)).

D. COVENANTS AND CONDITIONS OF LEASE:

This Lease is made on the following covenants and conditions which are expressly agreed to by Tenant and Landlord:

1. RENT:

Tenant covenants to pay as rental to Landlord the annual sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00), in advance of the first (1st) day of each month, and mailed to Landlord, or to such other address as Landlord may designate in writing to Tenant from time to time. The Rent is due on the first (1st) day of each month and shall not be withheld for any reason whatsoever. The Rent increases on the first anniversary of the Lease, and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Tenant pays the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Initial Term, the Rent shall decrease by Five Thousand and 00/100 Dollars (\$5,000.00) per month.

Each monthly rental payment, as set forth above, is due in advance on the first (1st) day of the calendar month. The parties agree that Tenant shall have a ten-day grace period within which the Landlord may receive the monthly advance rental payment without default; however, if the Landlord does not receive the monthly rental payment by six o' clock p.m. on the tenth day of the calendar month, the Tenant shall be in default without further notice, and the Landlord may, at its option, exercise its remedies provided herein for default, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month. Tenant shall not be in default for nonpayment of rent until the later of the tenth (10th) day of the calendar month or five (5) days after receiving written notice of the non-payment of rent from Landlord.

2. LEASE AS IS:

The Property is to be leased "as is". Tenant shall have sole responsibility for any and all improvements of the Property.

3. AUTHORIZED USE:

Tenant agrees not to abandon or vacate the Demised Premises and shall use the Demised Premises for the following purpose, and for no other purpose whatsoever, without the written consent of Landlord first had and obtained:

Tenant will use the Demised Premises for a restaurant and bar and for any other lawful purpose in the ordinary course of operating its business. Tenant shall have the right to seasonal closings of the Demised Premises.

Tenant will not permit or suffer anything to be done nor keep anything in or about the Demised Premises, which would render the insurance thereon void or voidable or cause cancellation. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Demised Premises, any article or material which is prohibited by law or by standard property insurance policies of the kind customarily in force with respect to premises of the same general type as those covered by this Lease.

4. INSURANCE/INDEMNITY:

- A. EXCEPT AS TO INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENCE OR WILLFUL ACTS OF LANDLORD FOR WHICH LANDLORD IS LEGALLY LIABLE, TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM ALL CLAIMS (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST SUCH CLAIMS) (I) ARISING OR ALLEGED TO ARISE FROM ANY ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES OR CONTRACTORS, OR (II) RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO THE PROPERTY OF ANY PERSON OCCURRING DURING THE TERM OF THIS LEASE IN THE DEMISED PREMISES. TENANT AGREES TO USE AND OCCUPY THE DEMISED PREMISES AND OTHER FACILITIES OF THE BUILDING AT ITS OWN RISK AND HEREBY RELEASES LANDLORD, ITS AGENTS OR EMPLOYEES, FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO THE FULL EXTENT PERMITTED BY LAW. THE INDEMNIFICATION PROVISION HEREIN SHALL SURVIVE ANY TERMINATION OF THIS LEASE BY LAPSE OF TIME OR OTHERWISE.
- B. Tenant shall maintain property insurance on the Property and such additions and improvements by Tenant, which have become or are to become the property of Landlord at the termination of the Lease. Such insurance shall be maintained with such companies and in such amounts desired by Landlord, and suitable for coverage of the Property and Demised Premises. Landlord shall also maintain commercial general liability insurance to afford such protection and with such companies as desired by Landlord. Tenant shall maintain at its expense (i) property insurance on all of its personal property and removable trade fixtures located in the Demised Premises and on all additions and improvements made by Tenant, (ii) commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence

covering the Demised Premises, (iii) property insurance coverage adequate to pay one hundred percent (100%) of the Rent to Lessor for the period of time in which Lessee is unable to operate its business as a result of sustained property damage, and (iv) building ordinance coverage insurance. Tenant's commercial general liability insurance shall list the Landlord, Landlord's Agent, and Snowmill, LLC as additional insured parties and provide that it is primary over any insurance carried by Landlord.

- C. Anything in this Lease to the contrary notwithstanding, the Parties hereto hereby waive any and all rights of recovery, claim, action or cause of action, against each other, their respective agents, officers and employees for any loss or damage that may occur to the Demised Premises, the Property and to all property, whether real, personal or mixed, located in or at the Demised Premises or the Property, by reason of fire, the elements, or any other peril as defined in the basic peril property insurance policy approved for use in South Carolina from time to time regardless of cause or origin, including negligence of the Parties hereto, the respective agents, officers and employees. Since the above mutual waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each Party hereto agrees immediately to give each insurance company which has issued to it property insurance policies, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such coverage by reason of said waivers.
- D. Each of the insurance policies referred to in this paragraph shall provide (if provision is obtainable), that it shall not be canceled without at least thirty (30) days prior written notice to Landlord and Tenant. In addition, the Parties shall furnish to one another certificates or copies of each of the insurance policies, which each Party is required to maintain promptly after obtaining such insurance.
- E. The Parties mutually agree that they shall not be responsible or liable to each other, their employees, agents, customers, or invitees for bodily injury (fatal or nonfatal) or property damage occasioned by the acts or omissions of any other tenant or such tenant's employees, agents, contractors, customers, or invitees within the Property.

5. CONDITION OF THE DEMISED PREMISES:

All improvements, alterations and additions to the Demised Premises desired by Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Landlord. Landlord's approval of the plans, specifications and working drawings for Tenant's alterations and/or Landlord's approval of Tenant's plans for Landlord's work shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or

compliance with all laws, rules and regulations of governmental agencies or authorities. If the improvements, alterations, or additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. All improvements and additions made by or for the Tenant and permanently attached to the Demised Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Demised Premises and shall be surrendered to Landlord at the Expiration Date or earlier termination of this Lease. Tenant has inspected and accepts the Demised Premises in the same condition they are in at the time of execution of this Lease. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Demised Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Demised Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance or regulation applicable thereto.

Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that it has granted its prior consent to Tenant for the material alteration of some or all of the Demised Premises, in Tenant's sole reasonable discretion. Tenant shall be responsible for payment of the costs of any such alterations provided the total cost of such alterations.

Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that all photographs located in or attached to the Demised Premises are the personal property of Richard H. Coen and have been temporarily loaned to the Tenant for use in Tenant's business. During the term of this Lease, Tenant shall not damage or take possession of such photographs nor permit any other party to damage or take possession of such photographs. Tenant shall use its best efforts to keep such photographs in good repair. Upon the termination or expiration of this Lease, Tenant shall return such photographs to Richard H. Coen in good repair.

6. REPAIR AND CARE OF PROPERTY:

- A. Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain the Demised Premises in good order and repair. Tenant shall maintain the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for leakage, cleaning, and other customary periodic maintenance. Tenant agrees to return the Demised Premises to Landlord at the expiration or prior termination of this Lease in as good a condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted.
- B. Tenant shall keep and maintain the foundations, roof, and structural portions of the exterior walls of the Demised Premises in good condition and repair. Landlord gives to Tenant exclusive control of the Demised Premises and shall be under no obligation to inspect the Demised

Premises. Landlord shall not be obligated to make any repair or replacement.

7. PAYMENT OF TAXES AND OTHER ASSESSMENTS:

Landlord shall pay annually all real estate taxes on the Demised Premises. Tenant shall pay its Pro-Rata Share (as defined below). Further, Tenant shall be responsible for and shall pay before delinquent all municipal, county, federal or state taxes coming due during or after the terms of this Lease against any leasehold interest or personal property of any kind owned or placed in, or about the Demised Premises by Tenant. Tenant shall pay all Solid Waste Disposal User Fees for Tenant's waste. Landlord and Tenant acknowledge and agree that Tenant's Pro-Rata Share of the real estate taxes under this Lease is One Hundred percent (100%) ("Pro Rata Share") of Charleston County TMS # 517-15-00-003 plus one hundred percent (100%) of the real estate taxes related to the spaces designated in Exhibit *A. 10/10/15 OC pdk*

Both Parties agree that if Tenant must pay real estate taxes directly to obtain tax incentives, that Tenant may pay Tenant's share of taxes directly, providing proof of same to Landlord.

8. PAYMENT OF UTILITIES:

Tenant shall contract for and pay, at its own expense and without damage or threat of damage to the Property or any part of the Property, electrical power and any other utilities or services required for its use of the Demised Premises, including, but not limited to, telephone service, electric power and connections for Tenant's equipment, and water and sewer. Landlord shall cause an electrical meter to be installed for the Demised Premises. Tenant shall keep such meter, or any other meters measuring the electricity consumed at the Demised Premises, in good order and repair.

9. SERVICES

Landlord shall not be liable for loss or damage arising from failure to provide utilities or services as a result of strike, casualty, repairs, or other causes beyond Landlord's reasonable control, nor shall any such failure relieve Tenant from the obligation to pay the full amount of Rent herein set forth, nor shall any such failure constitute or be construed as a constructive or other eviction of Tenant. Should Tenant desire any additional services beyond those described in Paragraph 7, above, Landlord may, at Landlord's option, upon reasonable advance notice from Tenant to Landlord, furnish such services. Tenant agrees to pay Landlord upon demand the cost for such additional services as Additional Rent.

10. COMPLIANCE WITH LAWS:

During the term of this Lease, Tenant and Landlord shall, at their own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and city governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto or any part thereof.

11. ALTERATION OF PROPERTY AND INSTALLATION OF FIXTURES AND
OTHER APPURTENANCES:

Tenant may, with the prior written consent of Landlord, in Landlord's sole discretion, but at its own cost and expense and in a good and workmanlike manner, make such alterations and repairs in the Demised Premises as Tenant may require for the conduct of its business. Any alterations or improvements to the Demised Premises, shall at the option of Landlord become the property of Landlord at the expiration or sooner termination of this Lease.

Any and all work performed by Tenant or its contractors, shall be with workmen and contractors approved in advance in writing by Landlord and in a manner and upon terms and conditions and at times satisfactory to and approved in advance in writing by Landlord. Landlord will not unreasonably withhold such approval. All work shall be approved by and in compliance with any and all laws, rules, and regulations of governmental agencies or authorities and in compliance with all building codes.

Unless otherwise agreed in writing by Landlord, prior to and at all times during the performance of the work by any of Tenant's contractors or subcontractors, Tenant shall require such contractors to provide, and shall require all subcontractors of every tier to provide, the insurance coverages described below, with deductibles for their own accounts, on policy forms acceptable to Landlord and with limits not less than those shown below, all of which shall be provided at no cost to Landlord:

	TYPE OF INSURANCE	MINIMUM LIMITS
I.	Workers' Compensation Employer's Liability	Statutory \$100,000
II.	Commercial General Liability (Including Products/Completed Operations)	Per Occurrence \$1,000,000
III.	Automobile Liability (All Owned, Non-Owned and Hired)	Combined Single Limit \$1,000,000

Tenant shall require that such contractors' Workers' Compensation insurance be endorsed to provide that the underwriter waives its right of subrogation against Landlord, its Affiliates and Agents. In addition, Commercial General Liability and Automobile Liability policies shall be endorsed specifically to name Landlord, its Affiliates and Agents as Additional Insured parties and be endorsed to provide that they are primary coverages, not in excess of any other insurance available to Landlord, its Affiliates and Agents to insure Landlord, its Affiliates and Agents against claims arising from such work. Evidence of such specific

endorsements shall be furnished to Landlord prior to commencement of such work. IN THE EVENT TENANT FAILS TO OBTAIN SUCH SPECIFIC ENDORSEMENTS, TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD, ITS AFFILIATES AND AGENTS HARMLESS FROM ANY AND ALL LOSSES, CLAIMS, DAMAGES, AND EXPENSES WHICH WOULD BE COVERED BY SUCH SPECIFIC ENDORSEMENTS THAT LANDLORD MAY INCUR, INCLUDING THOSE BASED IN WHOLE OR IN PART ON THE IMPUTED, JOINT, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ONE OR MORE OF THEM, INCLUDING (WITHOUT LIMITATION) COSTS OF DEFENSE AND ATTORNEYS' FEES. Tenant shall furnish to Landlord, prior to any such contractor or subcontractor commencing work hereunder, certificates evidencing that the required insurance is in force. The certificates shall provide that in the event of cancellation or material change, thirty (30) days' prior written notice shall be given to Landlord. If requested to do so by Landlord, Tenant shall also furnish the originals or certified copies of any such contractor's insurance policies for inspection. Such policies shall be subject to the approval of Landlord as to adequacy. Should Tenant fail to procure evidence of any such contractor's insurance or to require any such contractor to maintain in force the insurance specified herein, Landlord may secure such insurance and the cost thereof shall be borne by Tenant. Tenant agrees to reimburse Landlord as Additional Rent the cost of any such insurance plus a five percent (5%) administrative charge within ten (10) days after billing by Landlord. Any sum and financing unpaid fifteen (15) days after billing by Landlord shall bear interest at the rate of eighteen percent (18%) per annum until paid to Landlord. Compliance with the provisions of this subparagraph by Tenant for each such contractor and the limits of liability shown for each of the insurance coverages to be provided by Tenant for all such contractors shall not be deemed to constitute a limitation of Tenant's liability for claims or in any way limit, modify or otherwise affect Tenant's indemnification obligations. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for such contractor or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive or invalidate any of the provisions of this Lease. Where used herein, "Affiliates" shall mean any corporation, partnership, joint venture, division or other legal entity, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Landlord, its employees, agents, and representatives.

12. SUBORDINATION OF LEASE, ATTORNMENMENT AND ESTOPPEL CERTIFICATE:

Tenant agrees to subordinate this Lease to any mortgages, the Land Lease and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust pursuant to a Subordination, Non-Disturbance and Attornment Agreement. Tenant also agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at sale pursuant to any foreclosing or deed-in-lieu thereof, and to the Lessor in the event of a termination of the Land Lease.

Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord a statement certifying any facts that are then true with respect to this Lease, including without limitation (if such be the case) that this Lease is in full force and effect, that there are no modifications or amendments to the Lease except as disclosed, that Tenant is in possession of the Demised Premises, that Tenant has commenced the payment of Rent, that no Rent or

other sums have been paid to Landlord in advance, and that Tenant claims no defense or off-set to the due and full performance of its obligations under this Lease, and other such reasonable facts requested in tenant estoppel certificate.

13. CONDEMNATION:

If the whole of the Demised Premises, or such portion thereof as will make the Demised Premises unusable for the purpose herein leased be condemned by any legally constituted authority, this Lease shall terminate on the date when possession thereof is taken by public authorities, and Rent shall be accounted for as between Landlord and Tenant as of that date. In the event only a portion of the Demised Premises is acquired by condemnation as will leave the remaining Demised Premises, after alterations and repairs, in condition suitable for use by Tenant including comparable square footage space, type and quality of space, similar entrances/exits, and comparable parking, the monthly rental payments from the day of such acquisition to the end of the original or extended term of this Lease shall be continued, and Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required to restore the Demised Premises to a reasonably similar location within the Property. All sums awarded by the condemning authority for the taking of the interest of Landlord or Tenant, whether as damages or as compensation, will be the property of Landlord or Tenant as awarded. The Parties agree to notify the Other Party within two working days of notice by any legally constituted authority of its intent to condemn the Demised Premises.

14. RIGHT OF ENTRY BY LANDLORD:

Tenant, at any time during the term of this Lease, shall permit inspection of the Demised Premises at any reasonable time, by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Demised Premises or in order for the Landlord to show the Demised Premises to prospective Tenants. Landlord shall use its best efforts to minimize any interference to Tenant's use of the Demised Premises in such event. Ninety (90) days prior to the expiration of this Lease, Landlord may post suitable notices on the Demised Premises that the same are "For Rent" and show the Demised Premises to prospective tenants at reasonable times.

15. ASSIGNMENT, SUBLETTING, AND CHANGE IN OWNERSHIP:

Tenant shall not sublet, assign, mortgage or encumber this Lease, or license, or permit the Demised Premises or any part thereof to be used by others, whether voluntarily or by operation of law or otherwise, without the prior written consent of Lessor in each instance. Landlord shall not unreasonably withhold consent to such sublease, assignment, mortgage or encumbrance. The sale or transfer of membership interest, if Tenant be a limited liability company, shall be deemed an assignment of this Lease. It is understood that one hundred percent of Tenant's membership interest is currently owned by Dianne Crowley, and that transfer of any of her membership interest in Tenant to others shall be deemed an assignment. In the event this Lease or any interest herein is assigned or the Demised Premises or any part thereof sublet without Landlord's prior express written consent, Tenant shall remain fully liable under the terms, covenants, and other conditions of this Lease. Landlord shall thereupon have the right and option to cancel and terminate this Lease effective upon fifteen (15) days

notice to Tenant given by Landlord at any time thereafter either as to the entire Demised Premises or as to only the portion thereof which Tenant shall have attempted to assign or sublease or otherwise permitted some other party's occupancy without Landlord's prior express written permission; and if Landlord elects to cancel and terminate this Lease as to the aforesaid portion of the Demised Premises, then the Rent and other charges payable hereunder shall thereafter be proportionately reduced. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

16. DAMAGE OR DESTRUCTION:

If the Property or the Demised Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty covered by Tenant's policy of fire and extended coverage insurance, then Tenant shall replace the Demised Premises with a building conforming to the specifications of the building which was destroyed or an equivalent building satisfactory to Landlord and Tenant, as soon as possible after the insurance adjustment, or at its option, and after giving written notice to Landlord within thirty (30) days after the occurrence of said casualty or destruction, Tenant may turn all insurance proceeds over to Landlord, Landlord's mortgagee, if any, as their interests may appear, and terminate this Lease free of all further liabilities except those incurred prior to termination. In the event that Tenant replace the Demised Premises, Tenant shall remain responsible for the Rent due the Landlord.

17. SURRENDER OF DEMISED PREMISES:

Tenant agrees to deliver all keys and to surrender the Demised Premises at the expiration of the term of this Lease. If Tenant should remain in possession of the Demised Premises after the expiration or termination of this Lease, without the execution by Landlord and Tenant of a new lease or a written renewal or extension of the term of this Lease, then Tenant shall be deemed to be holding over in the Demised Premises. Such holding over shall, unless otherwise agreed in writing, constitute a month to month tenancy only, and Tenant shall pay, as monthly rental, the existing monthly Rent plus fifty percent (50%) and all Additional Rent.

18. QUIET ENJOYMENT:

If Tenant shall pay the Rent and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment of the Demised Premises without interference from Landlord or any person lawfully claiming through Landlord, subject, however to the terms of this Lease and any mortgages or deeds of trust provided for in Paragraph 12 above.

19. WAIVER OF COVENANTS:

It is agreed that the waiving of any of the covenants of this Lease by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision contained herein. No forbearance by either Party to seek a

remedy for any breach of this Lease shall be deemed a waiver by such Party of its rights or remedies with respect to such a breach.

20. DEFAULT BY TENANT:

A. This Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to wit: (a) failure to timely pay any installment of Rent when due, (b) failure to timely pay any installment of taxes or any other sums required to be paid by Tenant hereunder, or if any part thereof, shall at any time be in arrears and unpaid by Tenant for a period of seven (7) days, or (c) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless said default cannot reasonably be cured within thirty (30) days and Tenant shall have commenced to cure said default within thirty (30) days and continues diligently to pursue the curing of same within ninety (90) days from the occurrence of such default), or, (d) any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceedings by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall abandon or vacate the Demised Premises, Landlord shall have the option to pursue any one or more of the following remedies:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in Rent or Rent for the remainder of the lease term, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise.

(2) Enter upon and take possession of the Demised Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, without being liable for prosecution or any claim for damages therefore, and relet the Demised

Premises and receive the Rent therefore; and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting.

(3) Enter upon the Demised Premises without being liable for prosecution or any claim for damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expense which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action.

(4) Acceptance of possession of the Demised Premises by Landlord from Tenant shall not constitute an acceptance of a surrender of the Demised Premises as such unless Landlord shall specifically acknowledge the same in writing.

(5) Except as otherwise provided by statute or rule of law, pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided for herein or any other remedies provided by law, all of which may be enforced cumulatively, nor shall pursuit of any remedy provided for herein constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violation or breach of any of the terms, provisions and covenants herein contained.

B. If Tenant shall not remove its property from the Demised Premises upon termination of this Lease, Landlord may, at its option, remove the same or any of the same in any manner that the Landlord may choose and store the same without liability to the Tenant for loss thereof, and Tenant will pay the Landlord, as Additional Rent, on request, any reasonable expenses incurred in such removal and also for storage of the said effects for any length of time during which the same shall be in the Landlord's possession.

C. In case of any such default, re-entry, expiration and/or dispossession: (1) the Rent due hereunder for the entire term of the Lease shall thereupon become due and payable, and no receipt of money by Landlord from Tenant after termination of this Lease or after the giving of any notice thereof shall reinstate, continue or extend the term of this Lease; (2) Landlord may re-let the Demised Premises or any part or parts or parts thereof, either in the name of the Landlord or otherwise, upon terms and conditions deemed appropriate by Landlord, and for a term or terms which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free Rent, provided, however, that

Landlord shall retain only Five Thousand and no/100 Dollars (\$5,000.00) per month of Tenant's accelerated Rent and return the balance of the monthly Rent to Tenant; (3) As Additional Rent due hereunder, Tenant agrees to pay all reasonable costs and expenses and all reasonable attorneys fees incurred by Landlord in enforcing any of the obligations of Tenant under this Lease, and; (4) Tenant or the legal representatives of Tenant shall in addition to any other remedies contained herein, pay Landlord, as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants herein contained, any deficiency between the Rent hereby reserved and/or covenanted to be paid and the net amount of the Rents collected on the account of the Lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. In computing such liquidated damages, there shall be added to the said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, including but not limited to costs, reasonable attorneys fees, brokerage fees and preparation of the Demised Premises for re-letting as may be deemed appropriate by Landlord, and there shall be deducted the amount of any security deposit held by and forfeited to Landlord. Any such liquidated damages shall be payable immediately upon written demand therefore given by Landlord to Tenant, and the acceptance of partial payment by Landlord shall in no way prejudice Landlord's rights or affect Tenant's responsibility for the payment of the total balance owed. Landlord, at its option, may make such reasonable alternations, repairs, replacements and/or decorations in the Demised Premises as Landlord, in its reasonable judgment, considered advisable or necessary for purposes of re-letting the Demised Premises; and the making of such reasonable alternations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid, and Tenant hereby expressly agrees to pay any reasonable costs incurred in connection therewith as Additional Rent.

- D. If Tenant at any time shall fail to pay any taxes, assessments, or liens, or 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 and at the expense of Tenant. All sums so paid by Landlord and all costs and expense so incurred shall accrue interest at the rate of eighteen percent (18%) per annum from the date of payment or incurring thereby by Landlord and shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.
- E. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or

in equity. For the purpose of any suit brought by Landlord or based on this Lease, this Lease shall be construed to be a divisible contract to the end that successive action may be maintained as successive periodic sums shall mature under this Lease and it is further agreed that failure to include in any suit any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums omitted.

- F. Thirty days notice does not apply to Tenant's failure to pay timely rent, which is governed instead by Section D.1 of this Lease, providing for automatic default after the ten-day grace period, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month.

21. DEFAULT BY LANDLORD:

This Lease is made upon the condition that Landlord shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth.

22. FAILURE TO PERFORM COVENANT AND NON-WAIVER:

Any failure on the part of either Party to this Lease to perform any obligation hereunder or any delay in doing any act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or other similar cause beyond the control of the Party so failing to perform, to the extent and for the period that such continues, save and except that the provisions of this paragraph shall not excuse a non-payment of Rent, taxes, Additional Rent, and other sums due hereunder on its due date.

Neither acceptance of Rent by Landlord nor failure by Landlord to complain of any action, non-action or default of Tenant shall constitute a waiver of any of Landlord's rights hereunder. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default.

23. RIGHTS OF SUCCESSORS AND ASSIGNS:

The covenants and agreements contained in this Lease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, their heirs, successors, distributees, executors, administrators, legal representative, assigns, and upon their respective successors in interest, except as expressly hereinbefore provided.

24. LIENS:

Other than that leasehold mortgage from Tenant to NBSC in the approximate amount of One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00), as amended from time to time to include a refinancing of the terms or an extension of the maturity thereof, Tenant must obtain Landlord's consent to create any other leasehold mortgage, equity line, loan, or any other form of indebtedness secured by Tenant's interest in the leasehold or the Demised Premises. Furthermore, Tenant shall not allow or permit the creation of any liens for

labor or material on or against the Demised Premises, the Property, or any part thereof, and all persons either contracting with Tenant or furnishing and/or rendering labor and/or materials to Tenant, shall be notified in writing by Tenant that they must look only to Tenant to secure the payment of such labor or materials. Tenant agrees to provide such written notice as may be required, pursuant to S.C. Code Ann. §29-5-80 to all persons performing services or furnishing materials of Landlord's non-responsibility for payment for such services or materials. Should any mechanics', materialmens' or other liens be filed against the Demised Premises, the Property, or any part thereof, for any reason whatsoever relating to the furnishing of labor or materials associated with improvements to the Demised Premises for which Tenant is responsible for payment, Tenant shall cause the same to be cancelled and discharged of record by statutory bond or otherwise within ten (10) days after notice and demand for such cancellation and discharge by Landlord. In the event any lien continues undischarged after such ten (10) day period, Landlord shall have the right, at its sole election and discretion without any obligation, to pay the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid, including all costs and expenses, shall be deemed Additional Rent under the Lease and shall be due and payable on demand. FURTHERMORE, TENANT SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, ITS AFFILIATES AND AGENTS FROM AND AGAINST CLAIMS AND FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS TO TENANT IN CONNECTION WITH THE DEMISED PREMISES, OR ANY PART THEREOF, BY ANY OF TENANT'S CONTRACTORS AND THEIR SUBCONTRACTORS OF EVERY TIER. LANDLORD SHALL BE RESPONSIBLE, HOWEVER, FOR THE SATISFACTION OF CLAIMS FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS IN CONNECTION WITH THE DEMISED PREMISES, THE PROPERTY, OR ANY PART THEREOF, WHICH FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS OCCURRED ON OR BEFORE OCTOBER 1, 2003.

25. CONSTRUCTION OF LEASE:

The word "Landlord" as used herein shall refer to the individual, individuals, partnership or corporation called "Landlord" at the commencement of this Lease, and the word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant." Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plurals when sense requires.

26. PARAGRAPH HEADINGS:

The paragraph headings are inserted only for convenience and for reference and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

27. COMMISSIONS:

The Parties represent and warrant that they have dealt directly with and only with each other in connection with this Lease and that insofar as they know, no broker(s) negotiated this Lease or is entitled to any commission in connection therewith and the execution and delivery of this Lease by the Parties shall be conclusive evidence that they have relied upon the foregoing representation and warranty. The Parties shall defend and hold each other harmless for any claims which arise from the failure of this mutual warranty.

28. RULES AND REGULATIONS:

Tenant agrees that Tenant, its agents, employees, and invitees will abide by the Rules and Regulations as set forth on Exhibit "D" attached hereto, which may be amended from time to time by the Landlord. Such Rules and Regulations shall be those necessary in the sole opinion of the Landlord to provide for the uniform service, maintenance and peaceful enjoyment of the common areas and the outside common areas. Landlord shall notify Tenant in writing of changes in the Rules and Regulations from time to time and Tenant agrees to assist Landlord in the enforcement of such Rules and Regulations.

Landlord agrees that the Rules and Regulations as set forth on Exhibit "D", as amended from time to time, shall be applied uniformly to any and all tenants on the Building.

29. NOTICES:

It is agreed that the legal address of the Parties for all notices required or permitted to be given hereunder, or for purposes of billing, process, correspondence and any other legal purposes whatsoever, shall be deemed sufficient if given by a communication in writing by United States Mail, postage prepaid, and certified, and addressed as follows:

If to the Landlord:

Lowcountry Capital, LLC
100 Haddrell Street
Mt. Pleasant, SC 29464
Attn: Richard H. Coen

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704-342-0926

If to the Tenant:

RedWing, LLC.
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attn: Cecil Crowley

30. HAZARDOUS MATERIALS:

- A. Tenant shall not cause or permit any Hazardous Materials (hereinafter defined) to be stored, used or disposed of in or about the Demised Premises or the Property by Tenant, its agents, employees, contractors or invitees, nor shall the use which Tenant makes of the Demised

Premises result in any Hazardous Materials Contamination (hereinafter defined). For purposes of this Lease, the following terms shall have the meanings herein specified:

1. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. § 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.), as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (iii) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended from time to time, and regulations promulgated thereunder ("TSCA"); (iv) pesticides specifically regulated under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 135 et seq.), as amended from time to time, and regulations promulgated thereunder ("FIFRA"); (v) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance; (vi) the presence of oil, petroleum products, and their by-products; (vii) any substance the presence of which in or about the Demised Premises or the Property is prohibited by any governmental authority or which is hereafter classified by any governmental authority as a hazardous toxic waste, material, substance or similar phraseology; and (viii) any substance which by any governmental authority requires special handling notification of any governmental authority in its collection, storage, treatment, or disposal.
 2. "Hazardous Materials Contamination" shall mean the spillage, leakage, emission or disposal of Hazardous Materials (whether presently existing or hereafter occurring) in or about the buildings, facilities, soil, groundwater, air or other elements in or about the Demised Premises, or the Property or any other property as a result of Hazardous Materials at any time emanating from the Demised Premises or the Property.
- B. Notwithstanding the foregoing, Tenant shall be permitted to store, use and dispose of de minimus amounts of Hazardous Materials which are incidental to Tenant's business. Such Hazardous Materials and all containers therefore, shall be stored, used and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Materials. Tenant shall be liable for all costs and expenses related to the storage, use and disposal of such de minimus amounts of Hazardous Materials incidental to Tenant's business.

- C. At the commencement of each "Lease Year" (the term "Lease Year" as used in this Lease shall mean any twelve (12) month period beginning with the Commencement Date and each twelve (12) month period beginning on any anniversary date thereof), Tenant shall disclose to Landlord the names and approximate amounts of all Hazardous Materials which Tenant intends to store, use or dispose of in or about the Demised Premises in the coming Lease Year. In addition, at the commencement of each Lease Year (beginning with the second Lease Year), Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials that to Tenant's knowledge were actually stored, used or disposed of in or about the Demised Premises, if such materials were not previously identified to Landlord at the commencement of the previous Lease Years.
- D. Tenant shall give written notice to Landlord immediately upon Tenant's acquiring knowledge of the presence of any Hazardous Materials in or about the Demised Premises (subject to the provisions of subparagraph B. hereof) or of any Hazardous Materials Contamination with a full description thereof. Landlord shall have the right, but not the obligation, without in any way limiting Landlord's other rights and remedies under the Lease, to enter onto the Demised Premises or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Demised Premises or the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Demised Premises or the Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Demised Premises or the Property, or other action and/or which, in Landlord's sole opinion, could jeopardize Landlord's security under the Lease.
- E. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES DURING TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAG. (REAL OR

PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH E SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES TENANT MAY HAVE TO LANDLORD AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

F. TO THE BEST OF LANDLORD'S KNOWLEDGE, LANDLORD REPRESENTS AND WARRANTS THAT THE DEMISED PREMISES ARE AND SHALL BE FREE OF HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION AS OF THE COMMENCEMENT DATE. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SEYFLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND) OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES PRIOR TO TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH F SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES LANDLORD MAY HAVE TO TENANT AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

31. SECURITY DEPOSIT:

The Tenant shall deposit with the Landlord the sum of Five Thousand and No/100 Dollars (\$5,000.00), as security for the performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed, which sum shall be returned to Tenant after the expiration of the term hereof, provided Tenant has fully performed hereunder. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant and if the amount so applied shall not be re-instated and replaced by the curing of any such

default, Tenant shall immediately upon written demand by Landlord, replace the amount applied by Landlord to cure any such default so that the Landlord shall have the full deposit on hand at all times during the term of this Lease. In the event of a sale of the Property or a lease of the Property, subject to this Lease, Landlord shall have the right to transfer the security to the buyer or lessee, and Landlord shall thereupon be released from all liability for the return of such security and Tenant shall look to the new Landlord solely for the return of said security and this provision shall apply to every transfer of assignment made of the security to a new Landlord. The security deposited under this Lease shall not be assigned or encumbered by Tenant without the written consent of Landlord and any such assignment or encumbrance shall be void. The security deposited by Tenant hereunder shall not bear interest. In no event shall said security deposit be deemed or treated as prepaid Rent for any Rental installment due hereunder, whether the last monthly installment or otherwise. If Tenant shall default under this Lease more than three (3) times in any twelve (12) month period, irrespective of whether or not such default is cured, then the Security Deposit shall, within ten (10) days after demand by Landlord, be increased by Tenant to an amount equal to the greater of (i) three (3) times the aforestated amount or (ii) three (3) months' Rent.

E. LIMITATION OF LANDLORD'S LIABILITY:

The term "Landlord" shall mean the tenant under the Land Lease and in the event of the transfer by such owner of its interest in the Demise Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. All liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Property existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review.

F. NO OFFER:

The submission of this document for examination does not constitute an option or offer to lease space in the Property. This document shall have no binding effect on the Parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.

G. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT OF 1990.

Any other provision of this Lease notwithstanding, the Parties hereby agree that the Demised Premises may be subject to the terms and conditions of the Americans with Disabilities Act (ADA). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, such as compliance may be required to operate as long as the Demised Premises are in full compliance with the ADA on the Commencement Date as warranted by Landlord in this paragraph 34. Landlord warrants and represents that the Demised Premises are and shall be in full compliance with the ADA on the Commencement Date. Each Party agrees to indemnify and hold the Other Party harmless for any claims which may arise out of the Other Party's failure to comply with the provisions of this paragraph, regardless whether such claim arises before or

after the Commencement Date. Tenant has no obligation to independently verify that the Demised Premises are in compliance with the ADA as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless against any claims which may arise out of Tenant's use or alteration of the Demised Premises which results in their failure to comply with the ADA. Such indemnification by Landlord and Tenant shall include, but not necessarily be limited to: reasonable attorneys fees, court costs, and judgments as a result of said claims. A Party shall notify the other Party immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee, or governmental authority regarding the ADA.

35. GOVERNING LAW:

This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina.

36. TIME OF THE ESSENCE:

It is understood and agreed between the Parties hereto that time is of the essence in all of the terms and provisions of this Lease.

37. NATURE AND EXTENT OF AGREEMENT:

This Lease, including the exhibits attached hereto, contains the complete agreement between the Parties regarding the terms and conditions of the lease of the Demised Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease may be modified only by written instrument duly executed by both Parties or their respective successors in interest.

38. NON-EASEMENT:

It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Demised Premises are situated.

39. LANDLORD'S LIEN:

To secure the payment of all Rent due and to become due hereunder and the faithful performance of all the other covenants of this Lease required by Tenant to be performed, Tenant hereby gives Landlord an express contractual lien on and security interest in all property, chattels, or merchandise which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of damage to or destruction of any such property. Such lien is, however, subordinate to the perfect security interest of any secured creditor of Tenant, whether now existing or hereafter arising. All exemption laws are hereby, waived by Tenant. This lien and security interest, are given in addition to the Landlord's statutory lien(s) and will be cumulative thereto. Upon request, Landlord will subordinate its landlord's lien to security interests on Tenant's personal property on the Premises from Tenant's vendors, all on a form satisfactory to Landlord.

40. INTERPRETATION PRESUMPTION:

This Lease has been negotiated by the Parties hereto and by the respective attorneys for each Party. The Parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease, and in the event of a dispute concerning the interpretation of this Lease, each Party hereby waives the doctrine that an ambiguity should be interpreted against the Party which has drafted the document.

41. LIMITATION OF LIABILITY:

The obligations of the Landlord hereunder shall be binding upon Landlord and each succeeding owner of the Landlord's interest hereunder only during the period of such ownership and Landlord and each succeeding owner shall have no liability whatsoever except for its obligations during each such respective period. Landlord hereby agrees for itself and each succeeding holder of the Landlord's interest, or any portion thereof that any judgment, decree or award obtained against the Landlord or any succeeding owner of the Landlord's interest, which is in any manner related to this Lease, the Demised Premises or the Tenant's use and occupancy of the Demised Premises or the common areas of the Property, whether at law or in equity, shall be satisfied out of the Landlord's equity in the land and Property owned by the Landlord to the extent then owned by the Landlord, and landlord's liability policy, and such assets and to no other assets of the Landlord, or such succeeding owner, for satisfaction. Neither Landlord, nor any officer thereof, nor any subsequent Landlord, shall have any personal liability hereunder.

42. TRANSFER OF LANDLORD'S INTEREST:

The term "Landlord" as used in this Lease means only the owner for the time being or the Mortgagee, in possession for the time being of the Demised Premises. Each time the Demise Premises are sold, the selling Landlord shall be entirely relieved of all obligations and liability under this Lease. Any person who owns the Demised Premises and leases his reversionary interest in the Demised Premises subject to the lien of this Lease shall be relieved of all liability under this Lease.

43. REPRESENTATIONS AS TO CORPORATE ORGANIZATION:

The Tenant hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Tenant is a representative of Tenant who is duly authorized to execute and deliver this Lease. Tenant shall furnish Landlord with suitable evidence of the above if requested by Landlord.

The Landlord hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, registered to do business and in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated

hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Landlord is a representative of Landlord who is duly authorized to execute and deliver this Lease. Landlord shall furnish Tenant with suitable evidence of the above if requested by Tenant.

44. JURISDICTION:

In connection with this Lease, Tenant hereby submits to the jurisdiction and venue of the State Courts of Charleston County, South Carolina in connection with any matter pertaining to this Lease and agrees that service may be had by mailing the same, postage prepaid, addressed to Tenant at Tenant's Notice Address as set forth in Paragraph 29 of this Lease, it being agreed that service shall be deemed to have been made three (3) days after mailing.

45. MEMORANDUM OF LEASE:

Landlord and Tenant hereby agree to make and execute a memorandum of lease in recordable form so as to give public notice of the execution of this Lease and a statement therein as to the commencement date of the term of this Lease. All recording fees, documentary stamps or taxes relating to this Lease or its recording shall be borne by Tenant.

IN TESTIMONY HEREOF, the Parties hereto have executed this Lease to be effective as of the date aforesaid.

WITNESS:

Matthew D. Lincoln
[Signature]

WITNESS:

Matthew D. Lincoln
[Signature]

[Signature]
[Signature]

TENANT:

RedWing, LLC.

By: [Signature]
Name: Dianne Crowley
Its: Manager

LANDLORD:

LOWCOUNTRY CAPITAL, LLC

By: Richard H. Coen
Name: Richard H. Coen
Its: Co-manager

By: SHEM CREEK HOLDINGS, LLC
Its: Co-manager

By: [Signature]
David Sidbury, Its Co-manager

By: Debra Sidbury
Debra Sidbury, Its Co-manager

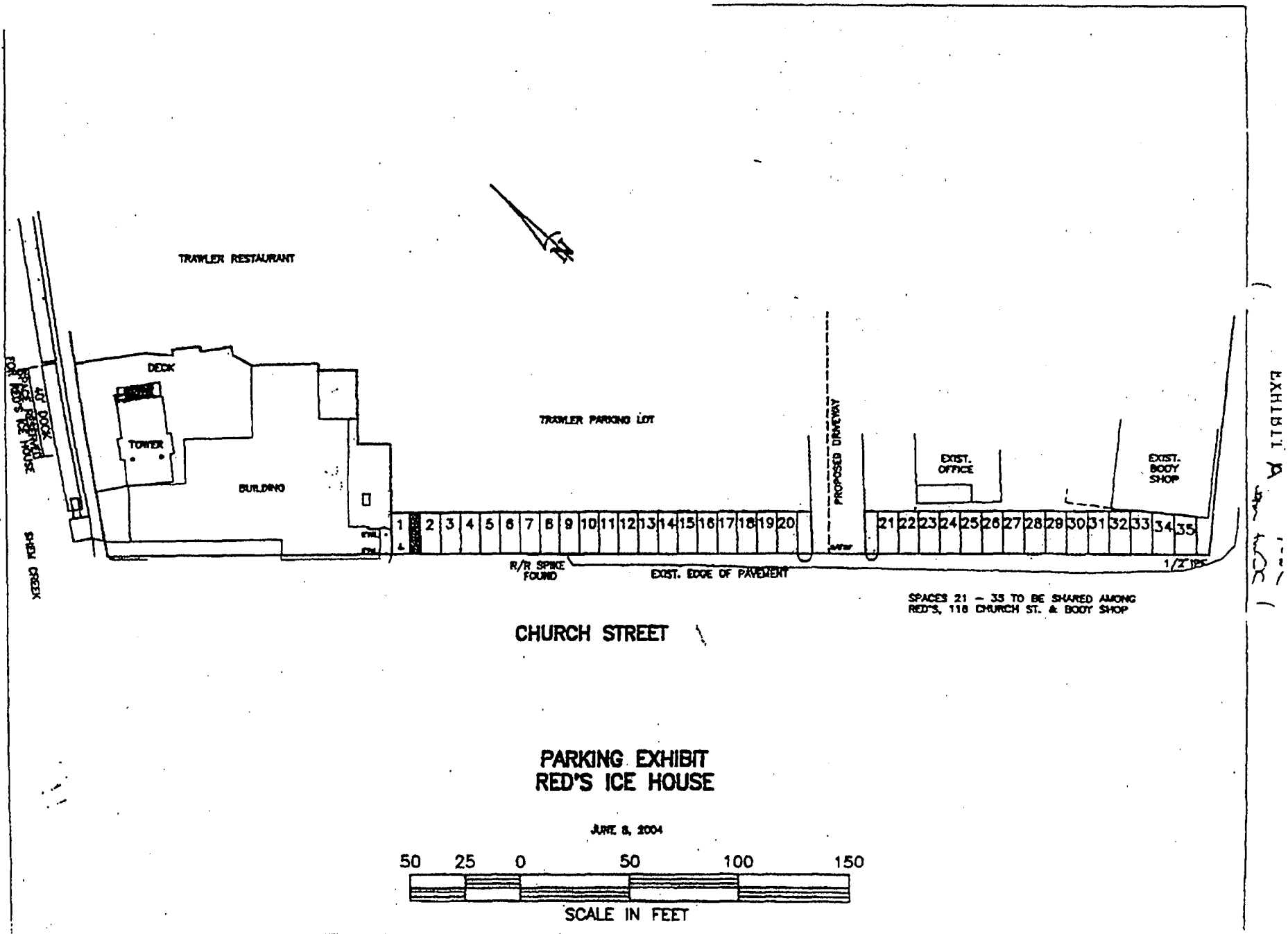


EXHIBIT "D"

RULES AND REGULATIONS

1. No advertisement or other notice shall be inscribed, painted or affixed on any part of the outside or inside of the Property, except upon the doors, and of such order, size and style, and at such places as shall be designated by Landlord.

2. Tenant shall not do or permit to be done in the Demised Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Property, or obstruct or interfere with the rights of other tenants or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or conflict with any of the rules and ordinances of the Board of Health. Tenants, theft agents and employees, shall maintain order in the Property and shall not interfere in any way with other tenants or those having business with them. Nothing shall be thrown by tenants, their agents or employees, out of the windows or doors, or down the passages of the Property. No rooms shall be occupied or used as sleeping or lodging apartments at any time. No part of the Property shall be used or any way appropriated for gambling, immoral, or other unlawful purposes.

EXHIBIT B

October 4, 2006

NOTICE OF DEFAULT

VIA FEDERAL EXPRESS

RedWing, LLC
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attention: Dianne and Cecil Crowley

RE: Lease Agreement dated June 10, 2004 (the "Lease") between Lowcountry Capital, LLC, a South Carolina limited liability company, as landlord ("Landlord") and RedWing, LLC, a South Carolina limited liability company, as tenant ("Tenant") for Red's Ice House; all capitalized terms used in this letter which are not expressly defined herein are used in the same manner as ascribed to them in the Lease

Dear Dianne and Cecil;

Notice is hereby given to Tenant that Tenant is in default under the Lease as described below. Landlord hereby demands that Tenant immediately remedy the defaults and damages caused thereby.

Tenant is in default under Section 10 of the Lease for failure to comply with the requirements of the Town of Mount Pleasant regarding the number of parking spaces to be provided for customers. As you are aware, Red's must provide at least forty-seven parking spaces for its customers. Currently, Red's has legal access to only thirty-five parking spaces for customer parking. Landlord had been informed by Tenant on August 16, 2006 that Tenant had entered into a Lease with Cottage on the Creek for access to the additional parking spaces that are needed for compliance. However, Landlord was subsequently notified by Tenant in a letter dated September 11, 2006 that Tenant has no parking rights on either the Mill Street or Cottage on the Creek properties.

Assuming that this most recent representation is true, Tenant no longer has use of sufficient parking spaces necessary to comply with the requirements of the Town of Mount Pleasant. As a result, Tenant is in default under the Lease.

Landlord hereby demands that Tenant cure the above referenced default as soon as possible, but no later than thirty (30) days from receipt of this letter. The primary means of curing this default is for Tenant to provide Landlord with proof that Tenant does in fact have a

CLT 989595v1

Appendix 213

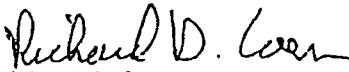
Mr. and Mrs. Cecil Crowley
October 4, 2006
Page 2

lease for the use of parking spaces ("parking lease") on the Cottage on the Creek property, which we believe to be the case. If this parking lease does exist and is intended to serve as a basis for curing this default, Tenant must provide a copy of the lease to Landlord along with a certification from the lessor that the parking lease remains in effect.

If Tenant fails to cure the foregoing default within the prescribed time period, Landlord shall have no choice but to pursue any and all appropriate remedies under the Lease, at law, and/or in equity, and Tenant must vacate the Premises and remove all of Tenant's property from the Premises at once.

Please note that nothing contained in this letter shall be construed to release Tenant from any of its obligations or liabilities under the Lease or waive any rights or remedies Landlord has, or shall have, against Tenant, or waive any other default by Tenant under the Lease.

Sincerely,


Richard H. Coen

RHC/hch

cc: James S. Grant
Andrew K. Epting, Jr., Esq.
Richard J. Brownyard, Esq.
Matthew J. Norton, Esq.
Ellis R. Lesemann, Esq.

CLT 989595v1

Appendix 214

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BEFORE THE
MAGISTRATE'S COURT

LOWCOUNTRY CAPITAL, LLC,

CASE NO. 2006-CI-72-1293

Plaintiff,

vs.

ORDER

REDWING, LLC AND DIANNE CROWLEY,

Defendants.

THIS MATTER CAME BEFORE THE COURT on an Application for Ejectment filed by Plaintiff Lowcountry Capital, LLC (as landlord) against Defendant RedWing, LLC (as tenant) and Diane Crowley (owner of tenant). Upon considering all of the exhibits, testimony, and arguments of counsel, the Court finds in favor of Plaintiff. Specifically, the Court rules that Defendant RedWing is ejected and excluded from any further use or right of possession of any parking spaces or parking areas on the premises controlled by landlord other than the 35 parking spaces that are designated in the lease agreement, to which Defendant RedWing will continue to have such rights as are provided in the lease agreement.

IT IS SO ORDERED.


The Honorable Jeanette Mullen Harper

December 15, 2006

Charleston, South Carolina

CLT 1008286v1

TOTAL P.01

Appendix 216

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

RICHARD H. COEN and LOWCOUNTRY
CAPITAL, LLC,

Plaintiff,

vs.

