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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2022-001353

Jeffery Rush,

Appellant

v.

Shady Moss Apartments,

Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Jeffery Rush,)
Appellant,)
v.)
Shady Moss Apartments,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2022-CP-26-2492

ORDER ON APPEAL

This matter came before me on appeal of an eviction action from the Conway Magistrate Court. Present at the hearing were Bronte M. Anelli of South Carolina Legal Services, counsel for Appellant, and Luther O. McCutchen, IV of the law firm of McCutchen Vaught Geddie & Hucks, P.A., counsel for Respondent.

After considering all of the facts presented, together with 7 CFR 3560.159(d), 24 CFR 5.858 and 24 CFR 5.861, this Honorable Court finds that there is no right to cure for criminal activity in a tenant's apartment.

THEREFORE, Appellant's Motion for Civil Appeal is hereby **DENIED**, and the decision of the Magistrate Court is herein **AFFIRMED**.

THEREFORE, IT IS ORDERED that Appellant vacate the premises no later than Monday, September 26, 2022, or a Writ of Ejectment shall be issued.

AND IT IS SO ORDERED.



Horry Common Pleas

Case Caption: Jeffery Rush VS Shady Moss

Case Number: 2022CP2602492

Type: Order/Judgment and Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-09-23 15:54:00 page 2 of 2

Conway Summary Court

Shady Moss Apartments,

Plaintiff,

Vs.

Jeffrey Rush,

Defendant,

Civil Case No.:2021CV261070730

Order on Rule to Vacate

This matter came before me, The Honorable William N. Hutson in the Conway Summary Court, on April 18, 2022, in a non-jury proceeding as a Rule to Vacate Action. Present was the plaintiff, Shady Moss Apartments represented by Attorney Luther McCutchen, IV and the defendant, Jeffrey Rush, represented by Attorney Bronte Anelli.

After careful review of the facts presented by both sides and information given during testimony, this court finds that it must consider Code of Federal Regulations (CFR) Title 7 Subtitle B Chapter XXXV Part 3560 Subpart D in this matter. This is solely based on the fact that the property in question is subsidized federally by the United States Department of Agriculture (USDA) and is thus subject to the CFR 3560.159 and further USDA regulations such as the provisions of 24 CFR 5.858 associated with this type of subsidized housing. Also, the court has taken time to review all the case law presented by counsel and have given appropriate weight and consideration to the information contained in the cases. As stated by defense counsel, the USDA CFR should be considered along with the South

Carolina Landlord Tenant Act when determining the outcome of the case at bar.

Herein, the court finds that the plaintiff and defendant are subject to the 7 CFR 3560.159 related to this case. The court also finds that paragraph (d) of the 7 CFR 3560.159 which is titled "Criminal Activity" states, "Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861".

Further, this court finds that the provisions of 24 CFR 5.858 states, "The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy." The Court was provided the lease and such language was found therein.

In this particular case, the defendant, Jeffrey Rush testified that Terrence Lamount Melvin was a guest in his home when he was taken into custody for warrants for attempted murder. There was further testimony that Mr. Melvin was also charged with possession of illicit narcotics and weapon possession. The court also finds that paragraph D stands alone, and contains no option or opportunity to cure in this particular paragraph as outlined in paragraph (a) of 24 CFR 3560.159 for violations of the lease. Also, the court determined from research into the Housing and Urban Development handbook on this same issue that "Owners may terminate tenancy and evict tenants for criminal activity by a covered person if they determine that the covered person has engaged in the criminal activity,

regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity."

Therefore, this court finds by the preponderance of the evidence for the plaintiffs in this matter, and so further orders that a 24 hour Writ of Ejectment shall be issued on April 25, 2022 in accordance with 7 CFR 3560.159 and 24 CFR 5.858 and South Carolina Landlord Tenant Act.

IT IS SO ORDERED

Dated this 20th day of April, 2022

Respectfully submitted

A handwritten signature in dark ink, appearing to read 'W. Hutson', written in a cursive style.

Judge William N. Hutson

STATE OF SOUTH CAROLINA **FILED** IN THE MAGISTRATE COURT
COUNTY OF HORRY **CONWAY MAGISTRATE** FIFTEENTH JUDICIAL CIRCUIT

Shady Moss Apartments, 2021 OCT 20) P 12: 17
Plaintiff,)
HORRY COUNTY, SC)

vs.)

ORDER OF CONTINUANCE

Jeffery Rush,)

Defendant.)

Hearing Date: October 18, 2021
Judge: Bradley D Mayers
Plaintiff's Attorney: Luther Oliver McCutchen IV
Defendant's Attorney: Bronte M. Anelli

This Matter comes before this honorable Court on a Motion to Alter or Amend Pursuant to SCRMC 19(d) filed by the Defendant through his attorney. Present at the call of the case was the Plaintiff's Attorney, Luther Oliver McCutchen IV, and the Defendant along with his attorney, Bronte M. Anelli, Esq.

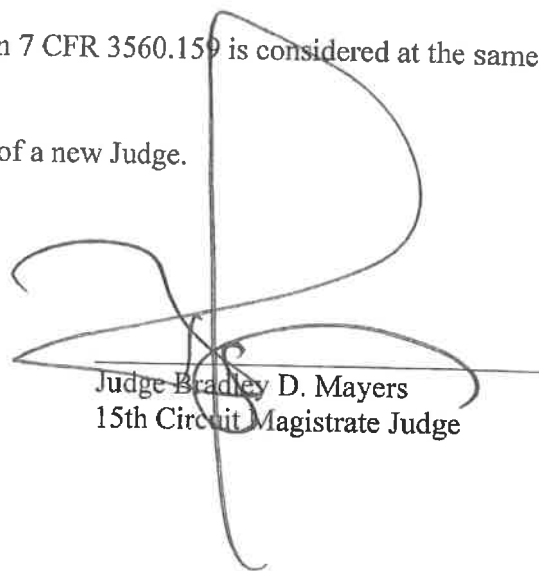
Based upon the arguments by the parties attorney, the facts, and the law, I find the following:

1. This Court has jurisdiction over the parties and the subject matter. I find that venue is proper.
2. I find that 7 CFR 3560.159 is applicable to this case and should be considered when making a ruling.
3. I find that this case should be retried wherein 7 CFR 3560.159 is considered at the same time the facts are presented.
4. I find that this case should be heard in front of a new Judge.

It is so ordered.

_____, SC

Date: 10/20/21


Judge Bradley D. Mayers
15th Circuit Magistrate Judge

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2602777

Jeffery Rush
PLAINTIFF(S)

Shady Moss
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After careful consideration the court has concluded that the Magistrate Judge should have considered the applicability of the laws pertaining to the USDA Rural Development. Therefore, the court is remanding this matter to the Magistrate for a ruling pursuant to Defendant's Motion to Alter or Amend and in doing so, to consider the applicability of the laws pertaining to the USDA Rural Development as they relate to the facts of this case.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/02/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Jeffery Rush VS Shady Moss

Case Number: 2021CP2602777

Type: Order/Electronic Form 4

H. Steven DeBerry, IV

At-Large Circuit Court Judge

Electronically signed on 2021-09-02 13:48:41 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2021CV261070730
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

WRIT OF EJECTMENT

Shady Moss Apartments
1705 Shady Moss Court
Conway, SC 29527
(843) 248-9191

PLAINTIFF(S)

Vs

Jeffery Rush
1708 Shady Moss Ct Apt 6C
Conway, SC 29527

DEFENDANT(S)

TO THE SHERIFF/MAGISTRATE'S CONSTABLE:

Upon Judgment of this Court, rendered on the , you are hereby Ordered to proceed to the premises located at 1708 Shady Moss Ct Apt 6C Conway, SC 29527.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have until **Friday April 30 2021 at 9:00 am** to voluntarily vacate the premises. **If the premises appear unoccupied and no one responds** to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after Friday April 30 2021 at 9:00 am following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a deputy sheriff may enter the premises using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

April 20, 2021

Conway Magistrate Court

_____, being duly sworn state that:

- ☐ I personally served a copy of this Writ on _____, an occupant of the rental unit
- ☐ On _____ 20____, at _____ the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise.
- ☐ On _____ 20____, at _____, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- ☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- ☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- ☐ Informed by Plaintiff that case is settled.

Date: _____, 20____

Sheriff/Deputy Sheriff/Constable

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2021CV261070730
CIVIL CASE NUMBER
MAGISTRATE'S COURT
RULE TO VACATE OR SHOW CAUSE (EVICTION)

Shady Moss Apartments
1705 Shady Moss Court
Conway, SC 29527

Phone: (843) 248-9191

PLAINTIFF(S)

Vs

Jeffery Rush
1708 Shady Moss Ct Apt 6C
Conway, SC 29527

Phone:

DEFENDANT(S)

TO Jeffery Rush : Shady Moss Apartments is asking this Court to evict you from the property located at because they claim that:

- ☐ You have failed to pay rent when due or demanded in the amount of \$.
- ☒ The terms of your tenancy or occupancy have ended.
- ☐ You have violated the terms or conditions of your lease by:

You the defendant(s) and lessee(s) of the premises listed at the address listed above, and all others, are ordered to vacate the premises immediately pursuant to S.C. Code Ann. §27-37-10 OR contact the:

Conway Magistrate Court
1201 Third Avenue
Conway, SC 29526
(843) 915-5290

within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

03/23/2021

Judge, Conway Magistrate Court

Personally appeared before me, the undersigned deponent, being duly sworn, says s/he is a person over 18 years of age, not a party or attorney in this action and s/he to serve the Rule to Vacate or Show Cause on Jeffery Rush on the following dates/times:

DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE
1. _____	_____	_____	3/25/21	1230
2. _____	_____	_____	SETTLED/DATE	VACANT/DATE
3. _____	_____	_____	PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT	

Jeffery Rush

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE

SIGNATURE OF SERVER

ON _____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

MAGISTRATE'S CLERK

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2021CV261070730
Shady Moss Apartments,	)	
	)	
Plaintiff	)	MOTION TO ALTER OR AMEND
	)	PURSUANT TO SCRMC 19 (d)
v.	)	
	)	
Jeffery Rush,	)	
	)	
Defendant	)	

Defendant, by and through the undersigned attorney, hereby moves this Court to reconsider the Writ of Ejectment signed by the Honorable Bradley D. Mayers on April 20, 2021. The Writ of Ejectment (attached Exhibit A) was filed with the Horry County Magistrate Clerk's office on April 20, 2021 and received by the undersigned counsel in person on April 20, 2021.

This motion for reconsideration is based upon the proceedings and exhibits previously before the Court, the laws of the USDA Rural Development, the laws of the State of South Carolina, and as grounds, Petitioner would show that:

1. The Plaintiff is part of a property financed by the Rural Housing Services, which is part of the USDA Rural Development according to paragraph 2 of the Lease Agreement (See Exhibit B) and the National Housing Preservation Database (See Exhibit C).
2. The Plaintiff must comply with the lease agreement as they are a party to the contract. Paragraph 3 of the Lease Agreement states, "the term of this Lease shall be for one (1) year and shall commence on 10/1/2020 and end at 12:00 noon on 09/30/2021, unless terminated as hereafter provided. This lease is renewable for successive terms of one (1) year by written agreement signed by all the parties and attached to this Lease unless

Tenant is subject to termination according to 7CFR 3560.158¹ and 7 CFR 3560.159 (See Exhibit D), or otherwise.” Paragraph 26(b) of the Lease Agreement states that “any termination of this Lease by Landlord must be in accordance with USDA regulations, State and local law, and the terms of this lease.” According to the lease itself, the lease is renewable unless the tenant is subject to termination according to 7 CFR 3560.158 and 7 CFR 3560.159, and if the lease is to be terminated, the Landlord is required to follow the USDA regulations.

3. 7 CFR 3560.159 is a USDA regulation controlling the termination of occupancy. Under § 3560.159(b), a tenant’s occupancy cannot end by a borrower when the lease expires. The tenant must meet a condition in paragraph (a) to end the tenancy. §3560.159(a) states that “borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenants lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation.” According to this federal regulation, tenants can only be evicted for lease violations if the landlord provides notice and an opportunity to cure.
4. The Plaintiff filed for an eviction for end of tenancy and lease violations. Based upon the USDA regulations they must follow, the Plaintiff may only terminate for violation of lease terms or upon changes of tenant’s eligibility. The Plaintiff may not terminate by simply providing a Notice of Termination of Lease as they did in the hearing. (See

¹ 7 CFR 3560.158 concerns tenants changes in eligibility for the benefits. This is not at issue as the Defendant still meets eligibility requirements and the eviction was for a lease violation. However, the regulation has been provided in Exhibit D for convenience.

Exhibit E). The Plaintiff improperly filed for an eviction for end of tenancy under 7 CFR 3560.159(b). The Plaintiffs can file for end of tenancy for violation of a lease term. According to both the Lease Agreement and the Regulations, the Plaintiff must provide a notice of the violation and give the tenant an opportunity to cure.

5. At the April 20, 2021 hearing, a Notice of Lease Agreement Violation was issued by the Plaintiff and presented into evidence (See Exhibit F). In this letter, the Plaintiff stated that the Defendant "cannot correct this violation since it is due to material and/or other good cause. You will be further notified that we will be seeking judicial action by termination of your lease." The Defendant made a Motion to Dismiss for Lack of a 14-day letter in accordance with South Carolina Statute § 27-40-710 arguing that the Landlord must provide an opportunity for the Tenant to cure the violation prior to filing the eviction. This Motion was denied by the Court. This Notice is in direct violation of 7 CFR 3560.159 (a) as it does not provide an opportunity for the tenant to cure the violation.

WHEREFORE Defendant respectfully requests this Court grant Defendant's motion to reconsider and find that the eviction violates the USDA regulations. Specifically, the Defendant requests that the Court find in favor of the Defendant and deny the Writ of Ejectment.

Respectfully submitted:


Bronte M. Anelli
1201 B. Creel St. Wing A-1
Conway, SC 29527
Bar No.: 0076095
(843) 381-8182 ext 6207 (phone)
(843) 381-8372 (fax)
Attorney for Defendant

Date: 04/22/21
Conway, SC

STATE OF SOUTH CAROLINA	)	COMMON PLEAS CASE NUMBER
	)	2021CV261070730
COUNTY OF HORRY	)	MAGISTRATE CIVIL CASE NUMBER
Jeffery Rush	)	
APPELLANT(S)	)	IN THE COURT OF COMMON PLEAS
VS.	)	NOTICE OF CIVIL APPEAL
Shady Moss	)	
RESPONDENT(S)	)	

The Appellant, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the County of Horry

This notice of appeal is made subsequent to personal notice of the judgment which was announced at trial on April 20, 2021. The appellant's exceptions to the judgment of the magistrate are set forth as follows:

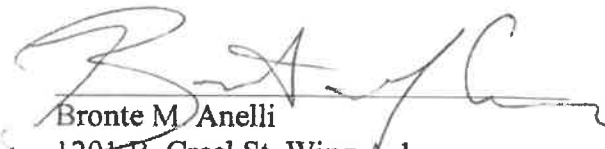
1. The trial court erred in denying Appellant's Motion to Dismiss for failure to provide a 14-day letter with right to cure the alleged violation, as required by S.C. Code § 27-40-710.
2. The trial court erred in denying Appellant's Motion to Alter or Amend Pursuant to SCRMC 19(d). The Appellant filed this Motion to the Court on April 26, 2021 which was properly within the five (5) day period stated within SCRMC 19(d). On April 29, 2021, the trial court contacted the Appellant's attorney in a phone call informing the attorney that they will not rule on the Motion and an appeal must be filed. A written decision would not be issued. The Appellant's attorney accepted this as a denial of the Motion and filed the subsequent appeal.
3. The trial court erred in finding that the Respondent is not part of a property financed by the Rural Housing Services, which is part of the USDA Rural Development according to paragraph 2 of the Lease Agreement and the National Housing Preservation Database.

4. The trial court erred in finding that Respondent was able to terminate the lease based on a 30-day notice and a lease violation even though the Respondent failed to terminate the lease agreement in accordance with the USDA regulations 7 CFR 3560.158 and 7 CFR 3560.159 as stated in paragraph 3 and 26(b) of the Lease Agreement.
5. The trial court erred in finding that the Respondent was able to terminate the lease based on a 30 day notice even though under § 3560.159(b) of the USDA Regulations, a tenant's occupancy cannot end by a borrower when the lease expires but must meet a condition in paragraph (a) to end the tenancy.
6. The trial court erred in finding that the Respondent was not required to provide an opportunity to cure even though under §3560.159(a) of the USDA Regulations state that "borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenants lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation."

For these reasons stated above, the Appellant respectfully requests that the Civil Court find that the Magistrate Court erred in their ruling and overturn the Writ of Eviction.

Respectfully submitted:

Conway, SC
Date: April 29, 2021


Bronte M. Anelli
1201 B. Creel St. Wing A-1
Conway, SC 29527
Bar No.: 0076095
(843) 381-8182 ext 6207 (phone)
(843) 381-8372 (fax)
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Jeffery Rush

APPELLANT(S)

VS.

Shady Moss

RESPONDENT(S)

COMMON PLEAS CASE NUMBER

2021CV261070730

MAGISTRATE CIVIL CASE NUMBER

IN THE COURT OF COMMON PLEAS

NOTICE OF CIVIL APPEAL

The Appellant, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the County of Horry.

This notice of appeal is made subsequent to notice of the judgment, which was announced in an Order issued on April 20, 2022 by Judge William N. Hutson. The Appellant is a tenant at Shady Moss which is a property financed by the Rural Housing Service, which is part of the USDA Rural Development, and whose lease is subject to termination according to 7 CFR 3560.158 and 7 CFR 3560.159. The appellant's exceptions to the judgment of the magistrate are set forth as follows:

1. The trial court erred in finding 7 CFR 3560.159(d) stands alone and allowed for termination without any notice or right to cure where there is criminal activity. 24 CFR 5.858 as referenced in 7 CFR .560.159(d) only requires borrowers to have specific language in the lease as grounds for termination. It does not provide termination procedures.
2. The trial court erred in finding 7 CFR 3560.159(d) was not subject to 7 CFR 3560.159(a) requirements for notice and right to cure. It states that "borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or

other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation.... (1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as: (i) violation of lease provisions or occupancy rules that are substantial and/or repeated ... (iii) admission to or conviction for use, attempted use, possession, manufacture selling or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity. (2) good causes, for purposes of occupancy terminations by a borrower, include actions such as: (i) actions by the tenant or member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or ... (iii) actions prohibited by state and local laws." The grounds for termination in subsection (d) are referenced as grounds for termination in subsection (a).

3. The trial court erred when it considered the Housing and Urban Development handbook and denied admittance of the USDA Guidebook Chapter 6 pages 6-44 and 6-45. No party presented the Housing and Urban Development handbook at trial, it is unclear of which handbook the court referenced, and the Housing and Urban Development handbook is not applicable to USDA Housing. Housing covered under the Rural Housing Services which is part of the USDA Rural Development is governed under the USDA Handbook which is different than the Housing and Urban Development handbook.

For these reasons stated above, the Appellant respectfully requests that the Civil Court find that the Magistrate Court erred in their ruling and overturn the Writ of Eviction.

Respectfully submitted:

Conway, SC
Date: April 21, 2022

/s/ Bronte M. Anelli
Bronte M. Anelli
1201 B. Creel St. Wing A-1
Conway, SC 29527
Bar No.: 0076095
(843) 381-8182 ext 6207 (phone)
(843) 381-8372 (fax)
Attorney for Appellant

1 STATE OF SOUTH CAROLINA

2 COUNTY OF HORRY

IN THE MAGISTRATE COURT

3

~~2021~~
2022-CP-26-02492

2021CV261070730

4 Jeffrey Rush,)

5 APPELLANT)

6 VS.)

7)

8 Shady Moss Apartments)

9 RESPONDENT)

APPEAL RETURN

FILED
HORRY COUNTY
2022 MAY 18 P 2:34
JENNIE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

10

11 This matter came before me, The Honorable William N. Hutson in the Conway Summary Court,
12 on April 18, 2022, in a non-jury proceeding as a Rule to Vacate Action. Present was the Respondent,
13 Shady Moss Apartments represented by Attorney Luther McCutchen, IV and the Appellant, Jeffrey
14 Rush, represented by Attorney Bronte Anelli.

15 This action was filed with the Conway Magistrate Court on March 12, 2021 in the form of a Rule
16 to Vacate Action and heard on October 18, 2021 by the Honorable Judge Bradley D Mayers. That
17 decision was appealed and remanded back to Conway Magistrate Court by the Court of Common Pleas
18 to be retried. Judge Bradley D Mayers ordered that the matter be retried, but recused himself since he
19 had already originally ruled on the matter. This Matter was heard on April 18, 2022 in a Bench Trial.

20 Testimony was given that the Respondent was requesting that an eviction be granted under the
21 Criminal Activity Section of the Code of Federal Regulations (CFR) identified in Section 3 of the lease.
22 The respondent entered the lease, and copies of the applicable CFR's related to the case. Testimony was
23 given that there was a police presence involving a wanted fugitive inside of the residence of the
24 Appellant and 9.6 grams of Marijuana in plain view resulting in application and granting of a search
25 warrant for the residence. Inside the residence of the Appellant during the execution of the search
26 warrant was also found what was reported to be Heroin and a 9mm Smith and Wesson pistol. This

27

28

1 testimony was given by the police officer who wrote the report outlining what was found and who was
2 present at the residence during the initial contact and subsequent search was not. Further testimony was
3 given, that notice was given to the Appellant terminating the lease after this activity, which included a
4 time for the Appellant to ask and seek a meeting with the staff of the residence to discuss and may also
5 request a formal hearing or appeal of their decision. The testimony also was given that there is no right
6 to cure for criminal activity other than that is outlined in the lease except for an option for a non-adult
7 member. Even then, the lease stated the "Landlord may" and not must. The testimony from the property
8 manager was that the Appellant did not request that hearing, and was then served with the action from
9 the court for the Rule to Vacate Action.

10 Testimony from the Appellant was that he was present with the alleged fugitive but had no
11 knowledge that he was wanted by law enforcement. He waited in the parking lot while law enforcement
12 executed the search warrant where the heroin and gun were found in the residence. Appellant testified
13 that there has only been one incident with law enforcement other than that particular incident, and that
14 was when his apartment was broken into. He stated that he was given no opportunity to cure the
15 violation of lease. Further testimony was given by the Appellants witness that there was no knowledge
16 of the subject being wanted, no prior criminal activity, and none since.

17 After careful review of the facts presented by both sides and information given during testimony,
18 this court found that it must consider Code of Federal Regulations (CFR) Title 7 Subtitle B Chapter
19 XXXV Part 3560 Subpart D in this matter. This is solely based on the fact that the property in question
20 is subsidized federally by the United States Department of Agriculture (USDA) and is thus subject to the
21 CFR 3560.159 and further applicable USDA Housing and Urban Development (HUD) regulations such
22 as the provisions of 24 CFR 5.858 associated with this type of subsidized housing and outlined in
23 Subpart D. Also, the court took the time to review all the case law presented by counsel and gave
24 appropriate weight and consideration to the information contained in the cases. As stated by defense
25 counsel, the USDA CFR Title 7 and other applicable HUD CFR Title 24 referenced in Title 7 should be
26 considered along with the South Carolina Landlord Tenant Act when determining the outcome of the

1 case at bar.

2 Herein, the court found that the plaintiff and defendant are subject to the 7 CFR 3560.159 related
3 to this case which defines the Termination procedures and has four different paragraphs in which an
4 occupancy would hereby be terminated. Those being (a) Tenants in violation of lease, (b) Lease
5 Expiration or Tenant Eligibility, (C) Other Termination (which include repairs, renovation, or natural
6 disaster), and (d) Criminal activity. The court found that paragraph (d) of the 7 CFR 3560.159 which is
7 titled "Criminal Activity" stands alone as reason to terminate occupancy, and stated, "Borrowers may
8 terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the
9 provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861".

10 Further, this court found that the provisions Title 24, Housing and Urban Development,
11 specifically 24 CFR 5.858, were applicable and stated, "The lease must provide that drug-related
12 criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any
13 such activity engaged in on the premises by any other person under the tenant's control, is grounds for
14 you to terminate tenancy." The Court was provided the lease and such language was found therein
15 specifically on Page 2, Paragraph 6, Section (a, b, c, e) of the lease.

16 In this particular case, the defendant, Jeffrey Rush testified that, Terrence Lamount Melvin was a
17 guest in his home, when he was taken into custody for warrants for attempted murder. There was further
18 testimony that Mr. Melvin was also charged with possession of illicit narcotics and weapon possession.
19 The court also found that paragraphs (b),(c), or (d) of 7 CFR 3560.159 contains no option or opportunity
20 to cure, or requirement of the landlord to provide such in this particular paragraph as outlined only in
21 paragraph (a) of 7 CFR 3560.159 for violations of the lease. Also, the court determined from the
22 Housing and Urban Development handbook which was referenced while researching the Housing and
23 Urban Development Code of Federal Regulations 24 CFR 5.858 that "Owners may terminate tenancy
24 and evict tenants for criminal activity by a covered person if they determine that the covered person has
25 engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted
26 for such activity and without satisfying a criminal conviction standard of proof of the activity."

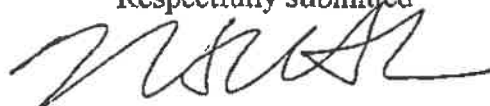
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Therefore, this court found by the preponderance of the evidence for the respondent in this matter, and so further ordered that a 24 hour Writ of Ejectment was to be issued on April 25, 2022 in accordance with 7 CFR 3560.159 and 24 CFR 5.585 and South Carolina Landlord and Tenant Act.

Dated this 12th day of May, 2022

Respectfully submitted

Judge William N. Hutson

FILED
HENDRY COUNTY
2022 MAY 18 P 2:34
KIMBERLY N. ELYS
CLERK OF COURT
HENDRY COUNTY, SC

Notice of Lease Agreement Violation

Date: 02/08/2021

Delivered by: First Class Certified Mail &
By Hand to Unit

Tenant Name: Jeffery Rush
Unit: 6C

FILED
HORRY COUNTY
2022 MAY 18 P 2:34
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

Dear Jeffery Rush:

In accordance with the provisions of your lease agreement dated 09/16/2020, you are hereby notified of the following lease agreement violation:

Section 26 : V. Drug related criminal activity engaged in on or near
community, by any tenant, household member or guest or any such activity;
on the community by any other person under tenants control
Check one:

☐ You can correct this violation by _____ (14 days after the date of this letter). If you have not corrected the violation by this date, you are hereby advised that we may seek judicial action by terminating your lease agreement.

You may request an informal meeting to discuss this violation. You are further advised that you have the right to request a formal hearing or appeal of this decision. Your request must be submitted within fourteen (14) calendar days after the date of this notice.