DIANE CROWLEY and REDWING, LLC,

Defendant.

Case No. 2006-CP-10-3670

**APPLICATION FOR
IMMEDIATE EJECTMENT
OF DEFENDANT REDWING, LLC**

BY

CLERK OF COURT

2608 FEB 21 PM 4:20

Lowcountry Capital, LLC, a Plaintiff in this pending action, hereby files this Application for Ejectment of Redwing, LLC ("Redwing") and further states as follows:

1. Plaintiff is the sublessor and landlord for certain leased commercial premises ("Premises") within the jurisdiction of this Court, more specifically described in the Commercial Lease attached as Exhibit A. The physical street address of the Premises is 98 Church Street, Mount Pleasant, South Carolina 29464. The Lease provides that the Premises were leased "as is" and that "Tenant shall have sole responsibility for any and all improvements" at paragraph D(2).

2. The Commercial Lease places an affirmative duty upon Redwing to maintain the Property: "Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain the Demised Premises in good order and repair." Exhibit A at ¶ 6(A). Furthermore, more specifically, the Lease states that "Tenant shall keep and maintain the foundations, roof and structural portions of the exterior walls of the Demised Premises in good condition and repair." Exhibit A at ¶ 6(B).

CLT 1109090v1

PLAINTIFF EXHIBIT 135

3. In late December 2007, Plaintiff discovered that the flooring in the kitchen area of the building had collapsed and that numerous support pilings in the structure had deteriorated.

4. Plaintiff issued a Default Notice to Defendant at that time, which is attached as Exhibit B.

5. At this time, there are emergent and substantial repairs required to the foundation as Defendant has failed to remedy these conditions for a period now exceeding two months.

6. Engineer Bobby Curry is a licensed engineer who was retained on behalf of the Plaintiff to verify the condition of the premises. His report states, "...we consider the building to be structurally deficient and unsafe for human occupancy." Furthermore, "[i]t is our concern that should a collapse of the floor system occur it is possible that the exterior load bearing walls would be jeopardized to the point of failure. Should this happen there is a possibility the entire roof system would collapse as well and this would be catastrophic should human life be involved." His professional opinion is attached as Exhibit C.

7. Engineer Ted Padgett is a licensed engineer who was retained on behalf of the Defendant. His opinion states that "The deterioration is such that an adequate factor of safety is not present. In strict structural terms, the floor framing has already failed." His professional opinion is attached as Exhibit D.

8. A stopgap repair was made by the Defendant in late December 2007 without obtaining a building permit or Plaintiff's permission, and was intended to serve merely as a temporary measure lasting for no longer than two weeks. See Preliminary Deposition Transcript of Engineer William Wright, a licensed engineer retained on behalf of the Defendant attached as Exhibit E (reference page 86, line 25-page 87, line 23).

9. Furthermore, Engineer Wright stated in his deposition that all three engineers who had inspected the structure felt that the repairs were "critically needed" and "need to be done immediately." (page 64, line 10-page 66, line 25).

10. As a result, Redwing remains in default in the following particulars and should be ejected from the Premises:

- a. failing to keep the structure in good condition;
- b. failing to repair the structure so as to protect the foundations and structural portions;
- c. by embarking on secret, insufficient and impermissible repairs; and
- d. exposing the general public to catastrophic risk of injury or death.

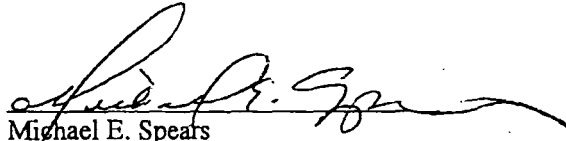
11. By such failure, Defendant has violated the terms of the Lease and is subject to summary ejectment from the Premises pursuant to S.C. Code § 27-37-10, and furthermore Plaintiff is entitled to immediate possession of the leased premises.

12. Furthermore, Defendant has failed to comply with various sections of the Lease, which provides Plaintiff with the right to terminate the Lease. Plaintiff has dealt with considerable burdens as a result of Defendant's conduct and has been required to resort to this legal proceeding as a result of Defendant's failure to uphold its obligations.

13. Therefore, Plaintiff requests that this Court issue a Notice of Ejectment to remove Defendant from the Premises and issue an Order requiring Defendant to pay any outstanding rent as well as the attorney's fees, court costs, other fees, and prejudgment interest incurred in connection with these proceedings, pursuant to of the Lease.

14. Pursuant to S.C. Code § 27-33-40, this Court is the appropriate forum for resolving this Application for Immediate Ejectment as this Court has concurrent jurisdiction with the Magistrate's Court over matters involving landlord and tenant.

WHEREFORE, having shown the grounds to justify the immediate issuance of a notice of ejectment of Defendant Redwing, LLC from the Premises, Plaintiff Lowcountry Capital, LLC requests that the Court issue such ejectment.



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MICHAEL E. SPEARS, P.A.
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Spartanburg, SC 29304-5806
(864)583-3535

A. Camden Lewis
Keith M. Babcock
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Post Office Box 11208
Columbia, SC 29211
(803)771-8000

Ellis R. Lesemann
PARKER POE ADAMS & BERNSTEIN, LLP
200 Meeting Street, Suite 301
Post Office Box 160
Charleston, SC 29402
(843) 272-2650

ATTORNEYS FOR PLAINTIFF
LOWCOUNTRY CAPITAL, LLC

Charleston, South Carolina
February 21, 2008

EXHIBIT A

Appendix 221

STATE OF SOUTH CAROLINA

COMMERCIAL LEASE

COUNTY OF CHARLESTON

THIS COMMERCIAL LEASE ("Lease") is made and entered into this 12th day of June, 2004 ("Effective Date") by and between LOWCOUNTRY CAPITAL, LLC., a South Carolina limited liability company ("Landlord") and REDWING, LLC., a South Carolina limited liability company ("Tenant") (Landlord and Tenant may be referred to individually as a "Party" or collectively as the "Parties").

WHEREAS, the Parties entered into a Termination of Commercial Lease, dated simultaneously herewith, which terminated the prior Commercial Lease between Lowcountry Capital, LLC and RedWing, LLC dated October 3, 2003; and

WHEREAS, the Parties desire to enter into a new Commercial Lease.

WTTNESSETH:

In consideration of the covenants and agreement of the respective Parties herein contained, the Parties hereto, for themselves, their heirs, successors, distributees, executors, administrators, legal representatives and permitted assigns, do hereby agree as follows:

A. LAND LEASE:

Landlord leases the land which contains the Demised Premises (as defined in Exhibit A and depicted in Exhibit B) from Snowmill, LLC as successor to Snowwis Properties, LLP and Mill Church Properties, LLC pursuant to that land lease dated October 1, 2003 ("Land Lease"). Said premises are situate, lying and being in the State of South Carolina, County of Charleston, located at Church Street and Shem Creek in Mount Pleasant, SC, consisting of a restaurant building and improvements known now as Red's Ice House and the non-exclusive right for parking in those designated spaces in Exhibit A.

B. TERM AND DELIVERY OF DEMISED PREMISES:

The term of this Lease shall commence on the Effective Date and shall terminate on September 30, 2018 ("Expiration Date") unless this Lease is earlier terminated pursuant to Section D hereof ("Initial Term").

C. OPTION TO RENEW:

At the expiration of the Initial Term of this Lease and at the expiration of any renewal term or extension of this Lease, with the approval of Landlord, approval not to be unreasonably withheld, Tenant may renew this Lease for an additional, five-year term. Tenant shall exercise its right to renew the Lease by providing Landlord at least one hundred twenty (120) days written notice of its intent to do so prior to the expiration of the existing Lease term.

NMRS-000264

1 of 26

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The Rent for the first year of any renewal term shall be negotiated between Landlord and Tenant beginning within one hundred twenty (120) days of the expiration of the Initial Term. During any renewal term, the Rent shall escalate 2% annually (in the manner described in Section D (I)).

D. COVENANTS AND CONDITIONS OF LEASE:

This Lease is made on the following covenants and conditions which are expressly agreed to by Tenant and Landlord:

1. RENT:

Tenant covenants to pay as rental to Landlord the annual sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00), in advance of the first (1st) day of each month, and mailed to Landlord, or to such other address as Landlord may designate in writing to Tenant from time to time. The Rent is due on the first (1st) day of each month and shall not be withheld for any reason whatsoever. The Rent increases on the first anniversary of the Lease, and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Tenant pays the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Initial Term, the Rent shall decrease by Five Thousand and 00/100 Dollars (\$5,000.00) per month.

Each monthly rental payment, as set forth above, is due in advance on the first (1st) day of the calendar month. The parties agree that Tenant shall have a ten-day grace period within which the Landlord may receive the monthly advance rental payment without default; however, if the Landlord does not receive the monthly rental payment by six o' clock p.m. on the tenth day of the calendar month, the Tenant shall be in default without further notice, and the Landlord may, at its option, exercise its remedies provided herein for default, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month. Tenant shall not be in default for nonpayment of rent until the later of the tenth (10th) day of the calendar month or five (5) days after receiving written notice of the non-payment of rent from Landlord.

2. LEASE AS IS:

The Property is to be leased "as is". Tenant shall have sole responsibility for any and all improvements of the Property.

3. AUTHORIZED USE:

Tenant agrees not to abandon or vacate the Demised Premises and shall use the Demised Premises for the following purpose, and for no other purpose whatsoever, without the written consent of Landlord first had and obtained:

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Tenant will use the Demised Premises for a restaurant and bar and for any other lawful purpose in the ordinary course of operating its business. Tenant shall have the right to seasonal closings of the Demised Premises.

Tenant will not permit or suffer anything to be done nor keep anything in or about the Demised Premises, which would render the insurance thereon void or voidable or cause cancellation. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Demised Premises, any article or material which is prohibited by law or by standard property insurance policies of the kind customarily in force with respect to premises of the same general type as those covered by this Lease.

4. INSURANCE/INDEMNITY:

- A. EXCEPT AS TO INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENCE OR WILLFUL ACTS OF LANDLORD FOR WHICH LANDLORD IS LEGALLY LIABLE, TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM ALL CLAIMS (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST SUCH CLAIMS) (I) ARISING OR ALLEGED TO ARISE FROM ANY ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES OR CONTRACTORS, OR (II) RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO THE PROPERTY OF ANY PERSON OCCURRING DURING THE TERM OF THIS LEASE IN THE DEMISED PREMISES. TENANT AGREES TO USE AND OCCUPY THE DEMISED PREMISES AND OTHER FACILITIES OF THE BUILDING AT ITS OWN RISK AND HEREBY RELEASES LANDLORD, ITS AGENTS OR EMPLOYEES, FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO THE FULL EXTENT PERMITTED BY LAW. THE INDEMNIFICATION PROVISION HEREIN SHALL SURVIVE ANY TERMINATION OF THIS LEASE BY LAPSE OF TIME OR OTHERWISE.
- B. Tenant shall maintain property insurance on the Property and such additions and improvements by Tenant, which have become or are to become the property of Landlord at the termination of the Lease. Such insurance shall be maintained with such companies and in such amounts desired by Landlord, and suitable for coverage of the Property and Demised Premises. Landlord shall also maintain commercial general liability insurance to afford such protection and with such companies as desired by Landlord. Tenant shall maintain at its expense (i) property insurance on all of its personal property and removable trade fixtures located in the Demised Premises and on all additions and improvements made by Tenant, (ii) commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence

compliance with all laws, rules and regulations of governmental agencies or authorities. If the improvements, alterations, or additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. All improvements and additions made by or for the Tenant and permanently attached to the Demised Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Demised Premises and shall be surrendered to Landlord at the Expiration Date or earlier termination of this Lease. Tenant has inspected and accepts the Demised Premises in the same condition they are in at the time of execution of this Lease. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Demised Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Demised Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance or regulation applicable thereto.

Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that it has granted its prior consent to Tenant for the material alteration of some or all of the Demised Premises, in Tenant's sole reasonable discretion. Tenant shall be responsible for payment of the costs of any such alterations provided the total cost of such alterations.

Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that all photographs located in or attached to the Demised Premises are the personal property of Richard H. Coen and have been temporarily loaned to the Tenant for use in Tenant's business. During the term of this Lease, Tenant shall not damage or take possession of such photographs nor permit any other party to damage or take possession of such photographs. Tenant shall use its best efforts to keep such photographs in good repair. Upon the termination or expiration of this Lease, Tenant shall return such photographs to Richard H. Coen in good repair.

6. REPAIR AND CARE OF PROPERTY:

- A. Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain the Demised Premises in good order and repair. Tenant shall maintain the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for leakage, cleaning, and other customary periodic maintenance. Tenant agrees to return the Demised Premises to Landlord at the expiration or prior termination of this Lease in as good a condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted.
- B. Tenant shall keep and maintain the foundations, roof, and structural portions of the exterior walls of the Demised Premises in good condition and repair. Landlord gives to Tenant exclusive control of the Demised Premises and shall be under no obligation to inspect the Demised

other sums have been paid to Landlord in advance, and that Tenant claims no defense or off-set to the due and full performance of its obligations under this Lease, and other such reasonable facts requested in tenant estoppel certificate.

13. CONDEMNATION:

If the whole of the Demised Premises, or such portion thereof as will make the Demised Premises unusable for the purpose herein leased be condemned by any legally constituted authority, this Lease shall terminate on the date when possession thereof is taken by public authorities, and Rent shall be accounted for as between Landlord and Tenant as of that date. In the event only a portion of the Demised Premises is acquired by condemnation as will leave the remaining Demised Premises, after alterations and repairs, in condition suitable for use by Tenant including comparable square footage space, type and quality of space, similar entrances/exits, and comparable parking, the monthly rental payments from the day of such acquisition to the end of the original or extended term of this Lease shall be continued, and Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required to restore the Demised Premises to a reasonably similar location within the Property. All sums awarded by the condemning authority for the taking of the interest of Landlord or Tenant, whether as damages or as compensation, will be the property of Landlord or Tenant as awarded. The Parties agree to notify the Other Party within two working days of notice by any legally constituted authority of its intent to condemn the Demised Premises.

14. RIGHT OF ENTRY BY LANDLORD:

Tenant, at any time during the term of this Lease, shall permit inspection of the Demised Premises at any reasonable time, by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Demised Premises or in order for the Landlord to show the Demised Premises to prospective Tenants. Landlord shall use its best efforts to minimize any interference to Tenant's use of the Demised Premises in such event. Ninety (90) days prior to the expiration of this Lease, Landlord may post suitable notices on the Demised Premises that the same are "For Rent" and show the Demised Premises to prospective tenants at reasonable times.

15. ASSIGNMENT, SUBLETTING, AND CHANGE IN OWNERSHIP:

Tenant shall not sublet, assign, mortgage or encumber this Lease, or license, or permit the Demised Premises or any part thereof to be used by others, whether voluntarily or by operation of law or otherwise, without the prior written consent of Lessor in each instance. Landlord shall not unreasonably withhold consent to such sublease, assignment, mortgage or encumbrance. The sale or transfer of membership interest, if Tenant be a limited liability company, shall be deemed an assignment of this Lease. It is understood that one hundred percent of Tenant's membership interest is currently owned by Dianne Crowley, and that transfer of any of her membership interest in Tenant to others shall be deemed an assignment. In the event this Lease or any interest herein is assigned or the Demised Premises or any part thereof sublet without Landlord's prior express written consent, Tenant shall remain fully liable under the terms, covenants, and other conditions of this Lease. Landlord shall thereupon have the right and option to cancel and terminate this Lease effective upon fifteen (15) days

remedy for any breach of this Lease shall be deemed a waiver by such Party of its rights or remedies with respect to such a breach.

20. DEFAULT BY TENANT:

A. This Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to wit: (a) failure to timely pay any installment of Rent when due, (b) failure to timely pay any installment of taxes or any other sums required to be paid by Tenant hereunder, or if any part thereof, shall at any time be in arrears and unpaid by Tenant for a period of seven (7) days, or (c) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless said default cannot reasonably be cured within thirty (30) days and Tenant shall have commenced to cure said default within thirty (30) days and continues diligently to pursue the curing of same within ninety (90) days from the occurrence of such default), or, (d) any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceedings by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall abandon or vacate the Demised Premises, Landlord shall have the option to pursue any one or more of the following remedies:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in Rent or Rent for the remainder of the lease term, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise.

(2) Enter upon and take possession of the Demised Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, without being liable for prosecution or any claim for damages therefore, and relet the Demised

Landlord shall retain only Five Thousand and no/100 Dollars (\$5,000.00) per month of Tenant's accelerated Rent and return the balance of the monthly Rent to Tenant; (3) As Additional Rent due hereunder, Tenant agrees to pay all reasonable costs and expenses and all reasonable attorneys fees incurred by Landlord in enforcing any of the obligations of Tenant under this Lease, and; (4) Tenant or the legal representatives of Tenant shall in addition to any other remedies contained herein, pay Landlord, as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants herein contained, any deficiency between the Rent hereby reserved and/or covenanted to be paid and the net amount of the Rents collected on the account of the Lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. In computing such liquidated damages, there shall be added to the said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, including but not limited to costs, reasonable attorneys fees, brokerage fees and preparation of the Demised Premises for re-letting as may be deemed appropriate by Landlord, and there shall be deducted the amount of any security deposit held by and forfeited to Landlord. Any such liquidated damages shall be payable immediately upon written demand therefore given by Landlord to Tenant, and the acceptance of partial payment by Landlord shall in no way prejudice Landlord's rights or affect Tenant's responsibility for the payment of the total balance owed. Landlord, at its option, may make such reasonable alternations, repairs, replacements and/or decorations in the Demised Premises as Landlord, in its reasonable judgment, considered advisable or necessary for purposes of re-letting the Demised Premises; and the making of such reasonable alternations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid, and Tenant hereby expressly agrees to pay any reasonable costs incurred in connection therewith as Additional Rent.

- D. If Tenant at any time shall fail to pay any taxes, assessments, or liens, or 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 and at the expense of Tenant. All sums so paid by Landlord and all costs and expense so incurred shall accrue interest at the rate of eighteen percent (18%) per annum from the date of payment or incurring thereby by Landlord and shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.
- E. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or

labor or material on or against the Demised Premises, the Property, or any part thereof, and all persons either contracting with Tenant or furnishing and/or rendering labor and/or materials to Tenant, shall be notified in writing by Tenant that they must look only to Tenant to secure the payment of such labor or materials. Tenant agrees to provide such written notice as may be required, pursuant to S.C. Code Ann. §29-5-80 to all persons performing services or furnishing materials of Landlord's non-responsibility for payment for such services or materials. Should any mechanics', materialmens' or other liens be filed against the Demised Premises, the Property, or any part thereof, for any reason whatsoever relating to the furnishing of labor or materials associated with improvements to the Demised Premises for which Tenant is responsible for payment, Tenant shall cause the same to be cancelled and discharged of record by statutory bond or otherwise within ten (10) days after notice and demand for such cancellation and discharge by Landlord. In the event any lien continues undischarged after such ten (10) day period, Landlord shall have the right, at its sole election and discretion without any obligation, to pay the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid, including all costs and expenses, shall be deemed Additional Rent under the Lease and shall be due and payable on demand. FURTHERMORE, TENANT SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, ITS AFFILIATES AND AGENTS FROM AND AGAINST CLAIMS AND FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS TO TENANT IN CONNECTION WITH THE DEMISED PREMISES, OR ANY PART THEREOF, BY ANY OF TENANT'S CONTRACTORS AND THEIR SUBCONTRACTORS OF EVERY TIER. LANDLORD SHALL BE RESPONSIBLE, HOWEVER, FOR THE SATISFACTION OF CLAIMS FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS IN CONNECTION WITH THE DEMISED PREMISES, THE PROPERTY, OR ANY PART THEREOF, WHICH FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS OCCURRED ON OR BEFORE OCTOBER 1, 2003.

25. CONSTRUCTION OF LEASE:

The word "Landlord" as used herein shall refer to the individual, individuals, partnership or corporation called "Landlord" at the commencement of this Lease, and the word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant." Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plurals when sense requires.

26. PARAGRAPH HEADINGS:

The paragraph headings are inserted only for convenience and for reference and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

27. COMMISSIONS:

The Parties represent and warrant that they have dealt directly with and only with each other in connection with this Lease and that insofar as they know, no broker(s) negotiated this Lease or is entitled to any commission in connection therewith and the execution and delivery of this Lease by the Parties shall be conclusive evidence that they have relied upon the foregoing representation and warranty. The Parties shall defend and hold each other harmless for any claims which arise from the failure of this mutual warranty.

28. RULES AND REGULATIONS:

Tenant agrees that Tenant, its agents, employees, and invitees will abide by the Rules and Regulations as set forth on Exhibit "D" attached hereto, which may be amended from time to time by the Landlord. Such Rules and Regulations shall be those necessary in the sole opinion of the Landlord to provide for the uniform service, maintenance and peaceful enjoyment of the common areas and the outside common areas. Landlord shall notify Tenant in writing of changes in the Rules and Regulations from time to time and Tenant agrees to assist Landlord in the enforcement of such Rules and Regulations.

Landlord agrees that the Rules and Regulations as set forth on Exhibit "D", as amended from time to time, shall be applied uniformly to any and all tenants on the Building.

29. NOTICES:

It is agreed that the legal address of the Parties for all notices required or permitted to be given hereunder, or for purposes of billing, process, correspondence and any other legal purposes whatsoever, shall be deemed sufficient if given by a communication in writing by United States Mail, postage prepaid, and certified, and addressed as follows:

If to the Landlord:

Lowcountry Capital, LLC
100 Haddrell Street
Mt. Pleasant, SC 29464
Attn: Richard H. Coen

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704-342-0926

If to the Tenant:

RedWing, LLC.
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attn: Cecil Crowley

30. HAZARDOUS MATERIALS:

- A. Tenant shall not cause or permit any Hazardous Materials (hereinafter defined) to be stored, used or disposed of in or about the Demised Premises or the Property by Tenant, its agents, employees, contractors or invitees, nor shall the use which Tenant makes of the Demised

Premises result in any Hazardous Materials Contamination (hereinafter defined). For purposes of this Lease, the following terms shall have the meanings herein specified:

1. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. § 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.), as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (iii) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended from time to time, and regulations promulgated thereunder ("TSCA"); (iv) pesticides specifically regulated under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 135 et seq.), as amended from time to time, and regulations promulgated thereunder ("FIFRA"); (v) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance; (vi) the presence of oil, petroleum products, and their by-products; (vii) any substance the presence of which in or about the Demised Premises or the Property is prohibited by any governmental authority or which is hereafter classified by any governmental authority as a hazardous toxic waste, material, substance or similar phraseology; and (viii) any substance which by any governmental authority requires special handling notification of any governmental authority in its collection, storage, treatment, or disposal.
 2. "Hazardous Materials Contamination" shall mean the spillage, leakage, emission or disposal of Hazardous Materials (whether presently existing or hereafter occurring) in or about the buildings, facilities, soil, groundwater, air or other elements in or about the Demised Premises, or the Property or any other property as a result of Hazardous Materials at any time emanating from the Demised Premises or the Property.
- B. Notwithstanding the foregoing, Tenant shall be permitted to store, use and dispose of de minimus amounts of Hazardous Materials which are incidental to Tenant's business. Such Hazardous Materials and all containers therefore, shall be stored, used and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Materials. Tenant shall be liable for all costs and expenses related to the storage, use and disposal of such de minimus amounts of Hazardous Materials incidental to Tenant's business.

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PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH E SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES TENANT MAY HAVE TO LANDLORD AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

- F. TO THE BEST OF LANDLORD'S KNOWLEDGE, LANDLORD REPRESENTS AND WARRANTS THAT THE DEMISED PREMISES ARE AND SHALL BE FREE OF HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION AS OF THE COMMENCEMENT DATE. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SEYFLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND) OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES PRIOR TO TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH F SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES LANDLORD MAY HAVE TO TENANT AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

31. SECURITY DEPOSIT:

The Tenant shall deposit with the Landlord the sum of Five Thousand and No/100 Dollars (\$5,000.00), as security for the performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed, which sum shall be returned to Tenant after the expiration of the term hereof, provided Tenant has fully performed hereunder. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant and if the amount so applied shall not be re-instated and replaced by the curing of any such

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default, Tenant shall immediately upon written demand by Landlord, replace the amount applied by Landlord to cure any such default so that the Landlord shall have the full deposit on hand at all times during the term of this Lease. In the event of a sale of the Property or a lease of the Property, subject to this Lease, Landlord shall have the right to transfer the security to the buyer or lessee, and Landlord shall thereupon be released from all liability for the return of such security and Tenant shall look to the new Landlord solely for the return of said security and this provision shall apply to every transfer of assignment made of the security to a new Landlord. The security deposited under this Lease shall not be assigned or encumbered by Tenant without the written consent of Landlord and any such assignment or encumbrance shall be void. The security deposited by Tenant hereunder shall not bear interest. In no event shall said security deposit be deemed or treated as prepaid Rent for any Rental installment due hereunder, whether the last monthly installment or otherwise. If Tenant shall default under this Lease more than three (3) times in any twelve (12) month period, irrespective of whether or not such default is cured, then the Security Deposit shall, within ten (10) days after demand by Landlord, be increased by Tenant to an amount equal to the greater of (i) three (3) times the aforesaid amount or (ii) three (3) months' Rent.

E. LIMITATION OF LANDLORD'S LIABILITY:

The term "Landlord" shall mean the tenant under the Land Lease and in the event of the transfer by such owner of its interest in the Demise Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. All liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Property existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review.

F. NO OFFER:

The submission of this document for examination does not constitute an option or offer to lease space in the Property. This document shall have no binding effect on the Parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.

G. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT OF 1990.

Any other provision of this Lease notwithstanding, the Parties hereby agree that the Demised Premises may be subject to the terms and conditions of the Americans with Disabilities Act (ADA). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, such as compliance may be required to operate as long as the Demised Premises are in full compliance with the ADA on the Commencement Date as warranted by Landlord in this paragraph 34. Landlord warrants and represents that the Demised Premises are and shall be in full compliance with the ADA on the Commencement Date. Each Party agrees to indemnify and hold the Other Party harmless for any claims which may arise out of the Other Party's failure to comply with the provisions of this paragraph, regardless whether such claim arises before or

after the Commencement Date. Tenant has no obligation to independently verify that the Demised Premises are in compliance with the ADA as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless against any claims which may arise out of Tenant's use or alteration of the Demised Premises which results in their failure to comply with the ADA. Such indemnification by Landlord and Tenant shall include, but not necessarily be limited to: reasonable attorneys fees, court costs, and judgments as a result of said claims. A Party shall notify the other Party immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee, or governmental authority regarding the ADA.

35. GOVERNING LAW:

This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina.

36. TIME OF THE ESSENCE:

It is understood and agreed between the Parties hereto that time is of the essence in all of the terms and provisions of this Lease.

37. NATURE AND EXTENT OF AGREEMENT:

This Lease, including the exhibits attached hereto, contains the complete agreement between the Parties regarding the terms and conditions of the lease of the Demised Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease may be modified only by written instrument duly executed by both Parties or their respective successors in interest.

38. NON-EASEMENT:

It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Demised Premises are situated.

39. LANDLORD'S LIEN:

To secure the payment of all Rent due and to become due hereunder and the faithful performance of all the other covenants of this Lease required by Tenant to be performed, Tenant hereby gives Landlord an express contractual lien on and security interest in all property, chattels, or merchandise which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of damage to or destruction of any such property. Such lien is, however, subordinate to the perfect security interest of any secured creditor of Tenant, whether now existing or hereafter arising. All exemption laws are hereby, waived by Tenant. This lien and security interest, are given in addition to the Landlord's statutory lien(s) and will be cumulative thereto. Upon request, Landlord will subordinate its landlord's lien to security interests on Tenant's personal property on the Premises from Tenant's vendors, all on a form satisfactory to Landlord.

40. INTERPRETATION PRESUMPTION:

This Lease has been negotiated by the Parties hereto and by the respective attorneys for each Party. The Parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease, and in the event of a dispute concerning the interpretation of this Lease, each Party hereby waives the doctrine that an ambiguity should be interpreted against the Party which has drafted the document.

41. LIMITATION OF LIABILITY:

The obligations of the Landlord hereunder shall be binding upon Landlord and each succeeding owner of the Landlord's interest hereunder only during the period of such ownership and Landlord and each succeeding owner shall have no liability whatsoever except for its obligations during each such respective period. Landlord hereby agrees for itself and each succeeding holder of the Landlord's interest, or any portion thereof that any judgment, decree or award obtained against the Landlord or any succeeding owner of the Landlord's interest, which is in any manner related to this Lease, the Demised Premises or the Tenant's use and occupancy of the Demised Premises or the common areas of the Property, whether at law or in equity, shall be satisfied out of the Landlord's equity in the land and Property owned by the Landlord to the extent then owned by the Landlord, and landlord's liability policy, and such assets and to no other assets of the Landlord, or such succeeding owner, for satisfaction. Neither Landlord, nor any officer thereof, nor any subsequent Landlord, shall have any personal liability hereunder.

42. TRANSFER OF LANDLORD'S INTEREST:

The term "Landlord" as used in this Lease means only the owner for the time being or the Mortgagee, in possession for the time being of the Demised Premises. Each time the Demise Premises are sold, the selling Landlord shall be entirely relieved of all obligations and liability under this Lease. Any person who owns the Demised Premises and leases his reversionary interest in the Demised Premises subject to the lien of this Lease shall be relieved of all liability under this Lease.

43. REPRESENTATIONS AS TO CORPORATE ORGANIZATION:

The Tenant hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Tenant is a representative of Tenant who is duly authorized to execute and deliver this Lease. Tenant shall furnish Landlord with suitable evidence of the above if requested by Landlord.

The Landlord hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, registered to do business and in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated

hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Landlord is a representative of Landlord who is duly authorized to execute and deliver this Lease. Landlord shall furnish Tenant with suitable evidence of the above if requested by Tenant.

44. JURISDICTION:

In connection with this Lease, Tenant hereby submits to the jurisdiction and venue of the State Courts of Charleston County, South Carolina in connection with any matter pertaining to this Lease and agrees that service may be had by mailing the same, postage prepaid, addressed to Tenant at Tenant's Notice Address as set forth in Paragraph 29 of this Lease, it being agreed that service shall be deemed to have been made three (3) days after mailing.

45. MEMORANDUM OF LEASE:

Landlord and Tenant hereby agree to make and execute a memorandum of lease in recordable form so as to give public notice of the execution of this Lease and a statement therein as to the commencement date of the term of this Lease. All recording fees, documentary stamps or taxes relating to this Lease or its recording shall be borne by Tenant.

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IN TESTIMONY HEREOF, the Parties hereto have executed this Lease to be effective as of the date aforesaid.

WITNESS:

Matt D. Linder
[Signature]

WITNESS:

Matt D. Linder
[Signature]

[Signature]
[Signature]

TENANT:

RedWing, LLC.

By: [Signature]
Name: Dianne Crowley
Its: Manager

LANDLORD:

LOWCOUNTRY CAPITAL, LLC

By: Richard H. Coen
Name: Richard H. Coen
Its: Co-manager

By: SHEM CREEK HOLDINGS, LLC
Its: Co-manager

By: [Signature]
David Sidbury, Its Co-manager

By: [Signature]
Debra Sidbury, Its Co-manager

NMRS-000287

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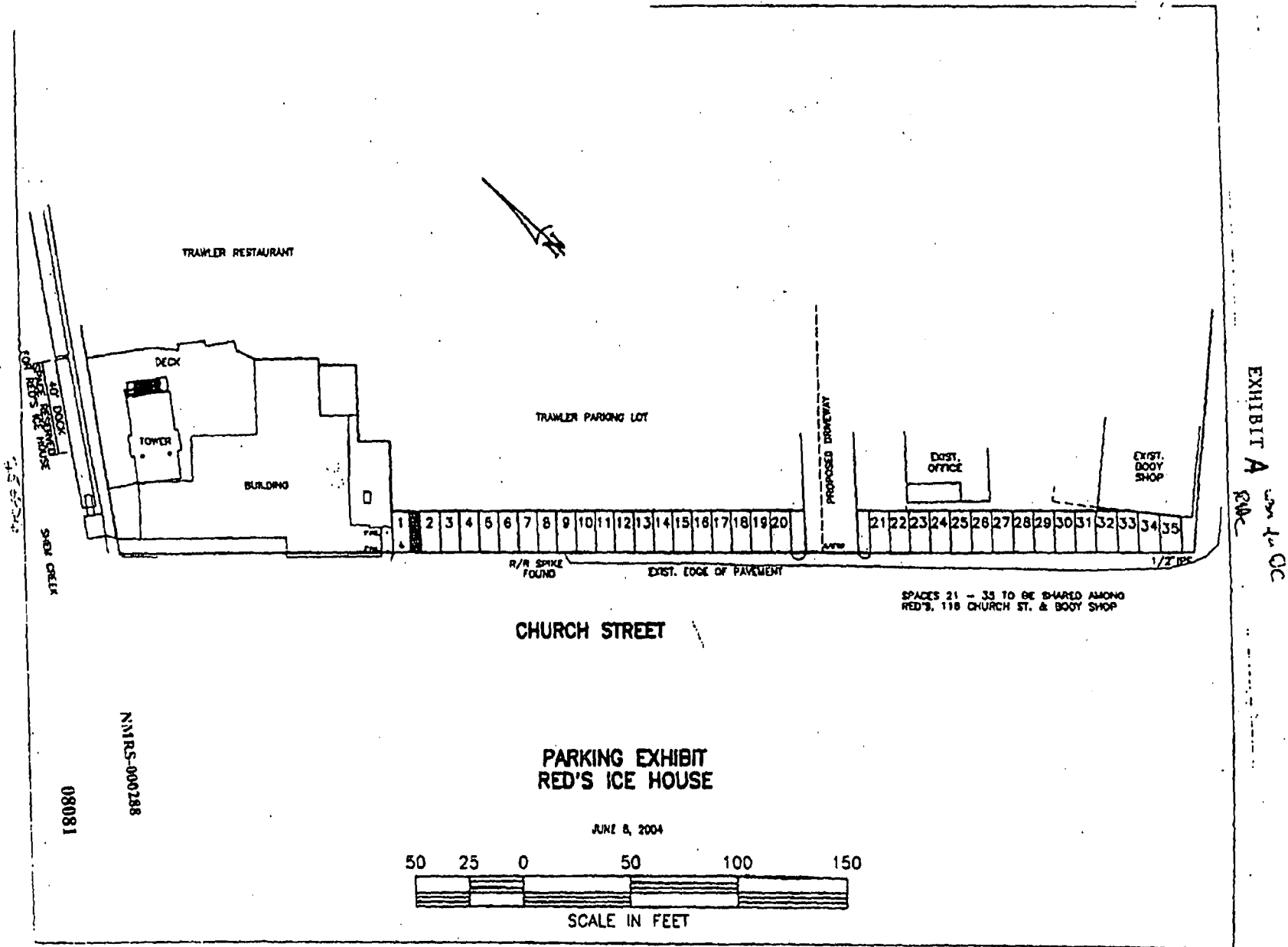


EXHIBIT "D"

RULES AND REGULATIONS

1. No advertisement or other notice shall be inscribed, painted or affixed on any part of the outside or inside of the Property, except upon the doors, and of such order, size and style, and at such places as shall be designated by Landlord.

2. Tenant shall not do or permit to be done in the Demised Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Property, or obstruct or interfere with the rights of other tenants or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or conflict with any of the rules and ordinances of the Board of Health. Tenants, their agents and employees, shall maintain order in the Property and shall not interfere in any way with other tenants or those having business with them. Nothing shall be thrown by tenants, their agents or employees, out of the windows or doors, or down the passages of the Property. No rooms shall be occupied or used as sleeping or lodging apartments at any time. No part of the Property shall be used or any way appropriated for gambling, immoral, or other unlawful purposes.

26 26
28 of 28

NMRS-000289

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EXHIBIT B

MICHAEL E. SPEARS, P.A.

ATTORNEYS AT LAW

172 EAST MAIN ST.

SUITE 200

P.O. BOX 5808

SPARTANBURG, SOUTH CAROLINA 29304-5808

MICHAEL E. SPEARS

TELEPHONE

(864) 583-3535

FACSIMILE

(864) 583-3528

attyspears@charter.net

December 28, 2007

CERTIFIED MAIL RETURN RECEIPT REQUEST

RedWing, LLC

202 Coleman Blvd.

Charleston SC 29464

ATTENTION: CECIL CROWLEY

NOTICE OF DEFAULT

You are hereby notified this 28th day of December, 2007, that the Commercial Lease dated June 10, 2004 by and between RedWing, LLC and Lowcountry Capital, LLC is hereby declared in default by the landlord due to the following Commercial Lease violations by the tenant:

1. Paragraph 6B of said Commercial Lease has been violated please see the attached structural inspection report by Curry Engineers dated December 26, 2007, a copy of which was delivered to your attorneys on December 27, 2007.
2. Violation of paragraph 10 of the Commercial Lease through the illegal discharge of raw sewage into Shem Creek in violation of the ordinances of the Town of Mt. Pleasant, South Carolina Department of Health and Environmental Control and South Carolina Department of Natural Resources.

Please note that under the mandates of paragraph 11 of the Commercial Lease, any and all repair work performed by the tenant or it's contractors on the leased premises must first have the prior written consent of the landlord and be in conformance with the applicable town ordinances and governmental regulations and rules regarding such reconstruction. Please bear in mind that this permission to repair by the landlord must be obtained in writing in advance of any construction work upon the leased premises. If you have such a report or construction drawings which would serve to correct the complained of deficiencies which constitute this default, we ask that you immediately submit them to the landlord through this

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office. Once again please bear in mind that all work must be approved by and in compliance with any and all laws rules and regulations and authorities and in compliance with all building codes under the Tenants paragraph 11 under the Commercial Lease.

3. Alienation of the sublease of the property known as Slightly Up the Creek. Under the Membership Interests Purchase and Sale Agreement also dated June 10, 2004 between Diane Crowley as Purchaser and Richard H. Coen and Shem Creek Holdings, LLC, Seller, both the assets of Red's Ice House and the leasehold interest in Slightly Up the Creek were transferred by Sellers to Purchaser. Representations from your representatives to Sellers have subsequently indicated that the 15 year lease on Slightly Up the Creek granted unto the Purchasers in the Membership Interest Purchase and Sale Agreement has been changed into a month to month lease at the discretion and under the control of another entity. If this is true, it is an improper conversion of the 15 year ground lease conveyed to the Sellers in the Membership Interest Purchase and Sale Agreement and thereby violative of said agreement as well as paragraph 15 of the Commercial Lease as well as other contractual provisions of the Commercial Lease and equity in general. If this is NOT true, and the 15 year ground lease on the Slightly Up the Creek property is still extant and under the control of Redwing, LLC, then please indicate such with confirming documentation as soon as possible. Again, please confirm to this office whether or not RedWing, LLC still possesses the 15 year leasehold upon the property as known as Slightly Up the Creek or whether said leasehold has been conveyed to any other party. Also, please confirm in writing whether said lease is in fact a month to month lease or a lease for a 15 year term.

Please note that this particular provision of the Commercial Lease permits the landlord the right and option to cancel and terminate the lease effective upon 15 days notice given to Tenant either as to the entire premises or only as to the portion thereof which the Tenant shall have attempted to assign or sublease. It is the landlord's option.

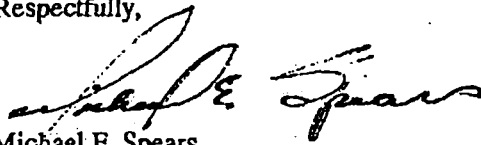
4. Alienation of RedWings, assets in the form of the trademarking of the name "Red's Ice House".

One of the assets conveyed through the Commercial Lease as well as the Membership Interest Purchase and Sale Agreement, both of June 10, 2004, was the name "Red's Ice House". The Seller/Landlord has been subsequently informed that said name "Red's Ice House", has been trademarked by a different entity and hence alienated from the assets of RedWing, LLC. If in fact the name "Red's Ice House" can be reconveyed to the Seller at the appropriate time please so indicate in writing in response to this Notice of Default. If, on the other hand, if said asset has been alienated from the assets of RedWing, LLC and RedWing, LLC is currently without the authority to reconvey said name, please also indicate that in

writing as soon as possible. Obviously, the alienation of the name "Red's Ice House" would be deemed to be a violation of the same paragraph 15 of the Commercial Lease as well as the Membership Interest Purchase and Sell Agreement.

Although there are other matters in contention among the parties, we ask you to note that this is an official **NOTICE OF DEFAULT** for the Commercial Lease and Membership Interest Purchase and Sale Agreement and that your duties, rights and remedies upon such Notice of Default are clearly set out in the documents referenced, as well as in any mortgages, guarantees, pledges or other contractual obligation you may have in regards to the property.

Respectfully,



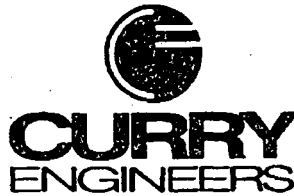
Michael E. Spears

MICHAEL E. SPEARS, PA

Attorney for Lowcountry Capital, LLC and
Richard H. Coen

cc: Andrew Epting, Jr., Esquire
Johnny Linton, Esquire
A. Camden Lewis, Esquire
Keith M. Babcock, Esquire
Ellis Leesmann, Esquire
Jenni Dunlap, Esquire
Richard H. Coen
Lee Cave, Building Inspector
Town of Mt. Pleasant

EXHIBIT C



Structural Inspection Report

December 26, 2007
Inspection Report #: T07-062

COEN CAPITAL LLC
Richard H. Coen
President
100 Haddrell Street
Mt. Pleasant, SC, 29464

Project Location: 98 Church St., Mt. Pleasant, SC 29464
Project Type: Restaurant Building
Inspection Date: December 17 & 19, 2007

Mr. Coen:

In accordance with your request, we performed a non-destruct visual inspection of the subject commercial structure including but not limited to the following:

DESCRIPTION

Subject building, originally an ice house that serviced various commercial fishing operations, was converted into a restaurant facility approximately 5 years ago. On December 13, 2007 we were told by Richard Coen, via email, that settlement and cracking of the floor slab in the building had occurred. The following is a chronological order of events that occurred from December 17, 2007 thru December 19, 2007:

- 1.) December 17, 2007 arrangements were made to inspect the settlement problem. We, along with Richard Coen observed the following:
 - a. The floor slab in the kitchen area had dropped approximately 2 inches in one area and 1 inch in another area. In addition it was observed that minor settlement had occurred near some interior walls. We were advised by the Restaurant Manager that base boards were added to cover the void(s) left by previous settlement. The minor settlement we observed was at the base boards of interior walls. The wall covering behind that stove area is distorted and occurs in the area of the dropped slab.
 - b. Several piles, near on embankment of Shem Creek, were observed to be severely damaged by marine borers and one pile was severed offering no support for the beam it supported.
 - c. There is an area in the kitchen where the plywood floor could be removed allowing visual inspection of the area beneath the dropped slab; however we were not permitted this access.

CURRY ENGINEERS, LLC
STRUCTURAL ENGINEERING - CONNECTION DESIGN
487-E SEACOAST PARKWAY - MOUNT PLEASANT, SC 29464 - OFFICE : 843-849-9735 - FAX : 843-849-7831
www.curryengineers.com

- d. We, as a result of this and our suspicions based on our limited incomplete inspection and the potentially life safety issues, determined necessary action should immediately be undertaken to correct these problems.
- 2.) December 18, 2007 sent letter, via email, to Richard Coen with a copy to Lee Cave, Mt. Pleasant Building Services recommending that immediate action be taken to correct the problems/deficiencies described above.
- 3.) December 19, 2007, after inspecting the structural conditions under the building we hand delivered a letter with pictures depicting the structural problems uncovered to Lee Cave's, Mt. Pleasant Building Official, office. Since life safety issues were at risk we, in this letter, strongly advised the building be vacated until proper repairs could be made.

On December 19, 2007 we, along with Richard Coen's representatives, Cas Kowalski and Will Thirnhill performed a non destruct visual inspection of the observable areas under the old building structure. The following are results of the inspection:

FINDINGS

- A.) Office exterior wall adjacent to RB's Restaurant approximately 44 feet long:
 - 1.) Load bearing wall supported by CMU and Timber Sill on grade. (PIC 1)
 - 2.) Timber support system is deteriorating from rot and insect infestation. (PIC 2, 3).
- B.) Underside of old building which houses the Kitchen Area:
 - 1.) Several piles deteriorating from Marine Borers. (PIC 4)
 - 2.) Main support timber beam is skewed. (PIC 5)
 - 3.) Support for timber beam missing in several locations.
 - 4.) Timber beam improperly spliced. (PIC 6)
 - 5.) A number of timber joists are severely deteriorated (PIC 7)
 - 6.) Several timber beams are deteriorated insufficiently supported (PIC 8).
 - 7.) Beam not sufficiently supported by pile or connected to pile
 - 8.) Timber beam crushed at its support PIC 9)
 - 9.) A couple of beam severely deteriorated and show signs of failure at support PIC 10)
 - 10.) Timber beam horizontally split and failed in vicinity of dropped floor slab in kitchen area (PIC 11, 12)
 - 11.) Sub-floor is moisture damaged and decayed in some locations. (PIC 13)
 - 12.) Beam split horizontally (PIC 14)
 - 13.) Pile leans and is eccentrically loaded and insufficiently connected to its support beam. (PIC 15)
 - 14.) Broken waste line and raw Sewage and deteriorated pile (PIC 16)
 - 15.) Moisture damaged beams(PIC 17)
 - 16.) Rotted sub floor and crushed beam (PIC 18)
 - 17.) Some of the timber piles of the palmetto pile variety have suffered extensive marine borer damage. Several piles are severed as a result of marine borer infestation.
 - 18.) Several timber girders are supported directly atop some piles and are only connected to each other by friction.
 - 19.) See attached pictures.

CONCLUSION & RECOMMENDATIONS

In view of the amount of insect infestation, rotted and severely deteriorated structural timbers and piles observed, we consider the building to be structurally deficient and unsafe for human occupancy. The substructure under the exterior wall, paralleling RB's restaurant, is deteriorated and is structurally suspect. Damage to some structural members and piles under the dining area also structurally suspect. It is our concern that should a collapse of the floor system occur it is possible that the exterior load bearing walls would be jeopardized to the point of failure. Should this happen there is the possibility the entire roof system would collapse as well and this would be catastrophic should human life be involved.

It is recommended that a survey of all structural elements be conducted prior to repairing or replacing structural members. All of the concrete floor and support system in the kitchen area should be removed and replaced with a new floor and beam system including damaged piles. All load bearing elements should be adequately supported during construction

It has been our pleasure to provide you with this report.

With regards, I am

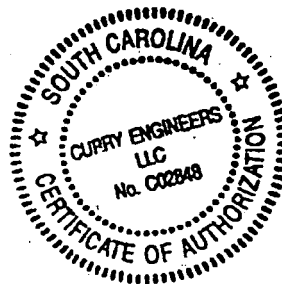
Bobby Curry, PE
Project Engineer

Curry Engineer, LLC
401-E Seacoast Parkway
Mount Pleasant, SC 29464
www.curryengineers.com

Phone: 843-849-0755

Fax: 843-849-7831

Email: curryb@curryengineers.com



DISCLAIMER

Curry Engineers, LLC agreed to perform this inspection for the purpose of informing the CUSTOMER of major structural deficiencies in the condition of the building. This inspection and report are performed and prepared for the sole, confidential, and exclusive use and possession of the CUSTOMER.

It is understood and agreed that this inspection is of readily available and accessible areas of the building and is limited to visual observations of apparent conditions existing at the time of this inspection only. Latent and concealed defects and deficiencies are excluded from this inspection. Because this building was inspected during working areas, most interior areas were inaccessible and could not be inspected.

Maintenance and other items may be discussed, but they are not part of our inspection. The structural report is not a code compliance inspection or certification for past or present governmental codes or regulations of any kind.

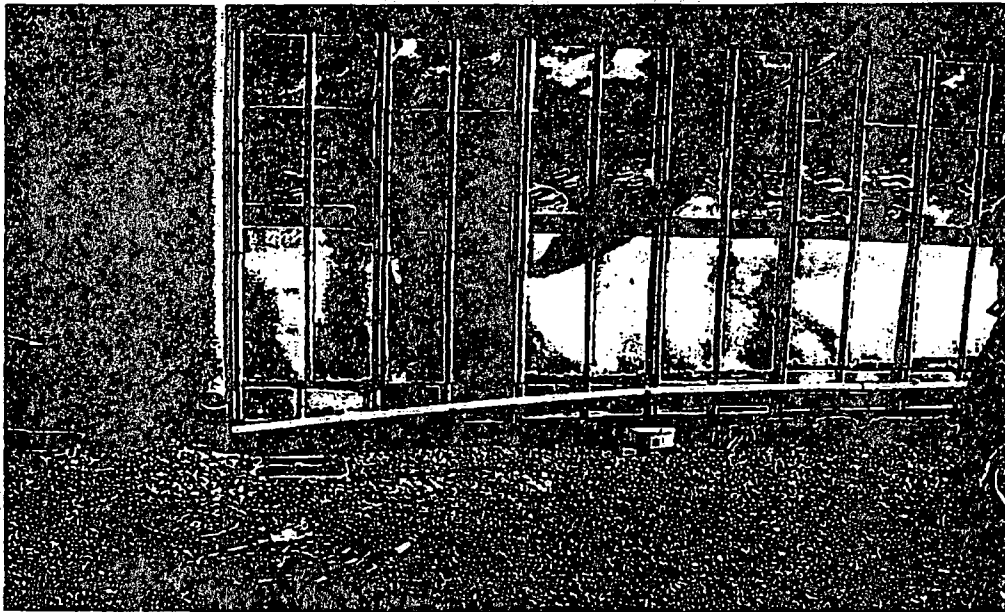
It is understood that this inspection is a visual, non-destruct STRUCTURAL INSPECTION only. Items excluded are inspections of and report on plumbing, electrical and HVAC systems, attic insulation and ventilation, soil condition, drainage and grading, or appliances and electronics of any kind. The inspection and report do not address and are not intended to address the possible presence of or danger from any potentially harmful substances and environmental hazards including but not limited to mold, radon gas, lead paint, asbestos, urea formaldehyde, toxic or flammable chemicals and water and airborne hazards. Also excluded are inspections of and report on wells, septic systems, security systems, elevator systems, fire-sprinkler systems, roof drainage systems, fire and safety equipment and the presence or absence of rodents, termites, and other insects.

The parties agree that Curry Engineers, LLC and its engineers and employees, assume no liability for the cost of repairing or replacing any unreported defect or deficiency, either current or arising in the future, or of any property damage, consequential damage, or bodily injury of any nature. This inspection and report are NOT intended or to be used as a guarantee or warranty, expressed or implied, regarding the adequacy, performance or condition of subject building. Curry Engineers, LLC is not an insurer of any inspected conditions.

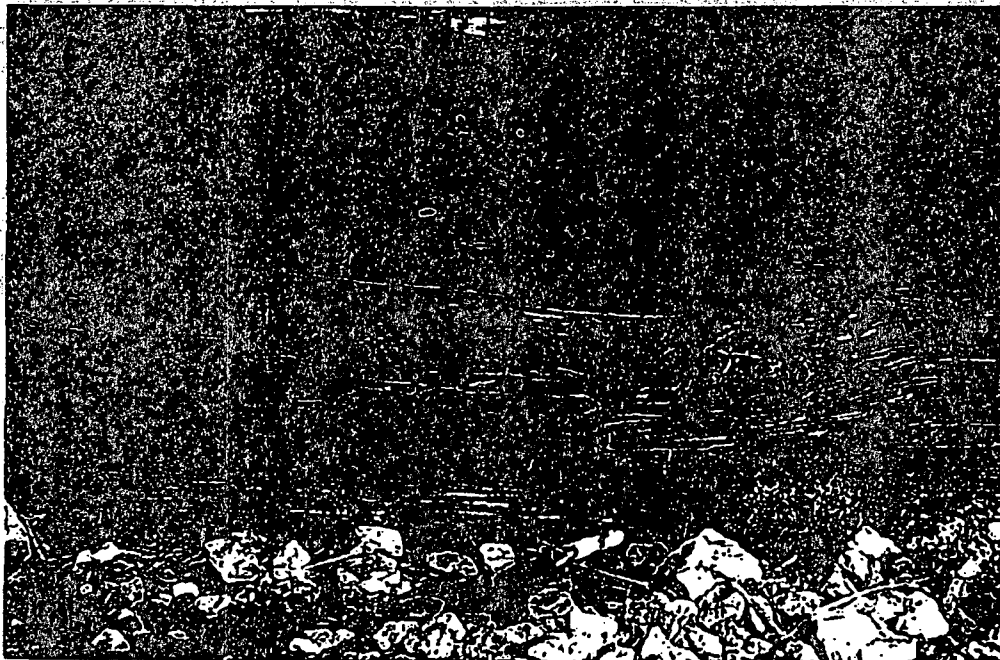
No claim arising out of or relating to this agreement shall be made unless Curry Engineers, LLC receives written notice and description of the claim within 90 days of the date on this agreement. After receiving such notice of a claim, Curry Engineers, LLC shall have the right to re-inspect the alleged inspection error before corrective measures are taken. Negotiation shall be employed first in an attempt to secure a resolution, followed by non-binding mediation, and finally by filing a lawsuit. Reasonable requests for information from one party to the other shall be honored.

It is understood and agreed that should Curry Engineers, LLC and / or its engineers and employees be found liable for any loss or damages resulting from a failure to perform any of its obligations, including but not limited to negligence, breach of contract, or similar, then the liability of Curry Engineers, LLC and its employees is limited to a sum equal to the amount of the fee paid by the CUSTOMER for the Structural Inspection and Report.

REDS ICE HOUSE PICTURES 12-19-2007



PIC 1



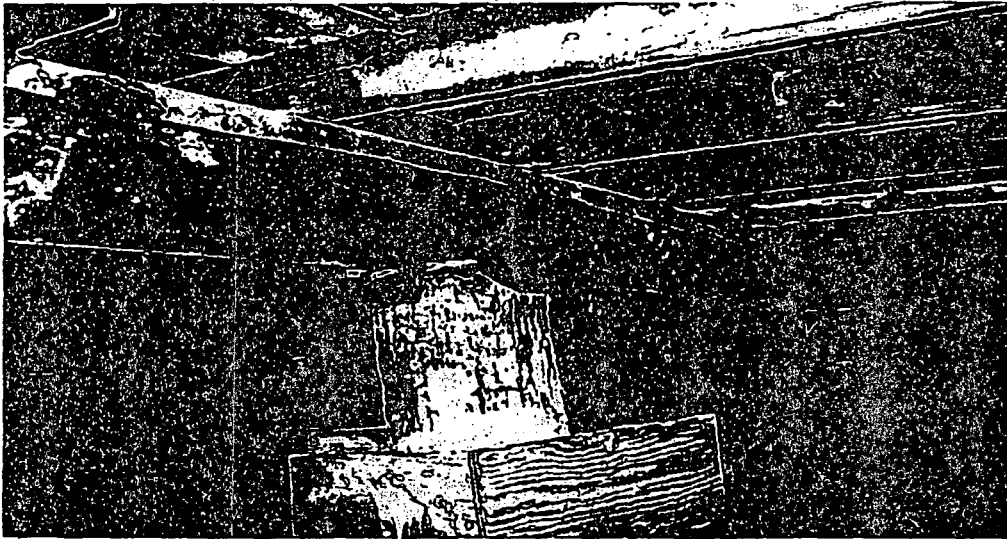
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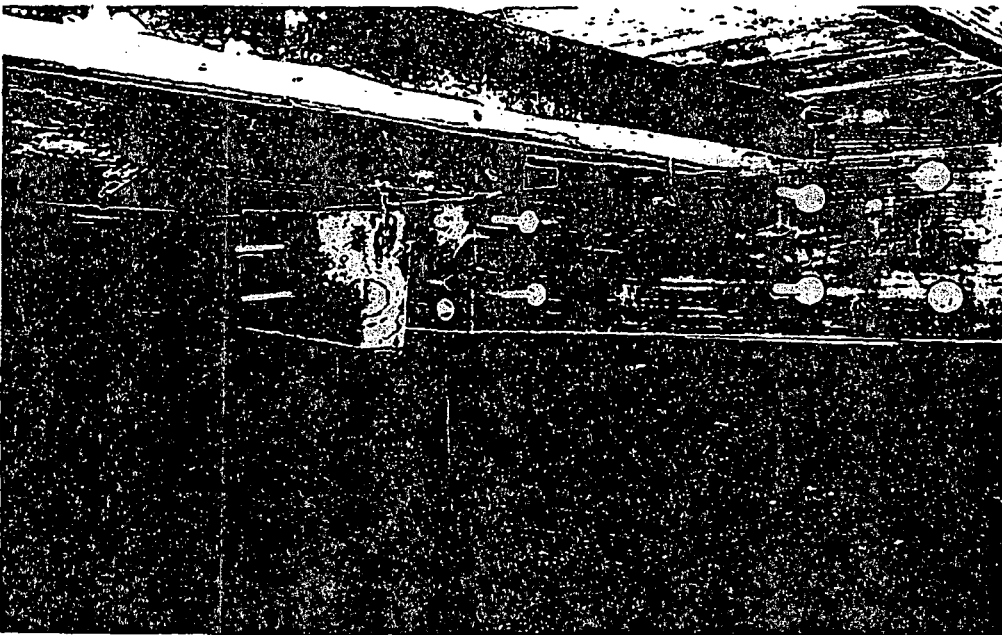
PIC 3



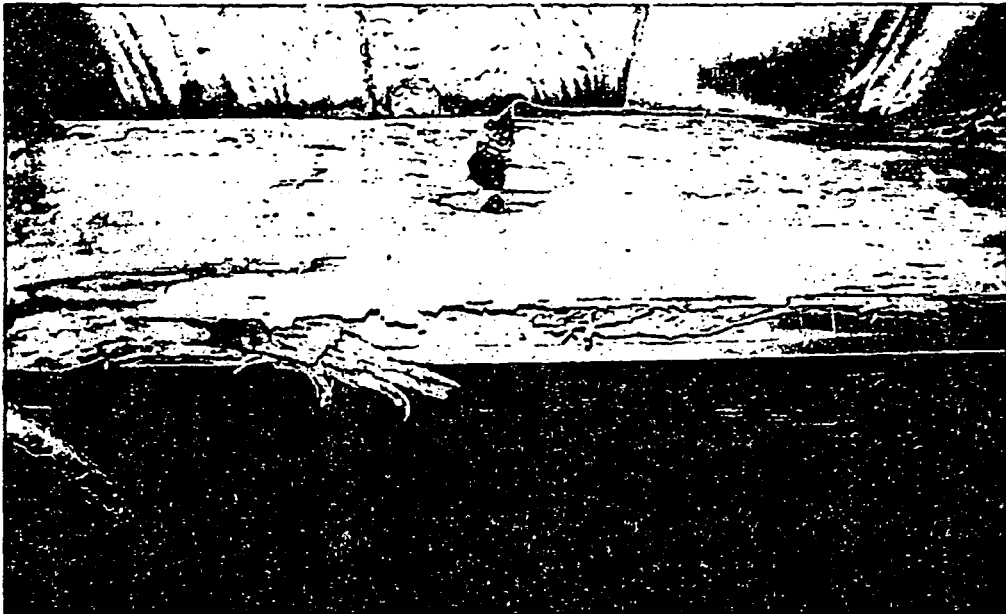
PIC 4



PIC 5



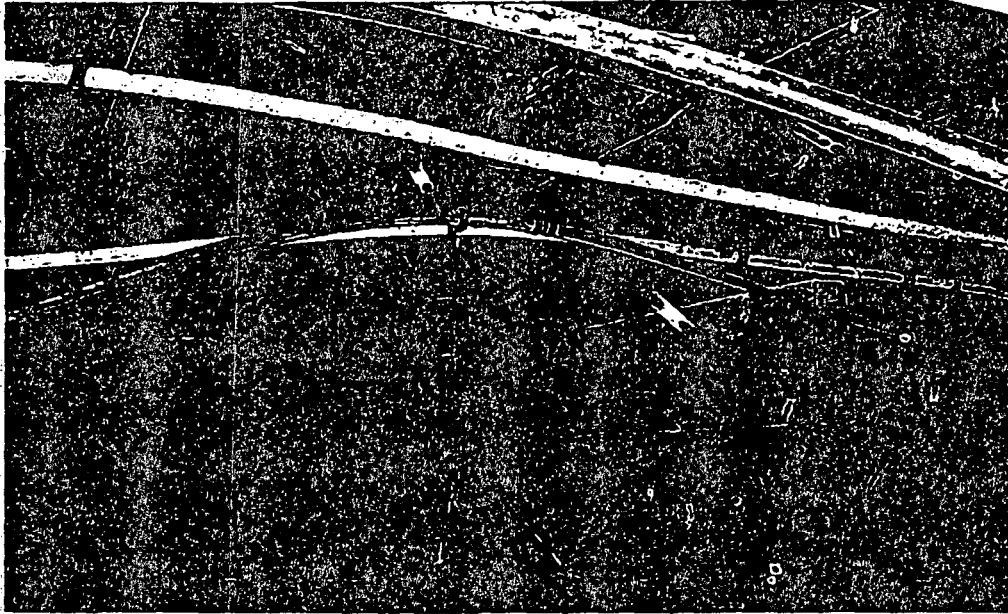
PIC 6



PIC 7



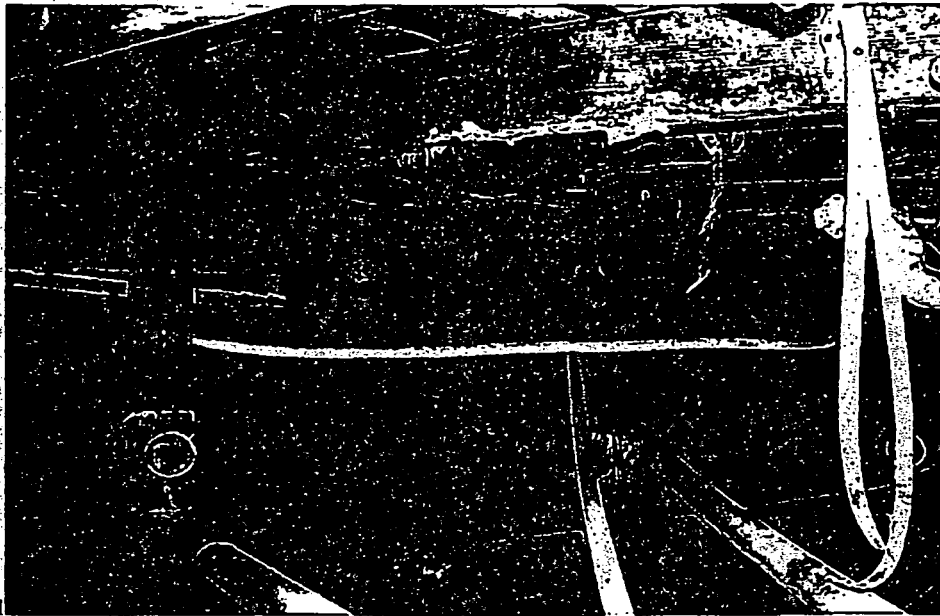
PIC 8



PIC 9



PIC 10



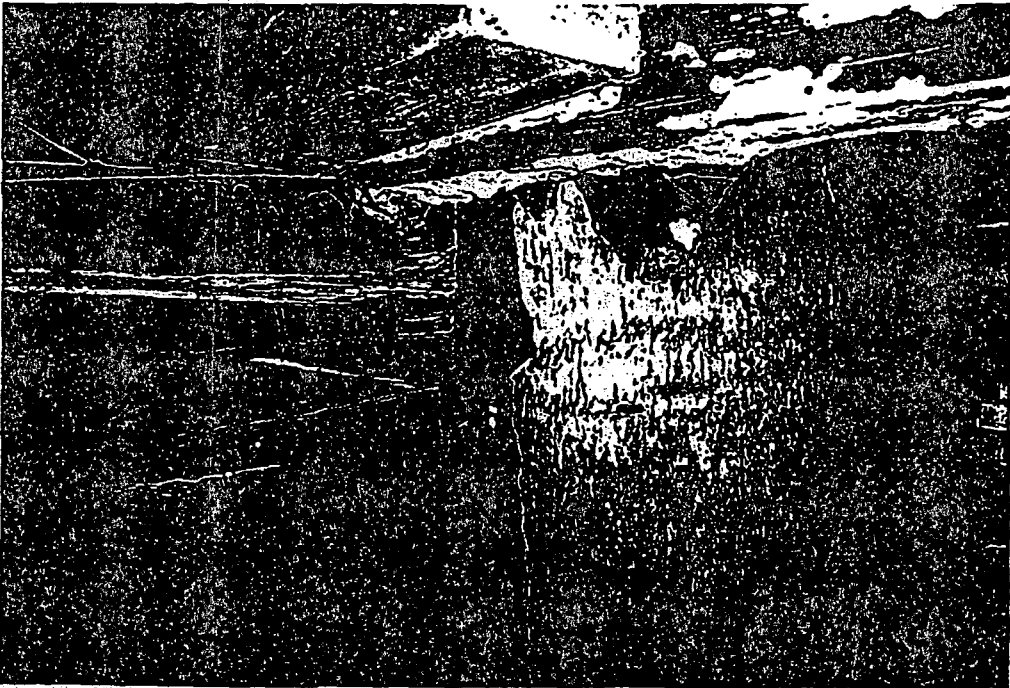
PIC 11



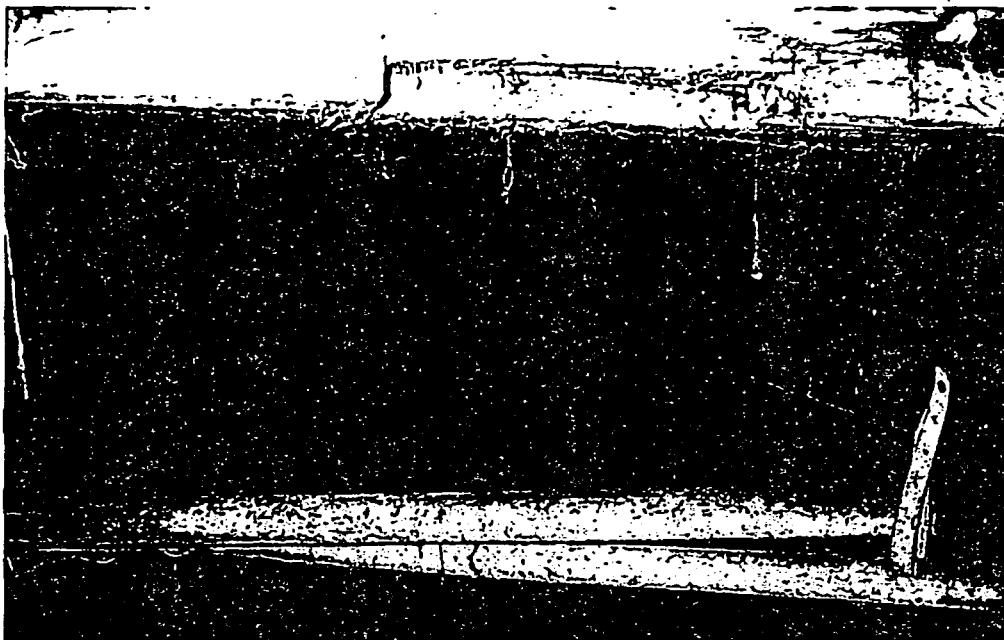
PIC 12



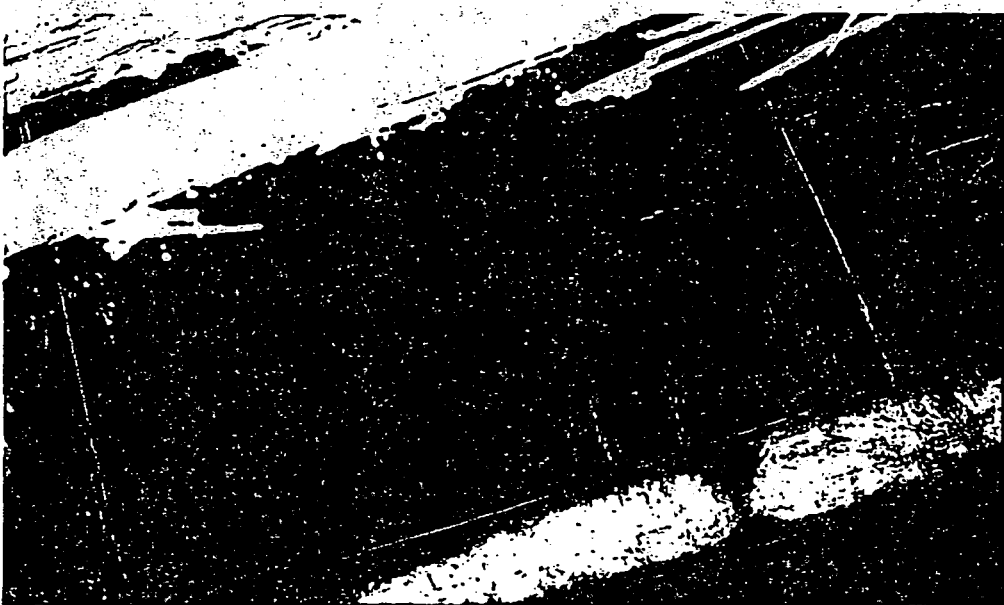
PIC 13



PIC 14

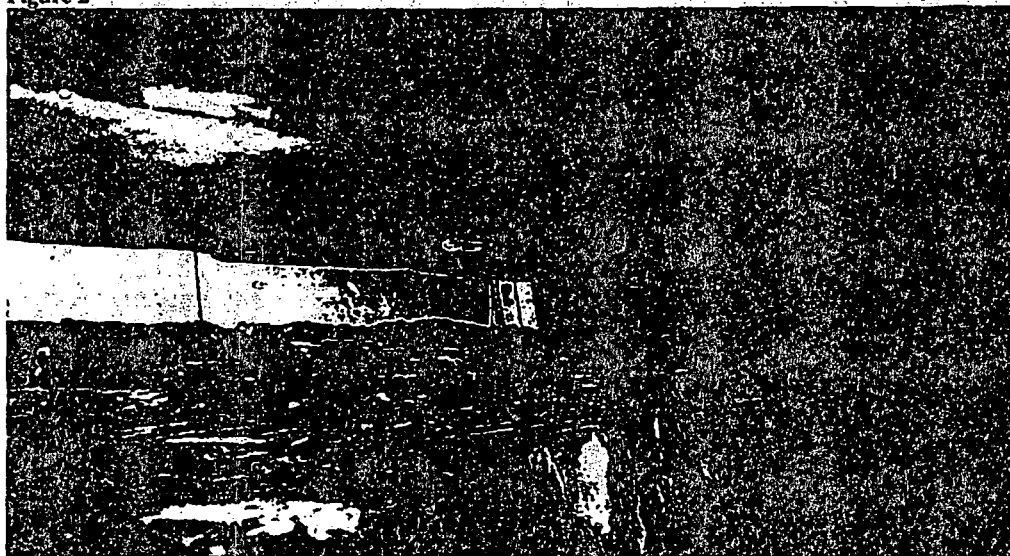


PIC 15



PIC 16

Figure 2



PIC 17



PIC 18



PIC 19

EXHIBIT D

Appendix 259

*Theodore Padgett, PE, PC
Consulting Engineer
4865 Highlander Lane
Hollywood, SC 29449
843 860 1307
843 769 7710 fax
theodorepadgett@aol.com*

December 20, 2007

Mr. William B Wright, PE
WPC
1017 Chuck Dawley Blvd.
Mount Pleasant, SC 29464

Re: Red's Ice House

Dear Mr. Wright:

This letter is to confirm my observations and recommendations given to you earlier today.

The inspection involved Red's Ice house- a restaurant on Shim Creek in Mount Pleasant. There were questions about the structural condition of certain floor members. To that end, we met onsite to view the conditions.

The location of concern is the kitchen and food preparation areas. The floor is deflected downward a few inches. Cracks are visible in the concrete floor surface. The total floor space affected is approximately 200-300 square feet.

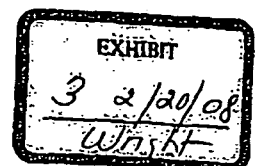
It appeared that the entire facility is supported on pile foundations. Most piles are pressure treated pine normally associated with construction in marsh or oceanfront environments. Other piles appeared to be palmetto logs.

Floor joists are 2x12 sections while beams and girders are either built-up 2x12's or 3x12's. The floor sheathing is plywood. The kitchen floor has a concrete topping.

The wood framing members have suffered long term deterioration due to exposure to excessive moisture. Extensive damage was also noted in the wood blocking at beam to pile connections. In the center of the kitchen area, the girder was no longer in contact with the pile.

The deterioration is such that an adequate factor of safety is not present. In strict structural terms, the floor framing has already failed. It is imperative that arrangements be made to perform permanent repairs in the very near future. In our discussions, the best time frame is probably right after the first of the year.

Mr. Wright
December 20, 2007
Page 1 of 2

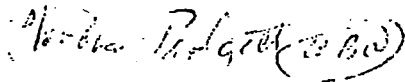


Appendix 260

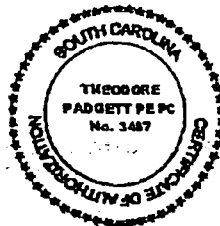
In the interim, it is advisable to perform limited temporary repairs to prevent further displacement. These should include additional wood blocking at vulnerable pile connections and shoring under badly deteriorated joists and beams. In that the holidays are upon us, the restaurant management should severely limit access to the kitchen areas until the temporary repairs can be made.

I appreciate the opportunity to be of service and if I may assist further, please let me know.

Sincerely,



Theodore Padgett, PE, PC



Mr. Wright
December 20, 2007
Page 2 of 2

Appendix 261

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CASE # 09-874

Lowcountry Capital, LLC
PLAINTIFF

IN THE MAGISTRATE'S COURT

AFFIDAVIT AND APPLICATION
FOR EJECTMENT AND RULE TO
VACATE OR SHOW CAUSE

PHONE: (843) 377-1400

VS

RedWing, LLC
DEFENDANT

DATED September 25, 2009

I, the Plaintiff in this action, being sworn, state that I am counsel for the Landlord/Lessor of the premises herein described. I further state that the premises are within the magisterial jurisdiction of Charleston County located at:

98 Church Street, Mount Pleasant, SC 29464

and that a landlord-tenant relationship exists between the parties described as evidenced by the following facts:

A Commercial Lease, attached as Exhibit A, a Membership Interests Purchase and Sale Agreement, attached as Exhibit B, and a Notice of Default, attached as Exhibit C.

Grounds for this ejectment are one or more of the following:

- () The tenant fails or refuses to pay the rent when due or demanded; or
- () The term of tenancy or occupancy has ended; or
- (xx) A term of condition of the contract has been violated, to-wit:

The Tenant (Redwing, LLC) and its owner (Dianne Crowley) are in breach of the attached agreements by failing to secure sufficient parking for its business operations, failing to properly police the parking areas, unauthorized material changes to the premises and operating in violation of town ordinances, as required by the parties Lease and Purchase and Sale Agreement and such other violations determined through inspection. As a result of these breaches, both Tenant and its owner are in default and Tenant's occupancy has ended. Tenant and its owner have been notified of these defaults, but have failed to cure the defaults or uphold their contractual obligations. For these reasons, Tenant must be ejected from the premises.

SWORN TO BEFORE ME THIS 25th
DAY OF SEPTEMBER 2009

[Signature]
NOTARY PUBLIC OR MAGISTRATE
MY COMMISSION EXPIRES 06/26/15

[Signature]
HUGH W. BUYCK, COUNSEL FOR PLAINTIFF

Upon application for ejectment, above, filed by the Plaintiff, you the Defendant and lessee of the premises noted above must request a hearing at 1189 Iron Bridge Road, Suite 300, Mount Pleasant, SC 29464 within ten (10) days from the date of service of this affidavit and rule why you should not be ejected from said premises. FAILURE TO VACATE THE PREMISES OR TO RESPOND TO THIS COURT WITHIN THE TIME PERIOD SET ABOVE, MAY RESULT IN THE ISSUANCE OF A WARRANT OF EJECTMENT.

9/25/09
DATED

[Signature]
MAGISTRATE

Redwing, LLC lease

STATE OF SOUTH CAROLINA)
) COMMERCIAL LEASE
COUNTY OF CHARLESTON)

THIS COMMERCIAL LEASE ("Lease") is made and entered into this 10th day of June, 2004 ("Effective Date") by and between LOWCOUNTRY CAPITAL, LLC, a South Carolina limited liability company ("Landlord") and REDWING, LLC, a South Carolina limited liability company ("Tenant"). (Landlord and Tenant may be referred to individually as a "Party" or collectively as the "Parties").

WHEREAS, the Parties entered into a Termination of Commercial Lease, dated simultaneously herewith, which terminated the prior Commercial Lease between Lowcountry Capital, LLC and RedWing, LLC dated October 3, 2003; and

WHEREAS, the Parties desire to enter into a new Commercial Lease.

WITNESSETH:

In consideration of the covenants and agreement of the respective Parties herein contained, the Parties hereto, for themselves, their heirs, successors, distributees, executors, administrators, legal representatives and permitted assigns, do hereby agree as follows:

A. LAND LEASE:

Landlord leases the land which contains the Demised Premises (as defined in Exhibit A and depicted in Exhibit B) from Snowmill, LLC as successor to Snowmill Properties, LLP and Mill Church Properties, LLC pursuant to that land lease dated October 1, 2003 ("Land Lease"). Said premises are situate, lying and being in the State of South Carolina, County of Charleston, located at Church Street and Shem Creek in Mount Pleasant, SC, consisting of a restaurant building and improvements known now as Red's Ice House and the non-exclusive right for parking in those designated spaces in Exhibit A. *Red's Ice House*

B. TERM AND DELIVERY OF DEMISED PREMISES:

The term of this Lease shall commence on the Effective Date and shall terminate on September 30, 2018 ("Expiration Date") unless this Lease is earlier terminated pursuant to Section D hereof ("Initial Term").

C. OPTION TO RENEW:

At the expiration of the Initial Term of this Lease and at the expiration of any renewal term or extension of this Lease, with the approval of Landlord, approval not to be unreasonably withheld, Tenant may renew this Lease for an additional, five-year term. Tenant shall exercise its right to renew the Lease by providing Landlord at least one hundred twenty (120) days written notice of its intent to do so prior to the expiration of the existing Lease term.

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Exhibit A

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The Rent for the first year of any renewal term shall be negotiated between Landlord and Tenant beginning within one hundred twenty (120) days of the expiration of the Initial Term. During any renewal term, the Rent shall escalate 2% annually (in the manner described in Section D (1)).

D. COVENANTS AND CONDITIONS OF LEASE:

This Lease is made on the following covenants and conditions which are expressly agreed to by Tenant and Landlord:

1. RENT:

Tenant covenants to pay as rental to Landlord the annual sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00), in advance of the first (1st) day of each month, and mailed to Landlord, or to such other address as Landlord may designate in writing to Tenant from time to time. The Rent is due on the first (1st) day of each month and shall not be withheld for any reason whatsoever. The Rent increases on the first anniversary of the Lease, and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Tenant pays the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Initial Term, the Rent shall decrease by Five Thousand and 00/100 Dollars (\$5,000.00) per month.

Each monthly rental payment, as set forth above, is due in advance on the first (1st) day of the calendar month. The parties agree that Tenant shall have a ten-day grace period within which the Landlord may receive the monthly advance rental payment without default; however, if the Landlord does not receive the monthly rental payment by six o' clock p.m. on the tenth day of the calendar month, the Tenant shall be in default without further notice, and the Landlord may, at its option, exercise its remedies provided herein for default, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month. Tenant shall not be in default for nonpayment of rent until the later of the tenth (10th) day of the calendar month or five (5) days after receiving written notice of the non-payment of rent from Landlord.

2. LEASE AS IS:

The Property is to be leased "as is". Tenant shall have sole responsibility for any and all improvements of the Property.

3. AUTHORIZED USE:

Tenant agrees not to abandon or vacate the Demised Premises and shall use the Demised Premises for the following purpose, and for no other purpose whatsoever, without the written consent of Landlord first had and obtained:

Tenant will use the Demised Premises for a restaurant and bar and for any other lawful purpose in the ordinary course of operating its business. Tenant shall have the right to seasonal closings of the Demised Premises.

Tenant will not permit or suffer anything to be done nor keep anything in or about the Demised Premises, which would render the insurance thereon void or voidable or cause cancellation. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Demised Premises, any article or material which is prohibited by law or by standard property insurance policies of the kind customarily in force with respect to premises of the same general type as those covered by this Lease.

4. INSURANCE/INDEMNITY:

- A. EXCEPT AS TO INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENCE OR WILLFUL ACTS OF LANDLORD FOR WHICH LANDLORD IS LEGALLY LIABLE, TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM ALL CLAIMS (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST SUCH CLAIMS) (I) ARISING OR ALLEGED TO ARISE FROM ANY ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES OR CONTRACTORS, OR (II) RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO THE PROPERTY OF ANY PERSON OCCURRING DURING THE TERM OF THIS LEASE IN THE DEMISED PREMISES. TENANT AGREES TO USE AND OCCUPY THE DEMISED PREMISES AND OTHER FACILITIES OF THE BUILDING AT ITS OWN RISK AND HEREBY RELEASES LANDLORD, ITS AGENTS OR EMPLOYEES, FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO THE FULL EXTENT PERMITTED BY LAW. THE INDEMNIFICATION PROVISION HEREIN SHALL SURVIVE ANY TERMINATION OF THIS LEASE BY LAPSE OF TIME OR OTHERWISE.
- B. Tenant shall maintain property insurance on the Property and such additions and improvements by Tenant, which have become or are to become the property of Landlord at the termination of the Lease. Such insurance shall be maintained with such companies and in such amounts desired by Landlord, and suitable for coverage of the Property and Demised Premises. Landlord shall also maintain commercial general liability insurance to afford such protection and with such companies as desired by Landlord. Tenant shall maintain at its expense (i) property insurance on all of its personal property and removable trade fixtures located in the Demised Premises and on all additions and improvements made by Tenant, (ii) commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence

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covering the Demised Premises, (iii) property insurance coverage adequate to pay one hundred percent (100%) of the Rent to Lessor for the period of time in which Lessee is unable to operate its business as a result of sustained property damage, and (iv) building ordinance coverage insurance. Tenant's commercial general liability insurance shall list the Landlord, Landlord's Agent, and Snowmill, LLC as additional insured parties and provide that it is primary over any insurance carried by Landlord.

- C. Anything in this Lease to the contrary notwithstanding, the Parties hereto hereby waive any and all rights of recovery, claim, action or cause of action, against each other, their respective agents, officers and employees for any loss or damage that may occur to the Demised Premises, the Property and to all property, whether real, personal or mixed, located in or at the Demised Premises or the Property, by reason of fire, the elements, or any other peril as defined in the basic peril property insurance policy approved for use in South Carolina from time to time regardless of cause or origin, including negligence of the Parties hereto, the respective agents, officers and employees. Since the above mutual waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each Party hereto agrees immediately to give each insurance company which has issued to it property insurance policies, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such coverage by reason of said waivers.
- D. Each of the insurance policies referred to in this paragraph shall provide (if provision is obtainable), that it shall not be canceled without at least thirty (30) days prior written notice to Landlord and Tenant. In addition, the Parties shall furnish to one another certificates or copies of each of the insurance policies, which each Party is required to maintain promptly after obtaining such insurance.
- E. The Parties mutually agree that they shall not be responsible or liable to each other, their employees, agents, customers, or invitees for bodily injury (fatal or nonfatal) or property damage occasioned by the acts or omissions of any other tenant or such tenant's employees, agents, contractors, customers, or invitees within the Property.

5. CONDITION OF THE DEMISED PREMISES:

All improvements, alterations and additions to the Demised Premises desired by Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Landlord. Landlord's approval of the plans, specifications and working drawings for Tenant's alterations and/or Landlord's approval of Tenant's plans for Landlord's work shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or

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compliance with all laws, rules and regulations of governmental agencies or authorities. If the improvements, alterations, or additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. All improvements and additions made by or for the Tenant and permanently attached to the Demised Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Demised Premises and shall be surrendered to Landlord at the Expiration Date or earlier termination of this Lease. Tenant has inspected and accepts the Demised Premises in the same condition they are in at the time of execution of this Lease. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Demised Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Demised Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance or regulation applicable thereto.

Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that it has granted its prior consent to Tenant for the material alteration of some or all of the Demised Premises, in Tenant's sole reasonable discretion. Tenant shall be responsible for payment of the costs of any such alterations provided the total cost of such alterations.

Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that all photographs located in or attached to the Demised Premises are the personal property of Richard H. Coen and have been temporarily loaned to the Tenant for use in Tenant's business. During the term of this Lease, Tenant shall not damage or take possession of such photographs nor permit any other party to damage or take possession of such photographs. Tenant shall use its best efforts to keep such photographs in good repair. Upon the termination or expiration of this Lease, Tenant shall return such photographs to Richard H. Coen in good repair.

6. REPAIR AND CARE OF PROPERTY:

- A. Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain the Demised Premises in good order and repair. Tenant shall maintain the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for leakage, cleaning, and other customary periodic maintenance. Tenant agrees to return the Demised Premises to Landlord at the expiration or prior termination of this Lease in as good a condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted.
- B. Tenant shall keep and maintain the foundations, roof, and structural portions of the exterior walls of the Demised Premises in good condition and repair. Landlord gives to Tenant exclusive control of the Demised Premises and shall be under no obligation to inspect the Demised

Premises. Landlord shall not be obligated to make any repair or replacement.

7. PAYMENT OF TAXES AND OTHER ASSESSMENTS:

Landlord shall pay annually all real estate taxes on the Demised Premises. Tenant shall pay its Pro-Rata Share (as defined below). Further, Tenant shall be responsible for and shall pay before delinquent all municipal, county, federal or state taxes coming due during or after the terms of this Lease against any leasehold interest or personal property of any kind owned or placed in, or about the Demised Premises by Tenant. Tenant shall pay all Solid Waste Disposal User Fees for Tenant's waste. Landlord and Tenant acknowledge and agree that Tenant's Pro-Rata Share of the real estate taxes under this Lease is One Hundred percent (100%) ("Pro Rata Share") of Charleston County TMS # 517-15-00-003 plus one hundred percent (100%) of the real estate taxes related to the spaces designated in Exhibit A *attached to OC*

Both Parties agree that if Tenant must pay real estate taxes directly to obtain tax incentives, that Tenant may pay Tenant's share of taxes directly, providing proof of same to Landlord.

8. PAYMENT OF UTILITIES:

Tenant shall contract for and pay, at its own expense and without damage or threat of damage to the Property or any part of the Property, electrical power and any other utilities or services required for its use of the Demised Premises, including, but not limited to, telephone service, electric power and connections for Tenant's equipment, and water and sewer. Landlord shall cause an electrical meter to be installed for the Demised Premises. Tenant shall keep such meter, or any other meters measuring the electricity consumed at the Demised Premises, in good order and repair.

9. SERVICES

Landlord shall not be liable for loss or damage arising from failure to provide utilities or services as a result of strike, casualty, repairs, or other causes beyond Landlord's reasonable control, nor shall any such failure relieve Tenant from the obligation to pay the full amount of Rent herein set forth, nor shall any such failure constitute or be construed as a constructive or other eviction of Tenant. Should Tenant desire any additional services beyond those described in Paragraph 7, above, Landlord may, at Landlord's option, upon reasonable advance notice from Tenant to Landlord, furnish such services. Tenant agrees to pay Landlord upon demand the cost for such additional services as Additional Rent.

10. COMPLIANCE WITH LAWS:

During the term of this Lease, Tenant and Landlord shall, at their own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and city governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto or any part thereof.

11. ALTERATION OF PROPERTY AND INSTALLATION OF FIXTURES AND
OTHER APPURTENANCES:

Tenant may, with the prior written consent of Landlord, in Landlord's sole discretion, but at its own cost and expense and in a good and workmanlike manner, make such alterations and repairs in the Demised Premises as Tenant may require for the conduct of its business. Any alterations or improvements to the Demised Premises, shall at the option of Landlord become the property of Landlord at the expiration or sooner termination of this Lease.

Any and all work performed by Tenant or its contractors, shall be with workmen and contractors approved in advance in writing by Landlord and in a manner and upon terms and conditions and at times satisfactory to and approved in advance in writing by Landlord. Landlord will not unreasonably withhold such approval. All work shall be approved by and in compliance with any and all laws, rules, and regulations of governmental agencies or authorities and in compliance with all building codes.

Unless otherwise agreed in writing by Landlord, prior to and at all times during the performance of the work by any of Tenant's contractors or subcontractors, Tenant shall require such contractors to provide, and shall require all subcontractors of every tier to provide, the insurance coverages described below, with deductibles for their own accounts, on policy forms acceptable to Landlord and with limits not less than those shown below, all of which shall be provided at no cost to Landlord:

	TYPE OF INSURANCE	MINIMUM LIMITS
I.	Workers' Compensation Employer's Liability	Statutory \$100,000
II.	Commercial General Liability (Including Products/Completed Operations)	Per Occurrence \$1,000,000
III.	Automobile Liability (All Owned, Non-Owned and Hired)	Combined Single Limit \$1,000,000

Tenant shall require that such contractors' Workers' Compensation insurance be endorsed to provide that the underwriter waives its right of subrogation against Landlord, its Affiliates and Agents. In addition, Commercial General Liability and Automobile Liability policies shall be endorsed specifically to name Landlord, its Affiliates and Agents as Additional Insured parties and be endorsed to provide that they are primary coverages, not in excess of any other insurance available to Landlord, its Affiliates and Agents to insure Landlord, its Affiliates and Agents against claims arising from such work. Evidence of such specific

endorsements shall be furnished to Landlord prior to commencement of such work. IN THE EVENT TENANT FAILS TO OBTAIN SUCH SPECIFIC ENDORSEMENTS, TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD, ITS AFFILIATES AND AGENTS HARMLESS FROM ANY AND ALL LOSSES, CLAIMS, DAMAGES, AND EXPENSES WHICH WOULD BE COVERED BY SUCH SPECIFIC ENDORSEMENTS THAT LANDLORD MAY INCUR, INCLUDING THOSE BASED IN WHOLE OR IN PART ON THE IMPUTED, JOINT, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ONE OR MORE OF THEM, INCLUDING (WITHOUT LIMITATION) COSTS OF DEFENSE AND ATTORNEYS' FEES. Tenant shall furnish to Landlord, prior to any such contractor or subcontractor commencing work hereunder, certificates evidencing that the required insurance is in force. The certificates shall provide that in the event of cancellation or material change, thirty (30) days' prior written notice shall be given to Landlord. If requested to do so by Landlord, Tenant shall also furnish the originals or certified copies of any such contractor's insurance policies for inspection. Such policies shall be subject to the approval of Landlord as to adequacy. Should Tenant fail to procure evidence of any such contractor's insurance or to require any such contractor to maintain in force the insurance specified herein, Landlord may secure such insurance and the cost thereof shall be borne by Tenant. Tenant agrees to reimburse Landlord as Additional Rent the cost of any such insurance plus a five percent (5%) administrative charge within ten (10) days after billing by Landlord. Any sum and financing unpaid fifteen (15) days after billing by Landlord shall bear interest at the rate of eighteen percent (18%) per annum until paid to Landlord. Compliance with the provisions of this subparagraph by Tenant for each such contractor and the limits of liability shown for each of the insurance coverages to be provided by Tenant for all such contractors shall not be deemed to constitute a limitation of Tenant's liability for claims or in any way limit, modify or otherwise affect Tenant's indemnification obligations. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for such contractor or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive or invalidate any of the provisions of this Lease. Where used herein, "Affiliates" shall mean any corporation, partnership, joint venture, division or other legal entity, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Landlord, its employees, agents, and representatives.

12. SUBORDINATION OF LEASE, ATTORNMEN AND ESTOPPEL CERTIFICATE:

Tenant agrees to subordinate this Lease to any mortgages, the Land Lease and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust pursuant to a Subordination, Non-Disturbance and Attornment Agreement. Tenant also agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at sale pursuant to any foreclosing or deed-in-lieu thereof, and to the Lessor in the event of a termination of the Land Lease.

Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord a statement certifying any facts that are then true with respect to this Lease, including without limitation (if such be the case) that this Lease is in full force and effect, that there are no modifications or amendments to the Lease except as disclosed, that Tenant is in possession of the Demised Premises, that Tenant has commenced the payment of Rent, that no Rent or

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other sums have been paid to Landlord in advance, and that Tenant claims no defense or off-set to the due and full performance of its obligations under this Lease, and other such reasonable facts requested in tenant estoppel certificate.

13. CONDEMNATION:

If the whole of the Demised Premises, or such portion thereof as will make the Demised Premises unusable for the purpose herein leased be condemned by any legally constituted authority, this Lease shall terminate on the date when possession thereof is taken by public authorities, and Rent shall be accounted for as between Landlord and Tenant as of that date. In the event only a portion of the Demised Premises is acquired by condemnation as will leave the remaining Demised Premises, after alterations and repairs, in condition suitable for use by Tenant including comparable square footage space, type and quality of space, similar entrances/exits, and comparable parking, the monthly rental payments from the day of such acquisition to the end of the original or extended term of this Lease shall be continued, and Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required to restore the Demised Premises to a reasonably similar location within the Property. All sums awarded by the condemning authority for the taking of the interest of Landlord or Tenant, whether as damages or as compensation, will be the property of Landlord or Tenant as awarded. The Parties agree to notify the Other Party within two working days of notice by any legally constituted authority of its intent to condemn the Demised Premises.

14. RIGHT OF ENTRY BY LANDLORD:

Tenant, at any time during the term of this Lease, shall permit inspection of the Demised Premises at any reasonable time, by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Demised Premises or in order for the Landlord to show the Demised Premises to prospective Tenants. Landlord shall use its best efforts to minimize any interference to Tenant's use of the Demised Premises in such event. Ninety (90) days prior to the expiration of this Lease, Landlord may post suitable notices on the Demised Premises that the same are "For Rent" and show the Demised Premises to prospective tenants at reasonable times.