☒ You cannot correct this violation since it is due to material and/or other good cause. You will be further notified that we will be seeking judicial action by termination of your lease.

Sincerely,



Shady Moss Apartments

Address: 1705 Shady Moss Ct Conway SC 29527

Phone: 843-804-6741

Fax: 843-804-6741

Email: shadymoss@boyd-mail.com

TTY Relay #: 711

cc: Resident file

"The Fair Housing Act prohibits discrimination in real estate related transaction, or in the terms of conditional of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U.S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777."



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Horry County

2022 MAY 18 P 2:34

RENEE N. ELVIS
CLERK OF COURT
Horry County, SC

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Total Postage and Fees \$4.15	
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City, State, ZIP+4®	

Postmark Here 0526 22

7020 2450 0002 2519 2908



Notice of Termination of Lease

Date: 2/12/21

Delivered by: Certified Mail

Tenant Name:	<u>Jeffery Rush</u>
Unit:	<u>6c</u>

Dear Jeffery Rush:

You are advised that your lease agreement is terminated. This termination of tenancy is due to material and/or other good cause violation of your Lease Agreement. Please refer to Section 26 of your Lease: V-Drug Related criminal activity engaged in on or near community by any tenant, household member or guest or any such activity on community by any other person under tenants control. You may choose to voluntarily vacate the premises. If you so choose, you should notify this office and return all keys on the date you vacate. However, if you have not vacated by 3/12/21 (30+ days from the above date), you are advised that eviction proceedings may be sought through the appropriate judicial process according to State Law at which time you may present a defense.

You and your attorney may view your file and copy any information it contains to aid you in your defense. Attached to this notice are a copy of the Notice of Occupancy Rights for VAWA Victims (5380) and the VAWA Certification Form (5382).

Sincerely,

Klara Logan

Manager of Shady Moss Apartments
Address: 1705 Shady Moss Ct Conway SC 29527
Telephone: 843-804-6741
Fax: 843-804-6741
Email: shadymoss@boyd-mail.com

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Horry County
2022 MAY 18 P 2:34
RENEE N. ELVIS
CLERK OF COURT
Horry County, SC

For the hearing impaired TTY Relay #: 711

Cc: Resident file; copy to CMI Compliance Department



"The Fair Housing Act prohibits discrimination in real estate related transaction, or in the terms of conditional of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U.S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777."



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☐ Adult Signature Required
☐ Adult Signature Restricted Delivery \$
Postage \$
Total Postage and Fees \$

Postmark: MAY 12 2012
Post Office: 29440

Signature: Jeffery Rush
Street and Apt. No., or P.O. Box No. 60 Shady Moss
City, State, ZIP+4[®] Conway, SC

PS Form 3800, April 2011 Edition. Use only with PS Form 3800, April 2011 Edition. See Reverse for Instructions.

RENEE N. ELYS
CLERK OF COURT
Horry County, SC

2012 MAY 18 P 2:34

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HORRY COUNTY



BOYD MANAGEMENT

PO BOX 23589
COLUMBIA, SOUTH CAROLINA 29224-3589
(803) 788-3800

FILED
HORRY COUNTY
2022 MAY 18 P 2:35
REHEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF Horry
LEASE AGREEMENT RD 515 APPROVED -- (Revised January 2019)

THIS LEASE is made and entered into this 16th day of September, 2020 by and between Shady Moss ("Landlord") (name of property), whose mailing address is 1705 Shady Moss Court, Conway, SC 29527 and Jeffery Rush ("Tenant"). BOYD MANAGEMENT, INC., whose address is 7700 Trenholm Road, Columbia, SC 29224, is Agent for the Owner of the Property.

1. **PREMISES:** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, Unit 6C ("Unit") in the premises known as Shady Moss (name of property), located at 1705 Shady Moss Court, Conway, SC 29527 ("Community") (physical address of property).

☐ Check here if the Community is NOT subject to Low Income Housing Tax Credit and/or Tax Exempt Bond regulations.

2. **NONDISCRIMINATION:** The Community is part of a property financed by the Rural Housing Service, which is part of the USDA Rural Development (hereafter called "RHS" or the "Agency"). The Agency has the right to further verify information provided by the applicant/Tenant. The Community is also subject to nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Americans with Disabilities Act. Complaints may be directed to the Administrator, RHS, USDA, Washington, DC 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington, DC 20410. In accordance with Federal civil rights law and USDA civil rights regulations and policies, Landlord is prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Complaints may also be directed to Landlord by contacting the site manager, either in writing or in person, or by writing to Boyd Management, Inc., Post Office Box 23589, Columbia, SC 29224. The site manager can be contacted at his/her address of 1705 Shady Moss Court, Conway, SC 29527 (property's office address); his/her phone number is 843-397-5141 (office phone number); his/her email is shadymoss@boyd-mail.com (office email). Boyd Management, Inc., is the entity authorized to act for and on behalf of the Owner for purposes of service of process and receiving and receipting for demands and notice. (The name and address of the Registered Agent for Boyd Management, Inc., are Joseph P. Wilczewski, 7700 Trenholm Road, Columbia, SC 29223).

3. **TERM:** The term of this Lease shall be for one (1) year and shall commence on 10/1, 2020, and end at 12:00 noon on 09/30, 2021, unless terminated as hereafter provided. This Lease is renewable for successive terms of one (1) year by written agreement signed by all parties and attached to this Lease unless Tenant is subject to termination according to 7 CFR 3560.158 and 7 CFR 7:3560.159, or otherwise. The initial term and any successive terms are referred to as the "Term."

4. **RENT:** Tenant covenants to pay Landlord rent of \$.56 per month, payable in advance on or before the first day of every month, the first and last month's rent to be prorated if applicable. The rent is payable at Shady Moss (name of property), or as Tenant may be advised from time to time by Landlord by written notice. Tenant covenants to pay a ten (\$10.00) dollar late penalty if Landlord does not receive rent from Tenant on or before the tenth (10th) day of each month. IF RENT IS NOT PAID BY THE TENTH (10th) OF EACH MONTH, LANDLORD MAY, AT ITS SOLE OPTION, TERMINATE THIS LEASE AND HAVE SERVED AN EVICTION NOTICE IF REQUIRED OR DESIRED AND TAKE OTHER APPROPRIATE LEGAL ACTION. Rent shall not be deemed received unless honored by the institution upon which the check is drawn. Landlord may collect a fee in accordance with state law on any check that is not honored for payment and all future payments will be made by money order. Any and all other amounts Tenant may owe to Landlord from time to time pursuant to the terms of this Lease shall be deemed additional rent.

NOTICE TO TENANT: IF TENANT DOES NOT PAY RENT BY THE 10TH, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THIS LEASE, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS LEASE OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS UNIT. THIS IS YOUR NOTICE.

5. **SECURITY DEPOSIT:**

(a) Tenant hereby deposits \$ 200.00 as security hereunder. The deposit shall not exceed an amount equal to the net Tenant contribution for one month or basic rent, whichever is greater. Any refund of the security deposit shall be in accordance with Paragraph 5(b) below. All security deposits for this Community are held in a separate escrow account at BB & T (bank) in Columbia (city), SC (state).

(b) Tenant acknowledges that, prior to tendering the security deposit, Tenant was presented with a comprehensive list of damages to the Unit, and was given the ability to inspect the Unit prior to occupancy to determine the accuracy of the list of damages. Within three (3) days after Tenant vacates the Unit, Landlord shall inspect the Unit and compile a comprehensive list of damages during Tenant's occupancy, which shall be the basis for any charge against the security deposit. Within thirty (30) days after termination of this Lease or Tenant vacates the Unit, whichever occurs last, Landlord shall return the security deposit to Tenant, less any amount deducted as permitted herein, to the last known address of Tenant via first class mail. If Landlord retains any or all of the security deposit, Landlord shall provide Tenant with a written statement listing the exact reasons for the retention. Landlord may retain the security deposit and apply it to items including, but not necessarily limited to the following:

- i. Any past-due rent or late fees owed by Tenant to Landlord.
- ii. Any funds expended by Landlord to place or maintain the Unit in the same condition as the Unit was in on the initial date of occupancy by Tenant, reasonable wear and tear excepted. If the amount of Tenant's security deposit is not sufficient to cover the cost of repairs, Tenant agrees to promptly reimburse Landlord for costs in excess of the original security deposit.
- iii. Unpaid utility charges or other bills incurred as a result of Tenant's occupancy.
- iv. Any breach or default by Tenant resulting in an uncured Lease violation.
- v. Costs for removing Tenant's personal property after Landlord obtains a writ of ejectment against Tenant.
- vi. Cost of replacing keys not returned at move-out.

Tenant acknowledges it is Tenant's responsibility to provide Landlord an accurate forwarding address. If the letter containing the security deposit refund is returned to Landlord undelivered and if Landlord is unable to locate Tenant after reasonable effort, then Landlord has no further duty, responsibility, nor liability as to the security deposit refund.

6. **USE:**

(a) The Unit shall be used for residential purposes only and shall be occupied only by Tenant and any persons listed in Paragraph 7 of this Lease. Tenant shall be responsible for maintaining the Unit in a clean, healthy, safe, and attractive condition, including the interior of the Unit itself and any adjoining patios, porches, or balconies. Tenant shall not permit the Unit to be used for any purpose which will injure the reputation of the Community. Tenant shall not use or permit anything upon the Unit or Community which will invalidate the insurance on the Community or increase the rate thereof.

(b) Tenant and members of Tenant's household or guests may not engage in the following activities: behaving in a loud or obnoxious manner; disturbing or threatening the rights, comfort, health, safety, or convenience of others (including employees of the Owner's agent) in or near the Community; disturbing the Community business operations; engaging in or threatening violence; using or displaying firearms, BB guns, pellet guns, knives, slingshots, firecrackers and/or any comparable weapons or noise-makers within the Community; storing anything in closets having gas appliances; tampering with utilities or telecommunications; bringing hazardous materials into the Community; or injuring the Community's reputation by making bad faith allegations to others.

(c) It is understood that the use, possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, state, or Federal law) while in or on any part of this Community is an illegal act. It is further understood that such action is a material Lease violation. Such violations (hereafter called a "drug violation") may be evidenced upon the admission to or conviction of a drug violation.

(d) It is further understood that domestic violence will not be tolerated on Rural Housing properties, and such action is a material Lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the Unit in accordance with eligibility requirements.

(e) Landlord may require any Tenant or other adult member of the Tenant household occupying the Unit (or other adult or non-adult person outside the Tenant household who is using the Unit) who commits a drug violation or domestic violence to vacate the Unit permanently, within time frames set by Landlord, and not thereafter enter upon the Community or the Unit without Landlord's prior consent as a condition for continued occupancy by other members of the Tenant household. Landlord may deny consent for entry unless the person agrees to not commit a drug violation or domestic violence in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program.

Landlord may require any Tenant to show evidence that any non-adult member of the Tenant household occupying the Unit, who committed a drug violation or domestic violence, agrees to not commit a drug violation or domestic violence in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program within time frames specified by Landlord as a condition for continued occupancy in the Unit. Should a further drug violation or domestic violence be committed by any non-adult person occupying the Unit, Landlord may require the person to be severed from Tenancy as a condition for continued occupancy by Tenant.

If a person vacating the Unit as a result of one of the foregoing policies is one of the Tenants, the person shall be severed from the tenancy and the Lease shall continue among any other remaining Tenants and Landlord. Landlord may also, at the option of Landlord, permit another adult member of the household to be a Tenant.

Should any of the above provisions governing a drug or domestic violence violation be found to violate any of the laws of the land, the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of Tenant afforded by law.

7. OCCUPANTS: The designated occupants of the Unit are:

NAME: Jeffery Rush
 NAME: _____
 NAME: _____
 NAME: _____
 NAME: _____
 NAME: _____
 NAME: _____

Birth date: 01/27/65
 Birth date: _____
 Birth date: _____
 Birth date: _____
 Birth date: _____
 Birth date: _____
 Birth date: _____

RENEE N. ELVIS
 CLERK OF COURT
 Horry County, SC

2022 MAY 18 P 2:35

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 Horry County

Only the persons designated above (or as subsequently modified and agreed to by Landlord in writing) shall reside in the Unit. Persons not currently listed on the Lease who reside in the household for a period of fifteen (15) days in a forty-five (45) day-period shall be considered living in the Unit, and may be required to be added to the tenant certification at Landlord's election. A Tenant allowing an unauthorized person(s) to occupy the Unit is a material Lease violation, and may be cause for termination of the Lease, and writ of ejectment.

Although Tenant is permitted from time to time to have guests, Landlord reserves the right to require a recorded declaration of domicile or proof of domicile if Landlord suspects that a guest is, in fact, an unauthorized household occupant. Landlord's suspicion on this issue is justified if a person is making repeated visits with Tenant, or if there is one extended visit as noted above. Should Tenant fail to provide proof of other domicile for the guest, or if there is other evidence reasonably demonstrating that the guest(s) has become an unauthorized occupant in the Unit, then these events shall be deemed a material non-compliance with the Lease, and cause for termination of the Lease, and writ of ejectment.

8. TENANT'S MAINTENANCE OF UNIT:

(a) **ORIGINAL CONDITION:** The Unit and its appliances and fixtures shall be deemed to be clean and acceptable, in good good repair and operable, unless Landlord is given written notice within 48 hours of the commencement of the Term hereof. Landlord will provide Tenant with a written statement (Move-In Unit Inspection Report) of the condition of the Unit upon Tenant's initially entering into occupancy thereof and upon Tenant's vacating the same. With the Move-In Unit Inspection Report, Tenant shall be entitled to participate in the inspection, and Tenant will have the opportunity to note in writing any observed discrepancies, and both Landlord and Tenant will sign the Report. When vacating, Tenant may participate in the inspection of the Unit, upon request in writing given simultaneously with the notice of intent to vacate. Landlord will monitor the maintenance responsibilities pertaining to buildings and common areas for compliance with state and local codes, Agency rules, and fair housing requirements.

(b) **CLEANLINESS:** Tenant shall keep Unit and appliances and fixtures in a reasonably clean and tenantable condition. Upon vacating the Unit, Tenant shall leave them in the condition existing at the commencement hereof, ordinary wear from other than Tenant's deliberate or negligent misuse or abuse excepted, or pay Landlord for the cost of restoring said Unit, fixtures, and appliances to their original condition. Tenant is responsible for the trash around the immediate area of the Unit.

(c) **REPAIRS:** Tenant shall keep the Unit and the appliances and fixtures in as good repair as they are in at the commencement hereof, ordinary wear and tear excepted. Tenant shall pay the cost of service to any appliance or fixture, or of repairing any damage resulting from Tenant's deliberate or negligent misuse or abuse of the Unit and/or the appliances and fixtures or the Community of which they are a part, upon demand by Landlord.

(d) **ALTERATIONS:** No alterations or changes in or to the Unit, or the appliances or fixtures shall be made without Landlord's prior written consent at Landlord's sole discretion. Tenant shall not paint or wallpaper any portion of the Unit without Landlord's prior written consent at Landlord's sole discretion. Tenant shall be responsible for the cost of restoring the Unit to its original condition if any such modifications are made without Landlord's prior written consent. All modifications to the Unit shall become the property of Landlord. A disabled Tenant may request a reasonable modification to the Unit which will be considered by Landlord in accordance with Landlord's reasonable accommodation and modification policy and applicable law.

(c) **FIXTURES AND APPLIANCES:** Tenant shall not use fixtures or appliances furnished by Landlord for any improper or unauthorized purposes. If Tenant does use such fixtures or appliances for any improper or unauthorized purpose, Landlord may after timely written notice charge Tenant for damages incurred due to the improper or unauthorized use of the fixtures or appliances, and Tenant shall pay the sum upon demand.

(f) **NOTIFICATION:** Tenant shall notify Landlord of any item becoming out of repair and of any roof leaks and spigot, pipe, or commode leakage. Tenant shall immediately notify the Site Manager in writing, by telephone, or in person of repairs needed.

(g) **DAMAGE:** Tenant will be responsible for the breakage of all glass, windows, and doors to the Unit regardless of how the same was broken (except breakage by Landlord or its employees or agents). Landlord will replace the broken glass at Tenant's expense. Tenant is responsible for all damages to the Unit and the Community caused by Tenant, Tenant's guests, and others under Tenant's control. Tenant agrees to not destroy, deface, damage, or remove any part of the Unit, common areas, or Community grounds. Deliberate or negligent misuse or abuse by Tenant or any person in the Unit with Tenant's permission, may be considered a material Lease violation, with all remedies available to Landlord. Tenant covenants to pay Landlord, upon demand after timely written notice, for any and all damage to the Unit and Community caused by Tenant, Tenant's guests, and others under Tenant's control. Tenant covenants to pay Landlord, upon demand after timely written notice, for any and all damage caused by Tenant to the Unit and the Community, to include, but not limited to, the lawn and shrubbery.

(h) **SMOKE DETECTOR:** IF THERE IS A PROBLEM WITH TENANT'S SMOKE DETECTOR, IT IS TENANT'S RESPONSIBILITY TO NOTIFY THE SITE MANAGER IMMEDIATELY. Tenant shall not tamper with the smoke detector. Landlord is responsible for maintaining the smoke detectors. Tenant will be responsible for the payment of any damages to the smoke detector caused by Tenant. If smoke detector is not operable due to tampering or if the smoke detector battery is dislodged or removed, there is a fifty (\$50.00) charge for repairing the damaged smoke detector or replacing the battery. Tampering with smoke alarms by Tenant will be considered a material breach and act of noncompliance under the Lease and dispossession proceedings may be brought against Tenant.

9. **LANDLORD'S MAINTENANCE OF COMMUNITY:** Landlord will maintain the building and any unassigned community areas in a decent, safe, and sanitary condition in accordance with local and county housing codes and regulations and RHS regulations, but failure to do so shall not be grounds for nonpayment of the sums due by Tenant to Landlord hereunder or the nonperformance of Tenant's other obligations hereunder, except that notwithstanding this provision, Landlord will comply with South Carolina Residential Landlord - Tenant law in affording Tenant all rights and means of redress indicated therein. Tenant shall promptly notify Landlord in writing of any accident to or defect in water pipes, gas pipes, electric wires or fixtures, and heating and cooling apparatus in order that Landlord may make the necessary repairs. Landlord shall not be liable for damages or inconvenience resulting from the unanticipated temporary breakdown or interruption of same.

10. **HOUSING ALLOWANCES:** A copy of the completed and approved Utility Allowance Form is attached hereto.

11. **UTILITIES, SERVICES AND EQUIPMENT:**

(a) Tenant agrees to pay all charges for the following utilities promptly when due: (check those that are responsibility of Tenant)

☐ Water ☐ Sewer ☒ Electric ☐ Gas ☐ Trash collection

Tenant shall pay and be responsible for all services and utilities separately metered to the Unit. Tenant will deal with such utility and service companies individually, applying for such service or utilities in Tenant's own name and paying any deposit that may be required by any utility company. Landlord shall be responsible and pay for any utilities or services not individually metered to the Unit but served by a master meter (if applicable). For any utility or service which is master metered and paid by Landlord, Tenant is authorized to use only so much of such service or utility as is customary for the Unit. The flagrant wasting of energy by Tenant (such as the running of heating or air conditioning systems with the doors and/or windows open) shall be deemed grounds for termination of this Lease.

Failure by Tenant to maintain essential utilities will be grounds for termination of this Lease.

(b) Landlord agrees to furnish the following: (check those that are responsibility of Landlord)

☒ Refrigerator ☒ Range ☒ HVAC ☒ Trash collection ☐ Other: _____
(Specify other major appliance/utility, if applicable)

12. **ASSIGNMENT OR SUBLEASE:** Tenant shall not assign its leasehold interest or sublet the Unit in whole or in part under any circumstances.

13. **DESTRUCTION OF OR DAMAGE TO UNIT:** If during the Term the Unit or Community is damaged by fire or the elements, they shall be repaired by Landlord with reasonable diligence. If the damage is too extensive to enable Landlord to effect such repairs as are required to render the Unit fit for occupancy within forty-eight (48) hours after the damaging event, the rent shall cease from the date of damage until so repaired, and the tenancy shall not be terminated unless such repairs shall require more than sixty (60) days, in which event Tenant shall have the option of terminating the Lease; provided, that there shall be no cessation of rent if the damages shall have been the result of negligence, default, or willful act of Tenant or anyone occupying the Unit.

RENEWED
CLERK OF COURT
HARRY
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14. **CONDEMNATION:** Tenant hereby waives any injury, loss, or damage, or claim thereof against Landlord resulting from any exercise of a power of eminent domain over all or any part of the Community. All awards of the condemning authority for the taking of land, parking areas, or buildings shall belong exclusively to Landlord. In the event substantially all of the Community shall be taken, this Lease shall terminate as of the date the right to possession vests in the condemning authority and rent shall be apportioned as of that date. In the event any part of the Community and/or building or buildings of which the Unit is a part (whether or not the Unit shall be affected) shall be taken as the result of the exercise of a power of eminent domain, and the remainder shall not, in the opinion of Landlord in its sole discretion, constitute an economically feasible operating unit, Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Lease as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of the termination date.

15. **ABANDONMENT BY TENANT:** Either (i) the unexplained absence of Tenant from the Unit for a period of fifteen (15) days or more after default in the payment of rent or (ii) if Tenant has voluntarily terminated the utilities for the Unit and there is an unexplained absence of Tenant after default in payment of rent, then there shall be deemed an abandonment of the Unit, and this Lease may be immediately terminated by Landlord by written notice to Tenant, and Landlord may reenter and take possession of the Unit by eviction proceedings in accordance with South Carolina law. Tenant shall give the Site Manager prior notice of any planned absence from the Unit for a period of two (2) weeks or more.

16. **NOTICE:** Except as otherwise set forth herein, notice to Tenant shall be deemed given when given in writing and delivered in hand to Tenant or mailed to Tenant at the Unit registered or certified mail. Except as otherwise set forth herein, notice to Landlord shall be deemed given when in writing and mailed to 1705 Shady Moss Court, Conway, SC 29527

by first class mail, postage prepaid. It is agreed and understood that Boyd Management is acting only as an agent for Landlord and has no liability hereunder.

17. **OPERATING EXPENSES:** The parties hereby agree that in the event of an extraordinary increase or decrease in utility or operating expenses for which Landlord is responsible, Landlord may adjust the monthly basic and/or note rate rental payments upon approval by RHS and upon giving Tenant thirty (30) days written notice of such increase or decrease.

18. **ELIGIBILITY CERTIFICATION:**

(a) Tenant agrees that the household income, household composition, and other eligibility requirements shall be deemed substantial material factors of his/her tenancy with respect to the amount of rental he/she will be obligated to pay and his/her right of occupancy, and that Tenant's obligation to report these things accurately and timely is a substantial material requirement of this Lease.

(b) Rents will be determined in accordance with (RD 3560-8) Tenant Certification.

(c) Eligibility will be in accordance with RD 3560 guidelines and maximum adjusted income for each particular county.

(d) Tenant understands that income certification is a requirement of occupancy and agrees to promptly provide any certification documents and income/asset verifications required by Landlord (usually income/asset verifications and names and ages of household members) to permit determination of eligibility and, when applicable, the monthly Tenant contribution to be charged.

(e) Tenants or members of Tenant's household may become ineligible after date of move-in when they fail to meet either the the income or occupancy requirements for the Unit, or other eligibility requirements. Landlord agrees to promptly give a (30) thirty day written notice of such ineligibility, informing Tenant if the ineligibility can be cured, or if Tenant must vacate the Unit within thirty (30) days or at the end of the Lease Term (whichever is longer). In these instances, the Ineligible Lease Addendum will be executed and becomes a part of this Lease.

(f) Unit size will be determined in accordance with Landlord's occupancy guidelines as follows:

Unit Size	Minimum	Desired Density	Maximum
One Bedroom	1	2	3*
Two Bedroom	2	4	5*
Three Bedroom	3	6	7*
Four Bedroom	4	8	9*

*cannot exceed local building codes.

Some exceptions may be made with RHS and/or Landlord approval. Such approval must be in writing and signed by the approval official. Such approval authorization becomes part of this Lease. Tenant may be temporarily assigned to a larger or smaller unit than indicated in the occupancy guidelines above. In this event, Tenant acknowledges and agrees that Tenant will be required to transfer to a correctly sized unit when one becomes available, and that Tenant must pay all costs associated with moving to the correctly sized unit. In addition, it is Tenant's responsibility to move to the next available appropriately sized unit if Tenant's household becomes over-housed or under-housed in Tenant's then-current unit. If Tenant is no longer eligible for occupancy under the foregoing occupancy rules or does not meet the criteria set forth in 7 CFR §3560.155(c) and (e), then Tenant must vacate the Unit within 30 days of being notified by Landlord that Tenant is no longer eligible for occupancy or at the expiration of this Lease, or whichever is greater, unless (1) The waiting list for the specific rental unit type has no eligible applicants; or (2) The required time period for vacating the unit would create a hardship on Tenant household.

(g) Tenant agrees that a recertification of income shall be made to Landlord annually from the date hereof, provided, however, that in any event Tenant shall recertify his income upon the execution of any subsequent agreement concerning the Unit.

(h) Tenant agrees to notify Landlord when changes occur in Tenant's income or assets, Tenant's qualifications for adjustments to income, or the number of persons living in the Unit. Tenant agrees that the monthly rental payment is subject to adjustment by Landlord to reflect such changes. Tenant agrees to be bound by such adjustments. Landlord agrees to give a thirty (30) day written notice of any such adjustment to Tenant when the new rent has increased and Tenant has complied with the re-certification process in a timely manner. A new Lease or Addendum will be executed at such time.

(i) Tenant agrees that Landlord must process a Tenant Certification whenever a permanent change of \$100 or more per month occurs in Tenant's income, Tenant's qualifications for adjustments to income change, or the number of persons living in the Unit changes. Landlord must recertify for such changes, including income changes of \$50 per month, if Tenant requests that such a change be made. Tenant agrees to supply Landlord information concerning such changes within thirty (30) days of such changes.

(j) Tenant agrees to pay RHS restitution when unauthorized assistance is received due to (1) Tenant's fraud or misrepresentation of Tenant's initial income certification or Tenant's recertification or in any other information furnished to Landlord, or (2) Tenant's failure to supply income recertifications when required or to supply information required by this Lease. All instances of unauthorized assistance are reported to RHS at the same time notice is sent to Tenant. Failure to repay such unauthorized assistance could result in the initiation of legal action by the Agency.

(k) Tenant understands that Tenant will no longer be eligible for occupancy in this Community if Tenant's income exceeds the maximum allowable adjusted income as defined periodically by the Rural Housing Service for South Carolina. Landlord agrees to give written notice to Tenant of Tenant's ineligibility to occupy the Unit due to income limitation. The Lease shall terminate at the end of the Lease term and Tenant shall agree to vacate the Unit at such end of Lease term, or within a thirty (30) day period, whichever is longer, unless eligibility can be established by approval of a waiver by RHS at the request of Landlord.