15. ASSIGNMENT, SUBLETTING, AND CHANGE IN OWNERSHIP:

Tenant shall not sublet, assign, mortgage or encumber this Lease, or license, or permit the Demised Premises or any part thereof to be used by others, whether voluntarily or by operation of law or otherwise, without the prior written consent of Lessor in each instance. Landlord shall not unreasonably withhold consent to such sublease, assignment, mortgage or encumbrance. The sale or transfer of membership interest, if Tenant be a limited liability company, shall be deemed an assignment of this Lease. It is understood that one hundred percent of Tenant's membership interest is currently owned by Dianne Crowley, and that transfer of any of her membership interest in Tenant to others shall be deemed an assignment. In the event this Lease or any interest herein is assigned or the Demised Premises or any part thereof sublet without Landlord's prior express written consent, Tenant shall remain fully liable under the terms, covenants, and other conditions of this Lease. Landlord shall thereupon have the right and option to cancel and terminate this Lease effective upon fifteen (15) days

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notice to Tenant given by Landlord at any time thereafter either as to the entire Demised Premises or as to only the portion thereof which Tenant shall have attempted to assign or sublease or otherwise permitted some other party's occupancy without Landlord's prior express written permission; and if Landlord elects to cancel and terminate this Lease as to the aforesaid portion of the Demised Premises, then the Rent and other charges payable hereunder shall thereafter be proportionately reduced. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

16. DAMAGE OR DESTRUCTION:

If the Property or the Demised Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty covered by Tenant's policy of fire and extended coverage insurance, then Tenant shall replace the Demised Premises with a building conforming to the specifications of the building which was destroyed or an equivalent building satisfactory to Landlord and Tenant, as soon as possible after the insurance adjustment, or at its option, and after giving written notice to Landlord within thirty (30) days after the occurrence of said casualty or destruction, Tenant may turn all insurance proceeds over to Landlord, Landlord's mortgagee, if any, as their interests may appear, and terminate this Lease free of all further liabilities except those incurred prior to termination. In the event that Tenant replace the Demised Premises, Tenant shall remain responsible for the Rent due the Landlord.

17. SURRENDER OF DEMISED PREMISES:

Tenant agrees to deliver all keys and to surrender the Demised Premises at the expiration of the term of this Lease. If Tenant should remain in possession of the Demised Premises after the expiration or termination of this Lease, without the execution by Landlord and Tenant of a new lease or a written renewal or extension of the term of this Lease, then Tenant shall be deemed to be holding over in the Demised Premises. Such holding over shall, unless otherwise agreed in writing, constitute a month to month tenancy only, and Tenant shall pay, as monthly rental, the existing monthly Rent plus fifty percent (50%) and all Additional Rent.

18. QUIET ENJOYMENT:

If Tenant shall pay the Rent and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment of the Demised Premises without interference from Landlord or any person lawfully claiming through Landlord, subject, however to the terms of this Lease and any mortgages or deeds of trust provided for in Paragraph 12 above.

19. WAIVER OF COVENANTS:

It is agreed that the waiving of any of the covenants of this Lease by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision contained herein. No forbearance by either Party to seek a

remedy for any breach of this Lease shall be deemed a waiver by such Party of its rights or remedies with respect to such a breach.

20. DEFAULT BY TENANT:

A. This Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to wit: (a) failure to timely pay any installment of Rent when due, (b) failure to timely pay any installment of taxes or any other sums required to be paid by Tenant hereunder, or if any part thereof, shall at any time be in arrears and unpaid by Tenant for a period of seven (7) days, or (c) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless said default cannot reasonably be cured within thirty (30) days and Tenant shall have commenced to cure said default within thirty (30) days and continues diligently to pursue the curing of same within ninety (90) days from the occurrence of such default), or, (d) any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceedings by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall abandon or vacate the Demised Premises, Landlord shall have the option to pursue any one or more of the following remedies:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in Rent or Rent for the remainder of the lease term, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise.

(2) Enter upon and take possession of the Demised Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, without being liable for prosecution or any claim for damages therefore, and relet the Demised

Premises and receive the Rent therefore; and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting.

(3) Enter upon the Demised Premises without being liable for prosecution or any claim for damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expense which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action.

(4) Acceptance of possession of the Demised Premises by Landlord from Tenant shall not constitute an acceptance of a surrender of the Demised Premises as such unless Landlord shall specifically acknowledge the same in writing.

(5) Except as otherwise provided by statute or rule of law, pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided for herein or any other remedies provided by law, all of which may be enforced cumulatively, nor shall pursuit of any remedy provided for herein constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violation or breach of any of the terms, provisions and covenants herein contained.

B. If Tenant shall not remove its property from the Demised Premises upon termination of this Lease, Landlord may, at its option, remove the same or any of the same in any manner that the Landlord may choose and store the same without liability to the Tenant for loss thereof, and Tenant will pay the Landlord, as Additional Rent, on request, any reasonable expenses incurred in such removal and also for storage of the said effects for any length of time during which the same shall be in the Landlord's possession.

C. In case of any such default, re-entry, expiration and/or dispossession: (1) the Rent due hereunder for the entire term of the Lease shall thereupon become due and payable, and no receipt of money by Landlord from Tenant after termination of this Lease or after the giving of any notice thereof shall reinstate, continue or extend the term of this Lease; (2) Landlord may re-let the Demised Premises or any part or parts or parts thereof, either in the name of the Landlord or otherwise, upon terms and conditions deemed appropriate by Landlord, and for a term or terms which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free Rent, provided, however, that

Landlord shall retain only Five Thousand and no/100 Dollars (\$5,000.00) per month of Tenant's accelerated Rent and return the balance of the monthly Rent to Tenant; (3) As Additional Rent due hereunder, Tenant agrees to pay all reasonable costs and expenses and all reasonable attorneys fees incurred by Landlord in enforcing any of the obligations of Tenant under this Lease, and; (4) Tenant or the legal representatives of Tenant shall in addition to any other remedies contained herein, pay Landlord, as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants herein contained, any deficiency between the Rent hereby reserved and/or covenanted to be paid and the net amount of the Rents collected on the account of the Lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. In computing such liquidated damages, there shall be added to the said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, including but not limited to costs, reasonable attorneys fees, brokerage fees and preparation of the Demised Premises for re-letting as may be deemed appropriate by Landlord, and there shall be deducted the amount of any security deposit held by and forfeited to Landlord. Any such liquidated damages shall be payable immediately upon written demand therefore given by Landlord to Tenant, and the acceptance of partial payment by Landlord shall in no way prejudice Landlord's rights or affect Tenant's responsibility for the payment of the total balance owed. Landlord, at its option, may make such reasonable alternations, repairs, replacements and/or decorations in the Demised Premises as Landlord, in its reasonable judgment, considered advisable or necessary for purposes of re-letting the Demised Premises; and the making of such reasonable alternations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid, and Tenant hereby expressly agrees to pay any reasonable costs incurred in connection therewith as Additional Rent.

- D. If Tenant at any time shall fail to pay any taxes, assessments, or liens, or 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 and at the expense of Tenant. All sums so paid by Landlord and all costs and expense so incurred shall accrue interest at the rate of eighteen percent (18%) per annum from the date of payment or incurring thereby by Landlord and shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.
- E. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or

in equity. For the purpose of any suit brought by Landlord or based on this Lease, this Lease shall be construed to be a divisible contract to the end that successive action may be maintained as successive periodic sums shall mature under this Lease and it is further agreed that failure to include in any suit any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums omitted.

- F. Thirty days notice does not apply to Tenant's failure to pay timely rent, which is governed instead by Section D.1 of this Lease, providing for automatic default after the ten-day grace period, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month.

21. DEFAULT BY LANDLORD:

This Lease is made upon the condition that Landlord shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth.

22. FAILURE TO PERFORM COVENANT AND NON-WAIVER:

Any failure on the part of either Party to this Lease to perform any obligation hereunder or any delay in doing any act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or other similar cause beyond the control of the Party so failing to perform, to the extent and for the period that such continues, save and except that the provisions of this paragraph shall not excuse a non-payment of Rent, taxes, Additional Rent, and other sums due hereunder on its due date.

Neither acceptance of Rent by Landlord nor failure by Landlord to complain of any action, non-action or default of Tenant shall constitute a waiver of any of Landlord's rights hereunder. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default.

23. RIGHTS OF SUCCESSORS AND ASSIGNS:

The covenants and agreements contained in this Lease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, their heirs, successors, distributees, executors, administrators, legal representative, assigns, and upon their respective successors in interest, except as expressly hereinbefore provided.

24. LIENS:

Other than that leasehold mortgage from Tenant to NBSC in the approximate amount of One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00), as amended from time to time to include a refinancing of the terms or an extension of the maturity thereof, Tenant must obtain Landlord's consent to create any other leasehold mortgage, equity line, loan, or any other form of indebtedness secured by Tenant's interest in the leasehold or the Demised Premises. Furthermore, Tenant shall not allow or permit the creation of any liens for

labor or material on or against the Demised Premises, the Property, or any part thereof, and all persons either contracting with Tenant or furnishing and/or rendering labor and/or materials to Tenant, shall be notified in writing by Tenant that they must look only to Tenant to secure the payment of such labor or materials. Tenant agrees to provide such written notice as may be required, pursuant to S.C. Code Ann. §29-5-80 to all persons performing services or furnishing materials of Landlord's non-responsibility for payment for such services or materials. Should any mechanics', materialmens' or other liens be filed against the Demised Premises, the Property, or any part thereof, for any reason whatsoever relating to the furnishing of labor or materials associated with improvements to the Demised Premises for which Tenant is responsible for payment, Tenant shall cause the same to be cancelled and discharged of record by statutory bond or otherwise within ten (10) days after notice and demand for such cancellation and discharge by Landlord. In the event any lien continues undischarged after such ten (10) day period, Landlord shall have the right, at its sole election and discretion without any obligation, to pay the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid, including all costs and expenses, shall be deemed Additional Rent under the Lease and shall be due and payable on demand. FURTHERMORE, TENANT SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, ITS AFFILIATES AND AGENTS FROM AND AGAINST CLAIMS AND FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS TO TENANT IN CONNECTION WITH THE DEMISED PREMISES, OR ANY PART THEREOF, BY ANY OF TENANT'S CONTRACTORS AND THEIR SUBCONTRACTORS OF EVERY TIER. LANDLORD SHALL BE RESPONSIBLE, HOWEVER, FOR THE SATISFACTION OF CLAIMS FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS IN CONNECTION WITH THE DEMISED PREMISES, THE PROPERTY, OR ANY PART THEREOF, WHICH FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS OCCURRED ON OR BEFORE OCTOBER 1, 2003.

25. CONSTRUCTION OF LEASE:

The word "Landlord" as used herein shall refer to the individual, individuals, partnership or corporation called "Landlord" at the commencement of this Lease, and the word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant." Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plurals when sense requires.

26. PARAGRAPH HEADINGS:

The paragraph headings are inserted only for convenience and for reference and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

27. COMMISSIONS:

The Parties represent and warrant that they have dealt directly with and only with each other in connection with this Lease and that insofar as they know, no broker(s) negotiated this Lease or is entitled to any commission in connection therewith and the execution and delivery of this Lease by the Parties shall be conclusive evidence that they have relied upon the foregoing representation and warranty. The Parties shall defend and hold each other harmless for any claims which arise from the failure of this mutual warranty.

28. RULES AND REGULATIONS:

Tenant agrees that Tenant, its agents, employees, and invitees will abide by the Rules and Regulations as set forth on Exhibit "D" attached hereto, which may be amended from time to time by the Landlord. Such Rules and Regulations shall be those necessary in the sole opinion of the Landlord to provide for the uniform service, maintenance and peaceful enjoyment of the common areas and the outside common areas. Landlord shall notify Tenant in writing of changes in the Rules and Regulations from time to time and Tenant agrees to assist Landlord in the enforcement of such Rules and Regulations.

Landlord agrees that the Rules and Regulations as set forth on Exhibit "D", as amended from time to time, shall be applied uniformly to any and all tenants on the Building.

29. NOTICES:

It is agreed that the legal address of the Parties for all notices required or permitted to be given hereunder, or for purposes of billing, process, correspondence and any other legal purposes whatsoever, shall be deemed sufficient if given by a communication in writing by United States Mail, postage prepaid, and certified, and addressed as follows:

If to the Landlord:

Lowcountry Capital, LLC
100 Haddrell Street
Mt. Pleasant, SC 29464
Attn: Richard H. Coen

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704-342-0926

If to the Tenant:

RedWing, LLC.
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attn: Cecil Crowley

30. HAZARDOUS MATERIALS:

- A. Tenant shall not cause or permit any Hazardous Materials (hereinafter defined) to be stored, used or disposed of in or about the Demised Premises or the Property by Tenant, its agents, employees, contractors or invitees, nor shall the use which Tenant makes of the Demised

Premises result in any Hazardous Materials Contamination (hereinafter defined). For purposes of this Lease, the following terms shall have the meanings herein specified:

1. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. § 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.), as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (iii) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended from time to time, and regulations promulgated thereunder ("TSCA"); (iv) pesticides specifically regulated under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 135 et seq.), as amended from time to time, and regulations promulgated thereunder ("FIFRA"); (v) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance; (vi) the presence of oil, petroleum products, and their by-products; (vii) any substance the presence of which in or about the Demised Premises or the Property is prohibited by any governmental authority or which is hereafter classified by any governmental authority as a hazardous toxic waste, material, substance or similar phraseology; and (viii) any substance which by any governmental authority requires special handling notification of any governmental authority in its collection, storage, treatment, or disposal.
 2. "Hazardous Materials Contamination" shall mean the spillage, leakage, emission or disposal of Hazardous Materials (whether presently existing or hereafter occurring) in or about the buildings, facilities, soil, groundwater, air or other elements in or about the Demised Premises, or the Property or any other property as a result of Hazardous Materials at any time emanating from the Demised Premises or the Property.
- B. Notwithstanding the foregoing, Tenant shall be permitted to store, use and dispose of de minimus amounts of Hazardous Materials which are incidental to Tenant's business. Such Hazardous Materials and all containers therefore, shall be stored, used and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Materials. Tenant shall be liable for all costs and expenses related to the storage, use and disposal of such de minimus amounts of Hazardous Materials incidental to Tenant's business.

- C. At the commencement of each "Lease Year" (the term "Lease Year" as used in this Lease shall mean any twelve (12) month period beginning with the Commencement Date and each twelve (12) month period beginning on any anniversary date thereof), Tenant shall disclose to Landlord the names and approximate amounts of all Hazardous Materials which Tenant intends to store, use or dispose of in or about the Demised Premises in the coming Lease Year. In addition, at the commencement of each Lease Year (beginning with the second Lease Year), Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials that to Tenant's knowledge were actually stored, used or disposed of in or about the Demised Premises, if such materials were not previously identified to Landlord at the commencement of the previous Lease Years.
- D. Tenant shall give written notice to Landlord immediately upon Tenant's acquiring knowledge of the presence of any Hazardous Materials in or about the Demised Premises (subject to the provisions of subparagraph B. hereof) or of any Hazardous Materials Contamination with a full description thereof. Landlord shall have the right, but not the obligation, without in any way limiting Landlord's other rights and remedies under the Lease, to enter onto the Demised Premises or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Demised Premises or the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Demised Premises or the Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Demised Premises or the Property, or other action and/or which, in Landlord's sole opinion, could jeopardize Landlord's security under the Lease.
- E. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES DURING TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAG. (REAL OR

PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH E SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES TENANT MAY HAVE TO LANDLORD AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

F. TO THE BEST OF LANDLORD'S KNOWLEDGE, LANDLORD REPRESENTS AND WARRANTS THAT THE DEMISED PREMISES ARE AND SHALL BE FREE OF HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION AS OF THE COMMENCEMENT DATE. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SEYFLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND) OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES PRIOR TO TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH F SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES LANDLORD MAY HAVE TO TENANT AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

31. SECURITY DEPOSIT:

The Tenant shall deposit with the Landlord the sum of Five Thousand and No/100 Dollars (\$5,000.00), as security for the performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed, which sum shall be returned to Tenant after the expiration of the term hereof, provided Tenant has fully performed hereunder. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant and if the amount so applied shall not be re-instated and replaced by the curing of any such

default, Tenant shall immediately upon written demand by Landlord, replace the amount applied by Landlord to cure any such default so that the Landlord shall have the full deposit on hand at all times during the term of this Lease. In the event of a sale of the Property or a lease of the Property, subject to this Lease, Landlord shall have the right to transfer the security to the buyer or lessee, and Landlord shall thereupon be released from all liability for the return of such security and Tenant shall look to the new Landlord solely for the return of said security and this provision shall apply to every transfer of assignment made of the security to a new Landlord. The security deposited under this Lease shall not be assigned or encumbered by Tenant without the written consent of Landlord and any such assignment or encumbrance shall be void. The security deposited by Tenant hereunder shall not bear interest. In no event shall said security deposit be deemed or treated as prepaid Rent for any Rental installment due hereunder, whether the last monthly installment or otherwise. If Tenant shall default under this Lease more than three (3) times in any twelve (12) month period, irrespective of whether or not such default is cured, then the Security Deposit shall, within ten (10) days after demand by Landlord, be increased by Tenant to an amount equal to the greater of (i) three (3) times the aforesaid amount or (ii) three (3) months' Rent.

E. LIMITATION OF LANDLORD'S LIABILITY:

The term "Landlord" shall mean the tenant under the Land Lease and in the event of the transfer by such owner of its interest in the Demise Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. All liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Property existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review.

F. NO OFFER:

The submission of this document for examination does not constitute an option or offer to lease space in the Property. This document shall have no binding effect on the Parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.

G. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT OF 1990.

Any other provision of this Lease notwithstanding, the Parties hereby agree that the Demised Premises may be subject to the terms and conditions of the Americans with Disabilities Act (ADA). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, such as compliance may be required to operate as long as the Demised Premises are in full compliance with the ADA on the Commencement Date as warranted by Landlord in this paragraph 34. Landlord warrants and represents that the Demised Premises are and shall be in full compliance with the ADA on the Commencement Date. Each Party agrees to indemnify and hold the Other Party harmless for any claims which may arise out of the Other Party's failure to comply with the provisions of this paragraph, regardless whether such claim arises before or

after the Commencement Date. Tenant has no obligation to independently verify that the Demised Premises are in compliance with the ADA as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless against any claims which may arise out of Tenant's use or alteration of the Demised Premises which results in their failure to comply with the ADA. Such indemnification by Landlord and Tenant shall include, but not necessarily be limited to: reasonable attorneys fees, court costs, and judgments as a result of said claims. A Party shall notify the other Party immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee, or governmental authority regarding the ADA.

35. GOVERNING LAW:

This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina.

36. TIME OF THE ESSENCE:

It is understood and agreed between the Parties hereto that time is of the essence in all of the terms and provisions of this Lease.

37. NATURE AND EXTENT OF AGREEMENT:

This Lease, including the exhibits attached hereto, contains the complete agreement between the Parties regarding the terms and conditions of the lease of the Demised Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease may be modified only by written instrument duly executed by both Parties or their respective successors in interest.

38. NON-EASEMENT:

It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Demised Premises are situated.

39. LANDLORD'S LIEN:

To secure the payment of all Rent due and to become due hereunder and the faithful performance of all the other covenants of this Lease required by Tenant to be performed, Tenant hereby gives Landlord an express contractual lien on and security interest in all property, chattels, or merchandise which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of damage to or destruction of any such property. Such lien is, however, subordinate to the perfect security interest of any secured creditor of Tenant, whether now existing or hereafter arising. All exemption laws are hereby, waived by Tenant. This lien and security interest, are given in addition to the Landlord's statutory lien(s) and will be cumulative thereto. Upon request, Landlord will subordinate its landlord's lien to security interests on Tenant's personal property on the Premises from Tenant's vendors, all on a form satisfactory to Landlord.

40. INTERPRETATION PRESUMPTION:

This Lease has been negotiated by the Parties hereto and by the respective attorneys for each Party. The Parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease, and in the event of a dispute concerning the interpretation of this Lease, each Party hereby waives the doctrine that an ambiguity should be interpreted against the Party which has drafted the document.

41. LIMITATION OF LIABILITY:

The obligations of the Landlord hereunder shall be binding upon Landlord and each succeeding owner of the Landlord's interest hereunder only during the period of such ownership and Landlord and each succeeding owner shall have no liability whatsoever except for its obligations during each such respective period. Landlord hereby agrees for itself and each succeeding holder of the Landlord's interest, or any portion thereof that any judgment, decree or award obtained against the Landlord or any succeeding owner of the Landlord's interest, which is in any manner related to this Lease, the Demised Premises or the Tenant's use and occupancy of the Demised Premises or the common areas of the Property, whether at law or in equity, shall be satisfied out of the Landlord's equity in the land and Property owned by the Landlord to the extent then owned by the Landlord, and landlord's liability policy, and such assets and to no other assets of the Landlord, or such succeeding owner, for satisfaction. Neither Landlord, nor any officer thereof, nor any subsequent Landlord, shall have any personal liability hereunder.

42. TRANSFER OF LANDLORD'S INTEREST:

The term "Landlord" as used in this Lease means only the owner for the time being or the Mortgagee, in possession for the time being of the Demised Premises. Each time the Demise Premises are sold, the selling Landlord shall be entirely relieved of all obligations and liability under this Lease. Any person who owns the Demised Premises and leases his reversionary interest in the Demised Premises subject to the lien of this Lease shall be relieved of all liability under this Lease.

43. REPRESENTATIONS AS TO CORPORATE ORGANIZATION:

The Tenant hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Tenant is a representative of Tenant who is duly authorized to execute and deliver this Lease. Tenant shall furnish Landlord with suitable evidence of the above if requested by Landlord.

The Landlord hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, registered to do business and in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated

hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Landlord is a representative of Landlord who is duly authorized to execute and deliver this Lease. Landlord shall furnish Tenant with suitable evidence of the above if requested by Tenant.

44. JURISDICTION:

In connection with this Lease, Tenant hereby submits to the jurisdiction and venue of the State Courts of Charleston County, South Carolina in connection with any matter pertaining to this Lease and agrees that service may be had by mailing the same, postage prepaid, addressed to Tenant at Tenant's Notice Address as set forth in Paragraph 29 of this Lease, it being agreed that service shall be deemed to have been made three (3) days after mailing.

45. MEMORANDUM OF LEASE:

Landlord and Tenant hereby agree to make and execute a memorandum of lease in recordable form so as to give public notice of the execution of this Lease and a statement therein as to the commencement date of the term of this Lease. All recording fees, documentary stamps or taxes relating to this Lease or its recording shall be borne by Tenant.

IN TESTIMONY HEREOF, the Parties hereto have executed this Lease to be effective as of the date aforesaid.

WITNESS:

Matthew D. Lindner
[Signature]
WITNESS:

Matthew D. Lindner
[Signature]

[Signature]
[Signature]

TENANT:
RedWing, LLC.

By: [Signature]
Name: Dianne Crowley
Its: Manager

LANDLORD:
LOWCOUNTRY CAPITAL, LLC

By: Richard H. Coen
Name: Richard H. Coen
Its: Co-manager

By: SHEM CREEK HOLDINGS, LLC
Its: Co-manager

By: [Signature]
David Sidbury, Its Co-manager

By: Debra Sidbury
Debra Sidbury, Its Co-manager

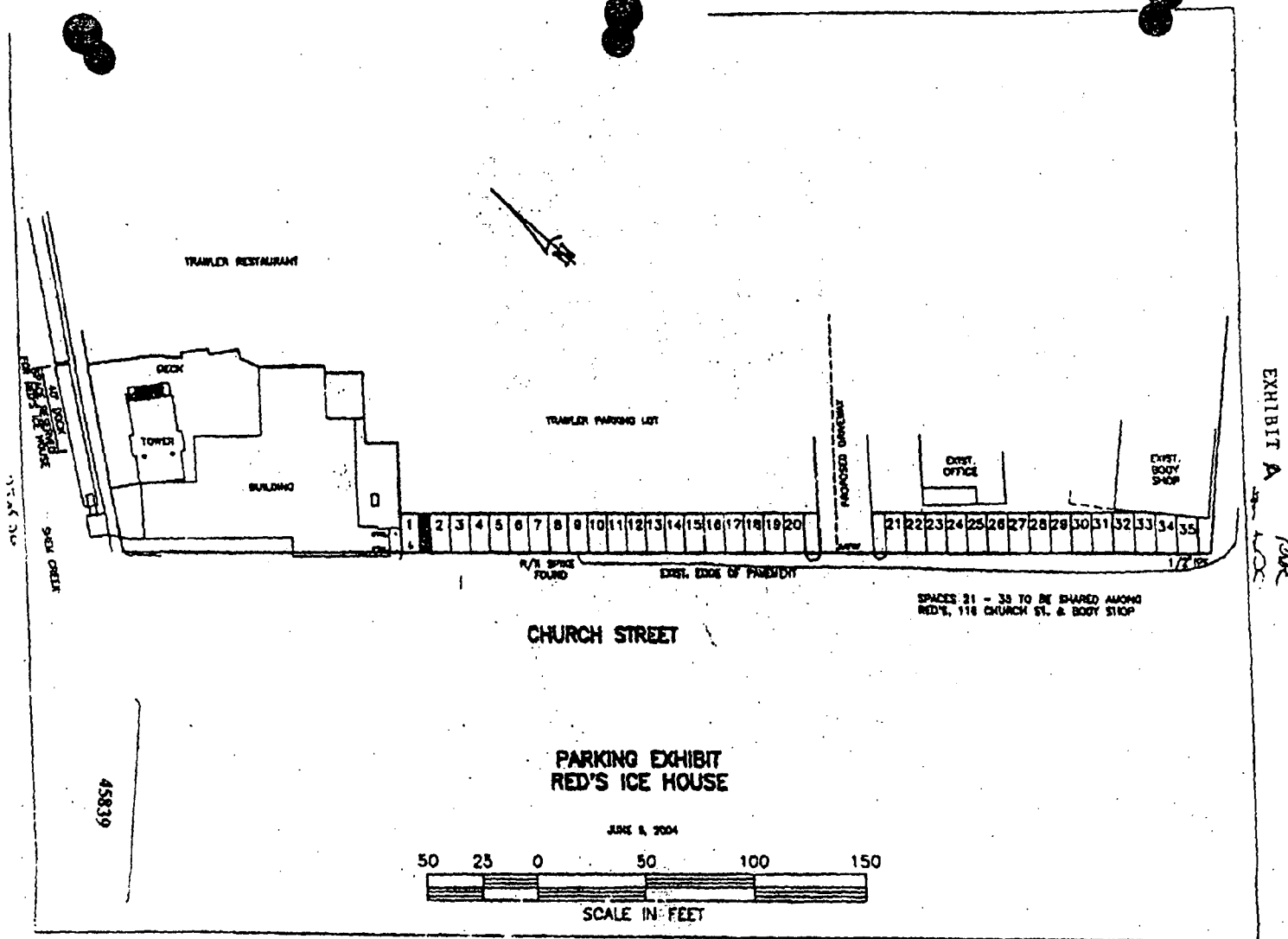


EXHIBIT "D"

RULES AND REGULATIONS

1. No advertisement or other notice shall be inscribed, painted or affixed on any part of the outside or inside of the Property, except upon the doors, and of such order, size and style, and at such places as shall be designated by Landlord.

2. Tenant shall not do or permit to be done in the Demised Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Property, or obstruct or interfere with the rights of other tenants or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or conflict with any of the rules and ordinances of the Board of Health. Tenants, theft agents and employees, shall maintain order in the Property and shall not interfere in any way with other tenants or those having business with them. Nothing shall be thrown by tenants, their agents or employees, out of the windows or doors, or down the passages of the Property. No rooms shall be occupied or used as sleeping or lodging apartments at any time. No part of the Property shall be used or any way appropriated for gambling, immoral, or other unlawful purposes.

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28 of 28

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Lowcountry Capital, LLC

100 Haddrell Street
Mount Pleasant, SC 29464

March 4, 2005

Billy Simmons
1557 Ben Sawyer Blvd.
Mt. Pleasant, SC 29464

Re: Old Montessori School at 116 Church St.

Dear Billy:

Lowcountry Capital, LLC would like to renovate the old Trawler Restaurant and parking area. In doing so, our intent is to create more parking for the businesses on this property. We would like to demolish the old Montessori school located at 116 Church St. In doing so, we will be able to create the additional parking. Lowcountry Capital, LLC, as tenant, and Richard H. Coen, individually, agree to replace the building or reimburse Snowmill, LLC the agreed upon value of the building in the event there is an uncured default and termination of the ground lease between Lowcountry Capital, LLC and Snowmill, LLC. The replacement value of the building is agreed to be \$200,000. Lowcountry Capital, LLC will have the option of paying the agreed upon value of the building or replacing the building.

This letter agreement shall remain in full force and effect for the balance and term of the above mentioned lease. However, in the event that Lowcountry Capital proposes redevelopment in accordance with the terms of the lease, this letter agreement shall become null and void.

If you have any questions, please feel free to contact me.

Thank you,

Richard H. Coen

Richard H. Coen
Manager
Lowcountry Capital, LLC
843-696-7900 - cell
843-856-9938 - office

Richard H. Coen

Billy Simmons

Richard H. Coen
Billy Simmons

45842

Appendix 290



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45843

EXHIBIT B

**MEMBERSHIP INTERESTS
PURCHASE AND SALE AGREEMENT**

**BY AND AMONG
RICHARD H. COEN
AND
SHEM CREEK HOLDINGS, LLC
AND
DIANNE CROWLEY**

JUNE 10, 2004

#373646 v1 - Revised purchase and sale agreement

07870

Exhibit B

Appendix 293

THIS MEMBERSHIP INTERESTS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of this 1st day of June, 2004, by and among Dianne Crowley ("Crowley" or "Purchaser"), Richard H. Coen ("Coen"), and Shem Creek Holdings, LLC ("Shem Creek Holdings") (collectively Coen and Shem Creek Holdings are referred to as "Sellers").

RECITALS:

WHEREAS, pursuant to that certain Operating Agreement of RedWing, LLC, a South Carolina limited liability company, effective October 3, 2003 ("the Operating Agreement"), Crowley and Coen each owned fifty percent (50%) of the Membership Interests of RedWing, LLC, a South Carolina limited liability company ("the Company"); and

WHEREAS, pursuant to that certain Contract for Sale and Purchase by and between Lowcountry Capital, LLC, Coenco, LLC, Red's Trawler, LLC, Charleston Harbor Partners, LLC and Richard H. Coen and David M. Sidbury, effective March 17, 2004, Coen sold and David M. Sidbury purchased fifty percent (50%) of all of the Membership Interests of RedWing, LLC owned by Coen; and

WHEREAS, pursuant to that certain Assignment of Interest Agreement, effective simultaneously herewith, David M. Sidbury assigned all his interest in and to Lowcountry Capital, LLC, Coenco, LLC, Red's Trawler, LLC, Charleston Harbor Partners, LLC, and RedWing, LLC to Shem Creek Holdings; and

WHEREAS, as of the date of this Agreement Crowley owns fifty percent (50%) of the Membership Interests of the Company, Coen owns twenty-five percent (25%) of the Membership Interests of the Company, and Shem Creek Holdings owns twenty-five percent (25%) of the Membership Interests of the Company; and

WHEREAS, the Sellers wish to sell to Purchaser all of the Sellers' right, title and interest in and to all of their outstanding Membership Interests, and Purchaser wishes to buy all of Sellers' right, title and interest in and to Sellers' Membership Interests, subject to and upon the terms and conditions set forth herein; and

WHEREAS, the Purchaser will own one hundred percent (100%) of the Membership Interests of the Company after the execution of this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) in hand paid to each party by the other, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Purchaser and Sellers hereby agree as follows:

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SECTION 1. PURCHASE AND SALE OF MEMBERSHIP INTERESTS AND CLOSING.

1.1 Purchase. Upon the terms and conditions set forth herein, Sellers shall sell to Purchaser, and Purchaser shall purchase from Sellers all of Sellers' right, title and interest in and to the Sellers' Membership Interests, which are identified as listed on Exhibit A hereto, free and clear of all liens, charges, encumbrances, claims, options, and other restrictions of any nature whatsoever.

1.2 Delivery of Membership Interests and Purchase Price. At Closing (as hereinafter defined) Sellers and Purchaser shall execute and deliver such instruments of conveyance, sale or transfer, and shall take or cause to be taken such further action as necessary to vest, confirm or evidence in the Purchaser good and marketable title to all of the Membership Interests intended to be conveyed, sold, transferred and delivered to the Purchaser hereunder, and Purchaser shall deliver to the Sellers the Purchase Price, as set forth in Section 2.1 below, and the other documents referred to herein.

1.3 Closing Date. The sale, transfer and delivery of the Membership Interests pursuant to the terms of this Agreement and the delivery of the Purchase Price (as hereinafter defined) shall take place as soon as practicable, but no later than June 10, 2004, at the offices of Nelson Mullins Riley & Scarborough, L.L.P., 151 Meeting Street, Suite 600, Charleston, South Carolina 29401 (the "Closing"). The date on which the Closing occurs is referred to herein as the "Closing Date."

SECTION 2. PURCHASE PRICE AND EXPENSES.

2.1 Purchase Price. In full payment and consideration for the Membership Interests, Purchaser hereby agrees as follows:

Purchaser covenants to execute the Commercial Lease by and between Lowcountry Capital, LLC and RedWing, LLC, dated simultaneously herewith ("Commercial Lease"). Under the Commercial Lease the Company covenants to pay as rental to Lowcountry Capital, LLC for the Premises (as defined in the Commercial Lease) the annual sum of One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and 00/100 (\$10,000.00). The Rent shall be paid for the Term of the Commercial Lease (as defined in the Commercial Lease). The Rent increases on the first anniversary of the Closing Date and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Purchaser pays Sellers the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Term of the Commercial Lease, the Rent shall decrease by Five Thousand Dollars (\$5,000.00) per month.

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2.2 Costs and Expenses. The Purchaser and Sellers agree to split equally the attorneys' fees, costs and expenses incurred by the parties hereto in connection with this Agreement.

SECTION 3. BUY OUT PROVISION.

In the event that Coen, Shem Creek Holdings, or any of their affiliates or assigns have the opportunity to construct a major redevelopment project in the area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek, and notwithstanding anything else in this Agreement to the contrary, Coen, Shem Creek Holdings, or any of their affiliates or assigns have the right to purchase one hundred percent (100%) of the assets of the Company, including, but not limited to, those assets associated with Red's Ice House and Slightly Up the Creek, by a written offer to the Company. From the Closing Date going forward the purchase price shall be the greater of the Aggregate Debt (defined below) of the Company or two times GAAP net income for the prior twelve (12) months. Aggregate Debt includes all notes, mortgages and normal operating debts of the Company to unrelated third parties, accrued in the ordinary course of business, and to be substantiated upon buy-out.

The parties agree to close any buy-out within thirty (30) days after determination of a purchase price. Time is of the essence. This provision shall be superior to any other article of this Agreement.

SECTION 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLERS.

Each Seller, with respect only to its respective Membership Interests, hereby represents, warrants and covenants to Purchaser that the following statements are accurate and complete as of the date hereof and acknowledge and confirm that Purchaser is relying upon such representations, warranties and covenants in connection with the execution, delivery and performance of this Agreement.

4.1 Membership Interests. Each Seller has good and marketable title to its Membership Interests, and the right to sell, transfer and deliver its respective Membership Interests to Purchaser, free and clear of all liens, encumbrances, claims, security interests, pledges, agreements and rights of third parties, and upon delivery of each Seller's Membership Interests to Purchaser, Purchaser will hold good and marketable title to the Membership Interests free and clear of all liens, encumbrances, claims, security interests, pledges, agreements and rights of third parties whatsoever. To the best of each Seller's knowledge, the respective Seller's Membership Interests have been legally and validly issued and are fully paid and nonassessable. There are no outstanding rights, warrants, calls, commitments or agreements to which such Seller is a party or by which such Seller is bound which relate to the Membership Interests.

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4.2 Binding Effect. This Agreement and each of the agreements and instruments contemplated hereby has been duly and validly executed and delivered by each Seller and constitutes the legal, valid and binding obligations of such Seller, enforceable in accordance with its terms.

4.3 Consents. There are no persons whose consent is necessary for the Sellers to consummate the transaction contemplated by this Agreement. Each party hereto agrees to cooperate with each other party to obtain the consents, approvals and authorizations of third parties and governmental authorities that any such party reasonably determines to be necessary to consummate the transaction contemplated by this Agreement.

4.4 Parking Areas Adjacent to Red's Ice House and Church Street. Lowcountry Capital, LLC, Coen, or either of their affiliates will be responsible for reconfiguring the parking area immediately adjacent to the backdoor of Red's Ice House in a manner that will provide access to the back door and dumpster of Red's Ice House. In addition Lowcountry Capital, LLC, Coen, or one of their affiliates will provide the Company with thirty parking spaces in an area adjacent to Church Street ("Thirty Parking Spaces"). The Thirty Parking Spaces are identified on a site plan attached hereto as Exhibit B. Section 5.9 provides the Company's responsibilities regarding the Thirty Parking Spaces.

SECTION 5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF PURCHASER.

Purchaser hereby represents, warrants and covenants to the Sellers as follows, and acknowledges and confirms that the Sellers are relying upon such representations, warranties and covenants in connection with the execution, delivery and performance of this Agreement.

5.1 Authorizations and Binding Effect. This Agreement, including the Exhibits hereto, has been duly and validly authorized, executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms. All other requirements for the execution and delivery of this Agreement, and for the consummation of the transactions contemplated hereby, have been duly taken by Purchaser.

5.2 Consents. There are no persons whose consent is necessary for the Purchaser to consummate the transactions contemplated by this Agreement. Each party hereto agrees to cooperate with each other party to obtain the consents, approvals and authorizations of third parties and governmental authorities that any such party reasonably determines to be necessary to consummate the transactions contemplated by this Agreement.

5.3 Termination of Right of First Refusal. The Company's first right of refusal on all food and beverage opportunities which Richard H. Coen, or affiliates of Richard H. Coen, shall develop in the Shem Creek Area (as defined in Section 18 of the Operating Agreement), which right of first refusal was initially granted in Section 18 of the Operating

Agreement, has been terminated. Coen and/or his affiliates shall retain all right, title, and privilege to any and all food and beverage opportunities, either produced or procured, in the Shem Creek Area.

5.4 Commercial Lease with Lowcountry Capital, LLC. That certain Commercial Lease between Lowcountry Capital, LLC, a South Carolina limited liability company, and RedWing, LLC, a South Carolina limited liability company, effective October 1, 2003 ("the Lease"), shall be terminated. The Company and Lowcountry Capital shall execute simultaneously herewith a new Commercial Lease ("New Lease"), which New Lease shall replace the Lease and shall specify the rights, privileges and responsibilities of the Company and Lowcountry Capital, LLC from the Closing Date going forward.

5.5 Rent Payments to Lowcountry Capital, LLC have been brought current. By the Closing Date, all debts, payables, and liabilities, excepting Rent, owed by the Company to Lowcountry Capital, LLC, Coen, or any affiliate of either shall have been brought current to a balance due of zero dollars (\$0.00). By September 1, 2004, the accrued Rent owed by the Company to Lowcountry Capital, LLC in the amount of Thirty-thousand and no/100 Dollars (\$30,000.00) shall have been brought current to a balance due of zero dollars (\$0.00). Non-payment of such accrued Rent by September 1, 2004 shall result in termination of the New Lease between Lowcountry Capital LLC and the Company, dated simultaneously herewith.

5.6 Coen Debts Forgiven. Any and all debts, payables, liabilities, or other amounts alleged to be owed by Coen, Lowcountry Capital, LLC, or any affiliate of either to the Company, as depicted in Exhibit C, shall be forgiven. On the Closing Date, Coen, Lowcountry Capital, LLC, or any affiliate of either shall be deemed to have no outstanding debt, payable, liability, or amount owed to the Company or Purchaser. Purchaser acknowledges that Seller retains all right, title, and privilege to the Shem Creek Museum.

5.7 Costs Associated with Red's Ice House. From and after the Closing Date, the Company shall be solely responsible for paying any and all costs, fees, and taxes associated with Red's Ice House, including but not limited to all personal property, real property, payroll, and other ad valorem taxes and special assessments lawfully charged or assessed against Red's Ice House; licenses, fees, permits, franchise and other lawful taxes and fees charged or assessed against or on account of the operation of Red's Ice House, insurance premiums, costs for repairs, costs for maintenance, solid waste management fees, and all costs for water, sewer, electricity, gas, telephone, and other utilities used at Red's Ice House. From and after the Closing Date, Shem Creek Holdings, Coen, Lowcountry Capital, LLC, or either of their affiliates shall in no way be obligated, responsible, or liable for any costs, taxes, assessments, or fees associated with Red's Ice House.

5.8 Police Red's Ice House Parking Areas. From and after the Closing Date, the Company shall be responsible for policing the Red's Ice House parking areas, which consist of the parking area immediately adjacent to Red's Ice House and the Thirty Parking Spaces adjacent to Church Street, and will use its best efforts to prevent its customers,

employees, and vendors from parking in any parking area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek that is not designated for use by Red's Ice House.

5.9 Costs Associated with Thirty Parking Spaces Adjacent to Church Street. From and after the Closing Date, the Company shall be solely responsible for paying any and all costs and fees associated with the Thirty Parking Spaces adjacent to Church Street, including but not limited to the pro rata share of the property taxes, insurance premiums, costs for repairs, and costs for maintenance. Coen, Lowcountry Capital, LLC, or either of their affiliates shall in no way be obligated or responsible for any costs associated with the Thirty Parking Spaces adjacent to Church Street.

5.10 Dock at Red's Ice House. Lowcountry Capital, LLC retains all right, title, and privileges to the floating dock space located adjacent to Red's Ice House on Shem Creek ("Dock Space"). Such Dock Space is identified on Exhibit B. In its sole discretion, Lowcountry Capital, LLC may lease any portion of such Dock Space to any vessel. Lowcountry Capital, LLC shall retain all rents derived from such leasing of Dock Space. The Company shall have the right to use forty (40) linear feet of Dock Space as identified on Exhibit B.

In no event shall the Company utilize or permit to be utilized any portion of the dock that is located adjacent to The Trawler on Shem Creek. The Company shall use its best efforts to prevent customers of Red's Ice House from docking their vessels in the floating dock space located adjacent to The Trawler.

SECTION 6. TERMINATION OF RIGHTS AND OBLIGATIONS; RELEASE OF LIABILITY.

6.1 Termination of Rights and Obligations. Purchaser and the Sellers hereby acknowledge the termination of all of the respective rights, interests and obligations of each Seller as a Member of the Company, or otherwise under the Operating Agreement, effective upon the Closing Date.

6.2 General Release of the Sellers. Upon consummation of the transactions contemplated herein, Purchaser, for herself and her heirs, successors, agents, representatives, assigns and attorneys, does hereby remise, release and forever discharge the Sellers and the Sellers' assigns, employees, agents, representatives, and attorneys, (collectively hereinafter referred to as the "Sellers' Releasees") from any and all claims, actions, promises, causes of action, suits, debts, demands, or obligations of any kind or nature in law or in equity which Purchaser ever had, has claimed to have, now has, or may hereafter have or claim to have against any one or more of the Sellers' Releasees from the beginning of time to the undersigned date including, but not limited to, any and all claims, actions, promises, causes of action, suits, debts, demands, or obligations of any kind or nature in law or equity that could have been asserted by Purchaser in a lawsuit or which relate in any manner to Sellers'

relationship with the Company and Purchaser and the Sellers' Releasees or any other matter between Purchaser and the Sellers; provided, however, that Purchaser does not waive or release any rights or obligations created by this Agreement.

SECTION 7. PURCHASER BOUND.

The Purchaser hereby agrees to assume all the respective duties and obligations of the Sellers under the Operating Agreement and to be bound by and subject to all of the terms and conditions thereof.

SECTION 8. CONDITIONS TO OBLIGATIONS OF PURCHASER

All of the obligations of Purchaser under this Agreement are subject to the fulfillment prior to or at the Closing of each of the following conditions, unless waived in writing by the Purchaser, and the Sellers shall exercise all reasonable efforts in good faith to satisfy such conditions:

8.1 Representations and Warranties. All representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects as of the date hereof, and such representations and warranties shall be true and correct in all material respects as of the Closing (as if made at and as of such time).

8.2 Performance of Agreements. Sellers shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

8.3 Magwood Lease. Simultaneously with the execution of this Agreement, Coenco, LLC, Coen, or any of their affiliates shall have delivered to the Company a Sublease for the property known as Slightly Up the Creek, being the same property that was included in the Lease Agreement between Robert E. Magwood, as Landlord, and Up The Creek, Inc. d/b/a L'Attitude South, as Tenant, dated March 30, 1995 ("Magwood Lease"), which Magwood Lease was assigned to Coenco, LLC by the Assignment of Lease by Tenant, entered into May 15, 2003 between Up The Creek, Inc. d/b/a L'Attitude South, as Assignor, and Coenco, LLC as Assignee. In addition within thirty (30) days of the Closing Date, Coenco, LLC, shall remove the dirt stockpiled in the parking lot associated with Slightly Up the Creek and shall grade and place gravel on the parking lot.

SECTION 9. CONDITIONS TO OBLIGATIONS OF SELLERS.

All of the obligations of the Sellers under this Agreement are subject to the fulfillment prior to or at the Closing of each of the following conditions, unless waived in writing by the Sellers, and the Purchaser shall exercise all reasonable efforts in good faith to satisfy such conditions:

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9.1 Representations and Warranties. All representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date hereof, and such representations and warranties shall be true and correct in all material respects as of the Closing (as if made at and as of such time).

9.2 Performance of Agreements. Purchaser shall have fully performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by her prior to or at the Closing.

9.3 Material Adverse Change. There shall have been no material adverse change in the business, operations, equity, earnings, prospects or financial condition of the Company from the date of the most recent financial statements delivered to the members.

9.4 Financing. Purchaser shall have obtained the financing necessary to consummate the transactions contemplated hereby.

SECTION 10. INDEMNIFICATION.

10.1 Definition of Damages. As used in this Agreement, "Damages" shall mean all assessments, levies, loss, fines, penalties, liabilities, damages, costs and expenses, including reasonable attorneys' fees and expenses.

10.2 Purchaser's Indemnification Obligations. Purchaser shall indemnify, save and keep harmless Sellers, and their affiliates against and from all Damages sustained or incurred by them as a result of or arising out of or by virtue of:

(a) any inaccuracy in or breach of any representation and warranty made by Purchaser to Sellers herein or in any closing document delivered to Sellers in connection herewith; or

(b) the breach by Purchaser of or the failure of the Purchaser to comply with, any of the covenants or obligations to be performed by the Purchaser under this Agreement.

(c) any Damages arising out of the relationship, prior dealings, or agreements between Sellers and Purchaser, Red's Ice House, or RedWing, LLC.

10.3 No Time Limitation on Certain Indemnification Obligations. Claims for indemnification made under Section 10.2 of this Agreement may be made indefinitely from the Closing Date.

SECTION 11. DEFINITIONS.

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Unless defined in this Agreement, all capitalized terms shall have the meaning ascribed to them in the Operating Agreement or Management Agreement by and between RedWing, LLC and Wings Over America, Inc., dated October 3, 2003.

SECTION 12. DESCRIPTIVE HEADINGS.

The descriptive headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

SECTION 13. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

SECTION 15. GOVERNING LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without regard for its principles of conflicts of laws.

SECTION 16. NOTICES.

All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile, by nationally recognized private courier, or by United States mail. Notice shall be deemed to have been given and received when actually received or when delivery is refused. Notice given by the attorney for any party shall be as effective as if given by that party. This paragraph shall survive closing. All notices shall be addressed as follows:

If to Purchaser:

Dianne Crowley

Fax: _____

If to Coen:

Richard H. Coen
100 Haddrell Street
Mount Pleasant, SC 29464
Fax: 843.856.9182

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With a copy to:

John B. Haggerty, Esq.
Nelson Mullins Riley and Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, SC 29461
Fax: 843.534.4356

If to Shem Creek Holdings:

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704.342.0926

With a copy to:

Benjamin F. Sidbury Esq.
Alston & Bird, LLP
Bank Of America Plaza
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
Fax: (704) 444-1111

SECTION 17. WAIVERS AND AMENDMENTS.

Any term or provision of this Agreement may be amended or supplemented at any time by the mutual consent of the Members, except that any waiver of any term or condition, or any amendment or supplementation, of this Agreement must be in writing. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

SECTION 18. ENTIRE AGREEMENT.

This Agreement (including the Exhibits, agreements, documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them with respect to the subject matter hereof.

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SECTION 19. SEVERABILITY.

In the event that any one or more of the provisions contained in this Agreement shall be declared invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

(the remainder of this page has been left blank intentionally.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first set forth above.

PURCHASER:
Dianne Crowley

Dianne Crowley

SELLER:
Richard H. Coen

Richard H. Coen

SELLER:
SHEM CREEK HOLDINGS, LLC

By: *David Sidbury*
David Sidbury, Its Co-manager

By: *Debra Sidbury*
Debra Sidbury, Its Co-manager

EXHIBIT A

1. All of Richard H. Coen's right, title and interest in and to all of his Membership Interests in RedWing, LLC, which represents twenty-five percent (25%) of the outstanding Membership Interests of RedWing, LLC.
2. All of Shem Creek Holdings' right, title and interest in and to all of its Membership Interests in RedWing, LLC, which represents twenty-five percent (25%) of the outstanding Membership Interests of RedWing, LLC.

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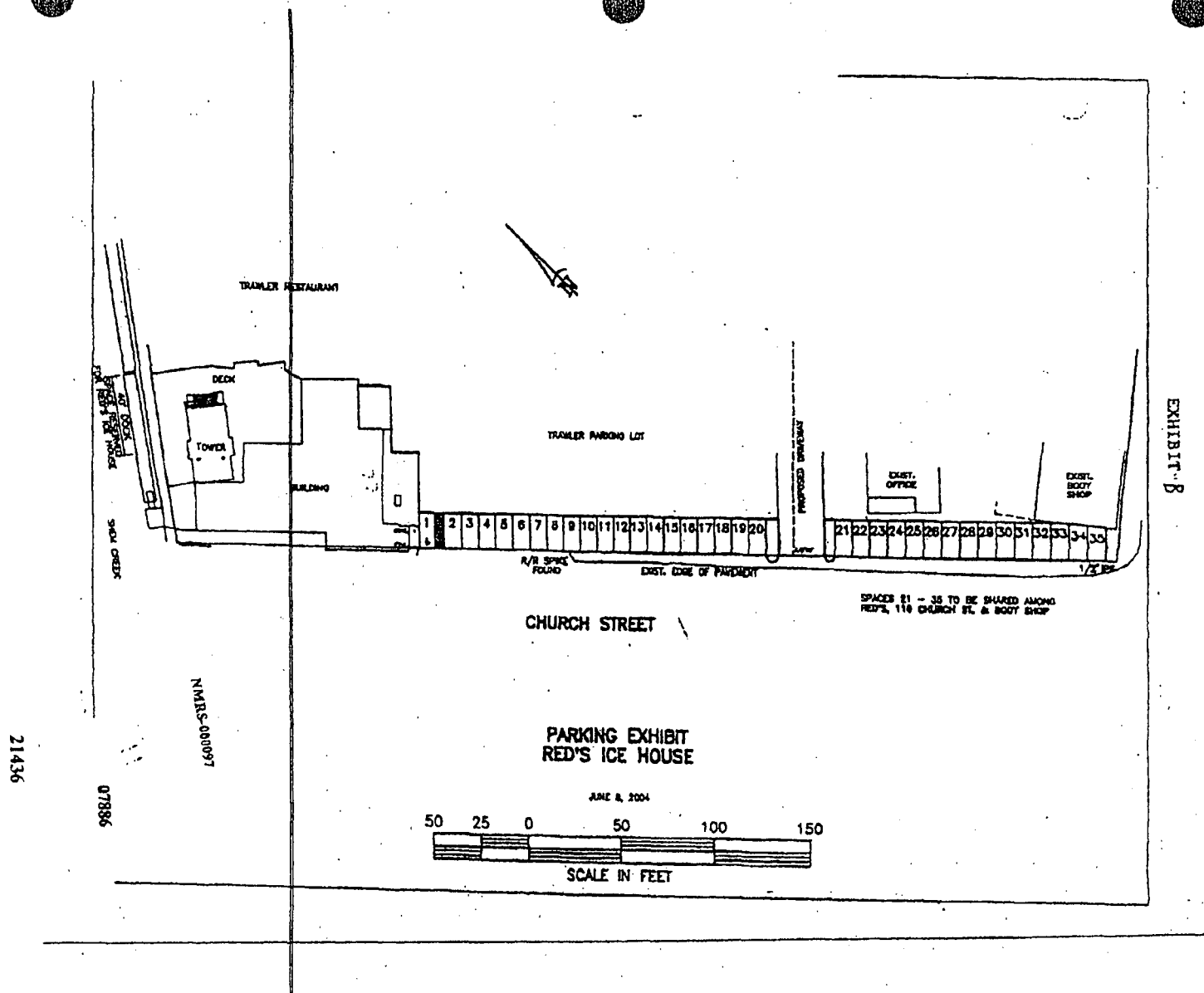


EXHIBIT C

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08/10/04
Accrual Basis

Red Wing, LLC
Transactions by Account
As of June 10, 2004

Type	Date	Num	Memo	Amount	Balance
2810 - Coen Capital Account					0.00
General Journal	10/1/2003		Tip to pay a...	-199.00	-199.00
General Journal	11/28/2003	112803	Coen contrib...	7,644.49	7,644.49
General Journal	11/30/2003		Tip to pay ce	-91.38	7,654.11
General Journal	12/2/2003	120203	Coen contrib...	10,000.00	17,554.11
General Journal	12/12/2003	121203		10,000.00	27,554.11
General Journal	1/22/2004			-1,240.78	26,313.33
Total 2810 - Coen Capital Account				26,313.33	26,313.33
2828 - Crowley Capital Account					0.00
General Journal	11/13/2003	111305		10,000.00	10,000.00
General Journal	11/18/2003	111803		5,000.00	15,000.00
General Journal	12/3/2003	120303		10,000.00	25,000.00
General Journal	12/15/2003	121503		20,000.00	45,000.00
Total 2828 - Crowley Capital Account				45,000.00	45,000.00
TOTAL				71,313.33	71,313.33

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Exhibit C

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06/10/04
Accrual Basis

Red Wing, LLC Transactions by Account As of June 10, 2004

Type	Date	Num	Name	Memo	Amount	Balance
1150 - Due from Coen						0.00
Bill	5/5/2003	8163	Blue Moon Graphics		3,898.06	3,898.06
Bill	5/5/2003	9199	B & C Hospitality S...	thermal paper	84.80	3,979.85
General Journal	10/3/2003	100303	AMEX	A	581.17	4,541.02
General Journal	10/3/2003	100303	Discover	D	84.80	4,625.82
General Journal	10/3/2003	100303	VISA	V	8,623.67	10,249.29
General Journal	10/3/2003				-9,105.00	1,144.29
General Journal	10/4/2003	100403	AMEX	A	873.53	2,017.82
General Journal	10/4/2003	100403	VISA	V	8,820.07	8,837.89
General Journal	10/5/2003	100503	AMEX	A	808.75	9,346.64
General Journal	10/5/2003	100503	VISA	V	2,558.70	11,905.34
General Journal	10/6/2003	100603	AMEX	A	263.23	12,168.57
General Journal	10/6/2003	100603	VISA	V	1,342.20	13,510.77
General Journal	10/6/2003	100603	Discover	D	68.05	13,578.82
General Journal	10/7/2003	100703	AMEX	A	224.83	13,803.65
General Journal	10/7/2003	100703	VISA	V	1,278.24	15,079.89
General Journal	10/7/2003	100703	Discover	D	34.00	15,113.89
General Journal	10/8/2003	100803	Coen	A	293.33	15,407.22
General Journal	10/8/2003	100803	Coen	D	18.25	15,425.47
General Journal	10/9/2003	100903	Coen	A	376.65	15,802.12
General Journal	10/9/2003	100903	Coen	D	163.10	15,965.22
General Journal	10/10/2003	101003	Coen	A	1,038.08	17,003.30
General Journal	10/10/2003	101003	Coen	D	47.65	17,048.95
General Journal	10/10/2003	101003	Coen	extra charge ...	-30.00	17,018.95
General Journal	10/11/2003	101103	Coen	A	552.82	17,571.57
General Journal	10/11/2003	101103	Coen	D	18.00	17,587.57
General Journal	10/12/2003	101203	Coen	A	648.77	18,236.34
General Journal	10/12/2003	101203	Coen	D	277.00	18,513.34
General Journal	10/13/2003	101303	Coen	A	74.40	18,587.74
General Journal	10/14/2003	101403	Coen	Adjust to actual	-4,000.00	14,587.74
General Journal	10/14/2003	101403	Coen	A	186.00	14,773.74
General Journal	10/14/2003	101403	Coen	D	18.43	14,792.17
General Journal	10/15/2003	101503	Coen	A	496.70	15,288.87
General Journal	10/16/2003	101603	Ben Arnold- Sunbelt...		-14,044.64	1,244.23
General Journal	10/18/2003	101803	Coen	Return of Ca...	-4,000.00	-2,755.77
General Journal	10/18/2003	101803	Coen	A	-300.00	-3,055.77
General Journal	10/18/2003	101803	Coen	Dawn & FICA	613.83	-2,442.14
General Journal	10/18/2003	101803	Coen	Harry's Funer...	-308.00	-2,750.14
General Journal	10/18/2003	101803	Coen	Buster's Adv...	50.00	-1,351.00
General Journal	10/17/2003	101703	Coen	A	2,654.35	1,300.35
General Journal	10/18/2003	101803	Coen	A	699.47	2,002.82
General Journal	10/18/2003	101803	Coen	A	495.55	2,498.47
General Journal	10/20/2003	102003	Coen	A	184.18	2,682.63
General Journal	10/21/2003	102103	Coen	A	323.66	3,186.49
General Journal	10/22/2003	102203	Coen	A	877.58	3,764.07
General Journal	10/23/2003	102303	Coen	A	936.24	4,700.31
General Journal	10/24/2003	102403	Coen	A	564.00	5,264.31
General Journal	10/27/2003	102703	Coen	Coen contrib...	-10,000.00	-4,735.69
General Journal	10/30/2003	103003	Coen	Dawn & FICA	1,449.14	-3,286.55
General Journal	11/7/2003	110703	OBCO Chemical C...		3,715.02	428.47
General Journal	11/12/2003	111203	Saffron Bakery		44.88	473.45
General Journal	11/13/2003	111303	Coen	Dawn & FICA	1,449.14	1,922.59
General Journal	11/17/2003	111703	Coen	Portion of Re...	5,713.28	7,635.87
Bill	11/27/2003	112703	Coen	Dawn & FICA	1,449.14	9,085.01
General Journal	11/28/2003	112803	Coen	Coen contrib...	-12,158.81	-3,070.80
General Journal	11/30/2003	113003	Snyder Party Rental		28.30	-3,041.20
General Journal	12/11/2003	121103	Crosby's Seafood	Invoice 3065...	283.50	-2,757.70
General Journal	12/11/2003	121103	Coen	Dawn & FICA	1,449.14	-1,308.56
Bill	12/17/2003	5857	Blue Moon Graphics		1,110.00	-198.56
General Journal	12/25/2003	122503	Coen	Dawn & FICA	1,449.14	1,250.59
Bill	12/30/2003	517-1...	Charleston County		3,720.00	4,970.59
General Journal	12/31/2003	123103	Blue Moon Graphics		-1,110.00	3,860.59
General Journal	1/8/2004	010804	Coen	Dawn & FICA	1,449.14	5,309.72
General Journal	1/22/2004	012204	Coen	Dawn & FICA	1,449.14	6,758.86
General Journal	2/2/2004		Coen		-1,240.78	5,518.08
General Journal	2/9/2004		Coen	Dawn & FICA	1,449.14	6,967.22
Bill	2/11/2004	acct n...	SC Employment Se...	Reds toe Hou...	37.72	7,004.94

NMRS-008099

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Page 1

21438

9:48 AM
06/10/04
Accrual Basis

Red Wing, LLC
Transactions by Account
As of June 10, 2004

Type	Date	Nurs	Nurse	Memo	Amount	Balance
General Journal	2/12/2004	021204		Harry Fund	-133.00	8,871.94
General Journal	3/17/2004	031704		basket supplies	81.59	8,953.53
Total 1150 - Due from Coan					8,953.53	8,953.53
TOTAL					8,953.53	8,953.53

NMRS-000100

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EXHIBIT C

August 20, 2009

Via Hand-Delivery & Certified Mail

RedWing, LLC

202 Coleman Blvd.

Mt. Pleasant, SC 29464

Attention: Dianne and Cecil Crowley

RE: Parking and docking restrictions and enforcement between Red's Ice House ("Red's") and Lowcountry Capital, LLC, as set forth in the Membership Interest Purchase and Sale Agreement, dated June 10, 2004 (the "Agreement").

Dear Dianne and Cecil,

In order to maintain our use and quiet enjoyment to our properties within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek, we have been forced at great expense to staff, erect barricades and gates and post "No Parking" signs throughout the gravel lot located behind The Trawler. These efforts are required due to the customers and employees of Red's. The signage clearly states that Red's patrons are not permitted to park on our properties, but they continue to do so. We, therefore, are presented with no choice but to contract a towing company and tow unauthorized vehicles out of the lot on a daily basis to our own detriment and expense.

Redwing makes no effort to assist in monitoring and controlling these continual violations. Section 5.8 of our Agreement clearly states:

"From and after the closing Date, the Company [Red's] shall be responsible for policing the Red's Ice House parking areas, which consist of the parking area immediately adjacent to Red's Ice House and the Thirty Parking Spaces adjacent to Church Street, and will use its best efforts to prevent its customers, employees, and vendors from parking in any parking area located within the boundaries of Coleman Boulevard, Church Street, Mill Street, and Shem Creek that is not designated for use by Red's Ice House."

You inaction breaches this provision of the Agreement.

Additionally, many of your customers arrive by boat, and moor on our fixed docks located directly in front of The Trawler building. We have been required to post eight signs that clearly restrict this docking, but your customers are not abiding by these restrictions. Section 5.10 of our Agreement, further reads:

"In no event shall the Company utilize or permit to be utilized any portion of the dock that is located adjacent to The Trawler on Shem Creek. The Company shall use its best efforts to prevent customers of Red's Ice House from docking their vessels in the floating dock space located adjacent to The Trawler."

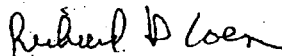
Exhibit C

Appendix 314

Your employees have been observed directing boats towards our docks in violation of your lease.

These numerous violations of your lease cannot continue as your actions have a detrimental effect on our properties, businesses and professional reputations. Your inactions and continued defaults of your lease will not be tolerated. We are again notifying you of your default for these violations and all others previously identified through separate notices. If such defaults continue and are not completely and fully remedied, we will take appropriate legal action for these activities and any and all prior notices of default.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard H. Coen", written in a cursive style.

Richard H. Coen

Lowcountry Capital, LLC

State of South Carolina	)	Court of Common Pleas
	)	
County of Charleston	)	Ninth Judicial Circuit
	)	
Richard H. Coen, Coen	)	
Capital, LLC, and	)	
Lowcountry Capital, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 2009-CP-10-5549
	)	
Diane Crowley, Cecil	)	
Crowley, Steve Carroll,	)	
Individually and as	)	
Principals and Agents of	)	
RedWing, LLC & Wings Over	)	
America, Inc., RedWing,	)	
LLC & Wings Over America,	)	
Inc.,	)	
	)	
Defendants.	)	

TRANSCRIPT OF RECORD

March 26, 2010

Charleston, South Carolina

B E F O R E:

The Hon. J. C. Nicholson, Jr., Judge

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

Hugh Willcox Buyck, Esq.
Attorney for the Plaintiffs

Andrew K. Epting, Jr., Esq.
Attorney for the Defendants

Brenda Cooley
Circuit Court Reporter

I N D E X

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E X H I B I T S

DEFENDANT'S	DESCRIPTION	I.D. REC'D
1	Notebook with tabs: Motions, Pleadings, Research, Points of Law, Judgment, Order	17

(The exhibit is retained by the Clerk of Court.)

1 (On Friday, March 26, 2010, the hearing
2 convenes at approximately 11:10 a.m., and the
3 following proceedings are had:)

4 THE COURT: It's what, a motion to dismiss or
5 a 12(b) or a summary judgment or what?

6 MR. EPTING: It's a motion to dismiss and
7 stay based on an arbitration clause, Judge.

8 THE COURT: A motion to dismiss and based on
9 what?

10 MR. EPTING: And a stay on the basis of an
11 arbitration clause.

12 THE COURT: Oh, okay.

13 MR. EPTING: May I proceed?

14 THE COURT: Wait a moment. Let me just look
15 at it real quick, okay?

16 MR. EPTING: Well, I actually have a book,
17 Judge, with everything in it.

18 THE COURT: Oh, you do?

19 MR. EPTING: I do.

20 THE COURT: Okay. Thank you, Mr. Epting.

21 MR. EPTING: I have figured out over the
22 years of doing this that what's in the Clerk's Office
23 and what's up here might not be the same thing.

24 THE COURT: That is very, very true.

25 (Notebook tendered to the Court.)

1 MR. EPTING: Whenever you're ready, Your
2 Honor.

3 THE COURT: All right.

4 MR. EPTING: I'll start out with a little bit
5 of humor. Sir Isaac Newton said in the late Seventeenth
6 Century that if I have seen further it's only by
7 standing on the shoulders of giants. Well, as it turns
8 out, Judge, you decided this case about three years ago,
9 a case in which I was involved. And I'm going to read a
10 little bit of your previous order to you, but, Judge, if
11 you would turn to the tab up at the top, I think I can
12 bring you pretty quickly to what this is about.

13 THE COURT: Okay. Which tab?

14 MR. EPTING: Well, Judge, look under orders,
15 and it's I think your blue tab.

16 THE COURT: Judgment and order, okay.

17 MR. EPTING: Right.

18 THE COURT: Okay.

19 MR. EPTING: You see the first sentence
20 there, the...

21 THE COURT: Consent order.

22 MR. EPTING: To arbitrate.

23 THE COURT: Yeah. Consent order to
24 arbitrate, yeah.

25 MR. EPTING: All right. The parties to this

1 order, Judge, are Richard Coen, Lowcountry Capital,
2 Diane Crowley, and RedWings.

3 THE COURT: Okay.

4 MR. EPTING: And the first line of that order
5 states: This matter comes to me by agreement of the
6 parties to refer all disputes arising from the dealings
7 or agreements between these parties to arbitration
8 before Tom Wills.

9 The lawsuit, Judge, that is filed in this
10 case is filed by, among others, Richard Coen, Lowcountry
11 Capital. And as you see, Judge, this time he sues Diane
12 Crowley, Cecil Crowley, Steve Carroll, individually and
13 as principals and the agents of RedWings. And that,
14 Judge, is under pleadings.

15 THE COURT: Okay. So the only new party is
16 Steve Carroll and Cecil Crowley?

17 MR. EPTING: And Wings Over America, Judge.

18 THE COURT: Pardon me?

19 MR. EPTING: And Wings Over America.

20 THE COURT: Wings Over America, Incorporated.
21 Okay.

22 MR. EPTING: Right. Now, if you look,
23 Judge ---

24 THE COURT: RedWing, LLC is not the same as
25 the RedWing, LLC and Wings Over America, Incorporated?

1 They're not the same people?

2 MR. EPTING: They are the same people, Judge,
3 but this is a different name.

4 THE COURT: Okay.

5 MR. EPTING: They're owned by most likely --
6 Diane Crowley owns RedWings, and Cecil and Diane Crowley
7 own Wings Over America.

8 THE COURT: Okay.

9 MR. EPTING: All right. Judge, if you turn
10 with me to what is your orange tab.

11 THE COURT: Okay.

12 MR. EPTING: And for your benefit, it's under
13 case law, and it's the *Levinsky* case. The standard for
14 this Court, Your Honor, on an arbitration motion is:
15 Furthermore, unless the Court can say with positive
16 assurance that the arbitration clause is not susceptible
17 to an interpretation that covers the dispute,
18 arbitration should be ordered.

19 So if there's any way, Judge, the order that
20 Judge Young entered, ordering these parties to arbitrate
21 all of their disputes, can be construed to require
22 arbitration ---

23 THE COURT: Was it arbitrated?

24 MR. EPTING: Judge, some part of it was. And
25 that's a question of what was and was not, which is one

1 of the reasons I think we go back to the order which
2 says all disputes between the parties. And so whatever
3 this dispute is, it's encompassed within that clause.

4 THE COURT: Well, let me look at the
5 complaint. What's the new dispute according to the
6 complaint?

7 MR. EPTING: Well, if you look ---

8 MR. BUYCK: If I can explain, I think I could
9 put all this in the proper context very quickly instead
10 of superfluous arguments in regards to what's going on
11 here.

12 There was an arbitration. There was an order
13 by Tom Wills in regards to the arbitration that said
14 there were so many parking spaces they could utilize.

15 We've got several trespass nuisance because
16 despite the arbitration and despite the order and
17 despite having gone through this entire process, they
18 still are abusing the properties. They are putting up
19 bumper stickers that say "Nine Out of Ten Locals Agree,
20 Keep Shem Creek Dick Free." My client -- there's an
21 allegation of slander.

22 THE COURT: I'll hear you. All right. Let
23 him finish, and you can make the argument.

24 MR. BUYCK: Well, I just -- I mean, we've
25 been through this about three times. There is another

1 claim between these same two parties where Mr. -- where
2 they've used this same argument saying that it wasn't --
3 there wasn't parking there. So they're using it both as
4 a shield and a sword. They're both using our ---

5 THE COURT: Well, let me hear his argument,
6 then I'll listen to you.

7 MR. BUYCK: Okay, I understand.

8 THE COURT: Please proceed, Mr. Epting.

9 MR. EPTING: Thank you. Without regard to
10 what is old and what is new, the order that is signed,
11 which is what I refer to you in blue...

12 THE COURT: Well, wasn't that order -- I
13 mean, as to the issues in that particular lawsuit which
14 was captioned 2006-CP-10-3670, the issues raised in this
15 lawsuit captioned number 3670, that's what this order is
16 pertaining to, not all issues in the future.

17 MR. EPTING: Judge, if you read it, it says
18 all disputes arising from the dealings or agreements
19 between the parties.

20 THE COURT: I understand, but ---

21 MR. EPTING: And the agreements that they're
22 suing upon are a lease, a membership interest, a
23 purchase/sale agreement. And if you look at the
24 complaint, you'll see. We can go through the complaint.

25 THE COURT: Just give me about two minutes to

1 read the complaint, okay?

2 MR. EPTING: Sure. All right, sir.

3 (The Court reviews document.)

4 THE COURT: All right. First of all, let me
5 orient. I know where Red's Ice House is on Shem Creek.
6 I know where the old Trawler is. Are we talking about
7 Coen involved with the Trawler property; is that what...

8 MR. BUYCK: Yes, sir, Your Honor.

9 THE COURT: Because the properties are
10 adjoining each other?

11 MR. BUYCK: That's right.

12 THE COURT: I'm just trying to get in mind
13 geographically where we're talking about.

14 MR. BUYCK: That's right.

15 THE COURT: And so when you come in right,
16 where it slips into the restaurant and you come back
17 around to the right, is that the road we're talking
18 about here, the parking spaces?

19 MR. BUYCK: That's where Tom Wills has
20 mandated that they park.

21 THE COURT: All right.

22 MR. BUYCK: And then they're continuing to
23 park other than onto the Trawler property. Mr. Coen's
24 been parking -- they're trying to run a business. And
25 despite the order of Mr. Wills and despite everything

1 that's going on over there, they continue to do that.

2 And they've acknowledged it and ---

3 THE COURT: They have used other parking
4 spaces other than along the road that runs out to the
5 Ice House?

6 MR. BUYCK: Right. They've continued to use
7 the Trawler property. They're trespassing the ---

8 THE COURT: Well, I just wanted to get a
9 geographic where we're talking about.

10 MR. BUYCK: And that's what the complaint is.

11 THE COURT: All right. I'm vaguely familiar
12 with the area, okay?

13 Go ahead, Mr. Epting.

14 MR. EPTING: Judge, I don't agree with any of
15 that, but it has nothing to do with this hearing.

16 THE COURT: Well, your theory is Judge
17 Young's order says that there should be arbitration in
18 this lawsuit because of his order saying all disputes
19 arising?

20 MR. EPTING: And all agreements between the
21 parties.

22 THE COURT: Okay.

23 MR. EPTING: And what my argument, Judge, is,
24 is that this Court's job is to follow the law, and the
25 law says unless you can say with positive assurance that

1 the arbitration clause is not susceptible to any
2 interpretation that covers the dispute, arbitration
3 should be ordered. And what I am saying is this
4 language says the parties refer all disputes arising
5 from their dealings or agreements.

6 THE COURT: I assume that's the arbitration
7 clause in the original agreement; is that correct?

8 MR. EPTING: No, sir. This is an agreement
9 that I drafted.

10 THE COURT: It's a consent that the parties
11 entered into? There's no arbitration clause in the
12 original?

13 MR. EPTING: This is it right here, sir.

14 THE COURT: All you've got is a consent
15 order?

16 MR. EPTING: Just -- that's it right there.

17 THE COURT: All right.

18 MR. EPTING: All right. The second part of
19 this, Judge, is, if you'll refer to the...

20 THE COURT: Well, Mr. Epting, how could this
21 consent order cover trespass? I mean, that's one cause
22 of action I noticed in the complaint.

23 MR. EPTING: Well, I think the question,
24 Judge, is this. And that brings me to part two.

25 THE COURT: You know, most of the time when

1 you enter into a consent order to do arbitration, that's
2 concerning the case that's pending at the time, not
3 future litigation concerning other issues.

4 MR. EPTING: Well, Judge, you're saying there
5 are other issues.

6 THE COURT: Well, I'm just reading the
7 complaint. I don't know if there are or not. I mean,
8 all I can do is say, hey, I can look at the cause of
9 action. You've got slander of title, defamation. I
10 thought I saw trespass in here. But there's tortious
11 interference, civil trespass, and nuisance.

12 MR. EPTING: Judge, some of that was in the
13 original suit.

14 THE COURT: Well, do you have a copy of the
15 original suit?

16 MR. EPTING: No, sir, but I can certainly ---

17 THE COURT: I mean, I think the arbitration
18 consent was for that particular lawsuit. Now, if
19 there's any duplication in this, yes, sir, you may have
20 a point. But if trespass, libel and slander, and
21 slander of title, and tortious interference, and
22 nuisance wasn't involved in that first lawsuit, I don't
23 think they consented to arbitrate it, irrespective of
24 the language in the order.

25 MR. EPTING: And, Judge, I haven't said that

1 they did. When I said to you my motion is for a motion
2 to compel those parties through the agreement and the
3 consent order to arbitrate -- and that's the second part
4 of my motion.

5 THE COURT: But that's been done.

6 MR. EPTING: No, sir, it hasn't.

7 THE COURT: It went to arbitration, and the
8 arbitrator issued an order, right?

9 MR. EPTING: The arbitrator issued an order.

10 THE COURT: Okay. Well, tell me why the
11 consent order at that point in time didn't terminate?

12 MR. EPTING: Because, Judge, the consent
13 order says that all disputes arising from the dealings
14 or agreements of the parties, and this is a dispute that
15 arises from the agreements of the parties.

16 THE COURT: Well, I understand. I don't
17 think that was the intent. The intent of the order is
18 all disputes arising from the parties pending at the
19 time in the Circuit Court in Charleston County, not
20 disputes off into infinity forever between the parties.

21 MR. EPTING: I had ---

22 THE COURT: What if they shot each other?
23 Would they then have to arbitrate that? Or if they hit
24 each other with a baseball bat, would they arbitrate
25 that?

1 MR. EPTING: Well, Judge, I had none other
2 than Louis Powell one time ask me, well, you're saying
3 that this is what the judge is going to do and you say
4 if we reverse him you aren't going to send it back and
5 he's going to do whatever he intended to do because
6 that's what he believes. And I said, well, all I can
7 say is I hope he follows the law.

8 I keep coming back to just this point, Judge.

9 THE COURT: Okay.

10 MR. EPTING: Unless the Court can say with
11 positive assurance that there is no interpretation,
12 these parties are to arbitrate. That's the standard,
13 Judge.

14 THE COURT: And, Mr. Epting, that standard, I
15 have read a case where I'm sure that standard is in
16 reference to the arbitration clause that's put in every
17 contract, every corporation in existence nowadays. I'm
18 sure that's what they're referring to, not some consent
19 to arbitrate during a litigation process.

20 MR. EPTING: Judge, I think the context of it
21 is: The language is the language is the language, and
22 it's the agreement of the parties.

23 THE COURT: I admire your ingenuity.

24 MR. EPTING: All right.

25 THE COURT: Okay? I just don't necessarily

1 agree with it.

2 MR. EPTING: Well, listen, Judge, I get that
3 sense directly. Judge, let me just finish my argument
4 so that the record ---

5 THE COURT: All right.

6 MR. EPTING: --- will be clear.

7 THE COURT: Okay.

8 MR. EPTING: If you will look, Judge, at what
9 is the yellow tab.

10 THE COURT: Okay.

11 MR. EPTING: The second part of my motion --
12 up at the top, Judge...

13 THE COURT: Okay.

14 MR. EPTING: --- is in South Carolina if any
15 part of a lawsuit is to be stayed because of
16 arbitration, the entire lawsuit has to be stayed. And
17 that's the *Municipal Housing* case, Judge. And you'll
18 see here I've just inserted the *South Carolina Am. Jur.*
19 on arbitration that states -- I'll let you find it.

20 THE COURT: Let me find where you are, first.

21 MR. EPTING: Yes, sir. It should be the
22 yellow tab at the top of the page of your notebook.

23 THE COURT: Okay. The yellow tab, all right.

24 (The Court reviews document.)

25 THE COURT: Go ahead. I'm listening.

1 MR. EPTING: In the second sentence, Judge,
2 it says: Further, a stay of judicial proceedings
3 pending arbitration between parties to an agreement will
4 be ordered even though the dispute may involve those who
5 are not parties to the agreement.

6 And so in this case, Judge, what I view the
7 law as being is there's an interpretation of the
8 agreement that requires arbitration among the parties to
9 the agreement and that as to the balance of the suit it
10 should be stayed pending arbitration.

11 THE COURT: Okay. That's to address the new
12 parties to the lawsuit, I presume.

13 MR. EPTING: That is, sir. Yes, sir. And
14 interestingly, Judge, what you're going to do here, for
15 right or wrong, is immediately appealable. I've got a
16 special interest in that last case because the United
17 States Supreme Court in March of 2009, Judge Scalia
18 wrote an opinion on it. And I would ask that you enter
19 an order here, which I have brought one for your review,
20 and certainly I'll give the other side an opportunity to
21 hand up an order.

22 THE COURT: All right. Anything else you
23 want to put on the record on your argument?

24 MR. EPTING: No, sir.

25 THE COURT: Do you want to make the book an

1 exhibit?

2 MR. EPTING: Yes, sir.

3 THE COURT: Okay. I'll be happy for you to
4 give it to the court reporter and mark it as -- I
5 believe it would be defendant's exhibit number one; is
6 that correct?

7 MR. EPTING: Right.

8 THE COURT: All right. Just mark it
9 defendant's exhibit number one.

10 (Defendant's Exhibit No. 1, notebook with
11 tabs, is marked for identification and received in
12 evidence.)

13 MR. EPTING: I should say, Judge, that I also
14 -- when I reference that quote and point to that
15 standing on the shoulders of giants, your order in the
16 previous case in which you granted partial relief of
17 arbitration as to some and stayed the other is in here,
18 as well.

19 THE COURT: All right.

20 MR. EPTING: Thank you, sir.

21 THE COURT: Let me ask you a question on a
22 different case. That case we had several months ago
23 about reducing the name, was the order ever issued? Has
24 that been done?

25 (There was off-the-record discussion

1 regarding a separate case.)

2 THE COURT: All right.

3 MR. BUYCK: My apology for interrupting
4 earlier.

5 This is contentious litigation. It's been
6 going on a long time. This doesn't have anything to do
7 with arbitration. We've got a whole 'nother case in
8 front of Judge Young now in his Business Court in which
9 they've made an antithesis of the opposite argument as
10 to why the arbitration order shouldn't apply, what
11 matters within arbitration aren't an issue in that
12 lawsuit. In this lawsuit, taken on the four corners of
13 the complaint, which is ---

14 THE COURT: Let me ask you this. Are any of
15 those same causes of action in the first lawsuit?

16 MR. BUYCK: No, sir, Your Honor. These
17 causes of action are related to civil trespass and
18 nuisance and all arise after the entry of the order by
19 Mr. Wills in which he delineated specifically what their
20 lease involved. They were faced with an eviction, and
21 they were faced with issues relative to the scope of the
22 parking that they had. And despite Tom Wills' order and
23 while Mr. Coen is trying to develop his property and
24 market his property, they're going to third parties and
25 saying, oh, no, I don't care about Tom Wills' order,

1 we've got other rights here. That comes under the
2 tortious interference with respect to contractual
3 relations. And in addition to that, Your Honor, we have
4 some pretty serious allegations of slander and
5 defamation.

6 THE COURT: Then why don't you think Judge
7 Young's order should encompass this action since it's
8 basically with the same parties?

9 MR. BUYCK: It's not between the same
10 parties.

11 THE COURT: Well, there's two additional
12 parties.

13 MR. BUYCK: Well, it's more involved than
14 that, Your Honor. It's in the actions by those parties
15 and in the actions by others, and it's in -- it's
16 actions beyond what was anticipated ---

17 THE COURT: But Diane Crowley and RedWings,
18 LLC, that's involved.

19 MR. BUYCK: That's correct.

20 THE COURT: But the others are not.

21 MR. BUYCK: But the others were not. And
22 that's their argument specifically in regards to the
23 other case, is they weren't the same parties, this
24 arbitration order can't control, this arbitration order
25 is not this. So I just find it quite ironic.

1 THE COURT: All right.

2 MR. BUYCK: And I think you hit the -- you
3 hit the nail on the head when you said, well, this
4 involves matters that weren't in that lawsuit. And
5 that's exactly right. And these are matters you can't
6 say prospectively what dealings between the parties are
7 going to be. This was to resolve issues then pending in
8 the courts. And that's where we are, and these are
9 issues that have arisen since then.

10 Mr. Coen lives in that neighborhood. He sees
11 bumper stickers. His children see bumper stickers. You
12 know, you'd think "Red's Ice House, Where Locals Meet to
13 Eat," whereas Diane Crowley came up with the slogan --
14 they've probably been making bumper stickers all over
15 town -- saying "Nine out of Ten Locals Agree to Keep
16 Shem Creek Dick Free." They're draping t-shirts over
17 his mailbox and plastering it all over his -- all over
18 the Trawler.

19 THE COURT: Keep what? I'm sorry.

20 MR. BUYCK: "Keep Shem Creek Dick Free" in
21 reference to my client who is right here in this
22 courtroom. And all this occurred subsequent to these
23 arbitration agreements, the issues that arise there, and
24 so -- and they are continuing to trespass and continuing
25 utilization and tearing up of his parking lot, which

1 they have agreed has value to it. In other litigation
2 they've talked about how much value it is to have
3 parking in that area. Parking is so valuable. And so
4 all this is arising ---

5 THE COURT: The parking is probably more
6 valuable than the building.

7 MR. BUYCK: Yeah, you're probably right about
8 that. Because it doesn't have anything to do with
9 arbitration. You're absolutely correct. The parties
10 aren't the same. There is no reason to issue a stay.

11 You know, interestingly enough, once this
12 litigation was filed there's been somewhat of an effort
13 by them to control parking over there. But, for
14 instance, Mr. Carroll, he parks flagrantly on that
15 property every day. We've got pictures of him. Despite
16 all the orders and despite everything, even to this day
17 he -- he maintains that he's parking right there on the
18 Trawler lot.

19 THE COURT: I mean, well, I don't know how or
20 what the dispute is all about, but ---

21 MR. BUYCK: Your Honor, we are here on a
22 motion to dismiss.

23 THE COURT: I know that's before me. The
24 motion is whether or not arbitration is proper.

25 MR. BUYCK: We're here on a motion to dismiss

1 based on our case. Now they're asking to say that the
2 allegations are true or not, but they have -- matter of
3 fact, today right here during the hearing they've got
4 that notebook, the first time they've set forth why they
5 believe the arbitration clause is applicable. It's not.
6 And so I think you were right from the beginning in
7 addressing the issues with Mr. Epting. And if he wants
8 to appeal that, I'm sure we can appeal the other case
9 just as well, submit it to arbitration. If we go down
10 that road, that's fine. We'll take everything up. But
11 it's not -- it's not -- it's not relevant. The
12 arbitration is not related to these issues.

13 THE COURT: You could get a contractor out
14 there and build about an eight-foot fence all the way
15 down there.

16 MR. BUYCK: Tried that once, but it was torn
17 down by the patrons and whoever else. That's been
18 attempted and, you know, that may go into the issues of
19 the damages.

20 THE COURT: Well, why not take the parking
21 spaces and generate some income from them?

22 MR. BUYCK: I bet everybody here in downtown
23 Charleston -- it just -- it doesn't work. There are too
24 many different venues and events going on around there,
25 and parking causes troubles. And, you know, they've got

1 patrons that are having difficulties.

2 So that's the -- that's the basic assertions
3 of the lawsuit. It's matters that arose after this
4 arbitration proceeding.

5 And there are -- there are matters that were
6 agreed upon for arbitration. And you hit it on the head
7 when you said, you know, that was in that case, that's
8 not this case, and this case is different. If they
9 think that those other matters were previously
10 addressed, there's a route to do that in summary
11 judgment and through additional pleadings in the case
12 once they participate in discovery and once they have
13 acted accordingly within this lawsuit. And that's where
14 we are. They need to do that.

15 Thank you very much.

16 THE COURT: Mr. Epting, very briefly in
17 reply.

18 MR. EPTING: Yes, sir. Judge, I'll stay away
19 with the merits.

20 THE COURT: The merits, that's -- I mean,
21 that's not part of ---

22 MR. EPTING: Just the order, the Supreme
23 Court case. I gave a copy to you.

24 THE COURT: All right. Anything else you
25 want to tell me?

1 MR. EPTING: No, sir.

2 THE COURT: All right. I'm going to deny
3 your motion to order the arbitration. The Court's
4 position is that looking at the complaint these are
5 separate issues. However, I would like to have a copy
6 of the old complaint to make sure they are separate
7 issues and in the case where Judge Young ordered the
8 arbitration.

9 MR. EPTING: Judge, here's the problem, that
10 if it's stayed ---

11 THE COURT: Not my problem. My problem is
12 this. If you do appeal, that's fine. I mean, that's
13 your decision, your client's decision. However, if you
14 do appeal, I want a copy -- somebody to give me a copy
15 of that complaint in the case where Judge Young ordered
16 arbitration, so there can be a comparison.

17 MR. EPTING: I'll be happy, Judge, to.

18 THE COURT: I just handed to the court
19 reporter the Court's (sic) exhibit. And, Mr. Epting, if
20 any of these causes of action were part of that previous
21 action, then I'll order arbitration on those causes of
22 action. You understand where I'm coming from?

23 MR. EPTING: Well...

24 THE COURT: I can't -- because I don't have
25 that complaint in front of me.

1 MR. EPTING: I think, Judge, probably I
2 stayed away from where it -- you should probably suspend
3 ruling on the -- that was not part of it.

4 THE COURT: I'll keep it under advisement
5 until somebody gives me a copy of the original
6 complaint. I'll mark it as an exhibit and compare it to
7 this complaint.

8 MR. EPTING: All right, sir. All right.

9 THE COURT: If it is, Mr. Epting, we can deal
10 with a motion to strike *res judicata* or something other
11 than arbitration, because it's been arbitrated one time.
12 No sense in arbitrating again. Your remedy is to strike
13 it ---

14 MR. EPTING: Judge.

15 THE COURT: --- on *res judicata*. Your remedy
16 -- get rid of it forever.

17 MR. EPTING: First problem, Judge, the
18 arbitration is not recorded. So there's no record. So
19 the only person who was knows what was tried is
20 Mr. Wills. Second point, Judge, we actually took
21 depositions of this slander in "Dick Free" in the first
22 case. Not just that it was in the pleadings, we took
23 depositions in the first case.

24 Now, do you dispute that?

25 MR. BUYCK: It was not a cause of action.

1 Your Honor, there is the defamation cause.
2 That continues to this day to occur.

3 THE COURT: The only thing I know to do is
4 compare the causes of the complaint, so that's what I
5 was wanting, when Judge Young issued his order. That's
6 the only thing I know to do.

7 MR. EPTING: Do you want me to deliver it?

8 THE COURT: I'll be here all next week
9 hearing motions. Now, just -- bring the complaint, mark
10 it as a Court's exhibit, I'm going to compare it to this
11 complaint to see if there's any duplications.

12 MR. EPTING: All right.

13 THE COURT: Now then, the question in my mind
14 -- I'm not going to order into arbitration what's
15 already been arbitrated. That's a waste of your time,
16 that's a waste of my time, waste of everybody's time.
17 To me, the remedy is to strike it, be done with it.

18 MR. BUYCK: Your Honor, that's their position
19 in the other case, was it had the language of the order.
20 We agreed not to arbitrate that portion of it. That's
21 *res judicata*, that argument, and then here we're still
22 going to trial in that matter. And, you know, the irony
23 is that ---

24 THE COURT: You can consolidate these two
25 cases.

1 MR. BUYCK: No. These are different issues.
2 These are different issues, and that's what we have
3 here. And I have even identified this order of
4 arbitration in my complaint to show that these are
5 actions that continue after the arbitration, that
6 despite the arbitration and despite the rules of the
7 arbitration these things happen.

8 THE COURT: Mr. Epting, assume after I
9 compare it I take the position that it's a duplication
10 from the previous lawsuit. What do you think your
11 remedy is at that time?

12 MR. EPTING: Well ---

13 THE COURT: I don't think arbitrating again
14 is your remedy.

15 MR. EPTING: Judge, you know ---

16 THE COURT: Do you understand what I'm asking
17 you?

18 MR. EPTING: Well, the problem, Judge, is,
19 strategically, what I think the problem is, if you
20 don't, then this is what -- this is going to be, look,
21 yes, we did, and I'm going I know we didn't, and nobody
22 is going to have a record. And that first case, it went
23 on for years. Actually, Bruce was in it, Mike Spears,
24 the Parker Firm, I mean ---

25 THE COURT: I see you had people from all

1 over the state involved.

2 MR. EPTING: So what I'm trying to avoid is
3 just this very back-and-forth here, because there will
4 be no back-and-forth there. But the point I'm making,
5 Judge, is that consent order says all about the
6 agreements.

7 THE COURT: Let me do this, okay? For
8 clarification, so everybody knows where I'm coming from,
9 I'm going to take this matter under advisement till I
10 see a copy of the complaint. After I review complaint,
11 comparing it to this, if I think there's duplication,
12 I'll review it for y'all to think about how you want to
13 proceed at that point in time. I'll give it some
14 thought. I'll listen to any oral motions you want to
15 make at that time, okay?

16 MR. EPTING: Okay.

17 MR. BUYCK: Thank you, Your Honor.

18 THE COURT: That's the only way I know to
19 take care of it.

20 MR. EPTING: Very fair.

21 THE COURT: Give you all an opportunity to
22 come back and make whatever oral motion y'all think is
23 appropriate for your respective clients.

24 MR. EPTING: Maybe we can ---

25 THE COURT: I'll do it next week. If you get

1 me a copy of the complaint, I'll do it next week. All
2 right. Thank you very much.

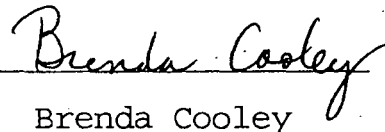
3 (Whereupon, the hearing is concluded at
4 approximately 4:45 p.m.)
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1 CERTIFICATE OF THE COURT REPORTER
2

3 I, the undersigned, Brenda Cooley, Circuit
4 Court Reporter for the Ninth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true and accurate transcript of record
7 of the proceedings had and the evidence introduced in
8 the hearing of the captioned case, pages 3 through 29,
9 inclusive, relative to appeal, in the Court of Common
10 Pleas for Charleston County, Charleston, South
11 Carolina, on the 26th day of March 2010.

12 I do further certify that I am neither of
13 kin, counsel, nor interest to any party hereto.
14

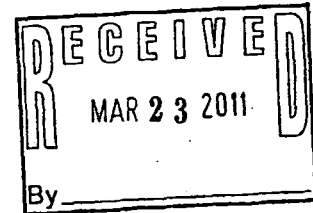
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16 June 22, 2010
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18 
19 Brenda Cooley

20 Circuit Court Reporter
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25

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

DC & SONS, LLC,	)	TRANSCRIPT OF RECORD
	)	
Plaintiffs,	)	January 15, 2010
	)	
-vs-	)	Charleston, South Carolina
	)	
RICHARD H. COEN, LOWCOUNTRY	)	08-CP-10-4675
CAPITAL, OCEAN I REALTY,	)	
JAMES R. MAULL, JR., LARRY	)	
McNAIR, COENCO, LLC &	)	
PAVILION DEVELOPMENT	)	
	)	
Defendants.	)	
* * * * *		
PAVILION DEVELOPMENT	)	
CORPORATION,	)	
	)	
Plaintiff,	)	
	)	07-CP-10-1475
-vs-	)	
	)	
DC & SONS, LLC,	)	
	)	
Defendant.	)	



B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 THE COURT: All right. We're back on DC &
2 Sons versus Coen, and this is Mr. Epting's motion, so if
3 you're ready, we'll begin.

4 MR. EPTING: Judge, if you would -- first, I
5 would like to file the two depositions of Mr. Coen, one
6 taken August 12, 2010 and one taken December 20, 2010,
7 and, Madame court reporter, if you would, for simplicity,
8 maybe mark the August one 1 and the December one 2.

9 There are two motions, one for summary
10 judgment of the counterclaim and the second to stay the
11 counterclaim. I'm going to address my remarks first to
12 the summary judgment and the grounds for it.

13 The two claims that are asserted in the
14 counterclaim, Judge, are abuse of process and, secondly,
15 civil conspiracy. And I want to read, Judge, the
16 formulation of the Coen defendants of that counterclaim
17 from the counterclaims that have been filed; first, the
18 abuse of process.