(l) Tenant agrees to notify Landlord within thirty (30) days of the occurrence of any change in income or assets, qualifications for adjustments to income, or the number of persons living in the Unit. Tenant understands that rent or benefits may be affected as a result of this information. Tenant also understands that failure to report such changes may result in loss of benefits to which Tenant may be entitled or may result in Landlord taking corrective action if benefits were mistakenly received. Tenant understands the corrective action Landlord may take includes the initiation of a demand for repayment of any benefits or rental subsidies improperly received, initiation of a notice to cancel any rental assistance or Section 8 assistance being received for the balance of Tenant's certification period, initiation of a notice to increase Tenant's monthly rent to current Note Rate Rent as approved by the Agency during the term of this Lease, or initiation of a notice of termination. Tenant understands that one or more of these remedies, or other appropriate remedies, may be initiated at the option of Landlord.

(m) Tenant understands that Tenant must promptly notify Landlord of any extended absences, and that if Tenant does not personally reside in the Unit for a period exceeding sixty (60) consecutive days, for reasons other than health or emergency, the net monthly Tenant contribution shall be raised to current Note Rate Rent as approved by the Agency during the term of this Lease for the period of Tenant's absence exceeding sixty (60) consecutive days. Tenant also understands that should any rental assistance be suspended or reassigned to other eligible tenants, Tenant is not assured that it will still be available to Tenant upon Tenant's return. Tenant also understands that if an absence continues, that Landlord may take the appropriate steps to terminate tenancy.

(n) **RENTAL ASSISTANCE:** (check the applicable section):

☒ **Tenant is participating in the USDA, RD Rental Assistance Program:** Tenant understands and agrees that as long as Tenant receives rental assistance, the gross monthly Tenant contribution (as determined on the latest Form RD 3560-8, which must be attached to this Lease) for rent and utilities will be \$45.00 ("Gross Tenant Contribution"). If Tenant pays any or all utilities directly (not including telephone, Internet or cable TV), a utility allowance of \$101.00 will be deducted from the Monthly Tenant Contribution and the resulting net monthly contribution will be \$-56 ("Net Contribution"). If the Net Contribution would be less than zero (0), Landlord will pay Tenant \$56.00. Tenant also understands and agrees that the Monthly Tenant Contribution under this Lease may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this Lease. Should Tenant no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the Landlord and the Agency expires, Tenant understands and agrees that the Monthly Tenant Contribution may be adjusted to no less than the current Basic Rent as approved by the Agency nor more than the current Note Rate Rent as approved by the Agency during the remaining term of this Lease, except that based on the escalation clause in this Lease these rates may be changed by an Agency approved rent change. Tenant understands that every effort will be made to provide rental assistance so long as Tenant remains eligible and the rental assistance agreement between the Landlord and Agency remains in effect. However, should this assistance be terminated, Tenant may arrange to terminate this Lease, giving proper notice as set forth elsewhere in this Lease.

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☐ **Tenant is occupying Unit under Interest Credit Plan II:** Tenant understands and agrees that Tenant's gross monthly contribution as determined on the latest Form RD 3560-8, which must be attached to this Lease, for rent and utilities will be \$ _____ ("Gross Monthly Contribution"). If Tenant pays any or all utilities directly (not including telephone or cable TV), a utility allowance of \$ _____ will be deducted from the gross monthly rent except that Tenant will pay not less than the basic rent or more than the note rate stated below. Tenant's net monthly rent will be \$ _____. Tenant understands that should Tenant receive rental subsidy benefits (interest credit) to which Tenant is not entitled, Tenant may be required to make restitution, and agrees to pay any amount of benefit to which Tenant was not entitled. Tenant also understands and agrees that the monthly Tenant rent under this Lease may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this Lease. Tenant's rent will not, however, be less than the current Basic Rent as approved by the Agency nor more than the current Note Rate Rent as approved by the Agency during the term of this Lease, except that based on the escalation clause in this Lease these rental rates may be changed by an Agency approved rent change and the adjustment clause in this Lease.

(o) **LIHTC/TEB, WHEN APPLICABLE:** In the event this Community is subject to provisions of Section 42 IRS as it pertains to Low Income Housing Tax Credit and/or Low Income Housing Tax Credit/Tax Exempt Bond, the following requirements are in effect as they relate to this Lease:

(i) Tenant must be, and remain, eligible under the provisions of this Lease; and

(ii) Tenant's eligibility shall be based upon the Low Income Housing Tax Credit/Tax Exempt Bond/RD515 Certification executed at initial occupancy, during the term of the Lease, if any, and upon each anniversary date of the original Lease. Tenant agrees to provide all information pertaining to income, assets, and household characteristics promptly when requested by the Landlord. Tenant certifies the accuracy of the information provided in connection with the examination or re-examination of the eligibility of the household of Tenant.

(iii) Based upon the Low Income Housing Tax Credit/Tax Exempt Bond/RD515 Certification after move-in, should Tenant be ineligible under the program guidelines, Tenant agrees to vacate the Unit within thirty (30) days after receiving notification of ineligible status.

(iv) Based upon the Tenant Certification in effect, Tenant understands that as long as the Unit and household are counted in the "qualified basis", the maximum rent chargeable is the restricted rent, as determined periodically by HUD, minus the Utility Allowance.

(p) **PREPAYMENT OF RHS LOAN:** In the event Owner prepays the Section 515 loan, Tenant will be afforded protections as provided for in accordance with current Agency regulations (7CFR 3560, subpart N).

(q) **ESCALATION CLAUSE:** Changes in basic and/or market rents prior to the expiration of this Lease are permitted. Rent changes would normally be necessary due to changing utility and other operating costs. Tenant contribution may be changed prior to expiration of the Lease if the change is due to changes in Tenant status, as documented on the Tenant Certification form, or Tenant's failure to properly recertify. All changes must be approved by RHS according to RHS HB-2-3560 Chapter 7.

(r) In the event that Tenant is temporarily assigned a unit that is a designated accessible unit but neither Tenant nor other designated occupants require such accessibility, Tenant understands that the following is applicable: Tenant acknowledges that Tenant is occupying a designated accessible unit. Tenant acknowledges that priority for such units is given to those needing special physical design features. Tenant acknowledges that Tenant is permitted to occupy the unit until management issues a notice that a priority applicant is on the waiting list and that Tenant must move to another suitably sized vacant unit in the Community. Upon receiving this notice, Tenant agrees to move at Tenant's expense within thirty (30) calendar days to the suitably sized vacant unit within the Community when one is available. Tenant further understands that the rental rate will change, when appropriate, to the rental rate for the unit Tenant moves to and this Lease will be modified accordingly. If a suitably sized unit is not available in the Community within thirty (30) days, Tenant understands that Tenant may remain in the designated accessible unit until the first available unit in the Community becomes available and then Tenant agrees to move within thirty (30) days.

(s) Should any Federal subsidies paid to Landlord on behalf of tenants in the Community be suspended or canceled, due to a monetary or non-monetary default by Landlord, the monetary payment made by Tenant to Landlord (or, when applicable, the monetary payment received by Tenant from Landlord) shall not change over that which would have been required had the subsidy remained in place for the term of the Lease.

(t) In the event Agency determines the Owner in default of its loan on this Community and legal proceedings have been initiated, the following requirements are in effect as they relate to this Lease:

(i) The Tenant contribution must remain as if interest credit and/or rental subsidy were still in place and available had acceleration not occurred; and

(ii) The terms of the Lease will remain in effect until the date acceleration and/or foreclosure is resolved.

19. **PETS:** Tenant understands that pets are not allowed in the Unit unless this Community is designated as "Elderly" by the Agency, except for assistance animals for tenants with a verified disability. When verified, an addendum to the Lease will be executed outlining certain rules and regulations regarding assistance animals. Additional deposits are not required for assistance animals. Guests are prohibited from bringing pets into the Unit and the Community. Failure to comply will constitute grounds for termination of the Lease and a writ of ejectment.

20. **TENANT'S PERSONAL PROPERTY:** All personal property in the Unit shall be at the risk of Tenant only. Landlord recommends Tenant obtain insurance coverage ("renter's insurance") for Tenant's personal property. Tenant acknowledges that personal property is subject to loss by fire, theft, and other perils of man and nature, and Tenant acknowledges that Landlord will not be responsible for such losses to Tenant's personal property. A Tenant's obligation to abide by the terms of this Lease still exists during the time that Tenant's household personal possessions remain in the Unit after the Tenant household has personally ceased occupancy with the intent to vacate and leave the Unit, until such time as the personal possessions have been removed voluntarily or by legal means, subject to the provisions of State or local law.

21. **PEACEFUL ENJOYMENT:** Landlord covenants that Tenant, on paying the rent and performing covenants hereof, shall and may peaceably and quietly have, hold and enjoy Unit for the Term, subject, however, to the terms and conditions hereof, without hindrance or interruption by Landlord.

22. **REASONABLE ACCOMMODATIONS:** Tenants who meet the definition of disabled (definition attached to the apartment application that Tenant completed, or may be requested from the site manager) may have need of reasonable accommodations or modifications during the time covered by this Lease. Requests for reasonable accommodations and modifications may be made by contacting the site manager and obtaining the forms to be completed for approval consideration by Landlord. These requests may be for live-in assistants, accessible units with special design features, and/or modifications to the present Unit.

23. **CONDITION OF UNIT AT TERMINATION:** Tenant shall deliver up the Unit at the termination of this Lease in as good condition as the Unit is in on the commencement date of the Lease, reasonable wear and tear excepted. Any addition made or fixture added shall be left with the Unit and become the property of Landlord at termination of this Lease, whether such fixture was added with written consent of Landlord or done in violation of this Lease.

24. **INABILITY OF LANDLORD TO DELIVER POSSESSION:** Should Landlord be unable to deliver possession of the Unit on the commencement date of this Lease through no fault of Landlord's, Landlord shall not be liable to Tenant for any damages other than to rebate any advanced rent and damage deposit paid. If possession cannot be given within seven (7) days from the commencement date, this Lease, with written notice, may be terminated by either party.

25. **LANGUAGE:** In areas with a concentration of non-English speaking tenants, this Lease may be available to tenants in both English and the appropriate additional language, upon written request. In areas where it is not feasible for a copy of this Lease in other than English to be obtained, the name and address of an interpreter will be provided.

26. **TERMINATION OF LEASE:**

(a) Tenant shall be in default in the event of the happening of any of the following (hereinafter referred to singularly as "Event of Default"). For an Event of Default, Landlord may terminate this Lease, evict Tenant, recover actual damages and obtain injunctive relief, all as allowed by law:

(i) Tenant fails to timely make monthly payments of rent and late charges, or any of them, whether the same be demanded or not, and same are not paid when they become due or within ten (10) days thereafter;

(ii) Tenant fails to comply with this Lease or the rules and regulations of the Community other than the non-payment of rent and late charges;

(iii) Tenant's material failure to carry out obligations under the South Carolina Residential Landlord-Tenant Act;

(iv) Action or conduct by Tenant which disrupts the livability of the Community or adversely affects the health and safety of any person, or the right of any other occupant to the quiet enjoyment of the Unit or the Community, or which has an adverse financial effect on the Community or constitutes harassment of the management staff at the Community;

(v) Drug related criminal activity engaged in on or near the Community, by any Tenant, household member, or guest, or any such activity engaged in on the Community by any other person under Tenant's control;

(vi) Determination made by Landlord that a household member is illegally using a drug;

(vii) Determination made by Landlord that illegal use of drugs interferes with the health, safety, or right to peaceful enjoyment of the Unit by other tenants;

(viii) Criminal activity by a Tenant, any member of Tenant's household, or a guest or another person under Tenant's control that threatens the health, safety, or right to peaceful enjoyment of the residences or Community by others (including other tenants and property management staff), regardless of whether the Tenant, any member of the Tenant's household, a guest or another person under the Tenant's control has been arrested or convicted for such activity;

(ix) Tenant is fleeing to avoid prosecution or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual is fleeing;

(x) Tenant is violating a condition of probation or parole under Federal or State law;

(xi) Determination made by Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the Unit by other tenants;

30 days ✓

(b) Any termination of this Lease by Landlord must be in accordance with USDA regulations, State and local law, and the terms of this Lease. Landlord shall give Tenant thirty (30) days' notice to vacate after Lease termination unless (i) the breach is for nonpayment of rent; or (ii) the severity of Tenant's Lease violation(s) is such that Landlord determines that Tenant is an immediate threat to the health or safety of Tenant himself or other members of the household, other tenants, guests, Landlord, Landlord's agents or staff, Landlord's property or other persons in the immediate vicinity of the Community.

(c) Notices of Lease termination from Landlord shall: (i) specify the date this Agreement will be terminated; (ii) state the grounds for termination with enough detail for Tenant to prepare a defense; and (iii) advise Tenant that he/she has 10 days within which to discuss the proposed termination with Landlord. *

(d) The 10-day period set forth above will begin on the date the notice is served upon Tenant. If Tenant requests a meeting with Landlord, Landlord agrees to discuss the proposed termination with Tenant and advise Tenant of his/her right to defend the action in court.

(e) Any Tenant or household member who is a victim of domestic violence or sexual assault or stalking as defined under South Carolina law may terminate this Lease providing Landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the Landlord's receipt of the notice.

27. LANDLORD'S RIGHT OF ENTRY: In the event of emergency, Landlord may enter the unit at any time with or without notice. When Tenant has requested services in the unit, Landlord may enter the unit between the hours of 8:00 AM and 8:00 PM after announcing the intent to do so for the purpose of addressing the requested services. (Twenty-four hour notice is not required.) For providing regularly-scheduled periodic services, such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, Landlord may enter the unit between the hours of 9:00 AM and 6:00 PM after announcing the intent to do so. (Twenty-four hour notice is not required.) For other reasons and purposes, Landlord shall give Tenant at least twenty-four hours' notice of Landlord's intent to enter and may only enter at reasonable times. The reasons Landlord will need to enter the unit from time to time will include, but are not necessarily limited to the following:

(a) To inspect the Unit to determine whether Tenant is fulfilling the obligation to maintain the Unit as required of Tenant herein. Inspections for this purpose are made quarterly during a specified week between the hours of 9:00 AM and 6:00 PM. Tenant will be notified prior to inspections.

(b) To perform any preventive or routine maintenance to the Unit or Complex or as part of any pest control.

(c) To make necessary repairs, decorations, alterations or improvements to the Unit.

(d) To show the Unit to prospective or actual purchasers, mortgagees, Tenants, workmen, contractors, or governing agencies.

(e) To inspect when Landlord has reasonable cause to believe Tenant has abandoned or surrendered the Unit.

(f) After Tenant has provided a vacating notice, Landlord may enter the Unit for the purpose of inspection, cleaning, and redecorating if such work can be done without disturbance to Tenant or damage to Tenant's property.

(g) To conduct smoke detector tampering inspections. If smoke alarm is not operable due to tampering or if the smoke alarm battery is dislodged or removed, there is a fifty (\$50.00) charge for repairing the damaged smoke detector or replacing the battery.

(h) For any other reason or purpose from time to time, which Landlord may reasonably deem necessary.

28. HUD SECTION 8 VOUCHER HOLDERS: The household's tenancy is subject to compliance with the terms of this Lease. The agency issuing the HUD Section 8 Voucher may also require Tenant to execute its Lease. If Landlord terminates this Lease early due to Tenant's violations of this Lease, the agency that issued the Section 8 Voucher will be notified.

29. TENANT GRIEVANCE PROCEDURES: Tenant's grievance or appeal from Landlord's decisions relative to this Lease, and/or other adverse action, shall be resolved, if properly requested by Tenant, in accordance with procedures consistent with RHS HB-2-3560, CFR 3560.160 covering such procedures, such being posted and available for inspection at the site manager's office. Tenant may request a hearing within (10) calendar days after Tenant receives written notice of any adverse action. All changes to this Lease or any additional addenda executed thereof will not take effect until thirty (30) days following the date of execution by Tenant and Landlord. A copy of these rights will be given to Tenant at move-in and each renewal of this Lease.

30. RULES AND REGULATIONS: The following rules and regulations apply to all residents and their guests. Violations should be reported promptly to the Site Manager.

(a) Motor Vehicles:

i. The maximum speed limit in the Community is 15 mph. Tenant and guests of Tenant must comply with this regulation. Parking must be within the lined spaces: one vehicle per marked space. Although parking places are not assigned, please be respectful of your neighbors and advise your guests accordingly.

ii. Driveways, parking areas (except for cars), sidewalks, entrances, passageways, courts, stairways, walks, lawns, and hallways must be kept free and clear of obstacles at all times. No possessions of residents can be placed in common areas.

iii. Accessible parking spaces are designated at the property. All vehicles must have proper identification displayed to allow their vehicle to be parked in the designated spot.

iv. All motor vehicles belonging to Tenant and guests of Tenant shall be parked in the areas provided for parking.

v. Motor vehicles are prohibited from driving onto sidewalks and lawn/grassed areas.

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vi. Vehicles of any type without mufflers are prohibited at the Community. Furthermore, vehicles must be in good repair. Vehicles leaking any type of fluid may be towed at the owner's expense from the Unit and Tenant will be responsible for any damages.

vii. Washing and waxing of motor vehicles are not permitted unless the Community has a specific car wash amenity for such purposes. Mechanical work on motor vehicles is not allowed on Community grounds. No vehicles can be placed on blocks or dismantled while on Community grounds.

viii. Motorcycles and scooter bikes must be parked only in assigned areas. Such items cannot be stored in hallways, apartments, nor on sidewalks and lawns.

ix. Inoperable motor vehicles - including ones with flat tires, no license tag or an expired license tag are not permitted in the Community, and will be towed at the owner's expense.

x. No boats, trailers, etc., will be allowed on the Unit of the Community.

(b) Achieving Compatible Living in Common Areas: Harmony Among Residents:

i. The use of firearms, BB guns, pellet guns, slingshots, firecrackers and/or any comparable weapons (knives) or noise-makers within the Community is strictly prohibited.

ii. No loud noises or public nuisances will be tolerated in residential areas. No Tenant and/or Tenant's guest(s) will disturb others with unlawful noises. No nuisances shall be allowed upon the Community; and no use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Community by its residents will be tolerated. If law enforcement officers are called to resolve a disturbance, whether involving Tenant(s) and/or their guest(s), Tenant may receive a 30-day notice to vacate. However, if a tenant is a victim of domestic violence, dating violence, and/or stalking, such victims will be granted all protections mandated by law. Eviction proceedings may be initiated after two confirmed complaints are received about Tenant.

iii. Tenant shall maintain reasonable noise levels at all times. TV, radio, and stereo volumes shall not be played loudly to the extent of being heard outside of the room where the equipment is in use between the hours of 11:00 PM and 7:00 a.m.

iv. Music lessons are not permitted in apartments. Musical instruments must be played with due consideration for other residents.

v. Climbing on roofs, fences, dumpsters, and/or any other equipment is prohibited. Only authorized workers are allowed on any roof area or on any portion of the Community's external structures (fences, retaining walls, etc.).

vi. Signs, advertisements, and/or any other type of lettering will not be exhibited or affixed to any door, building, or elsewhere by Tenant.

vii. Mops, clothing, rugs, and/or other items shall not be hung outside of the Unit so as to be in the view of the public area. No clotheslines or clothes-drying structures are permitted outside of the Unit.

viii. Patios and balconies cannot be used as storage areas. No large appliances (such as freezers) or interior-type furniture can be placed on apartment balconies and patios.

ix. Exterior radio aerials, television antennae, satellite dishes, or similar items must be installed in accordance with FCC Guidelines and only in an area where Tenant has exclusive use, and wiring must be installed correctly, and with written Landlord permission.

x. All trash and garbage must be placed in the containers provided and not strewn on the Community. Dumpsters are conveniently located throughout each Community. Lids to these dumpsters should be kept closed. All items for disposal must be placed inside the dumpster. Dumpsters are for household items only. All furnishings including, but not limited to, couches, mattresses, tables, chairs, etc. are the responsibility of the household to remove. No dumping allowed.

xi. All necessary light bulbs for use in the Unit shall be furnished and installed by Tenant.

xii. Playing is only allowed in designated play areas.

xiii. Loitering on the Community is not allowed.

xiv. Alcoholic beverages are prohibited in all common areas.

(c) Structural Modifications/Alterations:

i. Tenant shall not make any structural modifications or alterations to an apartment, or remove any portion thereof, or make any additions thereto, or do anything that would jeopardize the safety or soundness of such units or buildings, adversely affect any of the common elements, or impair any easement, without first obtaining approval in writing from Landlord.

ii. Painting, staining, and/or any other interior alterations will not be permitted without written approval from Landlord. Painting or staining any exterior portion of the building, including patios and balconies, is not permitted.

iii. Appropriate picture hanging devices or small nails are to be used to hang pictures. Avoid using stick-on hangers and toggle bolts or a charge to Tenant upon move-out will be incurred for repairing walls. The hanging of flags and banners from apartments is prohibited, except that an American flag of reasonable size may be displayed appropriately and respectfully, subject to the discretion and approval of the Landlord.

iv. Only authorized personnel may adjust water valves and/or other common area equipment.

v. White backed drapes or white mini-blinds only are allowed to show from the outside.

vi. Water beds are not permitted.

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(d) **Keys, Rent Payments, and Collections:**

i. In most instances, the Community is responsible for the mailboxes. An original set of keys to the mailbox will be provided upon payment of the first month's rent. All keys must be returned when Tenant vacates the apartment. If keys are not returned or replaced during tenancy, \$25.00 per mailbox key will be assessed. In certain localities, the Post Office is responsible for the distribution and maintenance of the postal service, keys, and mailboxes. Landlord shall provide Tenant with the local Post Office contact information when this occurs.

ii. An original set of entrance door, and storage door where applicable, keys will be provided upon payment of the first month's rent. All keys must be returned when Tenant vacates the apartment. If the keys are not returned or replaced during tenancy, a charge of \$5.00 per door key will be assessed.

iii. If eviction proceedings are filed against Tenant a second time for non-payment of rent during any 12-month period, the eviction will not be stopped and Tenant must vacate the apartment.

iv. Tenant who have checks returned for non-sufficient funds will incur a NSF fee of \$30.00 (the fee charged to the Landlord by the bank), plus a late fee if applicable as described in Paragraph 4 of this Lease. After Tenant's second NSF fee, no checks will be accepted for payments. We will only accept money orders.

v. All monies submitted to the office must be check or money order. **NO CASH WILL BE ACCEPTED.**

(e) **Safety Reminders:**

i. Nothing shall be done or maintained in the Unit or upon any common or limited common area, which will result in the cancellation of insurance, or any increase in the rate thereof on any apartment, building, or grounds in the Community.

ii. At least one adult Tenant must be in attendance to supervise cooking.

iii. "Cookers" or crock-pots are not to be left burning or warming while no one is at home. Please be reminded that the range hood filters are to be cleaned on a frequent basis. Do not wrap the oven burners or the stove top drip pans in aluminum foil. Do not remove or tamper with the Firestop Range Queens located on the underside of the range hood.

iv. Handles of cooking containers must be placed away from the front of the stove to avoid accidents.

v. When cooking with grease, use extreme caution. It can become overheated quickly and originate a kitchen fire.

vi. Individual personal grills are not allowed. Check with management if the Community has a community grill area. No storage of flammable material is allowed. No burning of any trash is permitted.

vii. The burning of candles and/or incense is prohibited.

viii. Egress is defined as "a place or means of going out or exiting". In the event of an emergency, all means of egress or exit must not be blocked; therefore furniture may not be placed where it will impede means of egress (escape) if so designed.

ix. All trip hazards must be removed from the interior of the units. Specifically, electrical cords may not be across pathways, nor run up the interior of steps.

31. **SECURITY:** Tenant, all occupants, and guests must exercise due care for his or her own and others' safety and security, especially in the use of smoke detectors, deadbolt locks, keyless bolting devices, window latches, and other safety or security devices. Tenant should dial 911 or immediately call local medical emergency, fire, or police personnel in case of accident, fire, smoke, or suspected criminal activity, or other emergency involving imminent harm. Tenant shall not treat any of Landlord's security measures as an express or implied warranty of security, or as a guarantee against crime or of reduced risk of crime. Unless otherwise provided by law, Landlord is not liable to Tenant or any guests or occupants for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism, or other crimes. Landlord is not obliged to furnish security personnel, security lighting, security gates or fences, or other forms of security unless required by statute. Landlord is not responsible for obtaining or failing to obtain criminal history checks on any tenants, occupants, guests, or contractors in the apartment community. If Tenant or any occupant or guest is affected by a crime, Tenant must make a written report to Landlord's representative and to the appropriate local law enforcement agency. Tenant also must furnish us with the law enforcement agency's incident report number upon request.

32. **MOLD AND MILDEW:** Tenant acknowledges that mold is found virtually everywhere in our environment, and consists of naturally occurring microscopic organisms which reproduce by spores. Mold breaks down and feeds on organic matter in the environment. The mold spores spread through the air and the combination of excessive moisture and organic matter allows for mold growth. Reducing moisture and using proper housekeeping practices significantly reduces the chance of mold and mold growth. Because mold occurs naturally and can grow almost anywhere, Landlord cannot guarantee that the Unit is, or ever will be, a mold-free environment. Tenant acknowledges that he/she will take the following actions to reduce the possibility of mold and mildew in the Unit:

Climate Control: Tenant agrees to use all air conditioning in a reasonable manner, and further agrees to use heating systems in moderation. Do not leave the fan in the ON position; always operate the HVAC system on AUTO. Summer thermostat settings should not be set higher than 78. Winter thermostat settings should not be set lower than 70. Note: The HVAC system must operate at all times. Do not turn off the HVAC system at any point, even if you are leaving your home for an extended period of time.