19 DC has delivered the ulterior purpose of
20 interfering with legitimate business goals of the Coen
21 defendants and to perpetuate litigation to its advantage,
22 including but not limited to seeking additional parking
23 rights despite the findings of the arbitration, did enter
24 into certain agreements, including but not limited to an
25 agreement to binding arbitration, the theory being,

1 Judge, that this litigation should have been part of the
2 arbitration, and the continuation of this litigation in
3 this case is an abuse of process.

4 The conspiracy count, Judge, is based on the
5 same general proposition, intentional misrepresentation
6 by the plaintiff, DC & Sons, its co-conspirators in order
7 to induce the defendants to enter a consent order of
8 arbitration, intentional assertion of parking rights by
9 the plaintiff and its co-conspirators on the defendant's
10 adjacent property in order to subvert the arbitration.

11 Now, Mr. Coen, Judge, in his deposition, when
12 I asked him to explain what his abuse of process and
13 conspiracy claims were about, here is what he said, and
14 I'm reading from his deposition of August the 12th, page
15 73, lines 1 through 14.

16 This is Mr. Coen's answer: So the filing of
17 this lawsuit, there are two things, two issues, that come
18 to mind with your question. The first is that DC & Sons
19 and the Crowleys, and you knew about this claim, the DC &
20 Sons claim, prior to the arbitration, during the
21 arbitration, and didn't bring it up, didn't say anything
22 about it, and therefore it was not given the opportunity
23 to have been resolved, but it had to have been brought up
24 if it was going to be brought up because the arbitration
25 was to end all matters relating to those claims, and this

1 was definitely, the parking, was really what the whole
2 thing, the whole arbitration, was about.

3 He goes on to say, and I think there was a
4 conspiracy between Red's Ice House, Dianne Crowley, Cecil
5 Crowley, DC & Sons, and Drew Epting to essentially
6 further damage me and my companies and my reputation
7 causing extreme hardship, knowing where our project ended
8 up and knowing my situation, and that ultimately for a
9 perpetual litigation that I would be driven out of
10 business.

11 So his claim here in this counterclaim,
12 Judge, is that the lawsuit filed by DC & Sons is a
13 conspiracy with the other defendants in another piece of
14 litigation that Mr. Coen has filed involving the parking
15 at Red's.

16 Now, you may recall, Judge, this suit has
17 nothing to do with the Red's parking and the arbitration,
18 but, rather, has to do with the sale of three parcels
19 that don't even touch Red's, called Cottage on the Creek,
20 and I'll come back to that, Judge, in my later remarks,
21 but I don't want to get off the subject.

22 You may recall, Judge, you entered an order
23 in which you refused to rule that the Coen defendants
24 were entitled to collateral estoppel on the basis that
25 the DC & Sons claim, the one that is here today, had been

1 part of the arbitration. You ruled that it was clear
2 that it was not part of the arbitration.

3 This counterclaim is now just coming back,
4 Judge, and saying it should have been, and you should
5 have brought it there, and because you didn't bring it
6 there and have it resolved, it's now an abuse of process
7 and you're conspiring with the Red's defendants over on
8 Red's. That's the argument.

9 What I want to do now, Judge, is read to you
10 from Mr. Coen, because what you found in your previous
11 order, and it was based on the affidavit of John Linton,
12 DC & Sons wanted this case tried in arbitration and tried
13 to do that. Mr. Coen objected, and Tom Wills on that
14 objection said that DC & Sons litigation would have to be
15 separate.

16 So let me read the examination, Judge, of
17 Mr. Coen, who admits what I've just said. Madame court
18 reporter, the last passage that I read was from the
19 December 20th deposition, page 119, lines 4 through 16,
20 and I'm now reading from the August 12th deposition,
21 pages 25 through 27, lines 24 through 18.

22 Question: Do you think that the lawyers that
23 you just enumerated worked diligently in setting the
24 scope of arbitration on your behalf? And that would have
25 been Parker Poe, Cam Lewis, and Mike Spears.

1 Answer: Yes.

2 Do you know of any reason why they would have
3 wanted to exclude and did exclude DC & Sons from the
4 arbitration?

5 Object to the form.

6 Witness: I can't be sure, but I think it was
7 possibly because we didn't want to -- maybe because they
8 didn't want to do anything that would potentially make a
9 claim to the Cottage on the Creek property, because that
10 wasn't -- I don't really know. We were very careful. We
11 didn't file a lis pendens or anything because we did not
12 want to -- we just wanted to try and follow the letter of
13 the agreements, and I think there was a concern on
14 counsel's behalf that didn't want to give any reason for
15 Dianne and Cecil to have a claim against us for my
16 entities for doing anything that would have affected them
17 negatively.

18 Question: Did you object to your lawyers
19 when they excluded DC & Sons from the arbitration?

20 Objection.

21 Question: Or did you think their logic was
22 compelling?

23 Same objection.

24 The witness: That was a discussion between
25 my and my lawyers and accountant.

1 Question: But in any event, you accepted
2 that advice that you just described.

3 Answer: I didn't think we needed a lis
4 pendens. Didn't benefit us because we didn't want to buy
5 the property.

6 Question: Right, but I'm not talking about
7 the lis pendens but excluding DC & Sons claim from the
8 arbitration.

9 Same objection.

10 Did you accept their advice?

11 Yes.

12 Reading from the August 12 2010 deposition,
13 pages 36 through 37, page 38, lines through 8.

14 Answer: I believe DC & Sons and its
15 principals were aware of this claim during the
16 arbitration and didn't make it, and since the arbitration
17 involved parking and the property, specifically the use
18 of the property by Red's Ice House that to make the claim
19 after the arbitration was not proper and that it was just
20 perpetuating litigation by using the Courts in a manner
21 that they were not intended --

22 Question: Mr. Coen?

23 Answer -- in costing me damages in critical
24 time and that this ultimately turned out to be a
25 conspiracy between the parties named in the lawsuit.

1 Question: Mr. Coen, I thought you told me
2 about ten minutes ago that your lawyers had advised you
3 to exclude DC & Sons claim from the arbitration and you
4 agreed with it. Is that not what you told me?

5 Answer: I did.

6 So here we are being sued, Judge, for
7 perpetuating litigation when the reason this lawsuit is
8 separate was because Mr. Coen's objections. I don't
9 think he can bring an abuse of process and a conspiracy
10 on that ground.

11 So context, Judge, the other ground is
12 Mr. Coen has not done what this Court has instructed him
13 to do several times, which is provide any backup or basis
14 for his counterclaim, but one of the things, Judge, and
15 we've not really -- and have tried to stay away from, but
16 I want you to know this: My clients have been sued by
17 the Coen defendants seven times, seven times.

18 Right now, the lawsuit that he says DC & Sons
19 conspired -- excuse me, the defendants in the lawsuit,
20 that he says DC & Sons conspired with, there was another
21 litigation that was filed on September the 2nd, 2009.
22 Seven times my clients have been defendants. This is the
23 only case we've ever been a plaintiff, and it has to do
24 with a completely separate piece of property.

25 Just, Judge, a little history, mainly just

1 for your own background. You know, Judge, this case was
2 to be tried last February, I think, and Mr. Bucyk filed
3 this counterclaim, and you didn't allow it because it was
4 untimely. The case was continued. You allowed the
5 counterclaim and basically ordered him to make it more
6 definite and certain on a motion of ours in June.

7 You ordered that the discovery on the
8 counterclaim, the documents and the like be produced
9 within 60 days. When no documents were forthcoming, we
10 noticed the deposition about five weeks after your order
11 and took it on August the 12th.

12 Mr. Coen was to come back to us and give us
13 additional documentation in order to take the deposition.
14 It wasn't forthcoming, so on November 23rd, we filed
15 another motion, trying to get that information out of
16 you. We came before you on December the 20th and said,
17 Judge, here are the problems that we're having. We don't
18 have anything, and, Judge, I read at the last hearing
19 some of that information into the record. You have the
20 deposition, but I think I can say that essentially when
21 asked in the August deposition, what have you brought,
22 what can you tell us about the counterclaim, he said, I
23 don't have anything.

24 I would ask him, what does he mean in one of
25 his complaint paragraphs? And he would say, I mean

1 what's in that paragraph, and for an hour I could never
2 get any movement out of him.

3 With your reprimand, Judge, on the 20th and
4 the deposition on the 20th, he was more forthcoming about
5 what his theory was; that is, that it's related to the
6 perpetuation of litigation, but on that day he brought
7 Lowcountry Capital, one of the defendants, expense
8 statement, and the expense statement did back up that
9 Mr. Coen had paid \$3,705 in attorney's fees, which is one
10 of the claims he has here.

11 But his theory, Judge, is that Mr. Coen lost
12 the property to the bank, that had he not lost it to the
13 bank -- and he lost it to the bank, Judge, because he
14 owed the bank \$4 or \$5 million on two pieces of property,
15 and because my client took over certain property from the
16 new buyer under the lease, he ought to be getting that
17 money, and he says, as a result, he would be getting
18 \$30,000 more a month.

19 Well, in order to know if that is true,
20 Judge, we said, well, if you're going to do that, you
21 have to pay the mortgage. What is the mortgage payment?

22 I don't know the mortgage payment.

23 So what Mr. Coen's damages are, if any, we
24 don't know as we sit here, but I've provided the
25 deposition, and I'm not going to go into great detail. I

1 just say to you I think what happened in the second
2 deposition and the first deposition is not what this
3 Court envisioned, and I think my client will be
4 prejudiced.

5 Judge, you know --

6 THE COURT: Let me back up a step and make
7 sure I understand the first part of your argument. The
8 first part of your argument, and please correct me if I'm
9 wrong, is y'all had an arbitration back before Tom Wills.

10 MR. EPTING: Yes, sir.

11 THE COURT: And your folks wanted to make the
12 subject of this lawsuit part of that arbitration, and he
13 objected to it?

14 MR. EPTING: Absolutely.

15 THE COURT: So now he's saying, oh, you
16 can't -- you suing me is an abuse of process and your
17 theory is, look, we wanted to arbitrate it a couple years
18 ago, and you objected.

19 MR. EPTING: Right.

20 THE COURT: I just wanted to make sure I had
21 it right.

22 MR. EPTING: That's it. It's just that
23 simple.

24 THE COURT: Okay.

25 MR. EPTING: You know, Judge, I ask you not

1 to hold this against me. I always enjoy being in your
2 courtroom, and I perhaps delusionally think I actually
3 know how you think, and, as a consequence, I'm always
4 trying to figure out what would Judge Young feel
5 comfortable with here?

6 I believe with every bone in my body this
7 counterclaim has no basis. In fact, Mr. Kefalos and I
8 have spent probably \$30 or \$40,000 of our time chasing
9 this thing around to find out if the basis of it as a
10 lawsuit that we tried to have decided earlier that he
11 objected to now that he says we should have done back
12 then, but that said, Judge, this lawsuit against DC &
13 Sons is DC & Sons is alleged to be a conspirator of
14 Red's, which operates Red's restaurant, Dianne Crowley,
15 Cecil Crowley, the master company, Wings Over America,
16 and the general manager of Red's, and the conspiracy is
17 that they violated certain of Mr. Coen's parking rights,
18 and that lawsuit I'm going to hand up to you.

19 It was filed in September of 2009, so what we
20 have, Judge, is we have the primary actors in this drama,
21 lawsuit seven, in a lawsuit filed in September, and over
22 here, parked in a lawsuit that has nothing to do with
23 Red's but rather has to do with the sale of a piece of
24 property not attached, called Cottage on the Creek, is
25 the owner of the Cottage of the Creek property, DC &

1 Sons, and it is alleged that DC & Sons conspired with the
2 Red's defendants to do all those bad things over at
3 Red's.

4 The status of that litigation is this, Judge:
5 You entered a consent order that is between Mr. Coen,
6 Lowcountry Capital, Dianne Crowley, and RedWings that
7 referred this matter to arbitration, meaning the original
8 lawsuit, and it said all matters between these parties
9 arising out of these agreements are referred to
10 arbitration.

11 So I responded to that September the 2nd
12 lawsuit, Judge, by saying certain of these parties agree
13 to resolve all of their disputes, including the new ones
14 that you now allege by arbitration, and you have to
15 arbitrate. Judge Nicholson decided against me, but
16 because I have an interlocutory appeal, I'm appealing.
17 Also, Judge, because the South Carolina law is clear is
18 that if some part of lawsuit is arbitrable, then as to
19 the remaining parties, the action needs to be stayed, and
20 I think it's Episcopal House One. I think it's One and
21 not Two.

22 So what I have also asked this Court, because
23 it essentially leaves this claim out there but doesn't
24 add another day or two to the trial of this case, because
25 it has to do with this other lawsuit, the September 2009

1 suit, is to simply state this: It relates to that
2 parking lot anyway.

3 THE COURT: Stay his counterclaim?

4 MR. EPTING: Yes, sir, because it's
5 completely unrelated, Judge, and if you read his
6 pleadings and read his deposition, no matter what you
7 might hear, it has to do with Red's, and in that way when
8 the Supreme Court rules that this thing is decided by Tom
9 Wills, he can decide all of it. If it's not, it all can
10 be decided at one time, and so alternatively, Judge,
11 although I certainly prefer the former, that this be
12 dismissed, we ask that the counterclaim be stayed,
13 certainly not compulsory, that arise out of the same
14 transaction, and that's my argument.

15 What I have done, Judge, because time is
16 important, because we're trying all to figure out how to
17 come down here and try the quickest case that we can try
18 and maybe even finish next week, I have prepared two
19 orders, one dismissing and one staying, for your review,
20 which I will now give to my colleagues.

21 Judge, I'll sit down because unless you ask
22 me, I probably am not going to engage in large reply.
23 I'm sure you've got many things to do. Do you understand
24 everything that I have said? Is there anything that I
25 was not clear on? I tried to move a little quickly

1 rather than read a lot of things.

2 THE COURT: I think you crystallized it down.
3 I think I got a grasp on what you're asking me to do and
4 not do.

5 MR. EPTING: Thank you, sir.

6 THE COURT: Mr. Bucyk?

7 MR. BUYCK: Thank you, Your Honor. It's an
8 interesting argument he makes, and I think it goes to the
9 heart of my initial motion for summary judgment in this
10 case, and I think what is most interesting is that
11 Mr. Epting takes the position in the other litigation
12 that even if you weren't a party to the litigation,
13 you're still subject to the arbitration.

14 And what he's saying to this Court is that
15 these are matters that should have been included with
16 arbitration, but for some reason we opted out of it, and
17 if you look at the wording of the arbitration order in
18 which it says that these were to be matters decided,
19 including parking issues, including matters then before
20 the magistrate's Court, including all the matters before
21 the Court, you see that this case should never see a
22 jury.

23 This case should be sent back to arbitration,
24 if that's the matter, and that is the crux of his
25 argument. So I shouldn't even have to come to this

1 courtroom next week. The case should be arbitrated.

2 THE COURT: You want it arbitrated?

3 MR. BUYCK: I want it arbitrated. If that is
4 his position, this case should be arbitrated.

5 THE COURT: Do you want it arbitrated still,
6 Mr. Epting?

7 MR. EPTING: Not at all, Judge. DC and --
8 but DC & Sons is not a party to the agreement, Judge.

9 THE COURT: All right.

10 MR. BUYCK: DC & Sons was initially a party
11 to the magistrate court actions. DC & Sons filed a
12 motion to stay the magistrate actions. DC & Sons was on
13 the pleadings in the motion to stay for an appeal of the
14 magistrate court actions when the order was entered.

15 DC & Sons is on the caption moving to stay
16 the magistrate court appeal when this matter went to
17 arbitration, and the agreements between the parties were
18 entered in order to stop all litigation. Let's decide
19 these issues concerning parking and move forward.

20 And the entirety of the plaintiff's claims
21 against the Coen defendants are they interfered with my
22 rights under this contract because they were asserting in
23 the Red's litigation a right to the assets of parking on
24 Cottage on the Creek, which were part of the membership
25 interest purchase and sale agreement specifically

1 included within the membership purchase and sale
2 agreement.

3 So what happened, and what we intend to
4 prove, is that they subverted this process intentionally,
5 slick lawyer or whatever it was, until two weeks after
6 arbitration order, bam, this lawsuit comes down. When it
7 was envisioned, when the minds were met to agree to the
8 arbitration order that everything would be resolved, and
9 I'm prepared to present Mr. Lesemann. Mr. Norton's
10 already testified to that in his de bene deposition
11 earlier this week. We got Mr. Spears and Mr. Lewis, all
12 named as witnesses.

13 Now, going to the counterclaims and the abuse
14 of process and the civil conspiracy, you asked that I
15 amend those claims on June 29th, 2010, and I'm not sure
16 that Mr. Epting is reading from the same pleading, which
17 was the amended pleading, with the sub specifications of
18 civil conspiracy that were included within that pleading.

19 First of all, there was the abuse of process,
20 and we stand by that claim, that this whole suit is being
21 done in a vindictive manner for an ulterior purpose,
22 either to get back at Mr. Coen for filing the prior
23 actions against him. The plaintiffs have admitted to
24 that, Dianne Crowley in her deposition.

25 THE COURT: As I understand, his argument

1 earlier was they wanted to arbitrate this, but your
2 client wouldn't arbitrate it and so they had to bring
3 this lawsuit.

4 MR. BUYCK: No. That's not the case. There
5 never was a lis pendens against this property.

6 THE COURT: I didn't say there was.

7 MR. BUYCK: And then they've all taken the
8 position, asserting rights by RedWings to park is what
9 interfered with their ability to close this property. We
10 have the letters of Mr. Vinzani, we have the various
11 documents in which they said Ms. Crowley disavows any
12 leasehold interest and we'll be done with this, but they
13 wouldn't sign those documents, and that goes back to the
14 statute of fraud issues that we talked about in our
15 earlier motions for summary judgment, in which all the
16 lawyers were looking for was written documentation that a
17 lease that granted for longer than a year had been
18 disavowed, altered, amended, or otherwise changed and
19 there were no such documents produced.

20 Mr. Vinzani refused to close. Mr. David's
21 client refused to close because the lease remained on the
22 property, and the lease was in the name of RedWings, and
23 RedWings was a party to the arbitration order and the
24 lease was associated with parking in the eyes of all
25 these entities involved and parking was to be included

1 within the arbitration. And this litigation, whether by
2 design, intent, or otherwise, is perpetuation of
3 litigation for the damage of DC & Sons, which is one
4 co-conspirator.

5 I'm not required to sue all the
6 co-conspirators in one action. It happens all the time
7 in criminal cases. One defendant is sued in one case and
8 another is sued in another, but other action I contend,
9 there is a lot more to it than just this parking issue.

10 We went through the issues with the
11 deposition and keep Shem Creek Dick free and slander and
12 malicious actions toward Mr. Coen that arose from that
13 that were not included within the arbitration, which
14 Judge Nicholson has ruled was not clear within
15 arbitration and matters that arose out of the arbitration
16 order and after the arbitration had been held.

17 And what these plaintiffs have done is by and
18 through this litigation they have tried to tie Mr. Coen
19 up. We've got Christmas cards from co-conspirators to
20 lessors of the property saying that Coen's in big
21 trouble. We've got their actions towards the bank, their
22 conversations with the bank, which Cecil Crowley has
23 talked about, how he spoke with the folks at NBSC, and
24 what ultimately ends up being a lease on all this
25 property in the name of DC & Sons, Red's, the Trawler,

1 and now they own the other one. I think there is ample
2 evidence to show this conspiracy.

3 And, Your Honor, there are two recent cases
4 on civil conspiracy which have come out in the last
5 month. The first is Jenkins versus Scott Few, and just
6 flip up 4763. It was the -- December 8th was the filing
7 of it. I think it's the very last Davis advance sheet,
8 and then another was filed December 22nd, Preachton vs.
9 Ward, and in this, it talks about whether direct or
10 circumstantial evidence is used to prove a conspiracy,
11 and it stated circumstantial evidence is typically the
12 only thing that can be used to prove conspiracy due to
13 the nature of a conspiracy in and of itself.

14 There is plenty of circumstantial evidence in
15 this case to show that not only are they utilizing this
16 litigation for vindictive reasons, they're always
17 utilizing litigation and they utilize this litigation to
18 go to the town of Mount Pleasant and try to mandate
19 Mr. Coen give them additional parking following the order
20 of Mr. Wills in which he said you're limited to 35
21 spaces.

22 So what were they to do, to run a restaurant
23 that required 55 spaces, lash out back at Mr. Coen and
24 try to get some more parking on the Trawler and do that
25 through this litigation and through discovery in this

1 litigation and using this litigation for an ulterior
2 purpose.

3 So Mr. Coen was damaged. They have damaged
4 his reputation and standing in the community, which are
5 all compensable injuries in the abuse of process claim
6 and the civil conspiracy claim, special damages. We've
7 shown what the special damages were. We provided the
8 financial information. They have subpoenaed the
9 information from Greg Taylor's office, who was involved
10 in the deed in lieu of giving this property back. They
11 subpoenaed, I believe, the records from NBSC. They have
12 got all that information at their disposal, and we
13 presented the cost of the lease to them for the financial
14 information provided December 20th.

15 There was no cutesy answers, I assure you.
16 We provided them that information. We gave them the
17 basis of future damages based on their own lease.

18 What is the value of this, the event that all
19 this litigation wasn't ongoing and Mr. Coen could proceed
20 with his business ventures as he wanted to, but was being
21 held up by this litigation? What is the reasonable basis
22 for that? Let's look at DC & Sons and see how much
23 they're paying for that property now. Damages don't have
24 to be proven with specificity, but there is enough to go
25 way beyond mere speculation on this record.

1 There have been no intentional delays either
2 by Mr. Coen in this case. At every step of this case,
3 let's move forward. I'm prepared to try this case. The
4 very first hearing we had back in your office, I said we
5 need to move this along. This is in business court.
6 Mr. Epting was going on a vacation. We've delayed things
7 until we got to the January time frame. I've been
8 involved with the case, I think, six months by then.

9 I said we'll still try it. I'm not going to
10 hide from a trial. I'll try a case, but this case
11 doesn't deserve to be here, and if Mr. Epting's argument
12 is what it is, then it should be in arbitration as all
13 matters that concern parking. If not, the counterclaims
14 are right, they're appropriate, they're founded well in
15 the law and fact, and there is plenty of evidence in this
16 record, including testimony of Dianne Crowley and Cecil
17 Crowley of the vindictive nature of this lawsuit, and I
18 think in and of itself, talk about being sued seven times
19 shows there is an ulterior purpose behind this.

20 I'm sorry if there has been litigation
21 between these parties and they haven't been able to get
22 along, but that is what the court system is here for, and
23 that is where we show that there is an abuse of process,
24 there is an abuse of process, and they had a counterclaim
25 for abuse of process.

1 They didn't believe any of those other claims
2 were ripe, but DC & Sons was named in that prior
3 litigation. DC & Sons filed pleadings in that prior
4 litigation. DC & Sons appealed the magistrate's order
5 and the issues before the magistrate which would be
6 included in your arbitration, your order for arbitration,
7 so if they now take the position we agreed otherwise
8 outside the bounds of your order, I think that you can
9 mandate that they go back in the meeting of the minds at
10 the time the order was entered and go forward, because
11 that's how the Court is to sue -- I've been doing a
12 little research on Mr. Epting's appeal, which I think my
13 answers are right, and it's the meeting of the minds in
14 the arbitration order that was entered and the issues
15 then present that determine whether the matter is
16 arbitrable.

17 That is what the meeting of the minds were,
18 the issues concerning property, and if for some reason
19 they decide on their own, and I dispute that they did,
20 still, it's a matter within this Court's jurisdiction, go
21 back, arbitrate, look at this, and I think that is where
22 we are.

23 Thank you, Your Honor.

24 MR. EPTING: Judge, Mr. Kefalos and I have
25 had a chance to talk. We'll accept Mr. Bucyk's proposal

1 that the DC & Sons suit and his counterclaim goes to Tom
2 Wills for a decision by arbitration. We can try the case
3 with Dan David. He's leaving in three days. So we agree
4 to it, Judge. We accept it.

5 THE COURT: So your case with Hugh all goes
6 to arbitration?

7 MR. EPTING: Our DC & Sons case and Hugh's
8 counterclaims, we'll just take them over to Tom Wills and
9 try them over there.

10 THE COURT: So next week you're just going to
11 try a case against Dan's client?

12 MR. EPTING: That's it.

13 THE COURT: Well, there you go.

14 MR. BUYCK: No problem.

15 THE COURT: Well, that presumably makes my
16 life a little bit easier, but that would be very
17 optimistic, I'm sure, so, Dan, are you ready -- well, you
18 had to be ready to go to trial next week.

19 MR. DAVID: We have one little problem with
20 some of the witnesses that have been subpoenaed. Since
21 everybody has subpoenaed them, I just want to make sure
22 that those subpoenas still stand. There are about ten,
23 and I'll talk to Hugh about that.

24 THE COURT: All right.

25 MR. DAVID: I don't have a problem with that.

1 THE COURT: All right. Well, then, good.
2 Then we might even get it done in a couple of days, three
3 days?

4 MR. EPTING: Yes.

5 THE COURT: All right. Let me ask you this:
6 I had asked you all to come today with pretrial orders
7 and proposed jury instructions.

8 MR. EPTING: We have ours, Judge, but you're
9 right, we'll need to go back in and adjust them, but we
10 can have them down tomorrow.

11 THE COURT: Why don't you just e-mail them to
12 me. Can you do that?

13 MR. DAVID: Yes, sir. I have them, but like
14 Drew said, we'd have to make some changes.

15 THE COURT: Just e-mail them to me then as
16 amended, and I'll let Don know that. That's good.

17 MR. EPTING: Are you going to enter a form
18 order or is the order simply that the case of DC & Sons
19 versus the Coen defendants and the counterclaim are
20 referred to binding arbitration before Tom Wills --

21 THE COURT: Help me out with which case --

22 MR. EPTING: There are two cases, Judge, but
23 it really is -- it would just be the DC & Sons claims
24 against --

25 THE COURT: So that would be the

1 08-CP-10-4675?

2 MR. EPTING: I think, Judge, all parties are
3 in both actions, whether they're listed there or not, but
4 the idea is whether stated in the one action or the
5 other. The DC & Sons claims, as stated in whichever of
6 the lawsuits, the complaint or its counterclaim, together
7 with the Coen defendant's claims back against DC & Sons
8 are going to Tom Wills for binding arbitration.

9 MR. DAVID: Do you want to send them all?

10 MR. EPTING: No.

11 THE COURT: All right. If everybody can live
12 with a form four, we'll just do it up that simple and
13 just use that language that you just stated.

14 MR. EPTING: That's all we need, Judge.

15 MR. BUYCK: I would ask that it be also noted
16 that it's is being remanded for arbitration pursuant to
17 the prior order of the Court dated whatever it is,
18 whatever that order was, pursuant to the prior
19 arbitration order.

20 MR. EPTING: You couldn't possibly do that,
21 Hugh, because DC & Sons is not a party. I'm just
22 accepting Mr. Bucyk's argument, and so we'll do it. I'm
23 not going to get in a situation where the order was a
24 referral of something but not my complaint of DC& Sons
25 and then face an argue in front of Tom Wills that, well,

1 the prior order limited what could be arbitrated and DC &
2 Sons' claims can't.

3 THE COURT: Just all the matters that are
4 involved in this case, claims and counterclaims, go to
5 arbitration.

6 MR. EPTING: Tom Wills.

7 MR. BUYCK: Your Honor, I got a problem with
8 that now because I've got to run it by my client. My
9 position is the prior order of arbitration covers these
10 matters, and that order controls, and that is my
11 position. I cannot --

12 THE COURT: In other words, you want it to go
13 to arbitration and then say, well, it's already been
14 arbitrated.

15 MR. BUYCK: No, I don't want to say that. I
16 want to say this is another issue that has to be
17 considered within that first arbitration, but it's still
18 part of this initial arbitration order. These matters
19 are controlled by the initial arbitration order, and that
20 is my position. I can't agree for my client now to say,
21 okay, we're going to enter a new arbitration order
22 because --

23 THE COURT: Why don't you get with him and by
24 the end of the day get back with me as to what you agree
25 to or not agree to, otherwise we still may just be trying

1 it all.

2 MR. DAVID: Your Honor, just for my own
3 edification, there was a de bene deposition taken of Matt
4 Norton, and I want to make sure that -- I didn't take it,
5 I didn't call it, I don't have the film or anything, but
6 y'all are going to present that whether Hugh's in the
7 case or not.

8 MR. KEFALOS: I don't know that we'll use it
9 simply against them, but I have no objection to it using
10 it if it's appropriate.

11 MR. DAVID: It goes to the issue of parking,
12 at least from his testimony, as I understood it, is the
13 whole issue of the case as to whether or not there was
14 some use, whether it be a lease, month to month, whatever
15 it may be on this particular property, which was never
16 resolved to my client's satisfaction, so I don't -- you
17 know, I want to at least have it available.

18 MR. KEFALOS: I have no objection to making
19 it available. When the time comes, I think we'll have
20 some problems with some of the substantive testimony
21 that's offered in it, but we can deal with that later. I
22 think there are some things that Dan does not appreciate
23 what happened in the case prior to him being in the case
24 that will make those arguments moot.

25 THE COURT: Okay. I'm not sure if we've made

1 progress or not, but let me know by the end of the day.
2 One way or another, I'll hear from you by the end of the
3 day, and then if you say everybody has agreed on what
4 goes to arbitration, then that's fine. If you don't,
5 then I'll rule on what we've done first thing in the
6 morning.

7 MR. BUYCK: And I may be able to come up with
8 some language to the effect that all issues, including
9 defenses and all, are in the order --

10 MR. EPTING: I'm not in any way trying to
11 keep you from putting in any defense that you want from
12 Tom Wills to the DC & Sons claims or limit your
13 counterclaims in any way in litigation, if that is your
14 question.

15 MR. BUYCK: I understand that, but, still, my
16 position is the prior arbitration order controls. That
17 is the arbitration that controls this, and now they're
18 asking me enter into a new agreement, and, of course, I
19 cannot do that without my client, and I'm going to have
20 to look at the agreement, look at the terms of the
21 agreement, and make a consideration from that point,
22 because otherwise I'm putting myself in a bad position.

23 THE COURT: Let me know by the end of the
24 day.

25 MR. DAVID: Your Honor, could I just ask one

1 more question of Drew and George? Drew, in your
2 argument, in the parking -- and maybe I misunderstood.
3 You were, first of all talking about the parking for
4 Cottage on the Creek, which --

5 MR. EPTING: Wait a minute. I'm not with
6 you. You mean here this morning?

7 MR. DAVID: Yes, here this morning, and then
8 there was another time that either you or Hugh were
9 talking about parking on the Trawler.

10 MR. EPTING: I never had anything to say
11 about parking on Cottage on the Creek.

12 MR. DAVID: Okay. All of what you were
13 referring to is the Trawler.

14 MR. EPTING: What I was reading had to do
15 with the RedWings issues, nothing to do with Cottage on
16 the Creek.

17 MR. DAVID: I understand, but RedWings, there
18 is a question of whether or not RedWings had a right to
19 park on the Cottage on the Creek property. Is that the
20 parking you were talking about or were you referring to
21 the parking on the Trawler?

22 MR. EPTING: The RedWings parking, the 55
23 spaces on the Trawler, the subject of the other lawsuit,
24 the first lawsuit.

25 MR. DAVID: Okay. The order in arbitration

1 addresses that, doesn't it? To some extent --

2 MR. EPTING: The key to it is the parties.
3 The parties.

4 MR. DAVID: RedWings LLC.

5 MR. EPTING: Right. It has nothing to do
6 with DC & Sons, which is what Hugh and I are talking
7 about.

8 MR. DAVID: I understand what we're saying, I
9 just don't agree with that, but be that as it may -- I
10 was just concerned with where your parking issue was.

11 MR. EPTING: Judge, since we're here and it
12 would be easier for us, if it's all right, and I'll be
13 responsible if Hugh does come back down and pick it up
14 and change it, but since I'm here, here is our pretrial
15 brief and our charges and an extra copy for the Court.

16 THE COURT: All right. Wonderful.

17 MR. EPTING: Thank you, sir. And I'll
18 reserve giving them to these gentlemen until we decide
19 where we are. Thank you, Judge.

20 MR. DAVID: Your Honor, can we have an
21 opportunity Tuesday morning to take up some procedural
22 issues?

23 THE COURT: Yeah. Tuesday I think Judge
24 Dennis is qualifying, and they'll start at 9:30. I told
25 them that my trial might likely go into the next week and

1 I would like first crack at the jury panel before anybody
2 else, you know, got to get through a number of people
3 that say, look, I can't be here two weeks, and so once we
4 get the jury drawn, I will send them to lunch, we'll tell
5 them to come back at, like, 2:00, so whatever time we
6 have before that we can knock out whatever we need at
7 that time.

8 MR. DAVID: Okay.

9 THE COURT: Okay?

10 MR. EPTING: Judge, there was one thing that
11 I meant to give you that I didn't that I referenced.
12 It's already on file. I referenced the affidavit of
13 Mr. Linton, and I just wanted to give you a copy of that,
14 and I also referenced the September 2009 suit, so these
15 are just -- so you don't have to reply to those
16 materials.

17 - - -

18 (Whereupon, the proceedings were concluded.)

19 - - -

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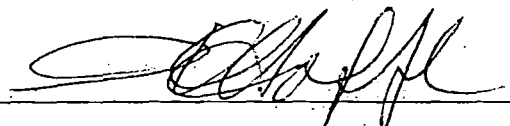
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25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official 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 Charleston County, South Carolina, on the 13th of January 2011.

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

March 7, 2011

A handwritten signature in dark ink, appearing to read 'A. Haffenden', is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) ASSIGNMENT OF COMMERCIAL LEASE

THIS ASSIGNMENT OF COMMERCIAL LEASE (this "Assignment") is made as of March 30, 2010, by and between Lowcountry Capital, LLC, a South Carolina limited liability company (the "Assignor") and Lucasville Investments, LLC, a South Carolina limited liability company, or its permitted assigns (the "Assignee"); Assignor and Assignee collectively herein, the "Parties".

WITNESSETH:

WHEREAS, Assignor is the Landlord under that certain Commercial Lease by and between Lowcountry Capital and Redwing, LLC, as Tenant thereunder, dated June 10, 2004, covering certain real property located in Mount Pleasant, South Carolina (the "Lease"), a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, Assignor, as Landlord under the Lease, and Redwing, LLC, as Tenant under the Lease, also entered into and executed that Memorandum of Lease, dated June 10, 2004 (the "Memorandum of Lease"), a copy of which is attached hereto in **Exhibit "A"** and incorporated herein by reference; and

WHEREAS, the Lease and Memorandum of Lease are collectively herein referred to as the "Red's Lease"; and

NOW, THEREFORE, in consideration of the foregoing, the sum of Ten and No/100 (\$10.00) Dollars, upon the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals and Definitions. The recitals set forth above are true and correct and incorporated herein by reference. All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed thereto in the Red's Lease.
2. Assignment and Assumption. Effective as of the date of this Assignment, Assignor hereby assigns, sells, conveys and transfers to Assignee all of the rights, title and interest of Assignor, in and to the Red's Lease, and Assignee assumes all the duties and obligations of Assignor to be performed under this Assignment.
3. Entire Agreement. This Assignment contains the entire agreement and understanding by and between the Parties relating to the assignment granted herein, and no representations, promises, agreements, or understandings, written or oral, relating thereto and not contained herein shall be of any force or effect.
4. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

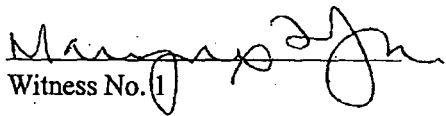
5. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

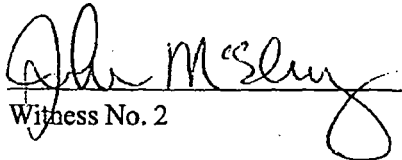
6. Governing Law. This instrument shall be governed by the laws of the state of South Carolina.

WITNESS our Hands and Seals this 30th day of March, in the year of our Lord Two Thousand Ten and in the Two Hundred and Thirty-Fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

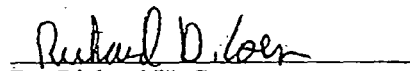
WITNESSES:


Witness No. 1


Witness No. 2

ASSIGNOR:

Lowcountry Capital, LLC,
a South Carolina limited liability company


By: Richard H. Coen
Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

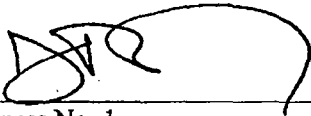
The foregoing instrument was acknowledged before me by Lowcountry Capital, LLC, by Richard H. Coen, its Manager, this 30 day of March, 2010.

 (SEAL)
Notary Public for the State of South Carolina
My commission expires: 06/2015

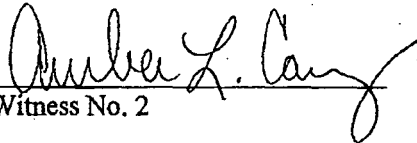
[Balance of page intentionally blank. Signatures continue on following page.]

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

WITNESSES:

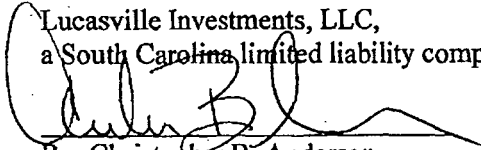


Witness No. 1



Witness No. 2

ASSIGNEE:

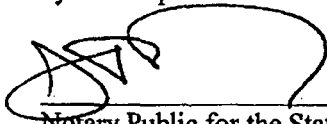


By: Christopher B. Anderson
Its: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me by Lucasville Investments, LLC,
by Christopher B. Anderson, its Managing Member, this 30th day of March, 2010.



(SEAL)
Notary Public for the State of South Carolina
My commission expires: 11/3/2018

EXHIBIT "A"

Lease

Memorandum of Lease

STATE OF SOUTH CAROLINA)

) COMMERCIAL LEASE

COUNTY OF CHARLESTON)

THIS COMMERCIAL LEASE ("Lease") is made and entered into this 10th day of June, 2004 ("Effective Date") by and between LOWCOUNTRY CAPITAL, LLC., a South Carolina limited liability company ("Landlord") and REDWING, LLC., a South Carolina limited liability company ("Tenant") (Landlord and Tenant may be referred to individually as a "Party" or collectively as the "Parties").

WHEREAS, the Parties entered into a Termination of Commercial Lease, dated simultaneously herewith, which terminated the prior Commercial Lease between Lowcountry Capital, LLC and RedWing, LLC dated October 3, 2003; and

WHEREAS, the Parties desire to enter into a new Commercial Lease.

WITNESSETH:

In consideration of the covenants and agreement of the respective Parties herein contained, the Parties hereto, for themselves, their heirs, successors, distributees, executors, administrators, legal representatives and permitted assigns, do hereby agree as follows:

A. LAND LEASE:

Landlord leases the land which contains the Demised Premises (as defined in Exhibit A ~~and depicted in Exhibit B~~) from Snowmill, LLC as successor to Snowmils Properties, LLP and Mill Church Properties, LLC pursuant to that land lease dated October 1, 2003 ("Land Lease"). Said premises are situate, lying and being in the State of South Carolina, County of Charleston, located at Church Street and Shem Creek in Mount Pleasant, SC, consisting of a restaurant building and improvements known now as Red's Ice House and the non-exclusive right for parking in those designated spaces in Exhibit ~~A~~ A-1 ENC ENC

B. TERM AND DELIVERY OF DEMISED PREMISES:

The term of this Lease shall commence on the Effective Date and shall terminate on September 30, 2018 ("Expiration Date") unless this Lease is earlier terminated pursuant to Section D hereof ("Initial Term").

C. OPTION TO RENEW:

At the expiration of the Initial Term of this Lease and at the expiration of any renewal term or extension of this Lease, with the approval of Landlord, approval not to be unreasonably withheld, Tenant may renew this Lease for an additional, five-year term. Tenant shall exercise its right to renew the Lease by providing Landlord at least one hundred twenty (120) days written notice of its intent to do so prior to the expiration of the existing Lease term.

The Rent for the first year of any renewal term shall be negotiated between Landlord and Tenant beginning within one hundred twenty (120) days of the expiration of the Initial Term. During any renewal term, the Rent shall escalate 2% annually (in the manner described in Section D (I)).

D. COVENANTS AND CONDITIONS OF LEASE:

This Lease is made on the following covenants and conditions which are expressly agreed to by Tenant and Landlord:

1. RENT:

Tenant covenants to pay as rental to Landlord the annual sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) ("Rent"), payable in monthly installments of Ten Thousand and No/100 Dollars (\$10,000.00), in advance of the first (1st) day of each month, and mailed to Landlord, or to such other address as Landlord may designate in writing to Tenant from time to time. The Rent is due on the first (1st) day of each month and shall not be withheld for any reason whatsoever. The Rent increases on the first anniversary of the Lease, and at each anniversary thereof, by two percent (2%) of the prior year's Rent.

Provided, that if Tenant pays the sum of Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00) at any time during the Initial Term, the Rent shall decrease by Five Thousand and 00/100 Dollars (\$5,000.00) per month.

Each monthly rental payment, as set forth above, is due in advance on the first (1st) day of the calendar month. The parties agree that Tenant shall have a ten-day grace period within which the Landlord may receive the monthly advance rental payment without default; however, if the Landlord does not receive the monthly rental payment by six o' clock p.m. on the tenth day of the calendar month, the Tenant shall be in default without further notice, and the Landlord may, at its option, exercise its remedies provided herein for default, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month. Tenant shall not be in default for nonpayment of rent until the later of the tenth (10th) day of the calendar month or five (5) days after receiving written notice of the non-payment of rent from Landlord.

2. LEASE AS IS:

The Property is to be leased "as is". Tenant shall have sole responsibility for any and all improvements of the Property.

3. AUTHORIZED USE:

Tenant agrees not to abandon or vacate the Demised Premises and shall use the Demised Premises for the following purpose, and for no other purpose whatsoever, without the written consent of Landlord first had and obtained:

Tenant will use the Demised Premises for a restaurant and bar and for any other lawful purpose in the ordinary course of operating its business. Tenant shall have the right to seasonal closings of the Demised Premises.

Tenant will not permit or suffer anything to be done nor keep anything in or about the Demised Premises, which would render the insurance thereon void or voidable or cause cancellation. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Demised Premises, any article or material which is prohibited by law or by standard property insurance policies of the kind customarily in force with respect to premises of the same general type as those covered by this Lease.

4. INSURANCE/INDEMNITY:

- A. EXCEPT AS TO INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM THE NEGLIGENCE OR WILLFUL ACTS OF LANDLORD FOR WHICH LANDLORD IS LEGALLY LIABLE, TENANT AGREES TO INDEMNIFY AND SAVE LANDLORD HARMLESS FROM ALL CLAIMS (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST SUCH CLAIMS) (I) ARISING OR ALLEGED TO ARISE FROM ANY ACT OR OMISSION OF TENANT OR TENANT'S AGENTS, EMPLOYEES OR CONTRACTORS, OR (II) RESULTING FROM ANY INJURY TO ANY PERSON OR DAMAGE TO THE PROPERTY OF ANY PERSON OCCURRING DURING THE TERM OF THIS LEASE IN THE DEMISED PREMISES. TENANT AGREES TO USE AND OCCUPY THE DEMISED PREMISES AND OTHER FACILITIES OF THE BUILDING AT ITS OWN RISK AND HEREBY RELEASES LANDLORD, ITS AGENTS OR EMPLOYEES, FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO THE FULL EXTENT PERMITTED BY LAW. THE INDEMNIFICATION PROVISION HEREIN SHALL SURVIVE ANY TERMINATION OF THIS LEASE BY LAPSE OF TIME OR OTHERWISE.
- B. Tenant shall maintain property insurance on the Property and such additions and improvements by Tenant, which have become or are to become the property of Landlord at the termination of the Lease. Such insurance shall be maintained with such companies and in such amounts desired by Landlord, and suitable for coverage of the Property and Demised Premises. Landlord shall also maintain commercial general liability insurance to afford such protection and with such companies as desired by Landlord. Tenant shall maintain at its expense (i) property insurance on all of its personal property and removable trade fixtures located in the Demised Premises and on all additions and improvements made by Tenant, (ii) commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence

covering the Demised Premises, (iii) property insurance coverage adequate to pay one hundred percent (100%) of the Rent to Lessor for the period of time in which Lessee is unable to operate its business as a result of sustained property damage, and (iv) building ordinance coverage insurance. Tenant's commercial general liability insurance shall list the Landlord, Landlord's Agent, and Snowmill, LLC as additional insured parties and provide that it is primary over any insurance carried by Landlord.

C. Anything in this Lease to the contrary notwithstanding, the Parties hereto hereby waive any and all rights of recovery, claim, action or cause of action, against each other, their respective agents, officers and employees for any loss or damage that may occur to the Demised Premises, the Property and to all property, whether real, personal or mixed, located in or at the Demised Premises or the Property, by reason of fire, the elements, or any other peril as defined in the basic peril property insurance policy approved for use in South Carolina from time to time regardless of cause or origin, including negligence of the Parties hereto, the respective agents, officers and employees. Since the above mutual waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each Party hereto agrees immediately to give each insurance company which has issued to it property insurance policies, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of such coverage by reason of said waivers.

D. Each of the insurance policies referred to in this paragraph shall provide (if provision is obtainable), that it shall not be canceled without at least thirty (30) days prior written notice to Landlord and Tenant. In addition, the Parties shall furnish to one another certificates or copies of each of the insurance policies, which each Party is required to maintain promptly after obtaining such insurance.

E. The Parties mutually agree that they shall not be responsible or liable to each other, their employees, agents, customers, or invitees for bodily injury (fatal or nonfatal) or property damage occasioned by the acts or omissions of any other tenant or such tenant's employees, agents, contractors, customers, or invitees within the Property.

5. CONDITION OF THE DEMISED PREMISES:

All improvements, alterations and additions to the Demised Premises desired by Tenant shall be made only at Tenant's expense, in good and workmanlike manner and in accordance with plans and specifications, which have been previously approved in writing by the Landlord. Landlord's approval of the plans, specifications and working drawings for Tenant's alterations and/or Landlord's approval of Tenant's plans for Landlord's work shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or

compliance with all laws, rules and regulations of governmental agencies or authorities. If the improvements, alterations, or additions are to be made by a contractor other than Landlord's, Landlord reserves the right to approve such contractor, which approval shall not be unreasonably withheld, and to require adequate lien waivers, bonds, permits, licenses and insurance. All improvements and additions made by or for the Tenant and permanently attached to the Demised Premises, including without limitation all partitions, carpets, lighting fixtures, doors, hardware, shelves, cabinets and ceilings, shall remain in the Demised Premises and shall be surrendered to Landlord at the Expiration Date or earlier termination of this Lease. Tenant has inspected and accepts the Demised Premises in the same condition they are in at the time of execution of this Lease. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Demised Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Demised Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance or regulation applicable thereto.

Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that it has granted its prior consent to Tenant for the material alteration of some or all of the Demised Premises, in Tenant's sole reasonable discretion. Tenant shall be responsible for payment of the costs of any such alterations provided the total cost of such alterations.