Tenant agrees to:

- (a) not close any HVAC vent register in order to direct air flow or for any other reason
- (b) keep the Unit clean, and regularly dust, vacuum and mop
- (c) use kitchen exhaust fan when cooking, cleaning and dishwashing

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- d) keep Unit free of excessive furniture to allow proper ventilation
- e) inspect for leaks under sinks
- f) check all washer hoses if applicable
- g) regularly empty dehumidifier if applicable
- h) wipe down any and all visible moisture, including from windows and window sills
- i) avoid excessive amounts of indoor plants
- j) water all indoor plants outdoors
- k) use exhaust fans when bathing/showering and leave on for a sufficient amount of time to remove moisture
- l) use ceiling fans if present
- m) wipe down bathroom walls, counters and fixtures after bathing/showering
- n) avoid air-drying dishes
- o) not "hang-dry" clothes indoors, or place wet items on doors
- p) open blinds/curtains to allow light into Unit
- q) ensure that all baths must have vinyl liner or shower curtain which should be inside bathtub when showering
- r) securely close shower doors during showering and leave bathroom and shower doors open after use
- s) use dryer for wet towels
- t) regularly use household cleaners on any hard surfaces
- u) remove any moldy or rotting food and remove garbage regularly

Tenant acknowledges and agrees that if Tenant fails to take steps necessary to prevent or reduce moisture in the Unit or fails to maintain the Unit in a clean condition, Tenant will be creating an environment that could result in mold growth. Tenant agrees to notify Landlord immediately of the following:

- (a) visible or suspected mold
- (b) moldy clothing
- (c) refrigerator leaks
- (d) all issues concerning the HVAC including pan overflows or drips from the line
- (e) leaks, moisture accumulations
- (f) moisture dripping from or around any leaks
- (g) musty odors
- (h) shower/bath/sink/toilet overflows
- (i) loose, missing, or failing grout/caulk
- (j) leaking faucets or other plumbing fixtures
- (k) discoloration of walls, baseboards, doors, countertops, or vents
- (l) leaks at window frames or on ceilings

Small areas of mold: If mold has occurred on a small non-porous surface such as ceramic tile, Formica, vinyl flooring, metal, or plastic and the mold is not due to an ongoing leak or moisture problem, Tenant agrees to clean the areas with soap (or detergent) and small amounts of water, let the surface dry, and then within 24 hours apply a non-staining cleaner such as Lysol Disinfectant®, PineSol Disinfectant®, Tilex Mildew Remover® or Clorox Cleanup®.

Illness; Damage to Personal Property: As to any illness or adverse health consequences whatsoever suffered by Tenant, any member(s) of Tenant's household, or guests, Tenant understands and agrees that Tenant and all Tenant's household members and guests occupy the Unit at their own risk. Tenant hereby agrees and warrants that Tenant will be solely responsible for any adverse health consequences and related costs suffered by Tenant, any members of Tenant's household, or guests, as a result of mold or other air-quality issues in the Unit, and that under no circumstances will Landlord be responsible.

Similarly, as to any damage or harm suffered to personal property belonging to Tenant, members of Tenant's household, or guests, Tenant understands and agrees that Tenant and all Tenant's household members and guests occupy the Unit at their own risk. Tenant hereby warrants and agrees that Tenant will be solely responsible for any and all damage caused by mold or other air-quality problems to personal property belonging to Tenant, members of Tenant's household, or guests, and that under no circumstances will Landlord be responsible. Furthermore, Tenant acknowledges the importance of maintaining "Renter's Insurance" for protection of personal property, and for liability coverage.

Furthermore, Tenant agrees to reimburse Landlord for any damage to the Unit resulting from acts or omissions of Tenant, members of Tenant's household, or guests which contribute to the presence of mold, or from Tenant's failure to notify Landlord of the presence of mold, or conditions which are conducive to the presence of mold. Tenant agrees to cooperate fully with Landlord in Landlord's efforts to investigate and correct any conditions that could result in, or have resulted in, mold growth, including, without limitation, upon Landlord's request, vacating the Unit for such time as is necessary to allow for any investigation and corrective action deemed necessary by Landlord. If Tenant is required to vacate the Unit temporarily while mold is being remediated, Landlord may, but expressly will not be required, to abate Tenant's rent for the period Tenant was required to vacate, all at Landlord's sole discretion.

Tenant warrants that he/she has reviewed and understands his/her obligations under this Paragraph, and that Tenant's failure to abide by the terms of this Paragraph shall be a material default under the Lease. Landlord reserves the right to terminate the tenancy, and Tenant agrees to vacate the Unit in the event Landlord in its sole reasonable judgment determines that there is mold or mildew present in the Unit which may pose a safety or health hazard to Tenant or other persons and Tenant's actions or inactions are causing a condition which is conducive to mold growth. Tenant shall indemnify and hold Landlord harmless for damage or injury to persons or property or both as a result of Tenant's failure to comply with the terms of this Lease. Tenant agrees that Landlord may conduct inspections of the Unit at any time with reasonable notice.

33. BED BUGS: Landlord has inspected the unit and is aware of no bed bug infestation upon move-in by Tenant. Tenant has also inspected the unit prior to move-in, and sees no indication of bed bugs. Tenant(s) states that all furnishings and personal properties to be moved into the premises are free of bed bugs. Tenant(s) hereby agrees to prevent and control possible infestation by adhering to the below list of responsibilities for the duration of the Tenancy: Inspection. Check for hitch-hiking bed bugs. If you stay in a hotel or another home, inspect your clothing, luggage, shoes and personal belongings for signs of bed bugs before re-entering your apartment. Check backpacks, shoes and clothing after using public transportation or visiting public places. After guests visit, inspect beds, bedding and upholstered furniture for signs of bed bug infestation.

(a) **Duty to Report.** Tenant shall report any problems immediately to the site manager. Even a few bed bugs can rapidly multiply to create a major infestation that can spread to other units. Manager will then be given access to rental unit for inspection within 24 hours of providing written notice to Tenant.

(b) **Mandatory Cooperation.** Tenant shall cooperate with pest control efforts. If your unit or a neighbor's unit is infested, a pest management professional will be called in to inspect and treat the infestation.

(c) **Bed Bug Treatment.** In the event of a bed bug issue, Tenant must comply with recommendations and requests from Landlord and the pest control specialist prior to professional treatment, including but not limited to:

(i) Place all bedding, drapes, curtains, and small rugs in plastic bags for transport to laundry or dry cleaners.

(ii) Heavily infested mattresses are not salvageable and must be sealed in plastic and disposed of properly. Empty dressers, night stands and tightly seal washable items separately from non-washable items. Used plastic bags must be disposed of properly.

(iii.) Wash all machine-washable bedding, drapes, and clothing, etc. on the hottest water temperature and dry on the highest heat setting. Items that cannot be washed must be taken to a dry cleaner who MUST be informed of the issue. You must safely discard ALL items that cannot be decontaminated.

(iv.) Vacuum all floors, including the inside of closets. Vacuum all furniture including inside drawers and nightstands, mattresses and box springs. Carefully remove vacuum bags, sealing them tightly in plastic and discarding them properly (outside of the unit). Use a brush attachment to dislodge eggs prior to vacuuming.

(v.) Move furniture toward the center of the room so that technicians can easily treat carpet edges where bed bugs congregate, as well as walls and furniture surfaces. Items must be removed from the closets to allow for treatment.

(d) **Property Insurance.** It is acknowledged that the Landlord shall not be liable to Tenant or others for any loss of personal property belonging to the Tenant, members of Tenant's household, or guests as a result of an infestation of bed bugs. It is strongly recommended that Tenant obtain personal property insurance ("Renter's Insurance") to cover such losses. It is also acknowledged that Landlord will not be liable to Tenant, members of Tenant's household, or guests for medical expenses or similar resulting from exposure to bed bugs. Tenant hereby expressly agrees to be responsible for all such losses, costs, and expenses. If Tenant is required to vacate the Unit temporarily to allow for treatment of bed bugs, Tenant understands and agrees that Tenant will nevertheless be responsible for full rent, with no abatement for the time Tenant was required to vacate.

(e) **Cost of Treatment.** It is understood and agreed that in most cases Resident will be responsible for the cost of treatment required for bed bugs in Resident's apartment. The Landlord will arrange all required treatment(s), as the Landlord has an established relationship and a preferential price structure with a trusted exterminator. However, the Resident may be responsible for all costs, which will be considered a damage charge. Tenant's repayment of costs to Landlord is due immediately after treatment is provided. Notwithstanding the Tenant's responsibility for costs, as a precautionary and preventive measure, the Landlord may elect to voluntarily pay for initial treatments required within a given apartment complex. (Under no circumstances will the Landlord ever pay for repeat treatments, if required.) Similarly, the Landlord may elect to allow Tenant to repay costs of treatment in monthly installments. These courtesies are entirely voluntary on the part of the Landlord, and will be provided solely at the Landlord's discretion, and should not be presumed nor expected by the Tenant.

34. **SMOKE FREE HOUSING:** Definition of Smoking: The term "smoking" means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, or other tobacco product or similar lighted product in any manner or in any form.

(a) **Smoke-Free Restrictions.** Tenant agrees and acknowledges that the Community, including the Unit to be occupied by Tenant and members of Tenant's household, has been designated as a smoke-free living environment. Tenant and members of Tenant's household, Tenant's guests or visitors shall not smoke within the Unit or within 25 feet of any building, common areas such as, but not limited to, gazebos, benches, playgrounds, and other amenities in the Community.

(b) **Landlord to Promote No-Smoking Policy.** Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and/or in such conspicuous places as may be appropriate to effect implementation of this policy. Tenant shall promptly give Landlord notice of any incident of smoking or migrating secondhand smoke.

(c) **Landlord is not a Guarantor of Smoke-Free Environment.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the Community as smoke-free, do not make Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Unit and the common areas of the Community. Landlord shall take reasonable steps to enforce the smoke-free terms of its leases; however, Tenant acknowledges that Landlord's ability to police, monitor, and enforce the no-smoking policy is dependent in significant part on compliance by the residents. Landlord specifically disclaims any implied or express warranties that the Community will have any improved air quality or higher air quality standards than any other rental property. Landlord cannot and does not warrant or promise that the Unit or the Community will be free from smoke. Landlord is not required to take steps in response to smoking unless Landlord has actual knowledge of said smoking or has been given written notice of said smoking.

(d) **Effect of Violation and Right to Terminate Lease.** A violation of this Paragraph by Tenant, any member of Tenant's household, or any guest shall be a material breach of the Lease and an Event of Default and Landlord may exercise any and all remedies under this Lease for such breach.

35. **WAIVER AND AMENDMENT:** The failure of either party to insist in any instance on strict performance of any covenant or condition hereof shall not be construed as a waiver of such covenant or condition. No modification, change, or cancellation hereof shall be valid unless in writing and executed by all parties hereto.

36. **REMEDIES AND LIMITATION ON ACTIONS:** All rights and remedies of Landlord under this Lease shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

37. **PRONOUNS:** For purposes hereof, any masculine pronoun shall include the feminine, any feminine pronoun shall include the masculine, any plural pronoun shall include the singular, and any singular pronoun shall include the plural pronoun.

38. **CAPTIONS:** Any headings preceding the text of any paragraph hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease nor shall they affect its meaning, construction, or effect.

39. **BINDING EFFECT:** The provisions of this Lease shall be binding upon and inure to the benefit of Landlord and Tenant, and their respective heirs, successors, legal representatives, and assigns. Should the Community of which the Unit is a part be sold to a buyer approved by RHS this Lease will be transferred to the new owner(s).

40. **SAVINGS CLAUSE:** If any provisions of this Lease are determined to be in conflict with the laws of the State of South Carolina, RHS regulations, or any other applicable law thereby making said provision(s) null and void, the nullity shall not affect the other provisions of this Lease which can be given effect without the said provision(s), and to this end, provisions of this Lease are severable.

[Acknowledgment and Signature Page Follows]

41. ACKNOWLEDGEMENT:

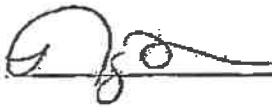
TENANT HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS LEASE, THE RENTAL APPLICATION AND THE RULES AND REGULATIONS, AND THAT THE SITE MANAGER HAS EXPLAINED THESE RULES AND REGULATIONS. TENANT UNDERSTANDS THAT HE/SHE MUST COMPLY IN ALL RESPECTS WITH THE TERMS AND PROVISIONS OF THIS LEASE AND ANY SUCH RULES AND REGULATIONS.

TENANT FURTHER ACKNOWLEDGES THAT IF HE/SHE HAS ENTERED THE COMMUNITY WITH A LETTER OF PRIORITY ENTITLEMENT (ISSUED BY RHS) AND IS TEMPORARILY OCCUPYING A UNIT FOR WHICH HE/SHE IS NOT OCCUPANCY ELIGIBLE, HE/SHE WILL MOVE TO AN ELIGIBLE UNIT WHEN AN ELIGIBLE UNIT BECOMES AVAILABLE CONSISTENT WITH PARAGRAPH 18(r) OF THIS LEASE. TENANT WILL EXECUTE THE INELIGIBLE LEASE CLAUSE IN THIS CASE AND IT BECOMES PART OF THIS LEASE.

Nothing contained in this agreement shall be construed as waiving any of Landlord's or Tenant's rights under the laws of the State of South Carolina. Tenant hereby understands that the property manager will verify, in writing through a third party, the information provided on the application and Tenant certification. Tenant also understands that RHS (The Agency) may verify through a third party the information concerning household wages, other income and expenses.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this instrument in duplicate the day and year first above written.

Landlord



Tenant (Signed by all household members and older



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DATE 9-16-20

Attachments:

Form 3560-8, Tenant Certification

Utility Allowance Form

VAWA Addendum

Ineligible Lease Addendum, when applicable

Pet Regulations/Addendum, when applicable

Other as required: _____



VAWA Notice Certification
USDA RD & RD/LHTC

I/We hereby certify that I/we have been given a copy of the Notice of
Occupancy Rights for VAWA Victims (5380) and the Certification Form (5382)

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CLERK OF COURT
HORRY COUNTY, SC

Certification:

Landlord/ Owner Representative Signature

9-16-20
Date

*Resident Signature

9-16-20
Date

*Resident Signature

Date

*Resident Signature

Date

*Signed by head of household and all adults in the household that are age 18 and older.

Apartments: Shady Moss
Address: 1705 Shady Moss Court
City, ST, Zip: Conway, SC 29527
Telephone: 843-397-5141
Fax: 843-248-9191
Email: shadymoss@boyd-mail.com
For the hearing impaired TTY relay #: 711

Cc: Resident File



"This institution is an equal opportunity provider."



**VIOLENCE, DATING VIOLENCE
OR STALKING**

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0204
Exp. 6/30/2017

LEASE ADDENDUM

VIOLENCE AGAINST WOMEN AND JUSTICE DEPARTMENT REAUTHORIZATION ACT OF 2005

TENANT	LANDLORD	UNIT NO. & ADDRESS
<i>Jeffery Rush</i>	<i>Shady Moss</i>	<i>1705 Shady Moss Conway, SC 29527</i>

This lease addendum adds the following paragraphs to the Lease between the above referenced Tenant and Landlord.

Purpose of the Addendum

The lease for the above referenced unit is being amended to include the provisions of the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA).

Conflicts with Other Provisions of the Lease

In case of any conflict between the provisions of this Addendum and other sections of the Lease, the provisions of this Addendum shall prevail.

Term of the Lease Addendum

The effective date of this Lease Addendum is 10-1-20. This Lease Addendum shall continue to be in effect until the Lease is terminated.

VAWA Protections

1. The Landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other "good cause" for termination of assistance, tenancy or occupancy rights of the victim of abuse.
2. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that abuse.
3. The Landlord may request in writing that the victim, or a family member on the victim's behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

Tenant

Landlord

Date

Date

Form HUD-91067
(9/2008)

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HORRY COUNTY

2022 MAY 18 P 2:35

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HORRY COUNTY, SC

AGENCY I.D.
SC0280200

INCIDENT REPORT

CASE NUMBER

2 0 2 0 0 2 2 2 1 7

NCIC

INQ. EXT.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 35A - Drug/Narcotic Violations - D - Distributing/Selling - Society/Public	☒ YES ☐ NO	☐ YES ☒ NO	20		☐ Individual ☐ Business ☐ Financial ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
2. 520 - Weapon Law Violations - P - Possessing/Concealing - Society/Public	☐ YES ☐ NO	☐ YES ☒ NO	20			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE		WEAPON TYPE		
1700 SHADY MOSS CT		29527		2012 MAY 12		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK
12/30/2020	15:00				12/30/2020	14:25
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
			J S O U			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
Society/Public			J S O U			
HEIGHT	WEIGHT	HAIR	EYES	FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECuliarITIES, ETC.		
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO ☐ EXPLAIN		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO ☐				
VICTIM (NO. 1) ☐ US/ALCOHOL ☐ YES ☐ NO ☐ LINK ☐ DRUGS ☐ YES ☐ NO ☐ LINK ☐ TYPE						
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASAT ☐ OTHER ☐ ALONE ☐ ASSISTED ☐		J - This Jurisdiction S - State D - Out of State U - Unknown				
☐ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE
☐ FUGITIVE		MELVIN, TERRENCE LAMOUNT		B	M	38
☐ WANTED		FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECuliarITIES, ETC.		ETH	DATE OF BIRTH	HEIGHT
☐ WARRANT				N	1/1982	WEIGHT
☒ ARREST		ADDRESS		CITY	STATE	ZIP CODE
☐ JAIL				CONWAY	SC	29526
☐ SUMMONS		SUBJECT (NO. 1) ☐ US/ALCOHOL ☐ YES ☐ NO ☐ LINK ☐ DRUGS ☐ YES ☐ NO ☐ LINK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE
						DATE/TIME OF ARREST
						12/30/2020 3:00:00 PM 12/30/2020 3:30:00 PM
NARRATIVE On Wednesday, December 30th 2020, Conway Investigations was assisting the US Marshals Task Force in attempting to locate an NCIC wanted person out of Conway City for Attempted Murder. The Marshals Task force had information that the arrestee was located at 1708 Shady Moss Court Apt C6. On arrival contact was made with the occupants at which time the listed arrestee was seen standing inside the apartment. While apprehending the listed arrestee it was noted in plain view that there was a green leafy vegetation that due to officers training and experience identified as marijuana was seen on the living room table. At that point all occupants were asked to leave the residence and that apartment was secured while a search warrant for the apartment was obtained. Det. Edwards then obtained and search warrant and brought it to the location. Once the search warrant was obtained the apartment was processed. Located inside the residence was approximately 9.6 grams of a green leafy vegetation that was identified as marijuana by officer training and experience. Along with the marijuana approximately 1.0 grams of a brown powdery substance that was identified as heroin by officers training and experience. Also located with the heroin inside the small black pack located in the living room was a 9mm Smith and Wesson Shield bearing SN: [REDACTED] The next item seized was a black and blue Nokia cell phone with IMEI [REDACTED] that was located within close proximity to the bag containing						
JURISDICTION OF THEFT		JURISDICTION OF ALL OTHER		JURISDICTION OF ALL OTHER		
LAW ENFORCEMENT AGENCY		LAW ENFORCEMENT AGENCY		LAW ENFORCEMENT AGENCY		
TYPE (GROUP)	20	13	23	77	TOTAL VALUE	
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED	1737	1	1	3	1782	
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		ACTIVE ☐ ADJ. CLOSED ☐		ARRESTED UNDER 18 ☐
				UNFOUNDED ☐		ARRESTED 18 AND OVER ☐
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER (R)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
Huggins, Alton	12/30/2020	CR04				
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER				

narcotics and the firearm, in the living room. The final thing that was seized was \$ ——— in US Currency that belong to the listed arrestee. This currency was noted be in small dominations which is consistent with street level narcotic sales.

The listed arrestee was transported to HCDC by CPD Patrol and a hold was placed for the located items inside the residence. The evidence was then transported back to CPD where it was processed. The narcotics was placed into SLED

BEST Kit # B323571. The \$ ——— was placed onto a Currency Domination form and placed into Currency Bag # 4294794 after being double verified by CSI Bauman and I. All evidence was then placed into the evidence locker.

Warrants will be obtained for the listed narcotics and possession of a firearm by certain person as the listed arrestee in a convicted of a felon.

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2022 MAY 18 P 2:38
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CLERK OF COURT
Horry County, SC

AGENCY I.D.
SC0260200

INCIDENT REPORT

CASE NUMBER

2 0 2 0 0 2 2 2 1 7

NCIC

INV. ENTD.

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
	1. 35A - Drug/Narcotic Violations - D - Distributing/Selling		☒ YES ☐ NO	☐ YES ☒ NO	20		☐ Individual ☐ Business ☐ Financial ☐ Governmental ☐ Reg. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
2. 520 - Weapon Law Violations - P - Possessing/Concealing		☒ YES ☐ NO	☐ YES ☒ NO	20				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		1700 SHADY MOSS CT			ZIP CODE	29527		
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.
12/30/2020		15:00				12/30/2020 14:25		15:55
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.
				J S O U				
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.		
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.
				J S O U				
HEIGHT		WEIGHT	HAIR	EYES	FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.		
VICTIM INJURY (VCT. 1) ☐ YES ☐ NO ☐ EXPLAIN		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO ☐						
VICTIM (NO.) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐		DRUGS ☐ YES ☐ NO ☐ UNK ☐		TYPE				
TYPED BY VTL ☐		ONE-MAN VTL ☐		DETECTIVE/SPLAINT ☐		OTHER ☐		
SUBJECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH
SUBJECT NO.)		FACIAL MARKS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
SUBJECT NO.)		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
SUBJECT NO.)		SUBJECT (NO.) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
SUBJECT NO.)		DRUGS ☐ YES ☐ NO ☐ UNK ☐		TOTAL # ARRESTED				
On Thursday, December 31st 2020, the following case was presented to the Conway City Judge who found cause to issue the following arrest warrants: 2020A2620400923- PWID Heroin 1st 2020A2620400924-Possession of weapon by a certain person, 2020A2620400925- Simple Possession Marijuana The warrants were the transported to HCDC and served. The warrants were then scanned and attached to the report and returned to the Conway City Court.								
RENEE N. REAVIS CLERK OF COURT Horry County, SC 2022 MAY 18 2:39 FILED HORRY COUNTY								
SUPERVISION OF TRAFFIC LAW ENFORCEMENT AGENCY SUPERVISION OF RECOVERY LAW ENFORCEMENT AGENCY								
PROPERTY EST. TYPE (GROUP) STOLEN DAMAGED BURNED RECOVERED SEIZED TOTAL VALUE								
ADMINISTRATIVE SUBJECT IDENTIFIED ☒ YES ☐ NO CLEARLY LOCATED ☒ YES ☐ NO ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED ☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER ☐ REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ BUNDOLE - NO CUSTODY REPORTING OFFICER(S) DATE UNIT NUMBER APPROVING OFFICER DATE UNIT NUMBER Haggles, Alan 12/30/2020 C924 OFFICER Haggles, Alan 12/30/2020 C924 POLYGRAPH INVESTIGATION ☒ YES ☐ NO								



Displaying title 7, up to date as of 4/05/2022. Title 7 was last amended 4/05/2022.

⌘ There have been changes in the last two weeks to Section 3560.159.

Title 7 - Agriculture

Subtitle B - Regulations of the Department of Agriculture

Chapter XXXV - Rural Housing Service, Department of Agriculture

Part 3560 - Direct Multi-Family Housing Loans and Grants

Subpart D - Multi-Family Housing Occupancy

FILED
HORRY COUNTY
2022 MAY 18 PM 2:30
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

§ 3560.159 Termination of occupancy.

- (a) *Tenants in violation of lease.* Borrowers, in accordance with lease agreements, may terminate or refuse to renew a tenant's lease only for material non-compliance with the lease provisions, material non-compliance with the occupancy rules, or other good causes. Prior to terminating a lease, the borrower must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. Subsequently, termination may only occur when the incidences related to the termination are documented and there is documentation that the tenant was given notice prior to the initiation of the termination action that their activities would result in occupancy termination.
- (1) Material non-compliance with lease provisions or occupancy rules, for purposes of occupancy termination by a borrower, includes actions such as:
- (i) Violations of lease provisions or occupancy rules that are substantial and/or repeated;
 - (ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or
 - (iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity.
- (2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:
- (i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities;
 - (ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or
 - (iii) Actions prohibited by state and local laws.
- (b) *Lease expiration or tenant eligibility.* A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with § 3560.158. At a minimum, the occupancy termination notice must include the following information:
- (1) A specific date by which lease termination will occur;
 - (2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the tenant in a manner constituting material non-compliance or good cause; and
 - (3) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.
- (c) *Other terminations.* Should occupancy be terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, and prior to expiration of the disaster declaration, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.
- (d) *Criminal activity.* Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.859, 5.859, 5.860, and 5.861.



Displaying title 24, up to date as of 4/05/2022. Title 24 was last amended 3/16/2022.

Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 5 - General HUD Program Requirements; Waivers

Subpart I

**- Preventing Crime in Federally Assisted Housing - Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse
Terminating Tenancy**

EDITORIAL NOTE ON PART 5

Editorial Note: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

§ 5.858 What authority do I have to evict drug criminals?

The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for you to terminate tenancy. In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

26(v)

FILED
HORRY COUNTY
2022 MAY 18 P 2:39
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC



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Title 24 - Housing and Urban Development

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Terminating Tenancy**

FILED
HORRY COUNTY
2022 MAR 18 P 2:39
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

EDITORIAL NOTE ON PART 5

Editorial Note: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

§ 5.859 When am I specifically authorized to evict other criminals?

- (a) **Threat to other residents.** The lease *must* provide that the owner may terminate tenancy for any of the following types of criminal activity by a covered person:
- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or
 - (2) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises.
- (b) **Fugitive felon or parole violator.** The lease *must* provide that you may terminate the tenancy during the term of the lease if a tenant is:
- (1) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
 - (2) Violating a condition of probation or parole imposed under Federal or State law.

Displaying title 24, up to date as of 4/05/2022. Title 24 was last amended 3/16/2022.

Title 24 - Housing and Urban Development

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- Preventing Crime in Federally Assisted Housing - Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

Terminating Tenancy

EDITORIAL NOTE ON PART 5

Editorial Note: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

§ 5.860 When am I specifically authorized to evict alcohol abusers?

The lease must provide that you may terminate the tenancy if you determine that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

§ 5.861
What
evidence
of
criminal
activity
must I
have to
evict?

FILED
HORRY COUNTY
2022 MAY 18 P 2:39
RENEE N. ELYS
CLERK OF COURT
HORRY COUNTY, SC

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Title 24 - Housing and Urban Development

Subtitle A - Office of the Secretary, Department of Housing and Urban Development

Part 5 - General HUD Program Requirements; Waivers

Subpart I

**- Preventing Crime in Federally Assisted Housing - Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse
Terminating Tenancy**

EDITORIAL NOTE ON PART 5

Editorial Note: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

§ 5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying a criminal conviction standard of proof of the activity.

FILED
HORRY COUNTY
2022 MAY 18 P 2:39
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

RECEIVED

Sep 26 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No: 2022-CP-26-2492

Shady Moss Apartments,

Respondent,

v.

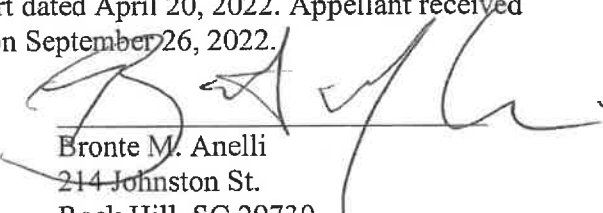
Jeffery Rush,

Appellant.

NOTICE OF APPEAL

Jeffery Rush appeals the Order of the Honorable G. Nettles dated September 26, 2022 which upheld the order of the Magistrate's Court dated April 20, 2022. Appellant received written notice of entry of the Order on Appeal on September 26, 2022.

September 26, 2022


Bronte M. Anelli
214 Johnston St.
Rock Hill, SC 29730
P: 803-327-9001
Attorney for Appellant

Other Counsel of Record
Luther O. MacCutchen, IV
4610 Oleander Dr. Ste 203
Myrtle Beach, SC 29577
Attorney for Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF HORRY) TRANSCRIPT OF RECORD

3 -----x
4 JEFFERY RUSH,)
5 Appellant,)
6 vs.) Case No. 2021-CP-26-02492
7 SHADY MOSS APARTMENTS,)
8 Respondent.)
9 -----x

September 21, 2022

10 B E F O R E:

11 The Honorable Michael Nettles, Presiding Judge

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

13 Bronte M. Anelli, Esq.
14 Attorney for the Appellant

15 Mac McCutcheon, Esq.
16 Attorney for the Respondent

17
18
19
20
21
22 Recorded by: Webex Recording

23 Transcribed by: Bobbi Fisher
24 SC Official Court Reporter III
25

I N D E X

DESCRIPTION	PAGE
Proceeding	3

E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings commenced as follows:)

THE COURT: The next case is Jeffery Rush versus Shady Moss. And is there any way we can print that return?

MR. McCUTCHEON: Good morning -- or good afternoon. Can you hear me?

THE COURT: Yes, I can. I'm going to print this return --

MR. McCUTCHEON: -- (inaudible) my microphone.

THE COURT: Yeah. I'm going to print this return and take a gander at it and then we'll recognize the appellant.

MS. ANELLI: Thank you. And I also would like to test my microphone to make sure that everyone can hear me as well.

THE COURT: I can hear you well.

MS. ANELLI: Thank you, Your Honor.

(Pause in the proceedings while the Court reviews documents.)

THE COURT: I'd be glad to hear from the appellant.

MS. ANELLI: Thank you, Your Honor. May it please the Court?

Before we go into the reasons why we are here, I would ask the Court if they prefer or if you prefer, pardon me, whether or not I provide a brief procedural and factual overview of this case, or if we should just go directly into the issues.

1 THE COURT: I think -- I've read the -- I think I have a
2 pretty -- after reviewing the return, I think I have a good
3 understanding of -- and really the issue is whether or not
4 there was criminal activity and whether or not that justified
5 the eviction. But if you find there's something in the facts
6 or the background that is relevant, I'd be glad to hear from
7 you. Or, otherwise, you can proceed as the spirit moves you.
8 But I think that's probably best for your focus a little bit.

9 So I'll be glad to hear from you. We have the luxury of
10 time. I'll hear anything that you have to say.

11 MS. ANELLI: Thank you, Your Honor. I do appreciate
12 that.

13 My client, Mr. Jeffery Rush, does not contest the facts
14 of this case. The sole issue we're here for today mainly is
15 whether or not the interpretation under 7 CFR 2560.159 was
16 proper in this case. It centers around Subsection D of this
17 case itself, as well as Subsection A.

18 Subsection A controls regarding lease violations for
19 material violations and good cause under this federal statute.
20 It requires the tenant to be provided with a written notice of
21 the lease violation and an opportunity to cure.

22 Under this subsection, material non-compliance does
23 include criminal activity, drug possession with the occupants,
24 family members, and subsequent guests. Subsection D permits
25 termination for criminal activity so long as the subsequent

1 provisions are followed. And when looking at the subsequent
2 provisions, 24 CFR 5.5-858 through 5.861, the Court looks into
3 -- pardon me -- the statute and these regulations look into
4 including specific language in the lease, it never fully
5 addresses the actual procedure for termination itself, but
6 just requires specific language is stated in the lease.

7 For example, under 5.858 of 24 CFR, it states that the
8 lease must provide that drug-related criminal activity engaged
9 in or near the premises by the tenant, household member, or
10 guest, etc. And, in this, it does not create the procedure
11 for it. It just states what the lease must provide, making it
12 a term of the lease. The actual procedure for terminating a
13 lease that is governed under the USDA regulations still holds
14 within Subsection A that controls lease violations. And, as a
15 result, under that subsequent -- under those procedures
16 itself, it does require not only notice but an opportunity to
17 cure.

18 The lower court held that Subsection D stands on its own
19 because of that language that it incorporates; however, we
20 thought -- it is our position that it does not stand alone for
21 -- as if it did stand alone, there would be contradictory
22 procedures within the same statute itself. You would have
23 Subsection A that requires notice and a right to cure for
24 criminal activity, and then Subsection D that does not require
25 those safety procedures, still for the same activity.

1 It is our -- and, as a result, we firmly believe that all
2 that Subsection D does is incorporate specific language from
3 another regulation instead of creating a separate procedure to
4 terminate a lease based upon this criminal activity.

5 We also firmly -- pardon me.

6 Subsequently, based upon that Subsection A requires that
7 notice, and if the Court found that Subsection D was supposed
8 to be interpreted with Subsection A, then my client,
9 Mr. Jeffery Rush, would have been entitled to that opportunity
10 to cure this violation of his lease, which he was not afforded
11 based upon the facts.

12 Furthermore, we do believe that the Court, although,
13 looked to the HUD documentation or HUD regulations for
14 Subsection D's -- for Subsection D's regulations itself, we do
15 firmly believe that the actual procedure relies heavily within
16 the USDA guidebook, specifically HB-2-3560, Chapter 6. And in
17 this guidebook itself, it really controls the procedure for
18 terminating a lease within the USDA guidelines, and it
19 addresses all of these issues.

20 So based upon the reasons stated not only in this
21 presentation but also in my notice, we do ask that the Court
22 overturn the lower court's decision based upon this
23 interpretation of the law.

24 THE COURT: Mr. McCutcheon, be glad to hear from you.

25 MR. MCCUTCHEON: Yes, Your Honor. She did a good job

1 kind of giving an overview, and I know you've read the return.

2 Can you hear me?

3 THE COURT: Yes.

4 MR. McCUTCHEON: And I know you've read the return, but
5 just a few points I want to make. We did file a memo in
6 opposition to the notice of civil appeal on Monday. We hit
7 all three of her points -- counsel's points. I would like to
8 reiterate that the trial court -- we don't believe they made
9 any error in finding that 7 CFR 3560.1-59 RD stands alone.

10 The trial court did carefully read all the provisions,
11 and the reason they read 24 CFR 5.85 was because it was a
12 subsection on the criminal activity underneath 159. I know
13 there's a lot of numbers that I keep -- and I've had to read
14 them a thousand times to try to keep them organized as well,
15 but I do believe that the trial court has read everything,
16 they've articulated everything on the third page of the
17 return, and it outlines specific reasons for the termination
18 of the termancy -- of the tenancy, and I believe they
19 correctly found that D stands alone.

20 I would like to note for the Court that the only
21 provision under there is A, that shows a procedural history.
22 So that's why he believes A, B, C, and D underneath 159 stand
23 alone because, again, it's a criminal activity. The intent of
24 the government housing and the HUD is to keep everybody safe
25 within the confines of the government housing. So the tenants

1 there need to abide by the terms of the lease, and it allows
2 everybody to terminate -- if there's criminal activity, it's a
3 threat to everyone there, pursuant to some of the documents
4 that I've read, they're allowed to terminate.

5 The second point is, on her motion or notice of civil
6 appeal, the trial court did review the HUD guidelines, along
7 with 24 CFR 5858 along with Section D of 159. They didn't
8 [verbatim] also note that B, C, and D do not contain any
9 option or right to cure given to the landlord. So he believes
10 that, again, they stand alone on that reference too.

11 And, again -- I feel like I'm reiterating, but, again, we
12 believe that it stands alone. There's no reason to read A, B,
13 C, and D together. They're all -- if it was -- if D was a
14 subsection of A, I would 100 percent agree with Ms. Anelli,
15 and that would be the procedure to follow. However, you can't
16 cure a wanted felon and Smith & Wesson and marijuana that was
17 -- you can't go back in time to cure that.

18 So what would be the intent to have the right to cure if
19 they wanted the -- if they wanted them to have the right to
20 cure a criminal activity, what would be the intent? What
21 would happen? If they wanted to, I think they would spell
22 that out, Your Honor. I think they would give that option
23 within the documents that they would give if they wanted you
24 to somehow go back in time and not commit the criminal acts,
25 Your Honor.

1 With that, Your Honor -- and I know you've read
2 everything, and I don't want to keep rehashing everything, so
3 I would ask that you uphold the ruling of the magistrate
4 court, immediately issue a writ of ejection, or either send it
5 back down to the magistrate court so that we can have an
6 eviction here, and for any other relief that you may deem
7 proper, Your Honor.

8 MS. ANELLI: Your Honor, I do have a brief statement, if
9 I may.

10 THE COURT: Yes.

11 MS. ANELLI: Opposing counsel has brought up this idea of
12 what is the ability to cure in this specific case here. In
13 this case, Mr. Rush was the person who was under the lease,
14 and he had a guest over that was wanted and had all of these
15 possessions. The ability to cure in this case is to ensure
16 that no further guests from this point forward bring in any
17 type of drugs, illegal possessions, or are wanted criminals in
18 this fact.

19 And it is my understanding that, since this incident, no
20 further incidents have occurred as well. So we do believe
21 there is an opportunity to cure. Nobody was harmed in this
22 community. This was just the result of a longer investigation
23 that occurred outside of my client's involvement. And, in
24 fact, he was not involved with this particular incident except
25 that it occurred at his home.

1 MR. McCUTCHEON: And, Your Honor, one more statement
2 since she brought -- sorry to keep going back and forth. We
3 did get a printout of the public index, and it was a Shady
4 Moss property, and it was a Jeffery Rush who was arrested on
5 September 9th of 2022 for domestic violence. I can submit
6 that to the Court.

7 But we did find that, and the reason I brought that up --
8 and I know it's not relevant to the eviction here -- is
9 because she said no subsequent acts have followed from her
10 client, and I wanted to make the Court aware of that, Your
11 Honor.

12 THE COURT: Ms. Anelli, you've done a very fine job, but
13 -- and I very well might be wrong, but I'm going to rule that
14 there is no right to cure, and I'm going to ask that
15 Mr. McCutcheon prepare an order consistent with his brief and
16 deny the appeal and order immediate ejection from the home.

17 And if you can prepare that, e-file it, send a copy of it
18 to Ms. Anelli, and I will sign it.

19 MS. ANELLI: Your Honor, for clarification purposes here,
20 for the order of ejectment, is this 24 hours? Up to five
21 days? What is the time period here that you are ordering?

22 MR. McCUTCHEON: We would ask -- he's been there for so
23 long, as quick as possible, but, obviously, we've got to get
24 everything filed before even we get that.

25 THE COURT: So why don't we -- just five days, and that

1 will give everybody time to get -- five days from today's
2 date. And let's go ahead and get that signed, and we can get
3 it moving.

4 Good luck to you.

5 MS. ANELLI: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. McCUTCHEON: Thank you, Your Honor.

8 (The following proceeding concluded.)
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10
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Jeffery Rush v. Shady Moss Apartments

3 2021-CP-26-02492

4 DATE OF HEARING: 9/21/2022

5 COURT REPORTER/MONITOR: Webex Recording

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.
14

15 17 /s/ Bobbi Fisher_____

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: October 26, 2022

20
21
22 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER
23 SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY
24 OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES
25 OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR
NON-PARTIES MUST BE SENT TO THIS REPORTER AT
BFISHER@SCCOURTS.ORG.

SHADY MOSS APARTMENTS

VS.

ORIGINAL

JEFFERY RUSH

2021CV261070730

APRIL 18, 2022

Legal Eagle

P. O. Box 5682

Greenville, SC 29606

864-467-1373

depos@legaleagleinc.com

1 THE COURT:

2 Today is April the 18th, 2022, time is 1:25. This
3 is civil case 2021CV261070730, Shady Moss Apartments
4 versus Jeffery Rush. Defendant -- excuse me,
5 Plaintiff in the matter is represented by Luther
6 Oliver McCutchen, IV and Defendants in the matter
7 are represented by Bronte Marie Anelli. Let the
8 record reflect Mr. McCutchen is present. Let the
9 record reflect Ms. Anelli is present. Let the
10 record also reflect Mr. Rush is currently not
11 present but his representation is present,
12 obviously, and he is on the way. We also have, for
13 the record, a subpoena that was never served by our
14 Sheriff's Office and we were able to get a hold of
15 that individual and they are on the way currently
16 and will be here in 35 minutes. Yeah, so they're
17 sequestered as it is too so that will be kind of --
18 works out for all parties. All right, so any
19 motions or anything to be considered before we go
20 into this hearing?

21 MS. ANELLI:

22 No motions from the Defense, Your Honor, but there
23 are two documents that I would like to present to
24 the Judge for consideration, if the Judge so
25 chooses. The first one is page 44 and 45 of the

1 UDSA Guidebook which speaks to the USDA's
2 interpretations of their regulations as well as a
3 case called CBN Group, Incorporated versus Llamas.
4 These are just for the Court's consideration if the
5 Court deemed them acceptable and applicable to
6 today's case. I have already provided a copy of
7 each document to co -- not co-counsel, to opposing
8 counsel today.

9 THE COURT:

10 Gotcha. All right, any objection to the --

11 MR. MCCUTCHEN:

12 I would object to that. I mean, this is the first
13 I've heard of it this morning and we've done three
14 of these hearings, appeals, so I would object that
15 it has never even been brought up, these two
16 documents only.

17 THE COURT:

18 Okay.

19 MS. ANELLI:

20 Your Honor, if I may?

21 THE COURT:

22 Sure.

23 MS. ANELLI:

24 Thank you. The Rules of Magistrate Court do not
25 require discovery to be provided prior to the case

1 and this is not discovery, it's just case law for
2 the Judge to consider if the Judge so desires.

3 THE COURT:

4 Correct. I think at whatever time that you want to
5 argue your case law, we bring that point up then and
6 then you can back it up with whatever documents that
7 you have. I mean, I've got to consider case law,
8 period. I mean, that's I have to, I have no choice
9 but to do that. As far as the USDA Guidebook, do
10 you have the complete Guidebook?

11 MS. ANELLI:

12 It is over 100 pages, Your Honor --

13 THE COURT:

14 I got you.

15 MS. ANELLI:

16 -- so I only brought the two, however if the Court
17 deems requirable I can forward an electronic copy to
18 both parties.

19 THE COURT:

20 well as long as it's a -- as long as it's a book
21 that's provided that has -- I guess -- I mean, you
22 can write whatever -- I mean, any type of guidelines
23 I don't know if it would be applicable in Court but
24 you can argue your point and then provide that,
25 we'll hear that at that point in time that you want

1 to make an argument.

2 MR. MCCUTCHEN:

3 I would object to the entry of that since it's only
4 two pages. Again, I understand you can probably
5 take your notes from those if we had a copy of the
6 Master Deed.

7 THE COURT:

8 Right.

9 MR. MCCUTCHEN:

10 where it was recorded somewhere in the Register of
11 Deeds, but at this point I -- I would object to
12 that. Of course, you can talk about it, I'm
13 assuming, but I would just object to this being
14 applied to the facts.

15 THE COURT:

16 Okay. All right, and like I say we'll -- I can make
17 that ruling at the time that you want to argue
18 whatever point you want to argue. I think trying to
19 bring it now beforehand and try to stipulate to it
20 being I -- I just don't -- I don't know if it would
21 be valid. So, I don't -- I'd like to hear the
22 argument and then hear what kind of case law
23 argument that you have or what kind of, you know,
24 where you're putting the crosshairs on, you know, in
25 order to make a ruling. I think that's only fair at

1 this point in time. For the record though we did,
2 last time we met and again for the record we had a
3 meeting in Chambers last Monday where we decided to
4 continue the matter 'till today at 1:00. At that
5 time, and y'all please correct me if I'm wrong, I
6 was provided with the -- a copy of the lease
7 agreement dated 9/16/20, correct?

8 MS. ANELLI:

9 Yes.

10 MR. MCCUTCHEN:

11 Yes.

12 THE COURT:

13 I was provided with a copy of the USDA -- well,
14 actually Code of Federal Regulations 3560.159,
15 correct?

16 MR. MCCUTCHEN:

17 That is correct.

18 MS. ANELLI:

19 Yes.

20 THE COURT:

21 Also, with some like I'm -- 5.858, 5.859, these are
22 all under Title 24, subset Title A part 5, 5.860 and
23 5.861, correct? Okay. And I was also provided with
24 a copy of Notice of Lease Agreement Violations
25 stemming from February 8, 2021 and February 12,

1 2021, correct for both parties?

2 MR. MCCUTCHEN:

3 That is correct.

4 MS. ANELLI:

5 That is correct.

6 THE COURT:

7 Anything else we need to stipulate as far as this,
8 ever okay with both parties at this point?

9 MR. MCCUTCHEN:

10 Did I give you the incident report?

11 THE COURT:

12 Yeah, I've not seen an incident report --

13 MR. MCCUTCHEN:

14 Okay.

15 THE COURT:

16 -- at this point in time.

17 MR. MCCUTCHEN:

18 Do you want me to hand that up? Because I will be
19 talking about it and then he will be talking about
20 it later. Is that acceptable, Judge?

21 MS. ANELLI:

22 Without waiving the right to objecting to this
23 document later on understanding that I will have an
24 opportunity to question on it and just for the
25 purposes of (inaudible).

1 THE COURT:

2 Let's do this, whenever he goes to introduce it,
3 object on what grounds you object to and then I will
4 hold off on making a ruling pursuant to wait -- we
5 got to wait -- hear from him and then honestly, I
6 mean, I'm trying to speed this process up for both
7 of you, and for everybody involved. I know this has
8 been going on a year at this point and y'all are
9 ready to -- a decision to be made, whatever that
10 decision is. But, we're giving an opportunity --
11 and I'm -- and I'll make the ruling at that point in
12 time whenever he goes to put it in. I duly note
13 your objection and honestly at the worst if we hear
14 and he don't show up, which he says he is, I have
15 all (inaudible) that he'll be here in 30 minutes or
16 so but if he doesn't show up then I'll recuse myself
17 and we'll have to rule -- you can make a motion to
18 have it re-heard in front of another judge and I can
19 grant that at that point in time. Is that fair to
20 both parties?

21 MS. ANELLI:

22 Yes, sir.

23 MR. MCCUTCHEN:

24 About as good as we can get.

25 THE COURT:

1 That's about as good as we can do.

2 MS. ANELLI:

3 Yeah.

4 MR. MCCUTCHEN:

5 That's about as good as we can get.

6 THE COURT:

7 I think that that's fair to both parties and that's
8 where I'm at.

9 MR. MCCUTCHEN:

10 Okay.

11 THE COURT:

12 So, all right, everybody good?

13 MS. ANELLI:

14 Yes, Your Honor.

15 THE COURT:

16 Any motions on this side?

17 MR. MCCUTCHEN:

18 No motions, Your Honor.

19 THE COURT:

20 Okay. And you're good to go so all right, we're
21 starting with the Plaintiff's case on Shady Moss
22 Apartments versus Jeffery Rush. Mr. McCutchen.

23 MR. MCCUTCHEN:

24 All right, Your Honor, we're here as you stated on
25 the record here for an eviction that started about a

1 year ago. The basis for the eviction as stated in
2 one of the letters is that it was drug related
3 criminal activity in or near the community by a
4 tenant or his household member or guest, which was a
5 guest. And at that point the termination of the
6 lease was sent and then actually the lease violation
7 and then a notice of termination of the lease was
8 sent. I've got a copy of the lease here, I'm going
9 to ask Rhonda to step up just to confirm that the
10 terms of the lease and to go over the lease, if
11 that's all right with you, Your Honor.

12 THE COURT:

13 That's fine. Ms. Rhonda, you're coming forward.

14 MS. CARTER:

15 Right here?

16 THE COURT:

17 Yes, ma'am. As you step up, raising your right
18 hand, do you solemnly swear or affirm that the
19 testimony you give the Court in this matter will be
20 the truth, the whole truth, and nothing but the
21 truth so help you God?

22 MS. CARTER:

23 Yes, sir.

24 THE COURT:

25 Thank you so much. Have a seat, spelling your name

1 and title for the record.

2 MS. CARTER:

3 R-H-O-N-D-A

4 THE COURT:

5 Uh-huh (affirmative).

6 MS. CARTER:

7 Carter, C-A-R-T-E-R.

8 THE COURT:

9 Uh-huh (affirmative).

10 MS. CARTER:

11 And I am the regional manager.

12 THE COURT:

13 Regional manager. Okay. Your witness, Mr.

14 McCutchen.

15 MR. MCCUTCHEN:

16 Rhonda, I'm going to walk up here and hand you this
17 document.

18 THE COURT:

19 Please do.

20 EXAMINATION BY MR. MCCUTCHEN:

21 Q. Can you tell me what that document is?

22 A. This is our lease.

23 Q. Who is that lease between?

24 A. It is between Mr. Jeffery Rush and Shady Moss
25 Townhouses.

1 Q. What are the terms of the lease?

2 A. The lease was executed on September 16th, 2020 and
3 it renews annually. There are addendums to the
4 lease to renew it annually. This particular lease
5 goes to 9/30/21.

6 Q. Okay. And this is a standard lease that is used by
7 Boyd Management?

8 A. Yes, sir, it is.

9 Q. And has Boyd Management changed names, are they --

10 A. Yes, sir. We did recently, October 20 our company
11 was sold to KK Management which just came in and
12 just changed the name.

13 Q. Just changed the name, okay.

14 A. Yes, sir. The company is still the same, intact, as
15 it was the name changed.

16 Q. Okay, will you flip to the second page, please?

17 A. The second page? Yes, sir.

18 Q. Will you read 6(C) to me, to the Court, please?

19 A. 6(C), it is understood that the use, possession,
20 manufacture, sell, or distribution of an illegal
21 controlled substance as defined by local state and
22 federal law while in or on any part of this
23 community is an illegal act. It is further
24 understood that such action is a material lease
25 violation. Such violations hereafter called a drug

1 violation may be evidenced upon the admission to or
2 conviction of a drug violation.

3 MR. MCCUTCHEN:

4 All right. And Judge, may I ask a question?

5 THE COURT:

6 Sure.

7 MR. MCCUTCHEN:

8 There are a lot of sections that are applicable
9 here.

10 THE COURT:

11 Uh-huh (affirmative).

12 MR. MCCUTCHEN:

13 Do we want to go through every one and have her read
14 it to the Court? Okay.

15 THE COURT:

16 We have some time, so, I'm good if y'all are, so.

17 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

18 Q. Will you read 6(C) -- or sorry --

19 THE COURT:

20 I am making note of the sections you're having her
21 read though. I'm making note of the sections that
22 you have her read.

23 MR. MCCUTCHEN:

24 Okay.

25 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

1 Q. And 6(E), please.

2 A. 6(E), landlord may require any tenant or other adult
3 member of the tenant household occupying the unit or
4 other adult or non-adult person outside the tenant
5 household who is using the unit who commits a drug
6 violation or domestic violence to vacate the unit
7 permanently, within timeframes set by landlord and
8 not thereafter enter upon the community or the unit
9 without landlords' prior consent as a condition for
10 continued occupancy by other members of the tenant
11 household. Landlord may deny consent for entry
12 unless the person agrees to not commit drug
13 violation or domestic violence in the future and is
14 either actively participating --

15 Q. Okay, I think that's --

16 A. Oh --

17 Q. I think we're good with --

18 A. Okay.

19 Q. -- the first paragraph. And then again, 6(A),
20 please.

21 A. 6(A)?

22 Q. Uh-huh (affirmative).

23 A. The unit shall be used for residential purposes only
24 and shall be occupied only by the tenant and any
25 persons listed in paragraph seven of this lease.

1 Tenant shall be responsible for maintaining the unit
2 in a clean, healthy, safe and attractive condition,
3 including the interior of the unit and its adjoining
4 patios, porches or balconies. Tenant shall not
5 permit the unit to be used for any purpose which
6 will injure the reputation of the community. Tenant
7 shall not use or permit anything upon the unit or
8 community which will invalidate the insurance or on
9 the community or increase the rate thereof.

10 Q. And 6(B), please.

11 A. Okay. The tenant and members of tenant's household
12 or guest may not engage in the following activities,
13 behaving in a loud and obnoxious manner, disturbing
14 or threatening the rights, comfort, health, safety
15 and convenience of others, including employees of
16 the owner's agent, in or near the community.
17 Disturbing the community business operations,
18 engaging in or threatening violence, using or
19 displaying firearms, BB guns, pellet guns, knives,
20 slingshots, firecrackers, and/or any comparable
21 weapons or noisemakers within the community, storing
22 anything in closets, having gas appliances,
23 tampering with the utilities, or telecommunications,
24 bringing hazardous material into the community or
25 injuring the community's reputation by making bad

1 faith allegations to others.

2 Q. Okay, and now this is where it gets a little tricky
3 because the officer is not here but the incident
4 report, you mind if I hand that up to the Judge
5 notes a number of violations pursuant to those
6 provisions there and the written document by the
7 officer.

8 THE COURT:

9 Okay. And your prev -- yup, and your previous
10 objection is noted on the grounds that you have no
11 one to cross-examine, but I think we're fixing that
12 hopefully soon.

13 MS. ANELLI:

14 Yes, Your Honor.

15 THE COURT:

16 Correct? All right. That is noted. I'm going to
17 even note it in my notes, objection.

18 MR. MCCUTCHEN:

19 Since he's not here, do you want me to read it to
20 you or you -- how -- for right now? I mean, I --

21 THE COURT:

22 If you want -- if you want to point out specific
23 points you want me to --

24 MR. MCCUTCHEN:

25 okay.

1 THE COURT:

2 -- to look at, obviously she didn't -- she didn't
3 write it but, I mean, we can --

4 MS. CARTER:

5 Well I'd be glad to

6 THE COURT:

7 -- we can read it. I mean --

8 MR. MCCUTCHEN:

9 Okay, I mean, I can point out a few things.

10 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

11 Q. The US Marshals Task Force actually entered the --
12 Mr. Rush's unit at 1708 Shady Moss Court, apartment
13 6C. Once they made contact with the people inside
14 there was, let me make sure I get this right, they
15 had information that he was listed inside the
16 apartment, while they apprehending him they noted in
17 plain view a green leafy vegetation, which was
18 marijuana, at that point all occupants were asked to
19 leave. A search warrant was obtained; Detective
20 Edwards obtained a search warrant. Once the search
21 warrant was obtained they located inside the
22 residence was approximately 9.6 grams of green leafy
23 vegetation that was identified by marijuana by the
24 officer. Along with the marijuana one gram of brown
25 powdery substance was identified as heroin. Also

1 located in the heroin inside the small bag was a 9mm
2 Smith and Wesson. The only reason I wanted to bring
3 that up now was that those two -- all the use
4 violations that were noted by and read by Ms.
5 Rhonda.