Notwithstanding anything in this Lease to the contrary, Tenant acknowledges that all photographs located in or attached to the Demised Premises are the personal property of Richard H. Coen and have been temporarily loaned to the Tenant for use in Tenant's business. During the term of this Lease, Tenant shall not damage or take possession of such photographs nor permit any other party to damage or take possession of such photographs. Tenant shall use its best efforts to keep such photographs in good repair. Upon the termination or expiration of this Lease, Tenant shall return such photographs to Richard H. Coen in good repair.

6. REPAIR AND CARE OF PROPERTY:

- A. Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain the Demised Premises in good order and repair. Tenant shall maintain the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for leakage, cleaning, and other customary periodic maintenance. Tenant agrees to return the Demised Premises to Landlord at the expiration or prior termination of this Lease in as good a condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted.
- B. Tenant shall keep and maintain the foundations, roof, and structural portions of the exterior walls of the Demised Premises in good condition and repair. Landlord gives to Tenant exclusive control of the Demised Premises and shall be under no obligation to inspect the Demised

Premises. Landlord shall not be obligated to make any repair or replacement.

7. PAYMENT OF TAXES AND OTHER ASSESSMENTS:

Landlord shall pay annually all real estate taxes on the Demised Premises. Tenant shall pay its Pro-Rata Share (as defined below). Further, Tenant shall be responsible for and shall pay before delinquent all municipal, county, federal or state taxes coming due during or after the terms of this Lease against any leasehold interest or personal property of any kind owned or placed in, or about the Demised Premises by Tenant. Tenant shall pay all Solid Waste Disposal User Fees for Tenant's waste. Landlord and Tenant acknowledge and agree that Tenant's Pro-Rata Share of the real estate taxes under this Lease is One Hundred percent (100%) ("Pro Rata Share") of Charleston County TMS # 517-15-00-003 plus one hundred percent (100%) of the real estate taxes related to the spaces designated in Exhibit A. *Amended CC page*

Both Parties agree that if Tenant must pay real estate taxes directly to obtain tax incentives, that Tenant may pay Tenant's share of taxes directly, providing proof of same to Landlord.

8. PAYMENT OF UTILITIES:

Tenant shall contract for and pay, at its own expense and without damage or threat of damage to the Property or any part of the Property, electrical power and any other utilities or services required for its use of the Demised Premises, including, but not limited to, telephone service, electric power and connections for Tenant's equipment, and water and sewer. Landlord shall cause an electrical meter to be installed for the Demised Premises. Tenant shall keep such meter, or any other meters measuring the electricity consumed at the Demised Premises, in good order and repair.

9. SERVICES

Landlord shall not be liable for loss or damage arising from failure to provide utilities or services as a result of strike, casualty, repairs, or other causes beyond Landlord's reasonable control, nor shall any such failure relieve Tenant from the obligation to pay the full amount of Rent herein set forth, nor shall any such failure constitute or be construed as a constructive or other eviction of Tenant. Should Tenant desire any additional services beyond those described in Paragraph 7, above, Landlord may, at Landlord's option, upon reasonable advance notice from Tenant to Landlord, furnish such services. Tenant agrees to pay Landlord upon demand the cost for such additional services as Additional Rent.

10. COMPLIANCE WITH LAWS:

During the term of this Lease, Tenant and Landlord shall, at their own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county and city governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto or any part thereof.

11. ALTERATION OF PROPERTY AND INSTALLATION OF FIXTURES AND
OTHER APPURTENANCES:

Tenant may, with the prior written consent of Landlord, in Landlord's sole discretion, but at its own cost and expense and in a good and workmanlike manner, make such alterations and repairs in the Demised Premises as Tenant may require for the conduct of its business. Any alterations or improvements to the Demised Premises, shall at the option of Landlord become the property of Landlord at the expiration or sooner termination of this Lease.

Any and all work performed by Tenant or its contractors, shall be with workmen and contractors approved in advance in writing by Landlord and in a manner and upon terms and conditions and at times satisfactory to and approved in advance in writing by Landlord. Landlord will not unreasonably withhold such approval. All work shall be approved by and in compliance with any and all laws, rules, and regulations of governmental agencies or authorities and in compliance with all building codes.

Unless otherwise agreed in writing by Landlord, prior to and at all times during the performance of the work by any of Tenant's contractors or subcontractors, Tenant shall require such contractors to provide, and shall require all subcontractors of every tier to provide, the insurance coverages described below, with deductibles for their own accounts, on policy forms acceptable to Landlord and with limits not less than those shown below, all of which shall be provided at no cost to Landlord:

	TYPE OF INSURANCE	MINIMUM LIMITS
I.	Workers' Compensation Employer's Liability	Statutory \$100,000
II.	Commercial General Liability (Including Products/Completed Operations)	Per Occurrence. \$1,000,000
III.	Automobile Liability (All Owned, Non-Owned and Hired)	Combined Single Limit \$1,000,000

Tenant shall require that such contractors' Workers' Compensation insurance be endorsed to provide that the underwriter waives its right of subrogation against Landlord, its Affiliates and Agents. In addition, Commercial General Liability and Automobile Liability policies shall be endorsed specifically to name Landlord, its Affiliates and Agents as Additional Insured parties and be endorsed to provide that they are primary coverages, not in excess of any other insurance available to Landlord, its Affiliates and Agents to insure Landlord, its Affiliates and Agents against claims arising from such work. Evidence of such specific

endorsements shall be furnished to Landlord prior to commencement of such work. IN THE EVENT TENANT FAILS TO OBTAIN SUCH SPECIFIC ENDORSEMENTS, TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD, ITS AFFILIATES AND AGENTS HARMLESS FROM ANY AND ALL LOSSES, CLAIMS, DAMAGES, AND EXPENSES WHICH WOULD BE COVERED BY SUCH SPECIFIC ENDORSEMENTS THAT LANDLORD MAY INCUR, INCLUDING THOSE BASED IN WHOLE OR IN PART ON THE IMPUTED, JOINT, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF ONE OR MORE OF THEM, INCLUDING (WITHOUT LIMITATION) COSTS OF DEFENSE AND ATTORNEYS' FEES. Tenant shall furnish to Landlord, prior to any such contractor or subcontractor commencing work hereunder, certificates evidencing that the required insurance is in force. The certificates shall provide that in the event of cancellation or material change, thirty (30) days' prior written notice shall be given to Landlord. If requested to do so by Landlord, Tenant shall also furnish the originals or certified copies of any such contractor's insurance policies for inspection. Such policies shall be subject to the approval of Landlord as to adequacy. Should Tenant fail to procure evidence of any such contractor's insurance or to require any such contractor to maintain in force the insurance specified herein, Landlord may secure such insurance and the cost thereof shall be borne by Tenant. Tenant agrees to reimburse Landlord as Additional Rent the cost of any such insurance plus a five percent (5%) administrative charge within ten (10) days after billing by Landlord. Any sum and financing unpaid fifteen (15) days after billing by Landlord shall bear interest at the rate of eighteen percent (18%) per annum until paid to Landlord. Compliance with the provisions of this subparagraph by Tenant for each such contractor and the limits of liability shown for each of the insurance coverages to be provided by Tenant for all such contractors shall not be deemed to constitute a limitation of Tenant's liability for claims or in any way limit, modify or otherwise affect Tenant's indemnification obligations. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for such contractor or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive or invalidate any of the provisions of this Lease. Where used herein, "Affiliates" shall mean any corporation, partnership, joint venture, division or other legal entity, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Landlord, its employees, agents, and representatives.

12. SUBORDINATION OF LEASE, ATTORNMEN AND ESTOPPEL CERTIFICATE:

Tenant agrees to subordinate this Lease to any mortgages, the Land Lease and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust pursuant to a Subordination, Non-Disturbance and Attornment Agreement. Tenant also agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at sale pursuant to any foreclosing or deed-in-lieu thereof, and to the Lessor in the event of a termination of the Land Lease.

Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord a statement certifying any facts that are then true with respect to this Lease, including without limitation (if such be the case) that this Lease is in full force and effect, that there are no modifications or amendments to the Lease except as disclosed, that Tenant is in possession of the Demised Premises, that Tenant has commenced the payment of Rent, that no Rent or

other sums have been paid to Landlord in advance, and that Tenant claims no defense or off-set to the due and full performance of its obligations under this Lease, and other such reasonable facts requested in tenant estoppel certificate.

13. CONDEMNATION:

If the whole of the Demised Premises, or such portion thereof as will make the Demised Premises unusable for the purpose herein leased be condemned by any legally constituted authority, this Lease shall terminate on the date when possession thereof is taken by public authorities, and Rent shall be accounted for as between Landlord and Tenant as of that date. In the event only a portion of the Demised Premises is acquired by condemnation as will leave the remaining Demised Premises, after alterations and repairs, in condition suitable for use by Tenant including comparable square footage space, type and quality of space, similar entrances/exits, and comparable parking, the monthly rental payments from the day of such acquisition to the end of the original or extended term of this Lease shall be continued, and Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs which shall be required to restore the Demised Premises to a reasonably similar location within the Property. All sums awarded by the condemning authority for the taking of the interest of Landlord or Tenant, whether as damages or as compensation, will be the property of Landlord or Tenant as awarded. The Parties agree to notify the Other Party within two working days of notice by any legally constituted authority of its intent to condemn the Demised Premises.

14. RIGHT OF ENTRY BY LANDLORD:

Tenant, at any time during the term of this Lease, shall permit inspection of the Demised Premises at any reasonable time, by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Demised Premises or in order for the Landlord to show the Demised Premises to prospective Tenants. Landlord shall use its best efforts to minimize any interference to Tenant's use of the Demised Premises in such event. Ninety (90) days prior to the expiration of this Lease, Landlord may post suitable notices on the Demised Premises that the same are "For Rent" and show the Demised Premises to prospective tenants at reasonable times.

15. ASSIGNMENT, SUBLETTING, AND CHANGE IN OWNERSHIP:

Tenant shall not sublet, assign, mortgage or encumber this Lease, or license, or permit the Demised Premises or any part thereof to be used by others, whether voluntarily or by operation of law or otherwise, without the prior written consent of Lessor in each instance. Landlord shall not unreasonably withhold consent to such sublease, assignment, mortgage or encumbrance. The sale or transfer of membership interest, if Tenant be a limited liability company, shall be deemed an assignment of this Lease. It is understood that one hundred percent of Tenant's membership interest is currently owned by Dianne Crowley, and that transfer of any of her membership interest in Tenant to others shall be deemed an assignment. In the event this Lease or any interest herein is assigned or the Demised Premises or any part thereof sublet without Landlord's prior express written consent, Tenant shall remain fully liable under the terms, covenants, and other conditions of this Lease. Landlord shall thereupon have the right and option to cancel and terminate this Lease effective upon fifteen (15) days

notice to Tenant given by Landlord at any time thereafter either as to the entire Demised Premises or as to only the portion thereof which Tenant shall have attempted to assign or sublease or otherwise permitted some other party's occupancy without Landlord's prior express written permission; and if Landlord elects to cancel and terminate this Lease as to the aforesaid portion of the Demised Premises, then the Rent and other charges payable hereunder shall thereafter be proportionately reduced. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

16. DAMAGE OR DESTRUCTION:

If the Property or the Demised Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty covered by Tenant's policy of fire and extended coverage insurance, then Tenant shall replace the Demised Premises with a building conforming to the specifications of the building which was destroyed or an equivalent building satisfactory to Landlord and Tenant, as soon as possible after the insurance adjustment, or at its option, and after giving written notice to Landlord within thirty (30) days after the occurrence of said casualty or destruction, Tenant may turn all insurance proceeds over to Landlord, Landlord's mortgagee, if any, as their interests may appear, and terminate this Lease free of all further liabilities except those incurred prior to termination. In the event that Tenant replace the Demised Premises, Tenant shall remain responsible for the Rent due the Landlord.

17. SURRENDER OF DEMISED PREMISES:

Tenant agrees to deliver all keys and to surrender the Demised Premises at the expiration of the term of this Lease. If Tenant should remain in possession of the Demised Premises after the expiration or termination of this Lease, without the execution by Landlord and Tenant of a new lease or a written renewal or extension of the term of this Lease, then Tenant shall be deemed to be holding over in the Demised Premises. Such holding over shall, unless otherwise agreed in writing, constitute a month to month tenancy only, and Tenant shall pay, as monthly rental, the existing monthly Rent plus fifty percent (50%) and all Additional Rent.

18. QUIET ENJOYMENT:

If Tenant shall pay the Rent and perform and observe all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment of the Demised Premises without interference from Landlord or any person lawfully claiming through Landlord, subject, however to the terms of this Lease and any mortgages or deeds of trust provided for in Paragraph 12 above.

19. WAIVER OF COVENANTS:

It is agreed that the waiving of any of the covenants of this Lease by either Party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision contained herein. No forbearance by either Party to seek a

remedy for any breach of this Lease shall be deemed a waiver by such Party of its rights or remedies with respect to such a breach.

20. DEFAULT BY TENANT:

A. This Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to wit: (a) failure to timely pay any installment of Rent when due, (b) failure to timely pay any installment of taxes or any other sums required to be paid by Tenant hereunder, or if any part thereof, shall at any time be in arrears and unpaid by Tenant for a period of seven (7) days, or (c) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless said default cannot reasonably be cured within thirty (30) days and Tenant shall have commenced to cure said default within thirty (30) days and continues diligently to pursue the curing of same within ninety (90) days from the occurrence of such default), or, (d) any trustee, receiver, or liquidator of Tenant or of all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceedings by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall abandon or vacate the Demised Premises, Landlord shall have the option to pursue any one or more of the following remedies:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearage in Rent or Rent for the remainder of the lease term, enter upon and take possession of the demised premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Demised Premises on satisfactory terms or otherwise.

(2) Enter upon and take possession of the Demised Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, without being liable for prosecution or any claim for damages therefore, and relet the Demised

Premises and receive the Rent therefore; and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting.

(3) Enter upon the Demised Premises without being liable for prosecution or any claim for damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expense which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action.

(4) Acceptance of possession of the Demised Premises by Landlord from Tenant shall not constitute an acceptance of a surrender of the Demised Premises as such unless Landlord shall specifically acknowledge the same in writing.

(5) Except as otherwise provided by statute or rule of law, pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided for herein or any other remedies provided by law, all of which may be enforced cumulatively, nor shall pursuit of any remedy provided for herein constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violation or breach of any of the terms, provisions and covenants herein contained.

B. If Tenant shall not remove its property from the Demised Premises upon termination of this Lease, Landlord may, at its option, remove the same or any of the same in any manner that the Landlord may choose and store the same without liability to the Tenant for loss thereof, and Tenant will pay the Landlord, as Additional Rent, on request, any reasonable expenses incurred in such removal and also for storage of the said effects for any length of time during which the same shall be in the Landlord's possession.

C. In case of any such default, re-entry, expiration and/or dispossession: (1) the Rent due hereunder for the entire term of the Lease shall thereupon become due and payable, and no receipt of money by Landlord from Tenant after termination of this Lease or after the giving of any notice thereof shall reinstate, continue or extend the term of this Lease; (2) Landlord may re-let the Demised Premises or any part or parts or parts thereof, either in the name of the Landlord or otherwise, upon terms and conditions deemed appropriate by Landlord, and for a term or terms which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free Rent, provided, however, that

Landlord shall retain only Five Thousand and no/100 Dollars (\$5,000.00) per month of Tenant's accelerated Rent and return the balance of the monthly Rent to Tenant; (3) As Additional Rent due hereunder, Tenant agrees to pay all reasonable costs and expenses and all reasonable attorneys fees incurred by Landlord in enforcing any of the obligations of Tenant under this Lease, and; (4) Tenant or the legal representatives of Tenant shall in addition to any other remedies contained herein, pay Landlord, as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants herein contained, any deficiency between the Rent hereby reserved and/or covenanted to be paid and the net amount of the Rents collected on the account of the Lease or leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. In computing such liquidated damages, there shall be added to the said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, including but not limited to costs, reasonable attorneys fees, brokerage fees and preparation of the Demised Premises for re-letting as may be deemed appropriate by Landlord, and there shall be deducted the amount of any security deposit held by and forfeited to Landlord. Any such liquidated damages shall be payable immediately upon written demand therefore given by Landlord to Tenant, and the acceptance of partial payment by Landlord shall in no way prejudice Landlord's rights or affect Tenant's responsibility for the payment of the total balance owed. Landlord, at its option, may make such reasonable alternations, repairs, replacements and/or decorations in the Demised Premises as Landlord, in its reasonable judgment, considered advisable or necessary for purposes of re-letting the Demised Premises; and the making of such reasonable alternations, repairs, replacements and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid, and Tenant hereby expressly agrees to pay any reasonable costs incurred in connection therewith as Additional Rent.

- D. If Tenant at any time shall fail to pay any taxes, assessments, or liens, or 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 and at the expense of Tenant. All sums so paid by Landlord and all costs and expense so incurred shall accrue interest at the rate of eighteen percent (18%) per annum from the date of payment or incurring thereby by Landlord and shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.
- E. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or

in equity. For the purpose of any suit brought by Landlord or based on this Lease, this Lease shall be construed to be a divisible contract to the end that successive action may be maintained as successive periodic sums shall mature under this Lease and it is further agreed that failure to include in any suit any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums omitted.

- F. Thirty days notice does not apply to Tenant's failure to pay timely rent, which is governed instead by Section D.1 of this Lease, providing for automatic default after the ten-day grace period, provided, however, that Landlord provide Tenant with written notice of the non-payment of rent by the fifth (5th) day of the calendar month.

21. DEFAULT BY LANDLORD:

This Lease is made upon the condition that Landlord shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth.

22. FAILURE TO PERFORM COVENANT AND NON-WAIVER:

Any failure on the part of either Party to this Lease to perform any obligation hereunder or any delay in doing any act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or other similar cause beyond the control of the Party so failing to perform, to the extent and for the period that such continues, save and except that the provisions of this paragraph shall not excuse a non-payment of Rent, taxes, Additional Rent, and other sums due hereunder on its due date.

Neither acceptance of Rent by Landlord nor failure by Landlord to complain of any action, non-action or default of Tenant shall constitute a waiver of any of Landlord's rights hereunder. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default.

23. RIGHTS OF SUCCESSORS AND ASSIGNS:

The covenants and agreements contained in this Lease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, their heirs, successors, distributees, executors, administrators, legal representative, assigns, and upon their respective successors in interest, except as expressly hereinbefore provided.

24. LIENS:

Other than that leasehold mortgage from Tenant to NBSC in the approximate amount of One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00), as amended from time to time to include a refinancing of the terms or an extension of the maturity thereof, Tenant must obtain Landlord's consent to create any other leasehold mortgage, equity line, loan, or any other form of indebtedness secured by Tenant's interest in the leasehold or the Demised Premises. Furthermore, Tenant shall not allow or permit the creation of any liens for

labor or material on or against the Demised Premises, the Property, or any part thereof, and all persons either contracting with Tenant or furnishing and/or rendering labor and/or materials to Tenant, shall be notified in writing by Tenant that they must look only to Tenant to secure the payment of such labor or materials. Tenant agrees to provide such written notice as may be required, pursuant to S.C. Code Ann. §29-5-80 to all persons performing services or furnishing materials of Landlord's non-responsibility for payment for such services or materials. Should any mechanics', materialmens' or other liens be filed against the Demised Premises, the Property, or any part thereof, for any reason whatsoever relating to the furnishing of labor or materials associated with improvements to the Demised Premises for which Tenant is responsible for payment, Tenant shall cause the same to be cancelled and discharged of record by statutory bond or otherwise within ten (10) days after notice and demand for such cancellation and discharge by Landlord. In the event any lien continues undischarged after such ten (10) day period, Landlord shall have the right, at its sole election and discretion without any obligation, to pay the same or any portion thereof without inquiry as to the validity thereof, and any amount so paid, including all costs and expenses, shall be deemed Additional Rent under the Lease and shall be due and payable on demand. FURTHERMORE, TENANT SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS LANDLORD, ITS AFFILIATES AND AGENTS FROM AND AGAINST CLAIMS AND FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS TO TENANT IN CONNECTION WITH THE DEMISED PREMISES, OR ANY PART THEREOF, BY ANY OF TENANT'S CONTRACTORS AND THEIR SUBCONTRACTORS OF EVERY TIER. LANDLORD SHALL BE RESPONSIBLE, HOWEVER, FOR THE SATISFACTION OF CLAIMS FROM AND AGAINST ANY AND ALL CONTRACTORS', LABORERS', MATERIALMENS' AND MECHANICS' LIENS IN CONNECTION WITH OR ARISING OUT OF, OR BASED ON THE FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS IN CONNECTION WITH THE DEMISED PREMISES, THE PROPERTY, OR ANY PART THEREOF, WHICH FURNISHING AND/OR RENDERING OF LABOR AND/OR MATERIALS OCCURRED ON OR BEFORE OCTOBER 1, 2003.

25. CONSTRUCTION OF LEASE:

The word "Landlord" as used herein shall refer to the individual, individuals, partnership or corporation called "Landlord" at the commencement of this Lease, and the word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant." Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plurals when sense requires.

26. PARAGRAPH HEADINGS:

The paragraph headings are inserted only for convenience and for reference and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

27. COMMISSIONS:

The Parties represent and warrant that they have dealt directly with and only with each other in connection with this Lease and that insofar as they know, no broker(s) negotiated this Lease or is entitled to any commission in connection therewith and the execution and delivery of this Lease by the Parties shall be conclusive evidence that they have relied upon the foregoing representation and warranty. The Parties shall defend and hold each other harmless for any claims which arise from the failure of this mutual warranty.

28. RULES AND REGULATIONS:

Tenant agrees that Tenant, its agents, employees, and invitees will abide by the Rules and Regulations as set forth on Exhibit "D" attached hereto, which may be amended from time to time by the Landlord. Such Rules and Regulations shall be those necessary in the sole opinion of the Landlord to provide for the uniform service, maintenance and peaceful enjoyment of the common areas and the outside common areas. Landlord shall notify Tenant in writing of changes in the Rules and Regulations from time to time and Tenant agrees to assist Landlord in the enforcement of such Rules and Regulations.

Landlord agrees that the Rules and Regulations as set forth on Exhibit "D", as amended from time to time, shall be applied uniformly to any and all tenants on the Building.

29. NOTICES:

It is agreed that the legal address of the Parties for all notices required or permitted to be given hereunder, or for purposes of billing, process, correspondence and any other legal purposes whatsoever, shall be deemed sufficient if given by a communication in writing by United States Mail, postage prepaid, and certified, and addressed as follows:

If to the Landlord:

Lowcountry Capital, LLC
100 Haddrell Street
Mt. Pleasant, SC 29464
Attn: Richard H. Coen

David M. Sidbury
P.O. Box 790256
Charlotte, NC 28206
Fax: 704-342-0926

If to the Tenant:

RedWing, LLC.
202 Coleman Blvd.
Mt. Pleasant, SC 29464
Attn: Cecil Crowley

30. HAZARDOUS MATERIALS:

- A. Tenant shall not cause or permit any Hazardous Materials (hereinafter defined) to be stored, used or disposed of in or about the Demised Premises or the Property by Tenant, its agents, employees, contractors or invitees, nor shall the use which Tenant makes of the Demised

Premises result in any Hazardous Materials Contamination (hereinafter defined). For purposes of this Lease, the following terms shall have the meanings herein specified:

1. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. § 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C.A. §§ 9601 et seq.), as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (iii) asbestos, polychlorinated biphenyls or other substances specifically regulated under the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), as amended from time to time, and regulations promulgated thereunder ("TSCA"); (iv) pesticides specifically regulated under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C.A. §§ 135 et seq.), as amended from time to time, and regulations promulgated thereunder ("FIFRA"); (v) storage tanks, whether or not underground and whether empty, filled or partially filled with any substance; (vi) the presence of oil, petroleum products, and their by-products; (vii) any substance the presence of which in or about the Demised Premises or the Property is prohibited by any governmental authority or which is hereafter classified by any governmental authority as a hazardous toxic waste, material, substance or similar phraseology; and (viii) any substance which by any governmental authority requires special handling notification of any governmental authority in its collection, storage, treatment, or disposal.

2. "Hazardous Materials Contamination" shall mean the spillage, leakage, emission or disposal of Hazardous Materials (whether presently existing or hereafter occurring) in or about the buildings, facilities, soil, groundwater, air or other elements in or about the Demised Premises, or the Property or any other property as a result of Hazardous Materials at any time emanating from the Demised Premises or the Property.

B. Notwithstanding the foregoing, Tenant shall be permitted to store, use and dispose of de minimus amounts of Hazardous Materials which are incidental to Tenant's business. Such Hazardous Materials and all containers therefore, shall be stored, used and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Materials. Tenant shall be liable for all costs and expenses related to the storage, use and disposal of such de minimus amounts of Hazardous Materials incidental to Tenant's business.

- C. At the commencement of each "Lease Year" (the term "Lease Year" as used in this Lease shall mean any twelve (12) month period beginning with the Commencement Date and each twelve (12) month period beginning on any anniversary date thereof), Tenant shall disclose to Landlord the names and approximate amounts of all Hazardous Materials which Tenant intends to store, use or dispose of in or about the Demised Premises in the coming Lease Year. In addition, at the commencement of each Lease Year (beginning with the second Lease Year), Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials that to Tenant's knowledge were actually stored, used or disposed of in or about the Demised Premises, if such materials were not previously identified to Landlord at the commencement of the previous Lease Years.
- D. Tenant shall give written notice to Landlord immediately upon Tenant's acquiring knowledge of the presence of any Hazardous Materials in or about the Demised Premises (subject to the provisions of subparagraph B. hereof) or of any Hazardous Materials Contamination with a full description thereof. Landlord shall have the right, but not the obligation, without in any way limiting Landlord's other rights and remedies under the Lease, to enter onto the Demised Premises or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Demised Premises or the Property following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Demised Premises or the Property or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Demised Premises or the Property, or other action and/or which, in Landlord's sole opinion, could jeopardize Landlord's security under the Lease.
- E. TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SETTLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES DURING TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAG. (REAL OR

PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH E SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES TENANT MAY HAVE TO LANDLORD AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

F. TO THE BEST OF LANDLORD'S KNOWLEDGE, LANDLORD REPRESENTS AND WARRANTS THAT THE DEMISED PREMISES ARE AND SHALL BE FREE OF HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION AS OF THE COMMENCEMENT DATE. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ANY CLAIMS, DEMANDS, PENALTIES, FINES, LIABILITIES, SEYFLEMENTS, DAMAGES, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) OF WHATEVER KIND) OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO (A) THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE AND SUBSEQUENT REMEDIATION OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION ON THE DEMISED PREMISES PRIOR TO TENANT'S OCCUPANCY OF THE DEMISED PREMISES; (B) ANY PERSONAL INJURY (INCLUDING WRONGFUL DEATH) OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO SUCH HAZARDOUS MATERIALS OR HAZARDOUS MATERIALS CONTAMINATION; OR (C) THE APPLICABILITY OF ANY LAWS RELATING TO HAZARDOUS MATERIALS. THE PROVISIONS OF THIS PARAGRAPH F SHALL BE IN ADDITION TO ANY OTHER OBLIGATIONS AND LIABILITIES LANDLORD MAY HAVE TO TENANT AT LAW OR IN EQUITY AND SHALL SURVIVE THE EXPIRATION OF THIS LEASE OR THE TERMINATION THEREOF.

31. SECURITY DEPOSIT:

The Tenant shall deposit with the Landlord the sum of Five Thousand and No/100 Dollars (\$5,000.00), as security for the performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed, which sum shall be returned to Tenant after the expiration of the term hereof, provided Tenant has fully performed hereunder. Landlord shall have the right to apply any part of said deposit to cure any default of Tenant and if the amount so applied shall not be re-instated and replaced by the curing of any such

default, Tenant shall immediately upon written demand by Landlord, replace the amount applied by Landlord to cure any such default so that the Landlord shall have the full deposit on hand at all times during the term of this Lease. In the event of a sale of the Property or a lease of the Property, subject to this Lease, Landlord shall have the right to transfer the security to the buyer or lessee, and Landlord shall thereupon be released from all liability for the return of such security and Tenant shall look to the new Landlord solely for the return of said security and this provision shall apply to every transfer of assignment made of the security to a new Landlord. The security deposited under this Lease shall not be assigned or encumbered by Tenant without the written consent of Landlord and any such assignment or encumbrance shall be void. The security deposited by Tenant hereunder shall not bear interest. In no event shall said security deposit be deemed or treated as prepaid Rent for any Rental installment due hereunder, whether the last monthly installment or otherwise. If Tenant shall default under this Lease more than three (3) times in any twelve (12) month period, irrespective of whether or not such default is cured, then the Security Deposit shall, within ten (10) days after demand by Landlord, be increased by Tenant to an amount equal to the greater of (i) three (3) times the aforesaid amount or (ii) three (3) months' Rent.

E. LIMITATION OF LANDLORD'S LIABILITY:

The term "Landlord" shall mean the tenant under the Land Lease and in the event of the transfer by such owner of its interest in the Demise Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership. All liability of Landlord for damages for breach of any covenant, duty or obligation of Landlord hereunder may be satisfied only out of the interest of Landlord in the Property existing at the time any such liability is adjudicated in a proceeding as to which the judgment adjudicating such liability is non-appealable and not subject to further review.

F. NO OFFER:

The submission of this document for examination does not constitute an option or offer to lease space in the Property. This document shall have no binding effect on the Parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.

G. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT OF 1990.

Any other provision of this Lease notwithstanding, the Parties hereby agree that the Demised Premises may be subject to the terms and conditions of the Americans with Disabilities Act (ADA). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, such as compliance may be required to operate as long as the Demised Premises are in full compliance with the ADA on the Commencement Date as warranted by Landlord in this paragraph 34. Landlord warrants and represents that the Demised Premises are and shall be in full compliance with the ADA on the Commencement Date. Each Party agrees to indemnify and hold the Other Party harmless for any claims which may arise out of the Other Party's failure to comply with the provisions of this paragraph, regardless whether such claim arises before or

after the Commencement Date. Tenant has no obligation to independently verify that the Demised Premises are in compliance with the ADA as of the Commencement Date. Tenant agrees to indemnify and hold Landlord harmless against any claims which may arise out of Tenant's use or alteration of the Demised Premises which results in their failure to comply with the ADA. Such indemnification by Landlord and Tenant shall include, but not necessarily be limited to: reasonable attorneys' fees, court costs, and judgments as a result of said claims. A Party shall notify the other Party immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee, or governmental authority regarding the ADA.

35. GOVERNING LAW:

This Lease shall be construed and enforced in accordance with the laws of the State of South Carolina.

36. TIME OF THE ESSENCE:

It is understood and agreed between the Parties hereto that time is of the essence in all of the terms and provisions of this Lease.

37. NATURE AND EXTENT OF AGREEMENT:

This Lease, including the exhibits attached hereto, contains the complete agreement between the Parties regarding the terms and conditions of the lease of the Demised Premises, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease may be modified only by written instrument duly executed by both Parties or their respective successors in interest.

38. NON-BASEMENT:

It is understood and agreed that this Lease does not grant any rights to light and air over property adjoining the land on which the Demised Premises are situated.

39. LANDLORD'S LIEN:

To secure the payment of all Rent due and to become due hereunder and the faithful performance of all the other covenants of this Lease required by Tenant to be performed, Tenant hereby gives Landlord an express contractual lien on and security interest in all property, chattels, or merchandise which may be placed in the Premises and also upon all proceeds of any insurance which may accrue to Tenant by reason of damage to or destruction of any such property. Such lien is, however, subordinate to the perfect security interest of any secured creditor of Tenant, whether now existing or hereafter arising. All exemption laws are hereby, waived by Tenant. This lien and security interest, are given in addition to the Landlord's statutory lien(s) and will be cumulative thereto. Upon request, Landlord will subordinate its landlord's lien to security interests on Tenant's personal property on the Premises from Tenant's vendors, all on a form satisfactory to Landlord.

40. INTERPRETATION PRESUMPTION:

This Lease has been negotiated by the Parties hereto and by the respective attorneys for each Party. The Parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease, and in the event of a dispute concerning the interpretation of this Lease, each Party hereby waives the doctrine that an ambiguity should be interpreted against the Party which has drafted the document.

41. LIMITATION OF LIABILITY:

The obligations of the Landlord hereunder shall be binding upon Landlord and each succeeding owner of the Landlord's interest hereunder only during the period of such ownership and Landlord and each succeeding owner shall have no liability whatsoever except for its obligations during each such respective period. Landlord hereby agrees for itself and each succeeding holder of the Landlord's interest, or any portion thereof that any judgment, decree or award obtained against the Landlord or any succeeding owner of the Landlord's interest, which is in any manner related to this Lease, the Demised Premises or the Tenant's use and occupancy of the Demised Premises or the common areas of the Property, whether at law or in equity, shall be satisfied out of the Landlord's equity in the land and Property owned by the Landlord to the extent then owned by the Landlord, and landlord's liability policy, and such assets and to no other assets of the Landlord, or such succeeding owner, for satisfaction. Neither Landlord, nor any officer thereof, nor any subsequent Landlord, shall have any personal liability hereunder.

42. TRANSFER OF LANDLORD'S INTEREST:

The term "Landlord" as used in this Lease means only the owner for the time being or the Mortgagee, in possession for the time being of the Demised Premises. Each time the Demise Premises are sold, the selling Landlord shall be entirely relieved of all obligations and liability under this Lease. Any person who owns the Demised Premises and leases his reversionary interest in the Demised Premises subject to the lien of this Lease shall be relieved of all liability under this Lease.

43. REPRESENTATIONS AS TO CORPORATE ORGANIZATION:

The Tenant hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Tenant is a representative of Tenant who is duly authorized to execute and deliver this Lease. Tenant shall furnish Landlord with suitable evidence of the above if requested by Landlord.

The Landlord hereby covenants, represents, and warrants that it is a limited liability company organized under the laws of the State of South Carolina, registered to do business and in good standing under the laws of the State of South Carolina, and by proper action has been duly authorized to execute and deliver this Lease, to enter into the transaction contemplated

hereby, to carry out its obligations hereunder, and that each person executing this Lease on behalf of Landlord is a representative of Landlord who is duly authorized to execute and deliver this Lease. Landlord shall furnish Tenant with suitable evidence of the above if requested by Tenant.

44. JURISDICTION:

In connection with this Lease, Tenant hereby submits to the jurisdiction and venue of the State Courts of Charleston County, South Carolina in connection with any matter pertaining to this Lease and agrees that service may be had by mailing the same, postage prepaid, addressed to Tenant at Tenant's Notice Address as set forth in Paragraph 29 of this Lease, it being agreed that service shall be deemed to have been made three (3) days after mailing.

45. MEMORANDUM OF LEASE:

Landlord and Tenant hereby agree to make and execute a memorandum of lease in recordable form so as to give public notice of the execution of this Lease and a statement therein as to the commencement date of the term of this Lease. All recording fees, documentary stamps or taxes relating to this Lease or its recording shall be borne by Tenant.

IN TESTIMONY HEREOF, the Parties hereto have executed this Lease to be effective as of the date aforesaid.

WITNESS:

TENANT:
RedWing, LLC.

Matthew D. Lincoln
[Signature]

By: [Signature] Dianne Crowley
Name: Dianne Crowley
Its: Manager

WITNESS:

LANDLORD:
LOWCOUNTRY CAPITAL, LLC

Matthew D. Lincoln
[Signature]

By: Richard H. Coen
Name: Richard H. Coen
Its: Co-manager

By: SHEM CREEK HOLDINGS, LLC
Its: Co-manager

By: [Signature]
David Sidbury, Its Co-manager

[Signature]
[Signature]

By: Debra Sidbury
Debra Sidbury, Its Co-manager

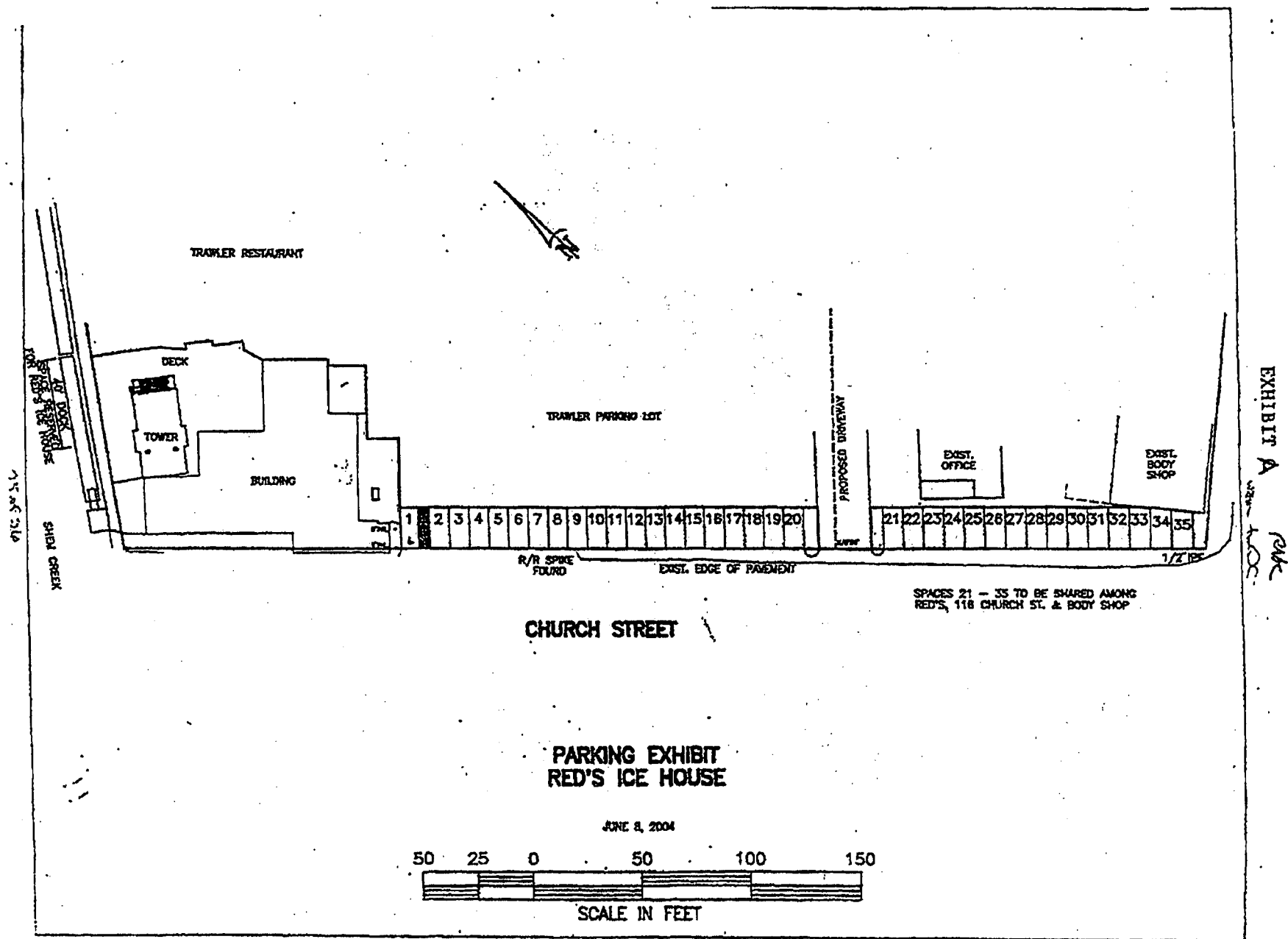


EXHIBIT "D"

RULES AND REGULATIONS

1. No advertisement or other notice shall be inscribed, painted or affixed on any part of the outside or inside of the Property, except upon the doors, and of such order, size and style, and at such places as shall be designated by Landlord.

2. Tenant shall not do or permit to be done in the Demised Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Property, or obstruct or interfere with the rights of other tenants or in any way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or conflict with any of the rules and ordinances of the Board of Health. Tenants, theft agents and employees, shall maintain order in the Property and shall not interfere in any way with other tenants or those having business with them. Nothing shall be thrown by tenants, their agents or employees, out of the windows or doors, or down the passages of the Property. No rooms shall be occupied or used as sleeping or lodging apartments at any time. No part of the Property shall be used or any way appropriated for gambling, immoral, or other unlawful purposes.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE (the "Memorandum") is entered into as of the 10 day of June, 2004 ("Effective Date") by and between Lowcountry Capital, LLC, having an address of 100 Haddrell Street, Mt. Pleasant, SC 29464 ("Landlord") and RedWing, LLC, having an address of 202 Coleman Blvd., Mt. Pleasant, SC 29464 ("Tenant") in consideration of the within mutual covenants and in further consideration of Five (\$5.00) Dollars, each paid to the other, the receipt and sufficiency of which is acknowledged, and intending to be legally bound.

RECITALS

WHEREAS, Landlord is a tenant under that Master Lease by and between Snowmill, LLC as landlord and Lowcountry Capital, LLC as tenant dated October 3, 2003 ("Master Lease"); and

WHEREAS, Landlord and Tenant have entered into a lease agreement dated simultaneously herewith (the "Lease") with respect to the property more fully described on Exhibit A ~~and depicted on Exhibit B~~ attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property is subject to the Master Lease; and

WHEREAS, Landlord and Tenant wish to place this Memorandum on the public land records to evidence the existence of the Lease including, but not limited to, those specific terms of the Lease set forth herein;

AGREEMENT

Landlord and Tenant represent, covenant and agree as follows:

1. Landlord and Tenant have entered into the Lease simultaneously herewith with respect to the Property.

2. The Lease is for a term commencing on the Effective Date and ending September 30, 2018 unless sooner terminated, which is incorporated herein by reference.

3. For additional terms of the Lease, reference is made to the original Lease, which is incorporated herein by reference and an original of which is in the possession of each of Landlord and Tenant.

IN WITNESS WHEREOF the undersigned have executed this Memorandum as of the day and year first above written.

LANDLORD:

LOWCOUNTRY CAPITAL, LLC

By: Richard H. Coen
Richard H. Coen, Its Co-manager

By: SHEM CREEK HOLDINGS, LLC.
Its: Co-manager

By: David Sidbury
David Sidbury, Its Co-manager

By: Debra Sidbury
Debra Sidbury, Its Co-manager

TENANT:

REDWING, LLC

By: Dianne Crowley
Dianne Crowley, Its Manager

TENANT ACKNOWLEDGEMENT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, Jesse S. Claypole IV, Notary Public for South Carolina, do hereby certify that
Matt Lincoln personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

WITNESS my hand and official seal this 10 day of June, 2004.


Notary Public for South Carolina

My Commission Expires: 1/9/11

LANDLORD ACKNOWLEDGEMENT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, Jesse S. Claypole IV, Notary Public for South Carolina, do hereby certify that
Matt Lincoln personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 10 day of June, 2004.


Notary Public for South Carolina

My Commission Expires: 1/9/11

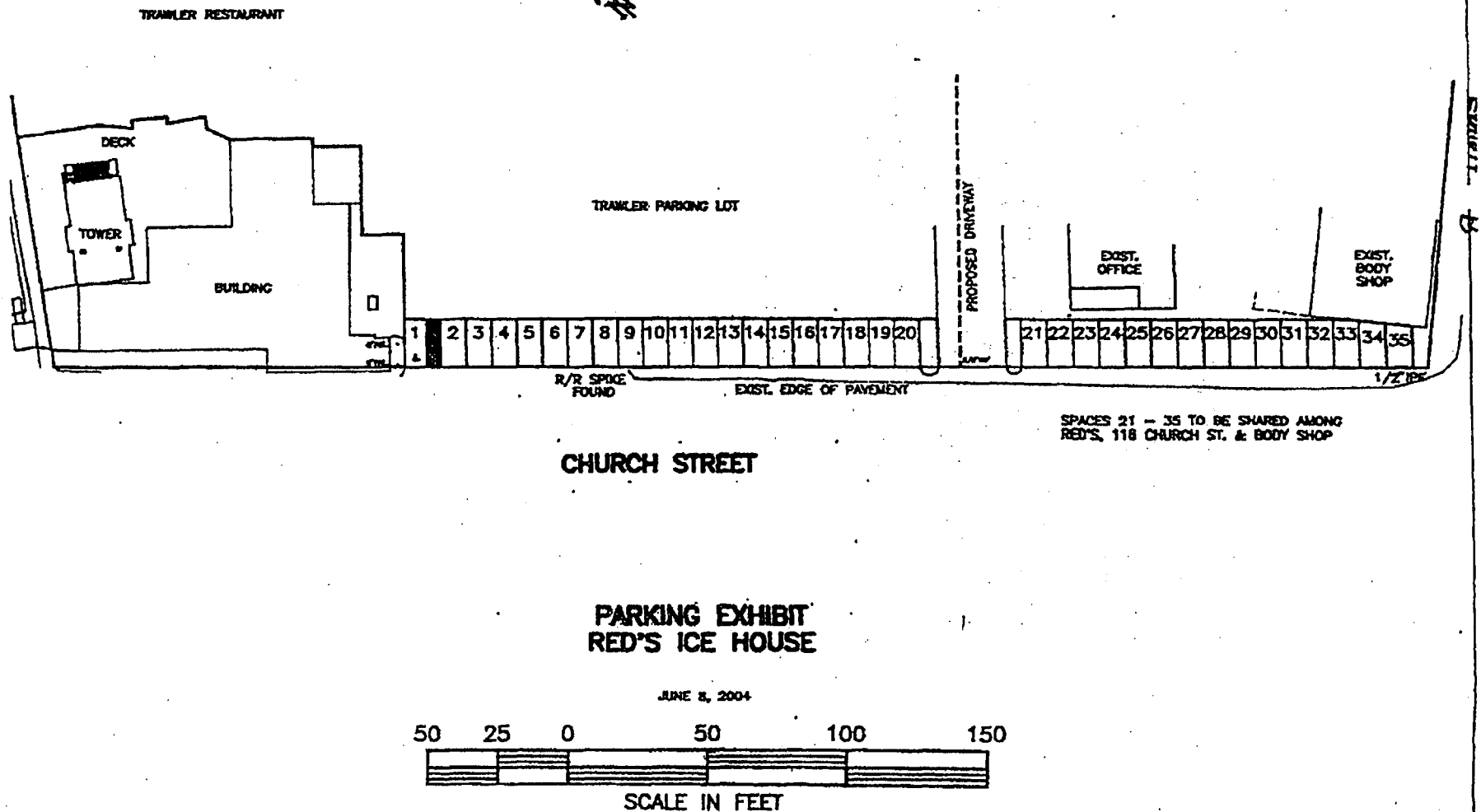
EXHIBIT "A"

Amended Legal Description

All that piece, parcel or lot of land, with buildings, improvements, deck, dock, and tower located thereon, including certain designated parking spaces, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being known as Red's Ice House as shown on Exhibit B, said Exhibit B being incorporated herein as a part of this description.

BEING a portion of the same property designated as "Lot 1-2-3-A," "Lot 1-2-3-B," and "Lot 1-2-3-E", as shown on a plat prepared by Charles F. Dawley, Jr. R.L.S. dated June 5, 1989, entitled "PLAT SHOWING A RESURVEY, ABANDONMENT OF PROPERTY LINES, AND RE-SUBDIVISION OF LOTS 1, 2 AND 3, BLOCK 22, SITUATE AT THE INTERSECTIONS OF COLEMAN BOULEVARD, MILL STREET, CHURCH STREET AND SHEM CREEK, IN THE TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA, LOTS 1-2-3-A AND 1-2-3-B ARE PRESENTLY OWNED BY SNOWMIS PROPERTIES. LOTS 1-2-3-C, LOTS 1-2-3-D AND 1-2-3-E ARE PRESENTLY OWNED BY ELLA T. SIMMONS", recorded at the Charleston County R.M.C. Office on June 27, 1989, in Plat Book BW, at Page 115.