6 MS. ANELLI:

7 Your Honor, I'm going to object to counsel's reading
8 of that into record. There was no question for the
9 witness who is currently on the stand pertaining to
10 this.

11 THE COURT:

12 Okay.

13 MS. ANELLI:

14 So, we don't know how it is relevant outside of
15 counsel's testimony. So, if he wants to ask a
16 question pertaining to what he read, I have no
17 objection to that but as just reading it into the
18 record itself --

19 THE COURT:

20 Okay.

21 MS. ANELLI:

22 -- I will have to object.

23 THE COURT:

24 All right. I'll grant that objection. If you'd
25 like to ask her if she's read the -- she's read the

1 report and what she can testify to as far as what
2 her reading it.

3 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

4 Q. Rhonda, have you had a chance to read the incident
5 report?

6 A. Uh-huh (affirmative).

7 Q. Do the violations that were in the incident report
8 violate the lease?

9 A. Yes, sir.

10 Q. Okay. And will you flip to page eight of the lease,
11 please. Termination of lease, do you see that?

12 A. Uh-huh (affirmative).

13 Q. Okay. will you please read 26(A) please?

14 A. 26(A), termination of the lease, tenant shall be in
15 default in the event of the happening of any of the
16 following here -- hereinafter referred to singularly
17 as event of default. For an event of default
18 landlord may terminate this lease, evict tenant,
19 recover actual damages and obtain injunctive relief
20 all is allowed by law.

21 Q. will you read 26(A)(2) please?

22 A. 26(2)?

23 Q. (A)(2).

24 A. Okay. Tenant fails to comply with the lease or the
25 rules and regulations of the community other than

1 non-payment of rent and late charges.

2 Q. 26(A)(3).

3 A. The tenant's material failure to carry out
4 obligations under the South Carolina Residential
5 Landlord Tenant Act.

6 Q. Four, please, (A)(4).

7 A. Action or conduct by tenant which disrupts the
8 livability of the community or adversely affects the
9 health and safety of any person or the right of any
10 other occupant to the quiet enjoyment of the unit or
11 the community or which has an adverse financial
12 effect on the community or constitutes harassment of
13 the management staff at the community.

14 Q. 26(A)(5).

15 A. Drug related criminal activity engaged in or near
16 the community by any tenant, household member or
17 guest or any such activity engaged in on the
18 community by any other person under the tenant's
19 control.

20 Q. I would ask again, 26(A)(5) speaks to guests,
21 correct?

22 A. Yes, sir.

23 Q. 26(A)(6).

24 A. Okay, determination by -- made by landlord that the
25 household member is illegally using a drug.

1 Q. (A)(7).

2 A. Determination made by landlord that illegal use of
3 drugs and appears with the health, safety or right
4 to peaceful enjoyment of the unit by other tenants.

5 Q. 26(A)(8), please.

6 A. Criminal activity by a tenant. Any member of the
7 tenant's household or a guest or another person
8 under the tenant's control that threatens the health
9 and safety or right to peaceful enjoyment or the
10 residents or community by others including other
11 tenants and property management staff. Regardless
12 of whether the tenant, any member of the tenant's
13 household, a guest or any -- or another person under
14 the tenant's control has been arrested or convicted
15 for such activity.

16 Q. Okay. And in applying the incident report that you
17 have read would those be reasons for termination of
18 the lease?

19 A. Yes, sir.

20 Q. Flip over to nine, please, page nine. I would like
21 to note that we're on 26(B) is what I was asking
22 that you read.

23 A. 26(B)? Any termination of this lease by landlord
24 must be in accordance with the USDA regulation,
25 state and local law and the terms of this lease.

1 Landlord shall give tenant 30 days' notice to vacate
2 after the lease termination unless the breach is for
3 non-payment of rent, the severity of the tenant's
4 lease violation is such that the landlord determines
5 that the tenant is an immediate threat to the health
6 or safety of the tenant himself or other members of
7 the household, other tenants, guests, landlords,
8 landlord's agents or staff, landlords' property or
9 other persons in the immediate vicinity of the
10 community.

11 Q. Okay. And C please.

12 A. Notices of lease termination from the landlord shall
13 specify the date this agreement will be terminated,
14 state the grounds for the termination with enough
15 detail for the tenant to prepare the defense, and
16 advise the tenant that he/she has 10 days within
17 which to discuss the proposed terminations with the
18 landlord.

19 Q. And D, please, 26 --

20 A. D?

21 Q. D, yes.

22 A. Okay. The 10-day period set forth above will begin
23 on the date the notice is served upon tenant. If
24 the tenant requests a meeting with the landlord, the
25 landlord agrees to discuss the proposed terminations

1 with the tenant and advise tenant of his or her
2 right to defend the action in Court.

3 Q. Moving on to the letter.

4 MS. ANELLI:

5 Yup.

6 MR. MCCUTCHEN:

7 Your Honor (inaudible) two letters (inaudible).

8 THE COURT:

9 Previously submitted for February 8th and February
10 12th, already agreed upon and stipulated.

11 MS. ANELLI:

12 Yes.

13 THE COURT:

14 All right.

15 MR. MCCUTCHEN:

16 (Inaudible).

17 MS. CARTER:

18 Okay.

19 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

20 Q. (Inaudible).

21 A. Yes, sir.

22 Q. What's the first one?

23 A. The first one was on February 8th where the lease
24 agreement violation was issued to Mr. Jeffery Rush
25 and it was stated that it could not be corrected

1 because of due material or other good cause.

2 Q. Can you read the paragraph right above that for me,
3 please?

4 A. The paragraph above it, you may request an informal
5 meeting?

6 Q. Yes.

7 A. Okay. You may request an informal meeting to
8 discuss this violation. You are further advised
9 that you have the right to request a formal hearing
10 or appeal of this decision. Your request must be
11 submitted within 14 days after the date of this
12 notice.

13 Q. Does that comply with the terms of lease that you
14 read?

15 A. Yes, sir.

16 Q. Does that actually give him four more days to
17 request an informal meeting?

18 A. Yes, sir.

19 Q. Okay. Okay, and if you'll go to the 2/12/21 letter,
20 and please --

21 A. Uh-huh (affirmative).

22 Q. -- tell me what that is.

23 A. Okay, this is the actual termination of the lease.

24 Q. Okay.

25 A. Once it -- once we give the lease violation and we

1 send it up to corporate, they review it and if it's
2 found that the lease is within good cause to
3 terminate then they send it back to us. At that
4 point in time there are two people at the corporate
5 office, either the vice-president or someone of that
6 nature that sign off on the lease and when we get it
7 back then the date that we get it back we date it
8 for that date and they're given 30 days from that
9 date counting tomorrow as one to vacate the
10 property.

11 Q. And if you would, will you read that paragraph and -
12 -

13 A. Okay.

14 Q. -- tell the Court if that is in compliance with the
15 lease?

16 A. Yes, sir. You are advised -- Mr. Jeffery Rush,
17 you're advised that your lease agreement is
18 terminated. This termination of tenancy is due to
19 material and/or good cause violation of your lease
20 agreement. Please refer to Section 26 of your lease,
21 the drug related criminal activity engaged in or
22 near the community by the tenant, household member
23 or guest or any such activity on the community by
24 any other person under the tenant's control. You
25 may choose to voluntarily vacate the premises if you

1 so choose you should notify this office and return
2 your keys on the date you vacate. However, if you
3 have not vacated by March 12, '21, 30 days from the
4 above date, you are advised that eviction
5 proceedings may be sought through the appropriate
6 judicial process according to state law at which
7 time you may be present -- you may present a
8 defense. You want me to continue? It says you or
9 your attorney may --

10 Q. I don't think -- I think that's everything that we
11 need for that one as well.

12 A. Okay.

13 Q. And again, I'd ask does that comply with the terms
14 of the lease?

15 A. Yes, sir, it does.

16 Q. Okay. 356159 (inaudible).

17 A. Okay.

18 MS. ANELLI:

19 I do need copies of (inaudible).

20 MR. MCCUTCHEN:

21 I only have two unfortunately. I gave the other one
22 to him.

23 THE COURT:

24 If you need copies we can make them for you, Ms.
25 Anelli.

1 MS. ANELLI:

2 I just want to read them.

3 THE COURT:

4 Okay, no problem.

5 WITNESS CONTINUES:

6 A. Yes, sir.

7 Q. Can you tell me what this document is?

8 A. It's the termination of occupancy, it's out of the
9 3560 hand -- the RD regulations manual.

10 Q. All right, can you read not A, B, C, but D, please?

11 A. Criminal activity. Borrowers may terminate tenancy
12 for criminal activity or alcohol abuse by household
13 members in accordance with the provisions of 24 CFR
14 5.85, 5.859, 5.856 and 5.8561.

15 Q. All right. Will you flip over --

16 A. Did I say that -- 5.861. I'm sorry.

17 Q. That's fine. Will you flip over to 5.858 please?

18 A. I got too busy -- carried away. What authority do I
19 have to evict drug criminals? The lease must
20 provide that drug-related criminal activity engaged
21 in or near the premises by any tenant, household
22 member, or guest, and in any such activity engaged
23 in on the premises by any other person under the
24 tenant's control, is grounds for you to terminate
25 tenancy. In addition, the lease must allow you to

1 evict a family when you determine that the household
2 member is illegally using a drug or when you
3 determine that a pattern of illegal use of a drug
4 interferes with the health, safety, and right of
5 peaceful enjoyment of the premises by other
6 residents.

7 Q. All right. And does it -- does that apply to this
8 matter?

9 A. Yes, sir, it does.

10 Q. And that is the federal guidelines as to why we are
11 back down in this Court having a re-trial; is that
12 correct?

13 A. Yes, sir.

14 Q. Can you flip over to 5.859(A)(1) and (2), please?

15 A. Yes, sir. You want me to read (a), (1) and (2)?

16 Q. Yes, please.

17 A. Okay. Threat to other residents. The lease must
18 provide that the owner may terminate tenancy for any
19 of the following types of criminal activity by a
20 covered person. (1) any criminal activity that
21 threatens the health, safety, or right to peaceful
22 enjoyment of the premises by other residents,
23 including property management staff residing on the
24 premises, or (2) any criminal activity that
25 threatens the health, safety, or right to peaceful

1 enjoyment of their residence by persons residing in
2 the immediate vicinity of the premises.

3 Q. And is that applicable to the facts here?

4 A. Yes, sir.

5 Q. Does anywhere in any of that information you read
6 speak to any right to cure by the tenant?

7 A. You can't cure something that's already taken place.

8 Q. Okay. Let's see --

9 A. A criminal activity. It's not a like a housekeeping
10 issue.

11 Q. Can you explain that?

12 A. If we were to request termination for a housekeeping
13 issue, on the first box on the lease violation is
14 checked and we give them 14 days to cure it. After
15 14 days we go back, reinspect the house to make sure
16 everything's in order and if it is then that lease
17 violation is rescinded, he's cured it. If it has
18 not been cured within the 14-day period then we
19 would send this up saying you did not cure it, it is
20 now non-correctable because you did not do it within
21 the 14 days.

22 Q. Okay. And let me ask you, in other instances when
23 an incident like this has happened has that ever
24 been considered curable --

25 A. No, sir.

1 Q. -- (inaudible).

2 A. Not of this nature.

3 Q. Okay.

4 A. No, sir.

5 Q. And again, that is why?

6 A. You can't cure criminal activity. It's of this
7 nature.

8 Q. Okay. I think at that point I'm -- I just got to
9 get the incident report in when he gets here but at
10 this point I think we've covered the majority of it.

11 THE COURT:

12 Ms. Anelli, your witness.

13 MS. ANELLI:

14 I do have a brief cross.

15 THE COURT:

16 Take your time.

17 EXAMINATION BY MS. ANELLI:

18 Q. Good afternoon, Ms. Carter. How are you?

19 A. Good afternoon.

20 Q. All right, so I would like -- does she still have a
21 copy of the lease up there?

22 MR. MCCUTCHEN:

23 She's got the leases, the --

24 MS. ANELLI:

25 Perfect.

1 WITNESS:

2 Got it right here.

3 MR. MCCUTCHEN:

4 -- letters and the Code Section.

5 EXAMINATION CONTINUES BY MS. ANELLI:

6 Q. If you can go to the lease, that would be --

7 A. Got it.

8 Q. Okay. And now let me get the lease, hold on here.

9 One moment.

10 MR. RUSH:

11 (Inaudible).

12 THE COURT:

13 You're good. We made note that you were going to be
14 late, so don't -- we just started without you.

15 That's okay. Your representation has been here.

16 MS. ANELLI:

17 All right.

18 THE COURT:

19 Just let me know -- when he comes just let me know.

20 EXAMINATION CONTINUES BY MS. ANELLI:

21 Q. So, I would like to bring your attention to page
22 one, paragraph three, about midway here. It states,
23 this lease is renewable for success of terms of one
24 year by written agreement signed by all parties and
25 attached to this lease unless tenant is subject to

1 termination according to 7 CFR, 3560.158 and 7 CFR 7
2 3560.159.

3 A. Uh-huh (affirmative).

4 Q. Or otherwise. Did I read that correct?

5 A. Yes, ma'am.

6 Q. Okay. Now, going to page two, paragraph six, last
7 paragraph at the bottom, the landlord may require
8 any tenant to show evidence that any non-adult
9 member of the household occupying the unit who
10 committed a drug violation or domestic violence
11 agrees to not commit a drug -- commit a drug
12 violation or domestic violence in the future and to
13 show the evidence the person is either actively
14 seeking or receiving assistance through counseling
15 or recovery program complying with a court orders
16 related to drug violation or domestic violence or
17 has completed counseling or recovery program within
18 timeframes specific by landlord as condition for
19 continued occupancy in the unit. Should a further
20 drug violation or domestic violence be committed by
21 any adult mem -- person occupying the unit, landlord
22 may require the person to be severed from tenancy as
23 a condition for continued occupancy by tenant. Did
24 I read that correctly?

25 A. Yes, ma'am.

1 Q. So, when you just testified that this is not
2 something that can be cured, a drug violation,
3 that's not actually what states in your lease?

4 A. Yes, ma'am, it does. That due to the nature of this
5 incident they chose to terminate the lease.

6 Q. Okay. However, from your knowledge, Mr. Rush wasn't
7 arrested, correct?

8 A. He wasn't what?

9 Q. Arrested. Correct?

10 A. I don't know if he was arrested or not. I don't
11 know.

12 Q. Oh. So, you don't know whether or not the -- he was
13 actually charged with anything?

14 A. Okay, due to the heroin and the other items that
15 were found in his unit, we have children there. We
16 -- we couldn't have this on the property. Due to
17 the nature of the offense and actual federal agents
18 came in.

19 Q. Okay.

20 A. We did not initiate this. Federal agents came in
21 with a warrant, they knew what they were going to do
22 and they went to this particular unit.

23 Q. Okay.

24 A. We didn't pick him up.

25 Q. So, you were not present when this incident

1 occurred, correct?

2 A. No, ma'am, I was not on site, because they rolled up
3 on the property, showed us their credentials, and
4 were going to knock the door in if we did not unlock
5 it.

6 Q. So, you are basing all of this upon --

7 A. My manager calling me and having a panic attack and
8 she was standing there and based on the police
9 incident report.

10 Q. Okay. But all of that information is coming from
11 other personnel, correct?

12 A. The police and the SLED officers and everybody that
13 was on site --

14 Q. Okay.

15 A. -- that I spoke to that day, yes, ma'am.

16 Q. All right. So, let's go back to the federal
17 statutes that you read, if you want to bring those
18 out as well.

19 A. Okay.

20 Q. And I'm specifically looking at both 24 CFR 5.585
21 and 5.859 the ones that you read into the record. I
22 believe it's page two and three of the packet that
23 you have in front of you.

24 A. Yes, ma'am.

25 Q. Okay. Now please correct me if I'm wrong, under

1 those items it states what terms the lease must
2 have, correct? It says the lease must have and then
3 it lists out requirements.

4 A. Right.

5 Q. Correct?

6 A. Uh-huh (affirmative).

7 Q. Okay. So those are our requirements for the lease
8 to have in order for you to evict under criminal
9 activity; is that correct?

10 A. That's what it reads, yes, ma'am.

11 Q. Can you please tell me where in those two statutes
12 it talks about the procedure of how to go about
13 evicting a tenant?

14 A. Okay, the 3560 is not a procedure manual it is
15 regulations.

16 Q. Okay.

17 A. It's not a procedure. It doesn't give you
18 procedures.

19 Q. Okay. So, they just provide you regulations,
20 correct?

21 A. Yes, ma'am, regulations and that's why you have
22 attorneys go over your lease and make sure that the
23 lease is good with government guidelines --

24 Q. Okay.

25 A. -- and our lease has been approved.

1 Q. Awesome. All right, so I'm going to now turn your
2 attention to the first notice that you provided on
3 February 8, 2021; is that correct?

4 A. February 8, yes, ma'am.

5 Q. Okay. First of all, is that your signature at the
6 bottom?

7 A. No, ma'am, it's not.

8 Q. Okay. So, you didn't create this document?

9 A. No, ma'am, I did not.

10 Q. Okay. So, you didn't --

11 A. This was the manager on site.

12 Q. All right. But you had no input into this document
13 based upon that signature?

14 A. It's not my signature. I know the document and I
15 know the charges the part in the lease violation
16 that we would have cited.

17 Q. Okay. So, I'm going to read the top here. In
18 accordance with the provisions of your lease dated
19 9/16/2020 you are hereby notified of the following
20 lease agreement violations; is that correct?

21 A. Uh-huh (affirmative), yes, ma'am.

22 Q. So, you are terminating him based upon violations of
23 an agreement, of the lease agreement, correct?

24 A. Yes, ma'am.

25 Q. Okay. So, let's go to the second notice, February

1 12, 2021. Okay?

2 A. Yes, ma'am.

3 Q. Are you there?

4 A. Yes, ma'am.

5 Q. Awesome. So here it states that you are advised
6 that your lease agreement is terminated. This
7 termination of tenancy is due to material and/or
8 other non -- pardon me, other good cause violations
9 of your lease agreement; is that correct?

10 A. Uh-huh (affirmative).

11 Q. So, in this letter you were notifying him that there
12 was a violation of his lease agreement; is that
13 correct?

14 A. Yes, ma'am.

15 Q. And in neither of these letters you provided him a
16 14 day right to cure?

17 A. We don't have to. It was non-correctable.

18 Q. Okay. And you based on --

19 A. That's what the first letter said.

20 Q. Okay.

21 A. It's non-correctable and he had --

22 Q. Okay. So, you didn't give him any ability to cure
23 this?

24 A. You can't cure a criminal activity, it's already
25 taken place.

1 Q. Okay.

2 A. You can't go back and undo it.

3 MS. ANELLI:

4 At this point in time, I have no further questions
5 for this witness.

6 THE COURT:

7 Thank you so much. Redirect?

8 MR. MCCUTCHEN:

9 Just two or three questions here.

10 REEXAMINATION BY MR. MCCUTCHEN:

11 Q. Pull out the lease for me, please, ma'am.

12 A. The lease?

13 Q. Yes, ma'am.

14 A. Got it.

15 Q. Paragraph three.

16 A. Yes, sir.

17 Q. Read the second to last sentence.

18 A. Second to last sentence in three.

19 THE COURT:

20 I'm sorry to interrupt, give me your location again.

21 MR. MCCUTCHEN:

22 I'm on the lease, paragraph three.

23 THE COURT:

24 Okay.

25 MR. MCCUTCHEN:

1 And the sentence I'm asking her to read is, this
2 lease is renewable.

3 WITNESS:

4 A. This lease is renewable for successive terms of one
5 year by written agreement signed by all parties and
6 attached to this lease unless tenant is subject to
7 termination according to 7 CFR 3560.158 and 7 CFR 7
8 -- 3560.159 or otherwise.

9 Q. So, or otherwise means --

10 A. Right.

11 Q. -- (inaudible) part of statute? Let's go to
12 paragraph six. She asked you to read the last
13 paragraph, or she read it in, six -- the last
14 paragraph.

15 A. Yes, sir.

16 Q. Will you read the first two words?

17 A. First two words, landlord may require --

18 Q. May, it says may, not shall --

19 A. -- tenant to show --

20 Q. -- is that correct?

21 A. Yes, sir.

22 Q. So, that is up to --

23 A. I mean --

24 Q. -- the manager's choosing?

25 A. I'm sorry?

1 Q. But that is up to the manager's choosing if they
2 will or will not?

3 A. Yes, sir.

4 Q. It says may, okay. And go to the letters that she
5 was referring to, specifically the first one.

6 A. I'm sorry. Yes, sir.

7 Q. Again, I would like to point out that the second
8 paragraph does read that he had every right to
9 submit an appeal for formal hearing, did he -- was
10 that ever done by Mr. Rush?

11 A. No, sir.

12 Q. Okay. I think I'm --

13 THE COURT:

14 Okay on those issues?

15 MR. MCCUTCHEN:

16 Yeah.

17 THE COURT:

18 Ms. Anelli?

19 MS. ANELLI:

20 Nothing further, Your Honor.

21 THE COURT:

22 I do have one question.

23 WITNESS:

24 Yes, sir.

25 EXAMINATION BY THE COURT:

1 Q. Luckily in our Court we can ask these questions to
2 clarify things. And I'm just trying to get my head
3 around that's -- the bottom of page two in that
4 paragraph that Ms. Anelli read on the lease about I
5 think he just had you read the first two words may.

6 A. Uh-huh (affirmative).

7 Q. What does the term -- what would the term non-adult
8 member be?

9 A. That's --

10 Q. Who would that -- who would that be?

11 A. A non-adult member would be a child under the age of
12 18.

13 Q. So that's what this paragraph is completely talking
14 about a child?

15 A. Yeah, that's a child under 18.

16 THE COURT:

17 That was my question. Okay, thank you. On those
18 issues I'll allow either party to ask or interject
19 on those. I just -- I had that question and I
20 wanted to have it answered that way I know when I
21 make a decision.

22 MS. ANELLI:

23 I have nothing, Your Honor.

24 MR. MCCUTCHEN:

25 I have nothing.

1 THE COURT:

2 Thank you so much. Ms. Carter, you're free to have
3 a seat and step down.

4 MS. ANELLI:

5 I do ask that those documents remain on the stand.

6 MR. MCCUTCHEN:

7 Oh, yeah, yeah.

8 MS. ANELLI:

9 I'm sorry.

10 MR. MCCUTCHEN:

11 That's all right.

12 THE COURT:

13 That's perfectly fine. All right, are you going to
14 call your next?

15 MR. MCCUTCHEN:

16 The officer's not here.

17 THE COURT:

18 He is.

19 MR. MCCUTCHEN:

20 Oh, hey, sorry. Yeah, will you come on up to the
21 stand, please?

22 THE COURT:

23 The Plaintiff calls Detective Huggins, thank you.
24 Detective Huggins, coming forward, please, raising
25 your right hand. Do you solemnly swear or affirm

1 testimony you'll give the Court in this matter will
2 be the truth, the whole truth, and nothing but the
3 truth so help you God?

4 DETECTIVE HUGGINS:

5 Yes, Your Honor.

6 THE COURT:

7 All right, Mr. Huggins, before we get started I just
8 wanted to show you this is where I signed it last
9 week. I know you didn't get served with it and
10 that's okay. Don't sweat it but thank you for
11 coming in a timely fashion.

12 DETECTIVE HUGGINS:

13 And I apologize too, I (inaudible).

14 THE COURT:

15 No, it's -- it's -- it's not your fault and we
16 actually made record of it on the record that he was
17 not notified by the Sheriff's Office so --

18 DETECTIVE HUGGINS:

19 They might have had problems finding me last week, I
20 wasn't at the office.

21 THE COURT:

22 Okay, well, that's okay. You're here now and I
23 appreciate you being here.

24 DETECTIVE HUGGINS:

25 Yes, sir.

1 THE COURT:

2 Mr. McCutchen, he's your witness. Oh, before we get
3 started. Please say, spell your name into the
4 record and your title, please.

5 DETECTIVE HUGGINS:

6 I'm a Detective for Conway City and my name is
7 Allan, A-L-L-A-N, Huggins, H-U-G-G-I-N-S.

8 THE COURT:

9 H-U -- A-L-A-N?

10 DETECTIVE HUGGINS:

11 A-L-L.

12 THE COURT:

13 A-L-L-A-N?

14 DETECTIVE HUGGINS:

15 Yes, sir.

16 THE COURT:

17 H-U-G-G-I-N-S.

18 DETECTIVE HUGGINS:

19 Yes, sir.

20 THE COURT:

21 Thank you.

22 DETECTIVE HUGGINS:

23 You're welcome.

24 THE COURT:

25 With CPD. Very good. All right.

1 MR. MCCUTCHEN:

2 I thought I brought an extra copy of the incident
3 report, I've got --

4 THE COURT:

5 You may have it here; you provided it to the Court
6 up here.

7 MR. MCCUTCHEN:

8 Okay. Let me just make sure. You got three pages?

9 THE COURT:

10 Yes, sir.

11 MR. MCCUTCHEN:

12 Okay.

13 THE COURT:

14 Yeah, and Ms. Anelli, I've got all this paperwork up
15 here if you -- whatever you need is up here too. I
16 think there's like two copies floating around.

17 MS. ANELLI:

18 Thank you, Your Honor.

19 MR. MCCUTCHEN:

20 You mind if I take one?

21 THE COURT:

22 You absol -- it's yours; you provided it to the
23 Court.

24 EXAMINATION BY MR. MCCUTCHEN:

25 Q. Can you tell us what that document is, please?

- 1 A. This is an incident report from our PremierOne
2 Suite, it's a police report from our department.
- 3 Q. And were there at this incident? (Inaudible).
- 4 A. Yes, yes, sir, I was.
- 5 Q. You were?
- 6 A. Yes.
- 7 Q. You were there, so, when they wrote up this incident
8 report, were you a part of --
- 9 A. Yes, I was.
- 10 Q. -- preparing this?
- 11 A. Huh?
- 12 Q. You were a part of preparing this incident report?
- 13 A. Let's see who the author is on this one.
- 14 Q. I thought we saw your name on it.
- 15 A. This is a little different format than I'm used to
16 seeing. We see a little different format so give me
17 just a second. Yup, C924, right there at the
18 bottom.
- 19 Q. I guess let's start with the location here. What
20 was the address that y'all were called to?
- 21 A. We weren't called to any address, we were there
22 tracking a wanted subject.
- 23 Q. What unit did y'all find him?
- 24 A. Huh?
- 25 Q. What unit was he located in?

1 A. He was located in 1708 Shady Moss Court, Apartment
2 C6.

3 Q. Apartment C6, and that is the same -- that is the
4 same unit as Mr. Jeffery Rush.

5 MS. ANELLI:

6 Objection, Your Honor, counsel is testifying.

7 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

8 Q. Can you please read --

9 A. Yeah,

10 THE COURT:

11 Have you got a question? Ask him a question.

12 MR. MCCUTCHEN:

13 Yeah, I'm just thinking out loud.

14 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

15 Q. Can you read the narrative section of that, please?

16 A. I can. On Wednesday, December 30, 2020 --

17 MS. ANELLI:

18 Objection, Your Honor. This is still hearsay.

19 Counsel has not provided any level of foundation to

20 get this report into the record and that as such I

21 will say that any reading of the narrative section

22 is thereby hearsay and until proper foun --

23 MR. MCCUTCHEN:

24 He said he prepared it.

25 THE COURT:

1 Yeah, he stated he prepared it. He stated his
2 number was 9224 on the bottom of the page.

3 MR. MCCUTCHEN:

4 If he prepared it then he can speak to it.

5 THE COURT:

6 I would agree.

7 MS. ANELLI:

8 I will withdraw my objection.

9 THE COURT:

10 Yeah, denied. He stated earlier that he prepared
11 the document, he was C924, correct?

12 WITNESS:

13 Yes, sir.

14 THE COURT:

15 Okay. I'm just reading my notes.

16 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

17 Q. Please go ahead, I'm sorry.

18 A. It's all right. On Wednesday, December 30, 2020
19 Conway Investigations was assisting the US Marshals
20 task force in attempting to locate an NCIC wanted
21 persons out of the Conway City for attempted murder.
22 The Marshals Task Force had informed me -- informed
23 that the arrestee was located at 1708 Shady Moss
24 Court, Apartment C6. On arrival contact was made
25 with the occupants, at which time the listed

1 arrestee was seen standing inside the apartment.
2 while apprehended the listed arrested it was noted
3 in plain view that there was green leafy vegetation
4 and due to my officer's training and experience
5 identified as marijuana was seen on the living room
6 table. At that point all occupants were asked to
7 leave the residence and the apartment was secured
8 for a search warrant or while a search warrant for
9 the apartment was obtained. Detective Edwards then
10 obtained the search warrant and brought it to the
11 location. Once the search warrant was obtained the
12 apartment was processed, located inside the
13 residence was approximately 9.6 grams of green leafy
14 vegetation that was identified as marijuana by
15 officer's training and experience. Along with the
16 marijuana, 1.0 grams of a brown powdery substance
17 had been identified as heroin by my officer's
18 training and experience. Also located with the
19 heroin inside a small black pack located in the
20 living room was a 9mm Smith & Wesson bearing serial
21 number which has been obliterated from the report,
22 or redacted from the report. The next seized item
23 was a black and blue Nokia cell phone with IMEI
24 which was redacted; this was located in close
25 proximity to the bag containing the narcotics and

1 the firearm in the living room. The final thing
2 that was seized was US currency and belonging to the
3 listed arrestee, the currency was noted in small
4 denomination which is consistent with street level
5 narcotic sales. The listed arrestee was transited
6 to ACPD by CPD patrol and holds were placed for --
7 or inside -- I'm sorry, placed for the lo -- for the
8 located items inside the residence. Evidence was
9 transported back to CPD where it's processed, the
10 narcotics was placed in a SLED BEST kit B23571, the
11 currency was placed in the currency denomination
12 form and the current -- and placed in the currency
13 bag number 4294794 after being double verified by
14 CSI Bowman and I. All evidence was then placed in
15 the evidence locker, warrants obtained for the
16 listed narcotics and possession of the firearm by
17 certain person and listed arres -- or the listed
18 arrestee is a convicted felon.

19 Q. All right. And just the third page here? Will you
20 confirm what he was arrested for?

21 A. We were -- obtained warrants for 2020A2620400923,
22 which is PWID heroin first, ending of 924 possession
23 of a weapon by a certain persons and 925 simple
24 possession of marijuana.

25 Q. All right. Judge, you want to go off the record for

1 a quick second? I just -- now that that correlates
2 with the lease I got to --

3 THE COURT:

4 Okay, so we need to go off the record?

5 MR. MCCUTCHEN:

6 Yeah, I just want to ask you how you want to proceed
7 with that since we're going out of how I would
8 normally do it.

9 THE COURT:

10 Okay. Let's do it on the record. I mean, I don't
11 have anything to do -- I mean, what are we -- what
12 do you want to talk about? I'm okay with talking on
13 the record.

14 MR. MCCUTCHEN:

15 well the incident report reflects the lease which
16 reflects the (inaudible).

17 THE COURT:

18 Are you trying to call her back up?

19 MR. MCCUTCHEN:

20 That's why it was crossed over.

21 THE COURT:

22 Yeah. We agreed -- we stipulated already that he --
23 you could do everything out of order and she was
24 fine with that.

25 MR. MCCUTCHEN:

1 Okay, I just wanted to make sure. I didn't want to
2 say anything on the record without --

3 THE COURT:

4 Yeah, yeah, we've already -- on the record we agreed
5 that we could do things out of order.

6 MR. MCCUTCHEN:

7 Okay, so again --

8 THE COURT:

9 So, however you want to do --

10 MR. MCCUTCHEN:

11 Just to confirm her testimony that what he has just
12 read is violations of the lease.

13 THE COURT:

14 Okay, so if you want to -- you want to put her back
15 up? You can't testify to it.

16 MR. MCCUTCHEN:

17 I know. But you just said we stipulated to that so
18 I'm just trying to --

19 THE COURT:

20 If you want to call her back up and then call him
21 back up. All right, Mr. Huggins, with -- hang on.
22 You want to ask questions first?

23 MS. ANELLI:

24 I would like to cross-examine him.

25 THE COURT:

1 First, before that?

2 MS. ANELLI:

3 Yes, Your Honor.

4 THE COURT:

5 Okay, no problem. You have any more questions for
6 him?

7 MR. MCCUTCHEN:

8 Not right now. I'm just trying to figure out how to
9 keep this thing flowing.

10 THE COURT:

11 Trust me, I'm wrapping my mind around it as best I
12 can too. And I think we're all -- I mean, we all
13 kind of --

14 MR. MCCUTCHEN:

15 I think, you know, we're doing good. Thank you.

16 THE COURT:

17 Yeah. Ms. Anelli, your witness, cross-examine.

18 EXAMINATION BY MS. ANELLI:

19 Q. Hi, Detective. Thank you so much for coming here
20 today. I just have a couple brief questions for
21 you.

22 A. Yes, ma'am.

23 Q. Regarding the incident report that was -- that you
24 read here. The subject was Terrance Lamont Melvin;
25 is that correct?

1 A. That's correct.

2 Q. Okay. And nowhere in this incident report does it
3 mention the -- anything regarding Jeffery Rush?

4 A. Not in the incident report but if you're asking what
5 I saw in the apartment I can expand upon it.

6 Q. I'm asking about the incident report itself.

7 A. Okay.

8 Q. He was not mentioned in this incident report nor
9 charged from this incident report.

10 A. No, the -- this incident report covers Terrance
11 Melvin.

12 Q. Okay. I have no further questions, Your Honor.

13 THE COURT:

14 Okay. Any re-direct?

15 REEXAMINATION BY MR. MCCUTCHEN:

16 Q. Was Jeffery Rush in the unit?

17 A. He was in the unit.

18 THE COURT:

19 On that issue?

20 MS. ANELLI:

21 No questions, Your Honor.

22 THE COURT:

23 All right, thank you so much. We're done with?

24 MR. MCCUTCHEN:

25 I think we're done. I'm done with him.

1 THE COURT:

2 I'm going to ask you to hang around.

3 DETECTIVE HUGGINS:

4 I will, sir.

5 THE COURT:

6 For just a few minutes.

7 DETECTIVE HUGGINS:

8 Yes, sir.

9 THE COURT:

10 Just 'cause we are doing things out of order if
11 something comes up that we need clarified at least
12 we'll have him around until such time as every party
13 deems they're done with Detective Huggins. All
14 right, for the record we are calling Ms. Carter back
15 to the stand, as agreed upon previously, by all
16 parties. Ms. Carter, you're still under oath.
17 Answer any questions your attorney has for you.

18 MS. CARTER:

19 Okay.

20 THE COURT:

21 Here, I'm going to put this (inaudible) around in
22 front of you. There you go.

23 MS. CARTER:

24 Sorry.

25 THE COURT:

1 Perfect, you're good.

2 REEXAMINATION BY MR. MCCUTCHEN:

3 Q. I'd like to go back to a few of the provisions,
4 specifically 6(B).

5 A. What are we talking about? Which one?

6 Q. Oh, the lease, I'm sorry.

7 A. The lease, okay. 6(B), okay.

8 Q. Can you read that to me, please?

9 A. Tenant and members of tenant's household or guests
10 may not engage in the following activities, behaving
11 in a loud or obnoxious manner, disturbing or
12 threatening the rights, comfort, health, safety and
13 convenience of others, including employees of the
14 agents or owner's agent.

15 Q. You can stop there. That says tenants and guests,
16 correct?

17 A. Yes.

18 Q. Does the lease apply to tenants and guests as far as
19 illegal activities?

20 A. Yes, sir.

21 Q. Okay. That's -- that's all I -- and the illegal
22 activities listed in the incident report apply to
23 the lease here?

24 A. Yes, sir.

25 Q. I think I'm -- I think I'm good.

1 THE COURT:

2 All right. Thank you, Mr. McCutchen. Ms. Anelli,
3 on those issues?

4 MS. ANELLI:

5 Nothing further on those issues, Your Honor.

6 THE COURT:

7 Thank you. All right. Ms. Carter, I think we're
8 done.

9 MS. CARTER:

10 Okay, and leave these here this time?

11 THE COURT:

12 Yes, please.

13 MS. CARTER:

14 Okay.

15 THE COURT:

16 All right, Mr. McCutchen, your next witness, please.

17 MR. MCCUTCHEN:

18 I think that's -- that's all. I rest.

19 THE COURT:

20 Plaintiff rests, okay. Ms. Anelli?

21 MS. ANELLI:

22 Thank you, Your Honor.

23 THE COURT:

24 It's your case.

25 MS. ANELLI:

1 At this time before the Defense brings forth their
2 case-in-chief I would like to make a motion for a
3 directive verdict as the Federal Guidelines require
4 a right to cure for lease violations. There was
5 testimony provided that these are lease violations
6 and since as a result of that particular requirement
7 which was clearly not met based upon the testimony
8 of the regional manager as well as the evidence
9 presented, I ask that the Court grant that motion to
10 dismiss.

11 THE COURT:

12 Okay. On those issues?

13 MR. MCCUTCHEN:

14 Your Honor, I think it was clearly stated that the
15 14 days was given to him to make an appeal. It was
16 clearly stated that 3560.159(D) is silent on the
17 fact of a cure, material breach, you can't cure it,
18 there's no way you can go back and remove the green
19 leafy stuff, etcetera or anything so I would ask
20 that you don't grant her motion.

21 THE COURT:

22 Okay. And on that?

23 MS. ANELLI:

24 Thank you, Your Honor. According to the Federal
25 Statute itself --

1 THE COURT:

2 And please --

3 MS. ANELLI:

4 -- when tenants are in violation of the lease it
5 specifically lays out the requirement that prior to
6 termination the borrower must give the tenant
7 written notice of the violation, and give the tenant
8 an opportunity to cure this violation. As you could
9 read based upon the -- based upon the notices
10 themselves they clearly do not provide the
11 opportunity to cure. We argue that the ability to
12 appeal is not given that notice to cure and that
13 opportunity to cure. Furthermore, if you look under
14 subsection A under 3560.159 you do see here that
15 they also talk about the admission to or conviction
16 or use or attempted use, possession, manufacture,
17 selling or distribution of an illegal or controlled
18 substance such as things that have occurred on the
19 property. We argue that even though the Plaintiff
20 feels that once it's done once you can't cure it,
21 the Federal guidelines have specifically identified
22 that regarding to violations of the lease you still
23 have an opportunity to correct even if it is
24 regarding the use, possession, manufacture, selling
25 or distribution of an illegal controlled substance,

1 which we argue has not occurred, and as a result
2 would require that 14 day to cure. And since this
3 was not an incident that my client partook in and
4 was his guest it -- we further will argue that it is
5 curable by him not inviting said guest over.

6 THE COURT:

7 Okay. All right. Anything further from either
8 side?

9 MR. MCCUTCHEN:

10 I mean, if you read it literally like she is he was
11 present, harboring a fugitive, and there was a gun.
12 So, if there's no -- even if the drug situation in
13 there there was still a violation of the criminal
14 activity down here because of the Smith & Wesson gun
15 and harboring a fugitive so I would again ask that
16 you don't grant the motion.

17 THE COURT:

18 Okay. All right. All right, after hearing the
19 motion and hearing from both sides, Ms. Anelli, I
20 respectfully deny your motion. I do think if there
21 was a violation of lease somewhere in here that he
22 could fix, I think it is -- and if I -- and I'm
23 specifically looking to your USDA document that you
24 provided, as far as the termination of occupancy. I
25 agree there is four different sections that he could

1 be terminated for and they stand alone. If it was
2 the criminal activity in section D does not offer
3 any -- any term for fixing the problem at all or
4 right to cure; neither does B, neither does C. If
5 it was -- if it fell under Section A, and I know
6 what you're saying you're talking about that these
7 letters state a violation of lease agreement,
8 whether he's trying to -- or whether the counsel is
9 trying to get him out on a violation of lease or
10 criminal activity, I think he's still covered
11 because he did give him the days to fix the problem
12 but I could pick one at this point, and criminal
13 activity sticks out and has been testified to the
14 most, I believe, as far as the reason for ejectment
15 at this point. So, Section D in accordance with
16 provisions from 24 CFR 585 as pointed out, I will
17 deny the motion and --

18 MS. ANELLI:

19 Thank you, Your Honor.

20 THE COURT:

21 -- the criminal activity I believe is there and I'll
22 -- but I'll be happy to hear your testimony. All
23 right?

24 MS. ANELLI:

25 Thank you, Your Honor. At this time, I would like

1 to call Mr. Jeffery Rush to the stand.

2 THE COURT:

3 Mr. Rush, coming forward please. All right, Mr.
4 Rush, please raise your right hand. Do you solemnly
5 swear or affirm the testimony you'll give the Court
6 in this matter be the truth, the whole truth, and
7 nothing but the truth so help you God?

8 MR. RUSH:

9 Yes, sir.

10 THE COURT:

11 Thank you so much. Have a seat; answer any
12 questions your attorney has for you. Thank you, Mr.
13 Rush.

14 EXAMINATION BY MS. ANELLI:

15 Q. For the record, could you please state your name?

16 A. My name is Jeffery Rush.

17 Q. All right. And where do you currently reside?

18 A. 1708 Shady Moss Court, Apartment 6C.

19 Q. And did you sign a lease agreement with them?

20 A. Yes, ma'am.

21 Q. And how long is that lease agreement for?

22 A. I think one year.

23 Q. All right. And does anybody with reside -- does
24 anybody reside with you?

25 A. No, ma'am.

1 Q. Okay. So, as you might be familiar now the
2 Plaintiff's have stated that you have violated the
3 lease. Are you familiar with the incident that
4 they're claiming you violated?

5 A. Yes, the incident that occurred at my apartment.

6 Q. Yes.

7 A. Yes, ma'am.

8 Q. Could you please describe in detail what occurred
9 that day?

10 A. Okay, that day we was sitting around in the living
11 room watching a movie and I was close to the door,
12 sitting there close to the door, and I heard a
13 knock. And I answered the door and it was the US
14 Marshall. And they say they was looking for a
15 Terrance Melvin and I said yes, yes, sir. And he
16 was in the bathroom and he came out and he came to
17 them and told them I'm Terrance Melvin.

18 Q. Okay. Now at this time did you know that Mr. Melvin
19 was wanted for anything?

20 A. No, ma'am, I did not.

21 Q. Okay. After Mr. Melvin identified himself to the US
22 Marshals what happened next?

23 A. Okay, they took him out of the unit and they came
24 and they told everyone else to remove theirselves from
25 the unit. And we all did. And we stood out in the

1 parking lot. And I think they ask for a search
2 warrant and I think Detective Williams, I mean one
3 of them went and got a search warrant. And when
4 they came back they asked -- they went and they
5 searched the apartment and one of the US Marshals
6 asked me about a black bag. I said I don't know
7 about no black bag, 'cause I don't have a black bag.
8 And he said who do it belongs to. I said probably
9 belong to him 'cause I don't have one. And so he
10 said okay. So, they went in and they searched. I
11 never found out what was found. All I know they
12 said they found marijuana on my coffee table. I
13 said well, I ain't seen no marijuana 'cause I don't
14 smoke marijuana in my -- in my unit. I don't do no
15 drugs. And they said it was in a little dish. But
16 I never seen it. And they never showed it to me.
17 So, I -- I said okay.

18 Q. Okay. That day were you investigated at all?

19 A. No, ma'am.

20 Q. Were you charged at all?

21 A. No, ma'am.

22 Q. Prior to this incident did anything like this ever
23 occur?

24 A. No, ma'am. This is the first time this ever
25 happened to me since I've been in this unit.

1 Q. And since then, has this incident ever occurred?

2 A. Oh, no, ma'am.

3 Q. Okay. Has Mr. Melvin ever set foot in your
4 apartment again?

5 A. No, ma'am.

6 Q. Have the police ever been called to your unit for
7 anything regarding incidents related to yourself?

8 A. No, ma'am.

9 Q. Okay.

10 A. Except -- except one, excuse me, when my unit was
11 broken into.

12 Q. Okay. Did you have -- did you have anything to do
13 with breaking into the unit?

14 A. No, ma'am.

15 Q. Were you a victim of that incident?

16 A. Yes, ma'am.

17 Q. Okay. So, for this particular incident in December
18 of 2020, you were not charged with anything at all?

19 A. No, ma'am.

20 Q. Okay. After this incident, do you remember
21 receiving notices of lease violations?

22 A. Yes, I receive a notice but it wasn't in the
23 mailbox, it was -- a note was sent to me by the US -
24 - UPS I think.

25 Q. Okay.

1 A. That I had to go down there to the post office and
2 receive it.

3 Q. All right. And are you familiar with these notices?

4 A. No, not really.

5 Q. Let the record show that I am approaching.

6 THE COURT:

7 Come on up.

8 MS. ANELLI:

9 Just providing a refresher here, Your Honor.

10 EXAMINATION CONTINUES BY MS. ANELLI:

11 Q. If you can, please review these quietly and let me
12 know when you are done. Actually, since they're
13 already admitted into the record I'll go ahead and
14 (inaudible). Are those the two notices that you
15 received?

16 A. Yes, ma'am.

17 Q. Okay. And anywhere in those notices does it give
18 you an opportunity to cure or an opportunity to fix
19 the violation that occurred?

20 A. Why yes I -- yes, I've tried to talk with the
21 manager about it.

22 Q. Okay. And what was your conversation when you
23 talked to your manager, what happened?

24 A. I explained to her that I had no idea or no
25 knowledge of Terrance Melvin being a wanted person

1 for attempted murder, 'cause we never had that
2 conversation about any of that. But I did not -- I
3 notified him that there won't be no crazy activity
4 going on in this apartment, drug activity, none of
5 that, that kind.

6 Q. And what happened after you had that conversation?

7 A. She said that she still will violate my -- my lease.

8 Q. Okay. However, according to the note dated February
9 8th it does not have the first box checked off,
10 correct?

11 A. No, ma'am.

12 Q. It only has the second box checked off, correct?

13 A. Yes, ma'am.

14 Q. And that second box states that you cannot correct
15 this violation due to material and other good cause;
16 is that correct?

17 A. Yes, ma'am.

18 Q. And just so the Court is aware, has anything like
19 this ever occurred after this incident?

20 A. No, ma'am, never.

21 MS. ANELLI:

22 I have no further questions for this witness, Your
23 Honor.

24 THE COURT:

25 Thank you so much. Mr. McCutchen, your witness.

1 EXAMINATION BY MR. MCCUTCHEN:

2 Q. Just to go back to the incident report, I think you
3 said you were in the living room.

4 A. Yes, sir.

5 Q. And you didn't -- you weren't aware of anything that
6 they found in the living room?

7 A. No, no, sir, I was not.

8 Q. All right. Will you pull the lease out for me,
9 please, sir? A copy of the lease should be right
10 there to your left.

11 A. Is that it?

12 Q. Yes. I would ask that you flip to page 15.

13 A. Yes, sir.

14 Q. You're on page 15? Can you read 41, just that first
15 paragraph, please. Paragraph 41 at the top.

16 A. Okay.

17 Q. Okay.

18 A. Hang on, I don't think I can see that.

19 Q. I'm sorry. Take your time.

20 A. Tenant hereby acknowledge that he/she has read this
21 lease, the details, application and rules and
22 regulations and that the site manager has explained
23 these rules and regulations. Tenant understands
24 that he or she must comply in all respects with the
25 terms and provisions of the lease and any such rules

1 and regulations.

2 Q. Okay. And is that your signature?

3 A. Yes, sir.

4 Q. Okay. And as -- since you have this in your hand,
5 will you flip to six --

6 A. Six?

7 Q. -- for me and brief --

8 A. You say six?

9 Q. 6(B), yes. On page two, paragraph 6(B), please,
10 just that first sentence.

11 A. Paragraph where? Which one you say?

12 Q. 6(B).

13 A. Okay. Tenant agrees to notify landlord --

14 Q. 6(B).

15 A. That's B ain't it? Oh, no, that's -- that's A. Oh,
16 you said B.

17 THE COURT:

18 He's on section five.

19 WITNESS CONTINUES:

20 A. Show me -- show me again, I can't see this.

21 THE COURT:

22 Do you have any objection to him coming up here and
23 pointing out what he wants to read?

24 MS. ANELLI:

25 No, Your Honor.

1 THE COURT:

2 Come on up, show him what you want him to read.

3 MR. MCCUTCHEN:

4 Can you just read that first sentence (inaudible)?

5 WITNESS CONTINUES:

6 A. Right here?

7 Q. Right there.

8 A. Oh, sorry.

9 Q. Six --

10 THE COURT:

11 Can you direct the Court where you want to go to?

12 MR. MCCUTCHEN:

13 Page two.

14 THE COURT:

15 Okay.

16 MR. MCCUTCHEN:

17 Paragraph 6, subsection B.

18 THE COURT:

19 Got it.

20 WITNESS:

21 Okay, I got you.

22 THE COURT:

23 I just want to make sure where I was at too.

24 EXAMINATION CONTINUES BY MR. MCCUTCHEN:

25 Q. Just read that first sentence.

1 A. Yes, sir. Tenants and members of tenants household
2 or guests may not engage in any -- in the following
3 activities behaving --

4 Q. I think you're good, because we've read that in
5 previously. So, when you signed you acknowledged
6 that you'd be responsible for tenant and guests
7 actions, pursuant to that paragraph?

8 A. No, this first time I've seen this paragraph 'cause
9 she didn't read this paragraph out to me.

10 Q. You did sign the document, correct?

11 A. Yes, I signed it, yes, sir. 'Cause that's what she
12 told me to sign when I went to the office.

13 Q. And ignorance obviously it's not the defense for
14 that paragraph it sounds like that he wasn't aware
15 of stuff. I don't have anything further, Your
16 Honor.

17 THE COURT:

18 Okay. Ms. Anelli, redirect?

19 MS. ANELLI:

20 I have no re-cross, Your Honor.

21 THE COURT:

22 Thank you so much.

23 MS. ANELLI:

24 Or redirect, pardon me.

25 THE COURT:

1 No problem. We're doing re-cross and redirect and
2 re-redirected and everything else. Thank y'all for
3 working with the Court. So, Mr. Rush, thank you so
4 much you're free to step down.

5 MR. RUSH:

6 Thank you, sir.

7 THE COURT:

8 You can sit with your attorney at this point in
9 time.

10 MS. ANELLI:

11 I do have one more witness, Your Honor for the
12 Court.

13 THE COURT:

14 Please. Okay.

15 MS. ANELLI:

16 I'd like to call Ms. Elizabeth Johnson to the stand.

17 THE COURT:

18 Ms. Johnson, I'm assuming that's the only person
19 left in the room? Ms. Johnson is Defense number
20 two. Ms. Johnson, as you're coming up please raise
21 your right hand. Do you solemnly swear or affirm
22 the testimony you give the Court in this matter be
23 the truth, the whole truth, and nothing but the
24 truth so help you God?

25 MS. JOHNSTON:

1 I do.

2 THE COURT:

3 Thank you so much. Please have a seat, spell your
4 name -- say your name and spell it for the record,
5 please.

6 MS. JOHNSTON:

7 My name is Elizabeth Johnson, E-L-I-Z-A-B-E-T-H, J-
8 O-H-N-S-T-O-N.

9 THE COURT:

10 S-T-O-N, Johnston.

11 MS. JOHNSTON:

12 Yes.

13 THE COURT:

14 Got you, all right. All right, Ms. Anelli. Answer
15 any questions Ms. Anelli has for you.

16 MS. JOHNSTON:

17 okay.

18 MS. ANELLI:

19 Thank you.

20 THE COURT:

21 Am I saying your name right?

22 MS. ANELLI:

23 Pardon?

24 THE COURT:

25 Am I saying your name right?

1 MS. ANELLI:

2 Say it one more time?

3 THE COURT:

4 Anelli.

5 MS. ANELLI:

6 Anelli, yes.

7 THE COURT:

8 Anelli, okay, good deal. Ms. Anelli.

9 EXAMINATION BY MS. ANELLI:

10 Q. Thank you, Ms. Johnston for joining us today. Do
11 you live with Mr. Rush?

12 A. No, I don't live with him.

13 Q. What's your relationship with him?

14 A. He's my boyfriend.

15 Q. Okay. Are you familiar with the date that this
16 incident that we are here today occurred?

17 A. Yes.

18 Q. Okay. And from what happened can you please tell
19 the Court?

20 A. Okay, on that day it was a friend through his family
21 that was over there, you know, for the holidays and
22 I was upstairs getting ready, my aunt was over
23 there. We had somewhere to go and they were
24 downstairs. There was a knock at the door, Jeffery
25 answered and they asked for Terrance Melvin and he

1 came out and he was -- he was arrested. They said
2 that he was wanted.