Portion of TMS No's: 517-15-00-003; 517-15-00-114



BUYCK & SANDERS, LLC

ATTORNEYS & COUNSELORS AT LAW

757 JOHNNIE DODDS BLVD., SUITE 100
P.O. BOX 2424
MT. PLEASANT, SC 29465-2424

TELEPHONE (843) 377-1400
FAX (843) 377-1403
E-MAIL: HWB@BUYCKFIRM.COM

Hugh W. Buyck
Darren K. Sanders
G. Wade Cooper

May 17, 2010

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Lucasville Investments, LLC
Attn: Chris Anderson
400 Hibben Street, Suite 200
Mt. Pleasant, SC 29464

Re: Richard H. Coen, Coen Capital, LLC, and Lowcountry Capital, LLC v. Diane Crowley, Cecil Crowley, Steve Carroll, individually and as principals and agents of RedWing, LLC & Wings Over America, Inc.; RedWing, LLC & Wings Over America, Inc.
C/A No. 09-CP-10-5549 (Charleston Co.)
BSLF File No.: 9.01

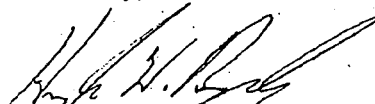
Dear Mr. Anderson:

We represent the Plaintiffs Richard H. Coen, Lowcountry Capital, and Coenco, LLC, suing the Defendants Diane Crowley, Cecil Crowley, Steve Carroll, individually and as principals and agents of RedWing, LLC & Wings Over America, Inc.; RedWing, LLC & Wings Over America, Inc. I am enclosing herewith a Rule 45 subpoena. The subpoena directs you to produce the described documents by **Monday, May 31, 2010**.

If you have any questions, please do not hesitate to contact me.

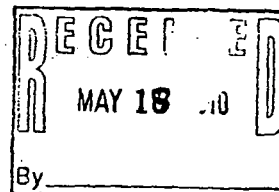
With kind regards,

Yours truly,


Hugh W. Buyck

HWB:efs
Enclosure

cc: George J. Kefalos, Esquire
Andrew K. Epting, Jr., Esquire
Dan M. David, Esquire



Z:\9.01\Coen v. RedWing\Subpoenas\L- Lucasville Investments LLC (Sub).doc

Appendix 414

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT

IN THE COUNTY OF CHARLESTON

Richard H. Coen, Coen Capital, LLC, and
Lowcountry Capital, LLC,

PLAINTIFF

v. ***SUBPOENA IN A CIVIL CASE***

Diane Crowley, Cecil Crowley, Steve
Carroll, individually and as principals and
agents of RedWing, LLC & Wings Over
America, Inc.; RedWing, LLC & Wings
Over America, Inc.,

DEFENDANTS

C/A No. 09-CP-10-5549

Pending in Charleston County

TO: Lucasville Investments, LLC
Attn: Chris Anderson
400 Hibben Street, Suite 200
Mt. Pleasant, SC 29464

☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY:

COURTROOM

DATE AND TIME:

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION:

DATE

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):

*See Attached Exhibit. This Subpoena is being issued pursuant to Rule 45(b) of the South Carolina Rules of Civil Procedure. In lieu of personally appearing, please send true and certified copies of the records to the address listed below.

PLACE

Buyck & Sanders Law Firm, LLC
757 Johnnie Dodds Blvd., Ste. 100
PO Box 2424
Mt. Pleasant, SC 29465-2424

DATE AND TIME

Monday, May 31, 2010

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICERS NAME, ADDRESS AND PHONE NUMBER

Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for Plaintiffs

Richard H. Coen, Lowcountry Capital, and Coenco, LLC

BUYCK & SANDERS LAW FIRM, LLC

757 Johnnie Dodds Blvd., Ste. 100

P.O. Box 2424

Mt. Pleasant, SC 29465-2424

Phone: (843) 377-1400; Fax: (843) 377-1403

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45 (b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE 5/27/10

SCCA FORM 254(7/93)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of the rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant experts resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
- iii. (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- iii. requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person.

~~the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.~~

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT

1. Any and all lease documents in your possession by and between Lucasville Investments, LLC, RedTy Advisors, LLC and/or DC & Sons, LLC.
 2. Any and all correspondence, e-mails, or other information relative to any and all leases, agreements, cross-easement parking, terms of leases or other communications with DC & Sons concerning the property formerly known as the Landing at Shem Creek and referenced by TMS No. 517-15-00-001.
 3. Any and all documents submitted to the Town of Mount Pleasant or any of its political subdivisions concerning, parking, cross-easement parking, terms of leases or any other regulatory submittals related to the property formerly known as the Landing at Shem Creek and referenced by TMS No. 517-15-00-001.
-

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DC & SONS, LLC

Plaintiff,

vs.

RICHARD H. COEN, LOWCOUNTRY
CAPITAL, OCEAN 1 REALTY, JAMES R.
MAULL, JR. LARRY MCNAIR,
COENCO, LLC, & PAVILION
DEVELOPMENT CORP.

Defendants.

PAVILION DEVELOPMENT
CORPORATION,

Plaintiff,

vs.

DC & SONS, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-4675 and
CASE NO. 2007-CP-IO-1457

DC & SONS SECOND SUPPLEMENTAL
RESPONSES TO PAVILION'S
AND COEN'S DISCOVERY
REQUESTS CONCERNING
DAMAGES

TO: DAN M. DAVID, ESQUIRE, COUNSEL FOR PAVILION DEVELOPMENT
CORPORATION AND LARRY MCNAIR; AND HUGH BUYCK, COUNSEL FOR RICHARD H.
COEN, LOWCOUNTRY CAPITAL AND COENCO, LLC

**DC & Sons, LLC supplements its responses to the discovery requests relating to damages
from Pavilion Development Corporation, Larry McNair, Richard H. Coen, Lowcountry Capital**

3. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed
to have been sustained by the party.

**SECOND SUPPLEMENTAL ANSWER: The attached computer listing of interest payments by
month for January 2007 through May 2010 reflects a total of \$583,035.37. Dianne and Cecil
Crowley will testify that the present value of the land is worth what they paid for it.**

George J. Kefalos, Esquire
GEORGE J. KEFALOS, PA
3 State Street, Charleston, SC 29401
P: 843.722.6612
F: 843.377.1310
George@kefaloslaw.com

Andrew K. Epting, Jr.,
ANDREW K. EPTING, JR., LLC
3 State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com

ATTORNEYS FOR DC & SONS, LLC

Charleston, South Carolina
January 11, 2010

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 06-CP-10-3670

363

1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3

4 ELLIS R. LESEMAN, ESQUIRE
Parker Poe
Suite 301, 200 Meeting Street
5 Charleston, South Carolina 29401
(843) 727-2650

6

7 REPRESENTING THE DEFENDANTS:

8

ANDREW K. EPTING, JR., ESQUIRE
9 Pratt-Thomas, Epting & Walker
16 Charlotte Street
Charleston, SC 29401
(843) 727-2200

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I N D E X

WITNESS: STEVE CARROLL

Examination	Page
BY MR. LESEMAN.	4
REPORTER'S CERTIFICATE	98

EXHIBITS:

Plaintiff's

Exhibit	Description	Page
1	Photograph	39
2	Photograph	39
3	Membership Interests Purchase and Sale Agreement	51
4	Commercial Lease	97

S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the parties hereto, through their respective
counsel, that the reading and signing of the
transcript is expressly waived by the Deponent.

1 CHARLESTON, SOUTH CAROLINA, WEDNESDAY, JANUARY 17, 2007

2 3:10 P.M.

3 P R O C E E D I N G S

4 - - - - -

5 WHEREUPON,

6 STEVE CARROLL

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. LESEMAN:

10 Q Mr. Carroll, have you -- my name is Ellis
11 Lesemann. We've known each other for a number of
12 years. We're here today in a lawsuit between Richard
13 Coen and Lowcountry Capital and Redwing, LLC, and a
14 number of other defendants. I would just like to ask,
15 have you ever had your deposition taken before?

16 A I have.

17 Q Okay. So you're likely familiar with the
18 process, and just to go through it again, Teri is here
19 as a court reporter to make a written record of
20 everything that we discuss today, and we'll have a
21 question and answer session that I anticipate will last
22 for about an hour, possibly an hour and 15 minutes or
23 so, depending on what you know.

24 A Okay.

25 Q So we'll go forward with that since, as an

1 A We don't monitor it on a regular basis, but
2 on big weekends, we do use a parking guy to keep
3 everybody out besides Cottage on the Creek people,
4 where it doesn't fill up with people like RB's
5 employees or our employees or our customers even.

6 Q Okay. When there's an event at Cottage on
7 the Creek, who oversees the food and the provision of
8 the food and beverage for that?

9 A It's a banquet facility. So there are
10 several caterers. Nobody is designated.

11 Q So Red's doesn't take food over to Cottage on
12 the Creek and serve it, or do they do that?

13 A We have. We don't serve it, but we -- you
14 know, we will go through Cottage on the Creek, and
15 actually, I think they use five or six caterers, you
16 know. But they don't -- we're not -- we don't do
17 events over there. We might provide food for it, but
18 not on a regular basis.

19 Q Okay. Who printed the "Keep Shem Creek Dick
20 Free" T-shirts that were worn at Red's on November
21 10th, 2006?

22 A I don't know. I don't know who printed them.

23 Q All right. Do you deny that -- or did
24 Mr. Coen call you that day to speak with you about the
25 issue of the T-shirts?

1 A He called me, he called me on a Friday night,
2 probably sometime near the shirts coming out.

3 Q Okay. How many days had the shirts already
4 been out by the time that he called you on that Friday
5 night?

6 A I have no idea.

7 Q All right. Okay. Did you tell him that
8 someone named Will had printed the T-shirts?

9 A I did.

10 Q Okay. And who is Will?

11 A Will is a -- a decoy.

12 Q Okay. And is the Will we're referring to
13 Will Strickland?

14 A No.

15 Q Okay. Who is Will, what is his last name?

16 A He didn't ever have a last name.

17 Q Okay. He's a fictitious person?

18 A Yes.

19 Q Okay. So who is the actual person?

20 A I don't know.

21 Q Why did you come up with a decoy and provide
22 Richard Coen with false information, rather than
23 telling him that you didn't know?

24 A I don't know who printed the shirts, was your
25 question.

1 Q And I'm not going to seek the fees against
2 you personally because I believe that you're only here
3 in your capacity as a general manager of Red's, you're
4 not here as Steve Carroll, okay. But what I just want
5 you to know is because you know this information and
6 because you can provide it and because it's relevant, I
7 am going to seek fees and costs against your employer
8 for the additional burden and expense that I'm going to
9 have to go through to get you to answer this question.
10 So that may not change your response at all.

11 A It doesn't.

12 Q Okay. And that's fine. But just so you know
13 and you've had fair opportunity, the attorney for
14 Redwing has had fair opportunity to address this
15 situation, I just want you to know that that's what
16 we're going to do and we're going to go forward with
17 it.

18 A I understand.

19 Q All right. So why did you lie to Richard
20 Coen?

21 A I didn't want Richard to smear somebody for
22 his own personnel arrogance.

23 Q All right. Do you think that the T-shirt
24 "Keep Shem Creek Dick Free," if you were in Richard's
25 position, you wouldn't feel like that was a smear

1 toward you or that that was inappropriate?

2 A I mean, I don't think so.

3 Q All right. So the mystery person that's not
4 going to be -- how did you come up with the name Will?
5 Did you come up with the decoy, or did someone tell you
6 to come up with that name?

7 A I came up with it.

8 Q All right. And so Will was just a name that
9 seemed reasonable to you to use, seemed like a good
10 decoy name?

11 A You know, it just came off in conversation.

12 Q All right.

13 A No principle behind it.

14 Q So what is it that you told Richard during
15 that conversation?

16 A What did I tell Richard during that
17 conversation, or what did Richard ask me during that
18 conversation?

19 Q Tell me what you recall about the entire
20 conversation.

21 A All right. I get a phone call from Richard
22 Coen, very angry Richard Coen, accusing me of printing
23 T-shirts with -- that he found offensive. I said,
24 "Richard, I didn't print these T-shirts." And he said,
25 "Well, who printed them? You know who printed them.

1 If you don't tell me, I'm going to subpoena everybody."

2 And, you know, that's just what you don't
3 want to hear on a phone call when somebody is calling
4 you to ask you a favor out of all of it. So I said,
5 "Richard, you know, I'm not going to tell you the guy's
6 name." And he's like, "I'm going to find out, I'm
7 going to find out, you need to tell me." And I said,
8 "His name is Will," just to back him off of me because
9 he's drilling me in the corner on a cell phone, which I
10 really just felt like hanging up, because he was
11 talking to me like I was a kid.

12 He said, "This shirt is offensive to me, it's
13 hurting the sales of my condo. It hurts my reputation,
14 it's offended my family, my kid's getting teased in
15 school, my wife is crying about it, and I heard your
16 employees were wearing them at Red's."

17 I said, "Some of my employees had those
18 shirts on, they did, Richard," and I said --

19 Q Let me stop you for one second. Go ahead and
20 name the employees who were wearing the T-shirts.

21 A I don't know who was wearing them.

22 Q Steve, seriously, is that your sworn answer,
23 that you have no idea --

24 A I don't recall who actually had those shirts
25 on. There was definitely more than five or six. I

1 don't remember exactly who. If I did, I would tell
2 you.

3 Q Okay. And who made the decision to allow
4 them to wear those instead of their standard uniform?

5 A I -- I guess I let them wear those shirts.

6 Q All right. Did you consult with any -- did
7 you consult with Dianne about that before you made that
8 decision?

9 A I did not. It was a spur of the moment, I
10 had a gentleman come in the bar and ask if he could
11 give out T-shirts to our customers. I said, "Let me
12 see the T-shirt," and I thought it was funny.

13 Q Okay. And let me stop you for one more point
14 here. You understand that "Keep Shem Creek Dick Free,"
15 the "Dick" refers to Richard Coen, correct?

16 A You know, I just didn't look at it like that,
17 but I see it.

18 Q Okay. So were you surprised when Richard
19 Coen called you and thought that this related to him?

20 A I was surprised he called me, yeah.

21 Q Okay. Were you surprised that he considered
22 that to be referring to him?

23 A I mean, I picked up on it pretty quick, I
24 mean, you know.

25 Q All right. So you believe that it's

1 reasonable that someone would see that statement and if
2 they are in the know, that they would consider that to
3 refer to Richard Coen?

4 A I think a lot of people don't like Richard
5 Coen in Mt. Pleasant.

6 Q That's not the answer to my question, but
7 that's fair for you to say.

8 A Okay.

9 Q But that's not the answer to my question.

10 A So I think it's a pretty common thought in
11 that area.

12 Q All right. So it's sufficiently clear that
13 "Dick" refers to Richard Coen in this statement?

14 A I mean, I don't -- you know, I didn't --
15 that's not the way I did, I don't print the sticker, so
16 I wouldn't say I think Richard Coen is a Dick. I
17 didn't say that, if that's what you're trying to get me
18 to say.

19 Q No, I'm just trying to get you to say
20 whatever your testimony is going to be. When you saw
21 that T-shirt, did you know that Richard Coen was the
22 person being referred to?

23 A I put one and one together.

24 Q Okay. Very good. And it was that easy as
25 putting one and one together, correct?

1 A From where I stand, yes.

2 Q All right. And since the person who you are
3 refusing to identify, but you know that that person
4 dislikes Richard Coen, it was fairly obvious that
5 Richard Coen was the intended target of the message?

6 A Yes, obvious to me.

7 Q Okay. Very good. And to the -- was it also
8 understood to the employees of Red's who wore the
9 T-shirts?

10 A Certainly, since, you know...

11 Q Okay. Fair enough. All right. And is the
12 message sort of a play on words, in that Dick is
13 another name for Richard and it's also a slang term for
14 a penis, is that the play on words, essentially, that's
15 occurring?

16 A Seems to be.

17 Q Okay. Very good. All right. So I initially
18 interjected when you were discussing the conversation
19 that you had with Richard, and I stopped you at the
20 point where basically, you had told him that -- that
21 to -- you had come up with a decoy name because you
22 didn't want to inform him of the person who had
23 actually provided them to you.

24 So during that phone call, is it correct that
25 you apologized to Richard?

1 Q Yeah. David Clark works for Wings Over
2 America?

3 A That's the guy you saw the other day.

4 Q Yeah. Does he work for Wings?

5 A Yeah. He's the director of operations.

6 Q All right. What's his involvement with
7 Red's?

8 A None. He was over there that day sorting
9 out, because Dianne was out of town and we needed -- he
10 came over to see if he could help me. He actually fell
11 down that day and broke his foot.

12 Q So, Mr. Carroll, to your knowledge, none of
13 the T-shirts, none of the "Keep Shem Creek Dick Free"
14 T-shirts were sold at Red's?

15 A Not to my knowledge, none at all.

16 Q Do you know if those T-shirts were
17 distributed at any location other than Red's?

18 A I do not.

19 Q Do you know how many T-shirts that the
20 individual who brought them to Red's had printed?

21 A I have no idea.

22 Q Do you know if he has any now?

23 A I have no idea. I haven't seen any in a
24 while, you know. I saw that batch that came out of
25 that box, basically. So I would say I have no idea.

May 10, 2011

Christy Wilner
Senior Disability Benefits Analyst
Standard Insurance Company
900 SW Fifth Avenue
Portland, OR 97204-1235

Re: State of South Carolina
LTD Plan Nos.: 627284, 621144
Claim Nos: 00VB5399, 00VB3833

Dear Ms. Wilner,

I represent Susan O. Neville with regard to her claim for benefits under the above insurance policies. I am in receipt of a copy of The Standard's letter dated February 24, 2011 wherein Ms. Fera upholds your October 31, 2010 decision to deny Ms. Neville benefits and close her LTD claim. On behalf of Ms. Neville, I am appealing this decision to the Employee Insurance Program. However, before I can determine what additional information is necessary for this appeal, I need to know precisely what The Standard reviewed in coming to this decision. To that end, please provide me with a complete copy of Ms. Neville's claim file, including but not limited to copies of the policies and the reports of any consultants upon which you relied in coming to your decision.

GEORGE J. KEFALOS, P.A.
Very truly yours,

Michelle N. Endemann, Esq.

MNE/agg
cc: George J. Kefalos, Esq.
Employee Insurance Program
Susan O. Neville

CONFIDENTIAL

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS

)
COUNTY OF CHARLESTON) CASE NO. 2006-CP-10-3670

RICHARD H. COEN, and)
LOWCOUNTRY CAPITAL,)
LLC,)

)
Plaintiffs,)

)
vs.)

)
DIANNE CROWLEY and)
REDWING, LLC,)

)
Defendants.)

* * * * *

DEPOSITION OF: MAGDALYN PATRICE DUFFIE

DATE TAKEN: Monday, April 28, 2008

TIME: 3:15 p.m.

PLACE: Parker Poe Adams & Bernstein
200 Meeting Street, Suite 301
Charleston, SC 29401

REPORTED BY: EVE WILBANKS
Registered Professional
Reporter and Notary Public

* * * * *

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

CAROLINA REPORTING (843) 832-0801

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1 A P P E A R A N C E S

2 REPRESENTING THE PLAINTIFFS:

3 MICHAEL E. SPEARS, ESQUIRE

Michael E. Spears, P.A.

4 172 E. Main Street, Suite 200

P.O. Box 5806

5 Spartanburg, SC 29304-5806

6 REPRESENTING THE DEFENDANTS:

7 M. DAWES COOKE, JR., ESQUIRE

Barnwell, Whaley, Patterson & Helms,

8 LLC

885 Island Park Drive

9 Charleston, SC 29492

10 REPRESENTING THE WITNESS:

11 JUSTIN O'TOOLE LUCEY, ESQUIRE

Justin O'Toole Lucey, PA

12 415 Mill St.

Mt. Pleasant, SC 29464

13

ALSO PRESENT:

14

ALISON A. DANNERT, LITIGATION PARALEGAL

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1 Q. You've never heard any complaints from
2 people who live in old town Mt. Pleasant about
3 customers from Red's parking in their
4 neighborhoods?

5 A. Not to me directly. I'm not --

6 Q. In the wind? Have you heard rumors of
7 that?

8 A. Maybe. I'm not sure.

9 Q. You can't remember?

10 A. Not any specific case. I might have
11 heard that once or twice, but I can't exactly
12 remember.

13 Q. I had asked you whether or not you
14 hadn't said other pro things about Red's in your
15 postings, and I believe you said that you couldn't
16 remember; is that right?

17 A. Yes. I'd have to check.

18 Q. And you kept showing past '05 into '06
19 and even into 07 "Virginia Tech" by your name?

20 A. Yes.

21 Q. What was the reason for that?

22 A. Virginia Tech?

23 Q. You weren't still at Virginia Tech.

24 A. That's what my Facebook thing was listed
25 under.

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1 Q. Well, a lot of people just say "South
2 Carolina" or --

3 A. South Carolina.

4 Q. Or "Charleston" or -- you know, not a
5 college. They just say a location.

6 A. I guess I never changed that after I
7 left Virginia Tech.

8 Q. Okay. Would I be correct in saying that
9 you had nothing to do with the printing or
10 distribution of those T-shirts that have been in
11 controversy?

12 A. You would be correct. I had nothing to
13 do with that.

14 Q. Did you ever own one?

15 A. No, sir.

16 Q. You never wore one?

17 A. No, sir.

18 Q. Did you ever see one?

19 A. Not to my knowledge. I heard about
20 them; I heard a lot about them, but I couldn't
21 tell you what they looked like.

22 Q. Okay. Do you remember ever saying that,
23 Something needs to be done now; they want to break
24 ground as early as January --

25 A. Uh-huh (indicating an affirmative)

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1 out and cause and (sic) uproar! Roar, people,
2 roar!" That was what you wrote?

3 A. Yes.

4 Q. Did he -- when you met with him, did he
5 discuss with you why he considered that a threat?

6 A. Not really. He just kind of -- I think
7 that was probably one of the more provocative
8 things I said. Because I tried to be as careful
9 with my wording as possible so as to not give the
10 wrong idea. But it's something I'm passionate
11 about, so I think that was just generally --

12 Q. Have you ever in any way advocated
13 violence or any illegal activity to stop his
14 project?

15 A. Absolutely not.

16 Q. Were you involved in the T-shirt
17 printing of -- what was it? Save Shem Creek from
18 Dick --

19 MR. SPEARS: Careful on that one.

20 Q. Whatever it said?

21 A. It's a tongue twister, yeah. I was
22 never a part of that at all.

23 Q. Do you know Dianne Crowley?

24 A. Not personally, no.

25 Q. Do you know Cecil, her husband?

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1 A. No.

2 Q. Were you in any way put up by anybody
3 with Red's Ice House to get involved in your
4 activism?

5 A. No.

6 Q. Did they encourage you or promote you in
7 any way in doing that?

8 A. No, sir.

9 Q. Were you privy to any of Mr. Coen's
10 financing plans for his project?

11 A. No, I was not.

12 Q. Did he ever discuss with you any of his
13 intentions for converting it from a condo hotel to
14 a regular hotel or a downsized hotel?

15 A. No. He never really gave me any idea
16 about it, so --

17 Q. Did he explain to you the setbacks and
18 all of the things that they were going to do to
19 make it aesthetically pleasing?

20 A. No. He just kind of -- when we met, he
21 never really discussed it or showed me any plans
22 or anything, so --

23 MR. COOKE: All right. That's all.

24 Thanks.

25 REDIRECT EXAMINATION

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1 BY MR. SPEARS:

2 Q. Now, you say you didn't know Dianne
3 Crowley personally, right?

4 A. No. I don't know her at all.

5 Q. So the qualifier "personally" --

6 A. Oh, I'm sorry. Yeah, I don't know her.

7 Q. Were you provided any free food or
8 beverages at any time by any employee at Red Wing
9 or at Wild Wing's?

10 A. At Wild Wing's?

11 Q. Yes.

12 A. I have a friend who bartends there. He
13 might have given me a beer once so --

14 Q. How about at Red's?

15 A. No.

16 Q. Never?

17 A. Not to my knowledge.

18 Q. And the friend of yours who bartended at
19 Wild Wing's, are you saying that's the only time
20 and the only event you got free alcohol there?

21 A. Yes.

22 Q. Okay. Now, in this letter, which is
23 Defendant's Exhibit 1, did Richard suggest that
24 you and your friends come to a meeting and invite
25 you to his office at 100 Church Street on Shem

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1 Creek, the old Trawler building, at 4 p.m.,
2 Thursday, December the 21st, 2006?

3 A. I'm sorry? Yes.

4 Q. Did you go?

5 A. No, I did not go.

6 Q. Did any of your friends go?

7 A. I'm not sure if anyone went.

8 Q. Did you give this to anyone?

9 A. Did I give that letter to anyone?

10 Q. Yeah.

11 A. No. But I know multiple people received
12 it.

13 Q. Why did you decide not to go to learn
14 more about the project?

15 A. I couldn't go at that time. I had a
16 conflict.

17 Q. Did you write him back and suggest a
18 different time?

19 A. We ended up meeting later. I told
20 him -- I didn't feel comfortable going because I
21 wasn't sure what was going to be shown or
22 presented or what we were going to be faced with.
23 Because I didn't -- I just wasn't sure how it was
24 going to go. Because with the threat of
25 litigation and all of that, it was just kind of

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WILL STRICKLAND

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 06-CP-10-3670

RICHARD H. COEN and LOWCOUNTRY)
CAPITAL, LLC,)

Plaintiffs,)

vs.)

DIANNE CROWLEY, WINGS OVER)
AMERICA, LLC, REDWING, LLC, DC &)
SONS, LLC, and COTTAGE ON THE)
CREEK,)

Defendants.)

* * * * *

DEPOSITION OF: WILL STRICKLAND

DATE TAKEN: Wednesday, January 17, 2007

TIME: 10:00 a.m.

PLACE: Suite 301, 200 Meeting Street
Charleston, SC

REPORTED BY: TERI L. SAMPSON,
Registered Professional
Reporter and Notary Public

* * * * *

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CHARLESTON, SOUTH CAROLINA 29413-1784

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Appendix 444

JANUARY 17, 2007

WILL STRICKLAND

Page 2

1 A P P E A R A N C E S

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WILL STRICKLAND

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I N D E X

WITNESS: WILL STRICKLAND

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EXHIBITS:

(No exhibits were offered or marked for
identification.)

S T I P U L A T I O N S

It is hereby stipulated and agreed by and
between the parties hereto, through their respective
counsel, that the reading and signing of the
transcript is expressly waived by the Deponent.

JANUARY 17, 2007

WILL STRICKLAND

Page 4

1 CHARLESTON, SOUTH CAROLINA, WEDNESDAY, JANUARY 17, 2007

2 10:49 A.M.

3 P R O C E E D I N G S

4 - - - - -

5 WHEREUPON,

6 WILL STRICKLAND

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. LESEMAN:

10 Q Mr. Strickland, I introduced myself to you.
11 My name is Ellis Lesemann. I'm the attorney for the
12 plaintiffs in the matter involving Red's Ice House. I
13 represent Richard H. Coen and Lowcountry Capital. Did
14 you receive a subpoena to appear for your deposition
15 today?

16 A Yes, I did.

17 Q Okay. Have you ever had your deposition
18 taken before?

19 A No, I have not.

20 Q Okay. Teri is here as our court reporter to
21 make a record of everything that's discussed.
22 Essentially, it's a formal question and answer session,
23 whereby I will ask you questions, and you will provide
24 verbal answers to them. Is that a fair enough process?

25 A Yes, sir.

JANUARY 17, 2007

WILL STRICKLAND

Page 5

1 Q Okay. Is there any reason why today would be
2 an inappropriate day to take your deposition?

3 A No.

4 Q Okay. Do you have an attorney that
5 represents you?

6 A No.

7 Q Okay. If I ask a question that is poorly
8 worded or that you just don't understand what I'm
9 asking, I just would ask you to let me know and I'll
10 rephrase it and try to make it into a better question,
11 is that fair?

12 A That's fine.

13 Q Okay. And so if I ask a question and you
14 provide a response, it will be fair to assume that you
15 understood the question, is that correct?

16 A Uh-huh (affirmative).

17 Q And you've done well. If you could always
18 just give a verbal yes or no --

19 A Right.

20 Q -- to the questions, that will be fine.

21 Okay. Mr. Strickland, did you print the
22 T-shirts that say, "9 Out of 10 Local Residents Agree;
23 Keep Shem Creek Dick Free"?

24 A No, I did not.

25 Q You did not?

JANUARY 17, 2007

WILL STRICKLAND

Page 6

1 A No.

2 Q Okay. Are you in the T-shirt business?

3 A I am.

4 Q Okay. Who did print those T-shirts?

5 A I don't know.

6 Q Have you seen the T-shirts?

7 A Actually, I have not seen the T-shirts.

8 Q Okay. What's the name of your T-shirt
9 business?

10 A Alumnot Graphics. A-L-U-M-N-O-T. I did not
11 graduate.

12 Q I see. Is that a limited liability company
13 or a corporation?

14 A No, it's a sole proprietorship.

15 Q Okay. Have you spoken with Mr. Epting before
16 this deposition?

17 A Yesterday at lunch.

18 Q Okay. And what did you discuss?

19 A Just what was going to be going on here
20 today.

21 Q Okay. When is the first time you ever met
22 Mr. Epting?

23 A That was it.

24 Q Okay. How did you know who he was?

25 A I was -- my former roommate called me and

JANUARY 17, 2007

WILL STRICKLAND

Page 7

1 told me that Steve Carroll had somebody he wanted me to
2 meet and have lunch with, and it was an attorney.

3 Q Okay. And tell me everything that was
4 discussed over lunch.

5 A Just the manner in which questions would be
6 phrased and basically kind of an overview of what was
7 going on without really letting me know what was going
8 on. I'm still pretty confused as to why I'm here. I
9 mean, I know that there were some shirts printed and
10 Richard is upset about it, but I don't know where I
11 come into play.

12 Q Okay. So it's your testimony, your sworn
13 testimony that you had nothing to do with those
14 T-shirts?

15 A Yes, it's my sworn testimony.

16 Q Okay. And it's your sworn testimony that you
17 have nothing to do with the bumper stickers, either?

18 A Yeah. I don't print bumper stickers.

19 Q Okay. All right. And you would be amenable
20 to a review of your business records to verify that you
21 had nothing to do with the printing of these T-shirts?

22 A You mean copies of invoices and the like?

23 Q Right.

24 A I've only done one run of shirts for Red's,
25 and yeah, I would be happy to bring you the invoices.

JANUARY 17, 2007

WILL STRICKLAND

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1 Q All right. What T-shirts have you printed
2 for Wings Over America or Wild Wings?

3 A None. I've only done one run of shirts for
4 Red's.

5 Q And when was that?

6 A I think it was in May, it was for a concert
7 they did called Rock the Dock. Plane Jane was playing,
8 and I misspelled the band name, and I haven't gotten
9 any business back.

10 Q So are you a regular patron of Red's?

11 A Not so much a patron as I do have a lot of
12 construction work for them, so I'm seen more there on a
13 business sense than I am recreationally.

14 Q You do a lot of construction work, is that
15 what you said?

16 A Right.

17 Q Okay. So have you performed some of the
18 alterations to the existing structure?

19 A Yes. We just bring stuff back up to code,
20 like when they have holes show up in the floor, we come
21 and patch them up.

22 Q All right. What's the business through which
23 you do construction work?

24 A Crescent Constructors.

25 Q And is that your business?

JANUARY 17, 2007

WILL STRICKLAND

Page 9

1 A No. That is my former roommate's business.

2 Well, I'm a part of it, but his name is Greg Preston.

3 Q What is Greg's -- so Greg Preston is the one
4 that informed you that Steve Carroll had an attorney
5 that he wanted to you speak with?

6 A That's correct.

7 Q Okay. Were you there on the evening of
8 November 10th, 2006, when the employees of Red's Ice
9 House were wearing the "Keep Shem Creek Dick Free"
10 T-shirts?

11 A I've never seen the shirts.

12 Q Okay. Do you know Steve Carroll?

13 A Yes, I do.

14 Q All right. Is he a good person, in your
15 estimation?

16 A He's not a bad guy.

17 Q Okay. Is he an honest person, in your
18 estimation?

19 A I don't know him well enough to say.

20 Q Do you know of anything he has ever said
21 that's been untrue?

22 A No.

23 Q Okay. Does he have the reputation for being
24 untruthful?

25 A I wouldn't be privy to his reputation.

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WILL STRICKLAND

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1 Q All right. And you're not aware of anything
2 he has ever said that's untrue?

3 A No.

4 Q So if he informed someone that you did have
5 some involvement with the T-shirts, that would be
6 untrue?

7 A Say that again.

8 Q If he informed someone that you did have
9 involvement with the "Keep Shem Creek Dick Free"
10 T-shirts, would that be an untrue statement on his
11 part?

12 A That would be untrue.

13 Q Have you ever made any negative statements to
14 anyone about Richard Coen?

15 A I don't know Richard Coen. I have never made
16 any statements like that.

17 Q So it's your testimony that you've never made
18 any negative statements about Richard Coen?

19 A That's my testimony.

20 Q All right. Have you ever made any negative
21 statements about The Landing?

22 A No.

23 Q Okay. Do you know what The Landing is?

24 A I know it's what they're trying to make the
25 Trawler into, but as far as anything after that, I'm

JANUARY 17, 2007

WILL STRICKLAND

Page 11

1 kind of a -- I don't really know what's going on.

2 Q So if you --

3 A It's kind of a condo development, right?

4 Q So your testimony is that you understand The
5 Landing is a development, but that you don't know a lot
6 of the details about the project?

7 A That's right.

8 Q Okay. Do you have an opinion about The
9 Landing?

10 A Not really, no.

11 Q Okay. Do you have an opinion as to whether
12 it is positive or a negative development for Shem
13 Creek?

14 A I think development is inevitable. It's not
15 really positive or negative.

16 Q So it's your testimony that you would not
17 have made negative statements about The Landing or
18 about Mr. Coen's proposed development?

19 A That's correct. I really just don't care.

20 Q Do you have any knowledge about the dispute
21 between Richard Coen and Redwing or Red's?

22 A No.

23 Q Okay. Do you know that there is a provision
24 by which Red's could be purchased by Richard Coen
25 pursuant to an agreement with Dianne Crowley?

JANUARY 17, 2007

WILL STRICKLAND

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1 Q Okay. What's the email address that you use?

2 A Will Strickland -- actually, just use
3 Will@Alumnot.com.

4 Q What other email addresses do you use?

5 A WillStrickland@gmail.

6 Q And gmail, that's a free -- is that a free
7 Internet service provider, free email provider?

8 A Yeah.

9 Q Okay. And with Alumnot.com, do you have your
10 own server, or do you have someone that hosts a server
11 for you?

12 A It's a Yahoo hosted site. You're welcome to
13 look in either of them.

14 Q Did you say that you've ever seen one of
15 these T-shirts before?

16 A Uh-uh (negative).

17 Q Never seen them --

18 A I've seen the bumper sticker.

19 Q You have seen the bumper sticker?

20 A Uh-huh (affirmative).

21 Q Okay. Where did you see the bumper sticker?

22 A In Red's parking lot.

23 Q As you were walking in, or did someone show
24 it to you or --

25 A As I was walking in. I mean, I've been told

JANUARY 17, 2007

WILL STRICKLAND

Page 28

1 about them, but the first time I actually seen one was
2 on a truck out in the parking lot.

3 Q Who told you about them?

4 A Greg Preston. He told me he had seen them.

5 Q What do you think that the "Dick" refers to
6 on the T-shirt?

7 A Well, I'm here, so I'm assuming that somebody
8 thinks it refers to Richard Coen.

9 Q Okay. When you see that T-shirt, is it your
10 testimony that you don't have any understanding as to
11 who that would refer to?

12 A I do now. I can't say what it would have
13 meant to me earlier, no.

14 Q Okay. When you saw the T-shirt on -- or when
15 you saw the bumper sticker on the truck in the Red's
16 parking lot --

17 A I had already been brought up to speed.

18 Q Okay. By Greg?

19 A By many people.

20 Q Okay. Who else other than Greg?

21 A God, I don't know, anybody I talked to that
22 is familiar with the Creek.

23 Q All right. And who is that?

24 A I don't remember.

25 Q Are you certain?

1 A Yes.

2 Q Okay. So it's your sworn testimony that
3 although you have been brought up to speed on this by
4 many people, you don't remember who those people are?

5 A That's it.

6 Q Was the actual source -- based on your
7 testimony that you had nothing to do with the T-shirts
8 and the bumper stickers, was the actual source of those
9 T-shirts and bumper stickers discussed during your
10 meeting yesterday?

11 A Absolutely not. Why would I want to know?

12 Q While you've been at Red's, whether doing --
13 well, when was the last time that you completed the
14 projects at Red's? You said it has been ongoing since
15 the inception, but when was the last time you did
16 something?

17 A It was either the walk-in cover in the back
18 of the restaurant or the roof extension out in the
19 front, and I would really have to check on paperwork.

20 Q Okay. So let's just do time frame, was it
21 summer of 2006, or was it --

22 A No. It was probably two or three months ago.

23 Q Okay. All right. And in the time when you
24 were around doing that project or when you just were
25 around having a beer or at Red's, you have never seen

1 one of these T-shirts?

2 A No.

3 Q What was the last time there was any account
4 activity in your Alumnot Graphics account with Bank of
5 America?

6 A Way before any of this would have happened,
7 so --

8 Q Okay.

9 A -- whenever.

10 Q Do you carry a cell phone?

11 A I do.

12 Q Okay. What's your cell phone number?

13 A 847-0971.

14 Q And who is your carrier?

15 A Suncom.

16 Q Do you use that phone in connection with your
17 construction and T-shirt business?

18 A It's everything.

19 Q Okay. When you design a T-shirt, do you have
20 a computer software program, or how do you set up the
21 graphics for the T-shirt?

22 A I use a computer.

23 Q Okay. So do you own your own computer?

24 A I actually use my girlfriend's computer.

25 Q Nancy?

JULY 23, 2007

DIANNE CROWLEY

Page 1

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 06-CP-10-3670

RICHARD H. COEN and LOWCOUNTRY)
CAPITAL, LLC,)

Plaintiffs,)

vs.)

DIANNE CROWLEY, WINGS OVER)
AMERICA, LLC, REDWING LLC, DC &)
SONS, LLC and COTTAGE ON THE)
CREEK,)

Defendants.)

DEPOSITION OF: DIANNE CROWLEY

DATE TAKEN: Monday, July 23, 2007

TIME: 9:30 a.m.

PLACE: 200 Meeting Street, Suite 301
Charleston, SC

REPORTED BY: TERI L. SAMPSON,
Registered Professional
Reporter and Notary Public

POST OFFICE BOX 21784
CHARLESTON, SOUTH CAROLINA 29413-1784

CAROLINA REPORTING (843) 832-0801

Appendix 459

1 A P P E A R A N C E S

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ALSO PRESENT:

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13 CECIL CROWLEY
14 JIM GRANT
15 WENDY MCPHAIL

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I N D E X

WITNESS: DIANNE CROWLEY

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EXHIBITS:

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1	Purchase and Sale Agreement, RWDC 02008 through 02025	15
2	May 24, 2006 letter to Richard Coen from Joel Ford, PLT-0164	18
3	June 12, 2006 email, PLT-0024	37
4	Post and Courier 12/21/06 article	55
5	March 14, 2007 letter to Dianne Crowley from Richard Coen, PLT-0142 through 0143	59
6	March 21, 2007 letter to Dianne Crowley from Richard Coen, PLT-0107	59
7	April 4, 2007 letter to Dianne Crowley from Richard Coen, PLT-0137 through 0138	59
8	August 8, 2006 letter to Dianne Crowley from Matthew Norton, PLT-0145 through 0146	60
9	July 22, 2007 email	61

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5		Dianne Crowley from Matthew	
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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the reading and signing of the transcript is expressly waived by the Deponent.

1 group that plays acoustic inside. If they're out on
2 the patio, then generally, it's just a one-man group
3 and he's early. If they're going to be later, we'll
4 put them inside and close the garage doors.

5 Q Is there any system by which you measure the
6 general noise, or essentially, is it more reactive to
7 where you do what you can and then you -- if there's a
8 complaint, then you make some kind of accommodation?

9 A We just -- after you've runs restaurant for a
10 long time or, in Steve's case, restaurants and
11 entertainment venues, he has a pretty good feeling for
12 what's annoyingly loud, or if -- and if someone
13 notifies us and says that's too loud, then we turn it
14 down. Otherwise, we feel like it's pretty reasonable
15 and in keeping with what the people across the way are
16 doing and the people next-door. When Big Game was in
17 place or all the restaurants, Vickery's and all of
18 those restaurants, they all have -- I believe they have
19 music, too. Certainly the Cabana does.

20 Q I want to ask you briefly about the T-shirts
21 and the bumper stickers. I understand that you may not
22 have a lot of knowledge about those, but just wanted to
23 clarify a couple of things. When did you first learn
24 that T-shirts that stated "9 out of 10 local residents
25 agree, keep Shem Creek Dick free" were being worn by

1 Red's employees?

2 A I've actually never learned that. I believe
3 that I heard in court from you that one of our
4 bartenders had one on. But when I learned that they
5 existed, I was in Scottsdale, Arizona, and I talked to
6 Steve and he told me that they existed and I giggled,
7 and then I said, "I don't want us to have anything to
8 do with it, we don't have anything to do with it, do
9 we?" And he said, "No," and I said, "Okay." He said,
10 "But patrons are wearing it." I said, "I can't stop
11 what the patrons are doing."

12 Q I know you weren't present during his
13 deposition that was taken several months ago, but he in
14 that deposition stated that five or six employees may
15 have been wearing them, or actually stated at least
16 five or six employees were wearing them. Do you have
17 any knowledge --

18 A That's the first I've heard that.

19 Q -- of those circumstances?

20 A No, no. That's the first I've heard it. The
21 only one I ever saw anything to do with was when you
22 presented a picture in court. It was my understanding
23 that none of us wore it. And if they had them on
24 and -- the minute I found out about it, I made them
25 take them off.

1 Q Who provided those T-shirts?

2 A I have no idea on this earth.

3 Q When you asked Steve what the circumstances
4 were and whether we had anything to do with it, "we"
5 meaning Redwing and you and Steve, et cetera, what was
6 his response? Did he tell you anything about who was
7 responsible for it?

8 A He said some guy on the creek.

9 Q Some guy on the creek.

10 A Since I'm not here -- from here and I don't
11 know these people, knowing a name wouldn't have meant
12 anything to me.

13 Q Do you recall whether this incident occurred
14 within a month or two of when Mr. Coen had filed the
15 lawsuit to enforce the membership interest purchase and
16 sale agreement?

17 A Yes. It must have -- well, I was in
18 Scottsdale in November and December and I found out
19 about it in November, I assume.

20 Q Did you think it was a good idea for
21 employees of Red's to be wearing those T-shirts?

22 A Absolutely not. Employees of Red's need to
23 wear T-shirts that say Red's. That's how people know
24 that they are employees.

25 Q Do you understand why Mr. Coen would have

1 been upset about those T-shirts?

2 A No, not really. I don't see how they -- I
3 don't even understand why he feels it's about him.

4 Q Okay. So you think it's just a general
5 statement?

6 A I think so.

7 Q So if it is just a general statement, can you
8 explain to me why it would be a bad idea for the
9 employees to wear them?

10 A Yes, because, A, Dick is obviously not a nice
11 word and we have a family restaurant, and, B, I like --
12 I insist that the people who work for us wear shirts
13 that identify them as people working for us. We don't
14 even let people wear liquor shirts or beer shirts that
15 are provided by things unless we have them co-branded
16 so that people can identify their servers. Just
17 anybody walking around in a T-shirt can be anybody.

18 Q Do you believe that Red's is a family
19 restaurant?

20 A I do.

21 Q Do you think it was a bad idea for the shirts
22 to be given away within your establishment?

23 A I would have preferred that they not be
24 considering the situation we're in and considering the
25 fact that some people who are more conservative than

1 others would be very offended by the word "Dick" and I
2 don't want to offend my customers.

3 Q Do you think there's any particular reason
4 why it was Shem Creek that people were keeping Dick
5 free versus the Wappoo cut or the intercoastal waterway
6 or anything like that, do you think that's just a
7 coincidence?

8 A Well, there had been a lot of publicity, to
9 my understanding, about the development generally on
10 Shem Creek and people who want to tear down things on
11 Shem Creek and change the old-fashioned ways of Shem
12 Creek and the old town feeling of Shem Creek resist
13 that and I believe that people who were trying to
14 change these people's lives, no matter who they were,
15 would have been looked at in a pejorative manner.

16 Q Were you aware that Steve Carroll knows the
17 identity of the person that brought the T-shirts to
18 Red's, but refused to say who it was?

19 A Not specifically.

20 Q Do you think that that is a good idea, as a
21 matter of course, to refuse to provide that type of
22 information when it's asked in a legal proceeding?

23 A I wouldn't venture. I probably wouldn't -- I
24 wouldn't do it, but then I can't speak to somebody
25 else's value systems and loyalties. I don't have a

1 clue.

2 Q Do you have any knowledge about the bumper
3 stickers that bore the same statement?

4 A I have never seen a bumper sticker. I have
5 never seen one. I don't know where they came from. I
6 have never touched, seen, looked at one, never seen one
7 hanging around, never seen one on a car, never seen
8 one.

9 Q Were you aware that those were also available
10 inside the restaurant during that time frame?

11 A No.

12 Q Did Mr. Carroll mention that to you?

13 A He mentioned to me that he got -- that he
14 looked out there one day and they were all over the
15 cars and that somebody had stuck them on cars and he
16 didn't say who, I don't even know that he knows who,
17 but that's all I know about them. He never said that
18 they were inside Red's or that we were handing them out
19 or anything.

20 Q When employees came to you to ask you about
21 the buy-out provision and the circumstances because
22 they had heard something on the street or otherwise,
23 what did you tell them?

24 A I told them that I was going to do everything
25 I can to try to save Red's, but if I couldn't, that I



Rezone from
MD and SCW-Overlay to R-3,
TMS #'s 517-15-00-018 and -
019
and rezone
AB to R-3 TMS# 517-15-00-

TOMP-PD
0207

Appendix 469

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 2009-CP-10- 5549

RICHARD H. COEN, COEN CAPITAL, LLC,
& LOWCOUNTRY CAPITAL, LLC,

Respondents,

v.

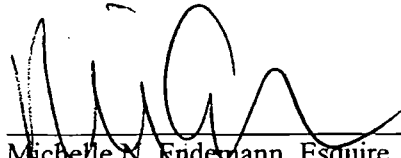
DIANNE CROWLEY, CECIL CROWLEY,
STEVE CARROLL, individually and as principals
and agents of REDWING, LLC and WINGS OVER
AMERICA, INC., REDWING, LLC, and WINGS
OVER AMERICA, INC.

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Record on Appeal contains all material proposed to be included by any of the parties and the Transcript of Record allowed by this Court's Order filed February 7, 2011 and not any other material.

May 12, 2011



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