3 Q. Okay. From your knowledge with your interactions
4 with Mr. Rush has any incident like this occurred
5 before?

6 A. No.

7 Q. Has any incident occurred like this since?

8 A. No.

9 Q. I have no further question for this witness, Your
10 Honor.

11 THE COURT:

12 Thank you so much. Any questions?

13 MR. MCCUTCHEN:

14 No, I think I'm good.

15 THE COURT:

16 All right. Ms. Johnston, you're free to have a
17 seat. Okay, Ms. Anelli?

18 MS. ANELLI:

19 At this time, Your Honor, the defense closes but
20 would like to make a brief closing argument if I
21 may.

22 THE COURT:

23 Absolutely, no problem.

24 MR. MCCUTCHEN:

25 I'll say a few words as well.

1 THE COURT:

2 Okay.

3 MS. ANELLI:

4 Okay, thank you, Your Honor. Shady Moss is governed
5 by the USDA Rules for Housing Authority here. And
6 page 9(B) requires termination to be in accordance
7 with those regulations state and local laws. The
8 USDA requires compliance with 7 CFR 356159 and state
9 laws require compliance with section 710(A) and
10 720(B) of the South Carolina Landlord Tenant Act
11 here. 7 CFR 356159 requires notice and the right to
12 cure before terminating the lease. Although
13 opposing counsel has argued that D requires no
14 notice or is no notice that is actually inconsistent
15 with all of the notice requirements located in
16 section A. And actually this exact question was
17 posed by another court in a Federal case here of
18 whether or not subsection B requires the same type
19 of notice statutes and CBM Group, Incorporated
20 versus Llamas. I do have this case here for the
21 Court, if the Court would like to review it. This
22 was a document that I tried to enter --

23 THE COURT:

24 Sure.

25 MS. ANELLI:

1 -- previously.

2 THE COURT:

3 Uh-huh (affirmative).

4 MS. ANELLI:

5 I have provided it to co-counsel as -- opposing
6 counsel as well prior. But if I may approach with a
7 copy of the case law.

8 THE COURT:

9 So, the case law argues what now?

10 MS. ANELLI:

11 The case law arose and it finds that -- found that
12 section D of the Federal Statute req -- for criminal
13 activity requires notice of the right to cure and
14 the ability to cure --

15 THE COURT:

16 Okay.

17 MS. ANELLI:

18 -- within it.

19 THE COURT:

20 Yeah, I will see that case law. Thank you very
21 much.

22 MS. ANELLI:

23 Thank you, Your Honor.

24 THE COURT:

25 And you do have a copy, right, Mr. McCutchen?

1 MR. MCCUTCHEN:

2 Yes, Your Honor.

3 THE COURT:

4 All right, thank you so much.

5 MS. ANELLI:

6 Furthermuchso, chapter six of the USDA Guidebook
7 which talks about their own regulations and their
8 interpretation of the regulations also state that
9 prior to terminating a lease the borrowers must give
10 the tenant written notice of the violation and give
11 the tenant an opportunity to correct that violation.
12 Subsequently termination may only occur when the
13 incidences related to the termination are documented
14 and there is documentation that the tenant was given
15 notice prior to the initiation of the termination
16 action that their activities would result in the
17 occupancy termination. Further we would like to
18 argue that Section 710(A) and 720 of the Landlord
19 Tenant Act also require a right to cure. Here 710
20 does have the 14-day notice as that requirement but
21 720(B) specifically states that if there is an
22 incident that materially affects the health and
23 safety other than as set forth in the previous
24 section A the tenant must prompt -- and the tenant
25 and fails to comply as promptly as the conditions

1 require in cases of emergencies then the landlord
2 has that ability to evict. We argue that not only
3 was there no notice provided but the tenant complied
4 as promptly as possible to remove the violations of
5 the lease. In fact they were removed that day and
6 they have never occurred since then. So, as a
7 result we argue that based upon the Federal Law 7
8 CFR 3560159 as well as the South Carolina Landlord
9 Tenant Act Section 710(A) and 720 that there was no
10 right to cure and that Mr. Rush incurred -- cured
11 the violation immediately by removing everybody the
12 same day and as a result we're asking that you find
13 that no eviction should be issued. Thank you, Your
14 Honor.

15 THE COURT:

16 Thank you so much. Mr. McCutchen?

17 MR. MCCUTCHEN:

18 This -- I mean, this case law is from California,
19 completely different federal circuit, is that --

20 THE COURT:

21 Yeah, we're talking about Appellate District
22 Superior Court of California, Fresno County.

23 MR. MCCUTCHEN:

24 That shouldn't apply to our district in my opinion.
25 Is that what you're -- I mean, this is a --

1 california is a completely different federal
2 district.

3 THE COURT:

4 Right.

5 MS. ANELLI:

6 But it's federal law and federal law is to be
7 interpreted across the entire United States
8 (inaudible) --

9 MR. MCCUTCHEN:

10 Not a fed -- different federal district. Federal
11 district can interpret federal law differently than
12 california would, our district would.

13 MS. ANELLI:

14 But the federal law is the federal law. The federal
15 law doesn't --

16 MR. MCCUTCHEN:

17 But federal law doesn't need to be interpreted by a
18 different district; it's our district that would
19 interpret it. And that's not applicable to these
20 facts. Is that right, Your Honor?

21 THE COURT:

22 You got to teach me, 'cause I mean, I'm -- I don't
23 know that.

24 MR. MCCUTCHEN:

25 I would --

1 THE COURT:

2 I mean --

3 MR. MCCUTCHEN:

4 -- I would definitely argue that the California is
5 in a completely different federal district. All
6 federal districts have different federal courts
7 which make their rulings. If those --

8 THE COURT:

9 So, you're saying if this was a Supreme Court ruling
10 it would --

11 MR. MCCUTCHEN:

12 Yes, Your Honor.

13 THE COURT:

14 -- it would go across --

15 MR. MCCUTCHEN:

16 Yes, Your Honor.

17 THE COURT:

18 -- but since this was in appellate division of that
19 particular circuit --

20 MR. MCCUTCHEN:

21 Yes, Your Honor.

22 THE COURT:

23 So you're saying if it was Supreme Court -- if it
24 was a Supreme Court decision I would have to
25 absolutely consider it.

1 MR. MCCUTCHEN:

2 All (inaudible).

3 THE COURT:

4 But since it's not --

5 MR. MCCUTCHEN:

6 Our federal circuit --

7 THE COURT:

8 Okay.

9 MR. MCCUTCHEN:

10 -- would rule --

11 THE COURT:

12 What do you say on that?

13 MS. ANELLI:

14 Your Honor, I say that the federal law is the
15 federal law. Just because -- and the way that the
16 court's rule is until the next highest court rules
17 on it that is the order that remains in place. And
18 unless someone else decided oh, that was the wrong
19 ruling and it went up that is the highest order to
20 date regarding these specific terms here. Just if
21 this was civil law and we weren't talking about
22 federal law I would absolutely agree with opposing
23 counsel, California has no effect within today's
24 hearing. But this is a -- the interpretation of a
25 federal regulation that is issued across the country

1 and to be interpreted the same across the entire
2 country. This case goes to the direct issues into
3 today's hearing and is almost applicable to today.

4 THE COURT:

5 okay.

6 MS. ANELLI:

7 So we -- so, yes, although South Carolina is not
8 California, nor should it be, however, the
9 interpretation of federal laws are to be interpreted
10 uniformly across the United States and until there
11 is a conflict within the interpretations that is
12 when it goes up higher to the Supreme Court.

13 THE COURT:

14 okay.

15 MS. ANELLI:

16 But so far this is the highest order regarding this
17 type of case and as such I'm asking the Court to
18 take it into consideration when making today's
19 ruling.

20 THE COURT:

21 okay, thank you so much. All right --

22 MR. MCCUTCHEN:

23 I would -- I --

24 THE COURT:

25 So, the question, Mr. McCutchen, is should the

1 decision from a different circuit be considered?

2 MR. MCCUTCHEN:

3 Carry any weight. I mean they talk about --

4 THE COURT:

5 Or carry --

6 MR. MCCUTCHEN:

7 -- 60-day notices here. They talk about -- this --
8 actually the facts of this are not identical because
9 this also has to do with non-payment of -- what did
10 it say? Appellant's failure to pay full market rate
11 rent. I mean, the facts are not on point. It's a
12 different circuit, they -- they talk about
13 apparently there's a 60-day notice. There's a lot
14 of different stuff that obviously they do something
15 potentially different out there.

16 THE COURT:

17 Right.

18 MR. MCCUTCHEN:

19 And I would ask that it be -- you wouldn't bring
20 them under consideration.

21 THE COURT:

22 Okay. So, here's what I'm going to do. I am going
23 to look up -- before I even read it, I haven't read
24 it obviously, I just got it, I'm going to look up
25 the question should the decision from a different

1 circuit court be considered or carry any weight in
2 this circuit, first and foremost.

3 MR. MCCUTCHEN:

4 Okay.

5 THE COURT:

6 Then if it is determined that I should then I will
7 read it in consideration of my decision. Is that
8 fair to both parties?

9 MR. MCCUTCHEN:

10 Yes.

11 MS. ANELLI:

12 Yes, Your Honor.

13 THE COURT:

14 Okay, very good. All right, in your closing, and
15 just for the record I'm probably not going to make a
16 decision today 'cause I have a lot of reading to do
17 and a lot of learning to do and I want to do that
18 and I want to make an educated decision 'cause
19 obviously I don't know federal law. If we were
20 doing landlord tenant South Car -- if we were just a
21 simple landlord tenant we could do it today but
22 we're throwing in some stuff I want to read up and
23 do some homework. I hope that's fair.

24 MR. MCCUTCHEN:

25 (Inaudible).

1 THE COURT:

2 And I'll issue a written decision if that sounds
3 good to all parties and then I'll get emails before
4 I go and then send those out. I'll try to do it
5 before the end of the week.

6 MR. MCCUTCHEN:

7 That's --

8 THE COURT:

9 If that's fair.

10 MS. ANELLI:

11 That's wonderful, Your Honor.

12 THE COURT:

13 Okay. Finish with your closing.

14 MR. MCCUTCHEN:

15 All right, Your Honor. I think and also just it's
16 been well established outside of the case law that
17 has just been presented that Mr. Rush occupies Unit
18 6C at 1708 Shady Moss Court. The incident report
19 which was read in by the officer here shows various
20 things including drugs, a wanted fugitive, I think
21 an attempted murder, a gun not -- some of the
22 violations weren't even strictly used -- or strictly
23 applied to drugs, they had a -- he was armed as a
24 convicted felon. The notices that were sent, the
25 notice of the lease agreement, it's a material

1 breach and again I'll need to read that case and if
2 it's applicable but I've still a year later still
3 trying to figure out how you cure an arrest when the
4 drugs were there. It's not like the curtains were
5 pink and you changed them to blue. The drugs and
6 everything were there you can't go back in time and
7 time travel and cure these -- these violations which
8 were obviously violations of the lease as we've
9 already stated. So, and again I would say the
10 paragraph that says he can request an informal
11 violation actually gives him 14 days instead of 10
12 days so they complied with everything. Mr. Rush
13 failed to submit an appeal. So, he had a chance to
14 appeal and discuss it but he just failed to do that,
15 Your Honor. And Your Honor, I understand you got a
16 lot of reading to do to try get caught up but I
17 would ask that you issue the writ of ejectment for
18 and I guess we'll hear from you by the end of the
19 week possibly.

20 THE COURT:

21 Yeah, if that's fine with both parties. I do have
22 some questions and whoever think -- and I'll -- help
23 me understand a few things, okay. Number one, was
24 for Mr. -- I'm so glad we can ask questions in this
25 Court. All right, 'cause it helps me know some

1 things. Number one, and I guess most glaring in my
2 face is the section that you had him read section
3 three the term, okay, on the lease, whether this
4 eviction went through or not it looks like he should
5 not be in that unit as of September 30, 2021, why is
6 he still in the unit? Did they -- did they re --
7 did they re-do another lease?

8 MS. ANELLI:

9 No, Your Honor, in fact that is an issue that was
10 brought up by my client. They actually would not
11 allow him to do -- re-do a lease.

12 THE COURT:

13 Okay.

14 MS. ANELLI:

15 He tried reaching out. I actually reached out to
16 opposing counsel but it's the belief that they're
17 trying to figure out what to do with this case
18 before whether or not they issue him a new lease.

19 THE COURT:

20 Okay. And I'll allow you to answer the question.

21 MS. CARTER:

22 In our mind --

23 THE COURT:

24 Uh-huh (affirmative).

25 MS. CARTER:

1 -- the lease had already been terminated.

2 THE COURT:

3 okay.

4 MS. CARTER:

5 And we had given him the term. We did not want to
6 enter a new lease and extend it for a year because
7 we're not going to.

8 THE COURT:

9 okay. Has -- and this does --

10 MR. MCCUTCHEN:

11 I would like to say one thing.

12 THE COURT:

13 Go ahead.

14 MR. MCCUTCHEN:

15 Sorry. The recertification is based off of the
16 arrest as a whole, that happened. You don't have to
17 recertify because the arrest happened in his unit.

18 THE COURT:

19 okay.

20 MR. MCCUTCHEN:

21 The eviction is one thing, we're arguing did the
22 procedures get followed, does the case law follow
23 but the recertification -- and correct me if I'm
24 wrong Rhonda, the recertification you're not going
25 to recertify based off of the arrest and then the

1 stuff that was found in there even though it wasn't
2 him, it was the guest that was in there.

3 MS. CARTER:

4 In our mind the lease was already terminated, he did
5 not extent it and we did not want to enter another
6 year.

7 MR. MCCUTCHEN:

8 (Inaudible).

9 THE COURT:

10 So, I guess my question would be --

11 MS. CARTER:

12 Yes.

13 THE COURT:

14 My question would be if we're doing everything by
15 the book and by the letter whether I evict him today
16 or not once the decision is made Mr. Rush has to
17 find somewhere else to go.

18 MS. ANELLI:

19 Your Honor, that's actually incorrect because --

20 THE COURT:

21 okay.

22 MS. ANELLI:

23 -- the terms here require that it be renewed each
24 year unless you are terminated here.

25 THE COURT:

1 Oh, okay.

2 MS. ANELLI:

3 So, because we're arguing that he is not terminated
4 then it should automatically be renewed so long as
5 he applies with the recertification of his finances

6 --

7 MR. MCCUTCHEN:

8 But that's not --

9 MS. ANELLI:

10 -- here.

11 MR. MCCUTCHEN:

12 The arrest happened --

13 MS. ANELLI:

14 But --

15 MR. MCCUTCHEN:

16 -- the recertification can't happen because of the
17 arrest. That's pretty simple in the lease.

18 MS. ANELLI:

19 But that's for the Judge to decide though so it's --

20 MR. MCCUTCHEN:

21 The Judge decides the eviction procedure here. The
22 termination is something completely different.

23 THE COURT:

24 Who --

25 MS. ANELLI:

1 But the law clearly --

2 THE COURT:

3 -- who decides that if you decide not to evict?

4 MR. MCCUTCHEN:

5 We'll file another eviction I guess.

6 MS. ANELLI:

7 And then we will hear that issue upon
8 recertification itself.

9 MR. MCCUTCHEN:

10 That sounds good.

11 MS. ANELLI:

12 Because the issue --

13 THE COURT:

14 Now where does that go to trial?

15 MR. MCCUTCHEN:

16 You.

17 THE COURT:

18 A magistrate determines recertification?

19 MR. MCCUTCHEN:

20 We are. And this is --

21 MS. ANELLI:

22 No, Your Honor.

23 MR. MCCUTCHEN:

24 -- the same discussion we had.

25 MS. ANELLI:

1 The recertification issue has to -- so, according to
2 the -- here is that the lease is renewable unless it
3 is termed -- pardon me, the lease is renewable for
4 one-year leases unless terminated hereafter
5 provided. So --

6 MR. MCCUTCHEN:

7 It was terminated.

8 MS. ANELLI:

9 -- certification itself is a Federal Rules and
10 Regulations which we -- neither of us here were
11 prepared to argue for today.

12 THE COURT:

13 Yeah, yeah, and I'm not asking to. I'm just --

14 MS. ANELLI:

15 But it is --

16 THE COURT:

17 -- my -- I guess my question, and I hate to
18 interrupt, and I'm just -- it -- whether either way
19 I go if they say that they're not recertifying it if
20 they say they're not recer -- who does that get
21 argued in front because I don't know that we would
22 have jurisdiction. I think that would have to be
23 federal -- a federal judge jurisdiction, right?

24 MS. ANELLI:

25 That most likely will have to be federal court and

1 it is our belief that unless it is terminated in
2 accordance with the federal and state laws, which is
3 your decision of whether or not the termination was
4 proper, the recertification has to go through.

5 THE COURT:

6 All right. Next question.

7 MS. ANELLI:

8 So that is --

9 THE COURT:

10 Okay.

11 MS. ANELLI:

12 -- going to be a separate issue.

13 THE COURT:

14 Thank you, that answered my question. I mean, I
15 just wanted to kind of clarify that. Just I'm going
16 to -- second question, if I'm -- and argue both
17 sides, am I following South Carolina statute for
18 Landlord Tenant here or am I following Federal
19 Guidelines? Do I have to follow -- and you -- and
20 you stated is there something in state law that says
21 I must look to federal statutes? You know what I'm
22 saying? And which one am I -- am I violating for --
23 or am I looking at an eviction for non-payment of
24 rent, violating terms of the lease, or end of term
25 of tenancy as stated in South Carolina law? Or am I

1 looking at an eviction based on tenant is in
2 violation of lease, lease expiration, other
3 terminations, or criminal activity? You follow what
4 I'm saying?

5 MS. ANELLI:

6 I do, Your Honor.

7 THE COURT:

8 And which one am I looking at? And the reason I'm
9 asking you specifically --

10 MS. ANELLI:

11 Uh-huh (affirmative)

12 THE COURT:

13 -- is 'cause I guess Judge Mayers -- and again, I
14 had no choice but to read his stuff, he looked at
15 the stuff and ruled on South Carolina law but agreed
16 and so did Circuit Court that we should consider
17 this.

18 MS. ANELLI:

19 Yes.

20 THE COURT:

21 And so, when I consider this and lay it on I guess
22 on top of South Carolina law do I work together,
23 work separately, how would you argue that I should
24 look at this?

25 MS. ANELLI:

1 Thank you, Your Honor. If I may here.

2 THE COURT:

3 I do. I promise I'll let you --

4 MS. ANELLI:

5 First of all, the Constitution provides the idea of
6 a supremacy clause.

7 THE COURT:

8 okay.

9 MS. ANELLI:

10 Saying that the federal law is the law you go to and
11 any other -- anything spoken outside of that is
12 state law that you look into. We ask that you
13 consider both, you first consider federal and then
14 you consider state law.

15 THE COURT:

16 Because he's underneath that particular clause?

17 MS. ANELLI:

18 Yes, Your Honor.

19 THE COURT:

20 Because he's subsidized through USDA.

21 MS. ANELLI:

22 Yes, Your Honor.

23 THE COURT:

24 That's why I have to lean on that song?

25 MS. ANELLI:

1 Yes, Your Honor.

2 THE COURT:

3 okay, so you agree that I have to look at USDA?

4 MS. ANELLI:

5 Yes, Your Honor.

6 THE COURT:

7 okay.

8 MR. MCCUTCHEN:

9 And again, just to point out, again, in the lease
10 which I believe was based off of federal law, again,
11 I think we talked about it but page 10 if law
12 enforcement officers are called to resolve a
13 disturbance, whether involving a tenant or the
14 guest, tenant may receive a 30-day notice to vacate.
15 That's what we did send. They did -- my client sent
16 him the 30-day notice to vacate so again the
17 termination has happened and I don't mean to go back
18 to your question but I just wanted to --

19 THE COURT:

20 okay.

21 MR. MCCUTCHEN:

22 -- notify you of why we believe that's the case,
23 that's all.

24 MS. ANELLI:

25 Yeah, and the termination of the lease has to comply

1 with the federal regulations.

2 MR. MCCUTCHEN:

3 I don't think that --

4 MS. ANELLI:

5 If it doesn't comply with the federal regulations
6 then it's an improper termination.

7 THE COURT:

8 okay.

9 MR. MCCUTCHEN:

10 I think it does.

11 THE COURT:

12 Based on -- based on the fact that he's fallen
13 underneath USDA?

14 MS. ANELLI:

15 Yes, Your Honor.

16 THE COURT:

17 That's where the hook that brings in the USDA stuff?

18 MS. ANELLI:

19 Yes, Your Honor.

20 THE COURT:

21 okay. All right.

22 MS. ANELLI:

23 It's federal --

24 THE COURT:

25 I think I've got both sides arguments in my head. I

1 think I have them all in front of me.

2 MS. ANELLI:

3 would you like us to do a brief for Your --

4 THE COURT:

5 No, no, I don't think I need that. I appreciate
6 that. I've got -- trust me, I've got my own brief.
7 I've been --

8 MR. MCCUTCHEN:

9 Plenty of notes.

10 THE COURT:

11 I have been slamming ahead here. I will tell you
12 the first thing I'm going to do is research on
13 whether or not I should consider that case law and
14 if I am to consider that case law I will read it and
15 will apply it should I need to necessary.

16 MR. MCCUTCHEN:

17 Do you need to get those documents that were up
18 there for you?

19 THE COURT:

20 I have most of them, I think. If you'd like to make
21 sure I do I would love to make sure I have that.

22 MR. MCCUTCHEN:

23 Y'all (inaudible) documents do you?

24 MS. ANELLI:

25 No, I have multiple copies.

1 MR. MCCUTCHEN:

2 Just I guess take them just in case. Unless you
3 want more documents.

4 THE COURT:

5 I'll take them just in case I do not have them.

6 MR. MCCUTCHEN:

7 More papers.

8 THE COURT:

9 More papers. All right, anything else in closing?
10 I would let either one of you say anything they
11 wanted to say or that you don't -- I want to make
12 sure everybody feels like they've been heard and
13 everything's laid on the table 'cause the last thing
14 I want is something to surprise pop up here maybe
15 you should consider this.

16 MR. MCCUTCHEN:

17 I have nothing further. I think we've made our
18 case.

19 MS. ANELLI:

20 I have something else.

21 THE COURT:

22 Let's get it in now.

23 MS. ANELLI:

24 I'm going to lay it all out. I -- since you are
25 doing research, Your Honor, I actually have already

1 done some research --

2 THE COURT:

3 okay.

4 MS. ANELLI:

5 -- into different cases that talk -- that support
6 showing that courts are to defer to agency
7 interpretation of its own regulations, which is one
8 of the issues at here as well, so if the Court is to
9 find that they are to look into other case law then
10 I would like the Court to have those.

11 THE COURT:

12 Give me the names of the cases.

13 MS. ANELLI:

14 Okay, R versus Robbins.

15 THE COURT:

16 R.

17 MR. MCCUTCHEN:

18 Hold on a second.

19 MS. ANELLI:

20 A --

21 MR. MCCUTCHEN:

22 Hold on. Oh, you got copies of them?

23 MS. ANELLI:

24 Yeah. I also have copies for the Court if they
25 would like.

1 THE COURT:

2 Sure, sure. And like I say, I'm not going to look
3 at these until I determine if I should. Is this in
4 our district?

5 MR. MCCUTCHEN:

6 No.

7 THE COURT:

8 Okay, thank you.

9 MR. MCCUTCHEN:

10 No, Your Honor, I'm sorry.

11 THE COURT:

12 This is a good question. I mean, I need to know
13 this. I need to do my homework on whether I should
14 -- that way I can know for future references. Hey,
15 that's in a different district I shouldn't consider
16 it.

17 MS. ANELLI:

18 This is pretty much a Bar question.

19 THE COURT:

20 Huh?

21 MS. ANELLI:

22 This is pretty much a Bar question.

23 MR. MCCUTCHEN:

24 This says warning at the top, what is that for?

25 MS. ANELLI:

1 These are just -- so I --

2 THE COURT:

3 So, this says Supreme Court.

4 MR. MCCUTCHEN:

5 It says warning so we've got to look into see --
6 well obviously if it's applicable.

7 THE COURT:

8 Okay.

9 MR. MCCUTCHEN:

10 But why is it warning?

11 MS. ANELLI:

12 It's just for the Court's convenience to have.

13 MR. MCCUTCHEN:

14 That's fine, I'm just pointing it out.

15 MS. ANELLI:

16 Uh-huh (affirmative).

17 THE COURT:

18 All right. I will make note of the warning. All
19 right, anything further?

20 MS. ANELLI:

21 No, Your Honor.

22 THE COURT:

23 Thanks so much for your patience with the Court and
24 we will -- and even further patience as we go today
25 -- go today and like I don't think this is a

1 decision I need to make hastily and decide without
2 doing my due diligence or research to be fair to
3 both parties.

4 MR. MCCUTCHEN:

5 All right, thank you, Your Honor.

6 MS. ANELLI:

7 Thank you, Your Honor.

8 THE COURT:

9 Thanks so much.

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CERTIFICATE

I, the undersigned, Jessica Antonucci, Notary Public in and for the State of South Carolina do hereby certify that:

That the foregoing tape was transcribed at the request of the South Carolina Legal Services;

A court reporter was not present at the proceedings and therefore cannot guarantee that every word of testimony could be heard or that the speaking parties are properly identified;

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 2nd day of April, 2023.



Jessica Antonucci

Notary Public for South Carolina

My Commission expires 7/06/2025





PO BOX 23589
COLUMBIA, SOUTH CAROLINA 29224-3589
(803) 788-3800

STATE OF SOUTH CAROLINA
COUNTY OF Horry

LEASE AGREEMENT RD 515 APPROVED - (Revised January 2019)

THIS LEASE is made and entered into this 16th day of September, 2020 by and between Shady Moss ("Landlord") (name of property), whose mailing address is 1705 Shady Moss Court, Conway, SC 29527 and Jeffery Rush ("Tenant"). **BOYD MANAGEMENT, INC.**, whose address is 7700 Trenholm Road, Columbia, SC 29224, is Agent for the Owner of the Property.

1. **PREMISES:** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, Unit 6C ("Unit") in the premises known as Shady Moss (name of property), located at 1705 Shady Moss Court, Conway, SC 29527 ("Community") (physical address of property).

☐ Check here if the Community is NOT subject to Low Income Housing Tax Credit and/or Tax Exempt Bond regulations.

2. **NONDISCRIMINATION:** The Community is part of a property financed by the Rural Housing Service, which is part of the USDA Rural Development (hereafter called "RHS" or the "Agency"). The Agency has the right to further verify information provided by the applicant/Tenant. The Community is also subject to nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Americans with Disabilities Act. Complaints may be directed to the Administrator, RHS, USDA, Washington, DC 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington, DC 20410. In accordance with Federal civil rights law and USDA civil rights regulations and policies, Landlord is prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Complaints may also be directed to Landlord by contacting the site manager, either in writing or in person, or by writing to Boyd Management, Inc., Post Office Box 23589, Columbia, SC 29224. The site manager can be contacted at his/her address of 1705 Shady Moss Court, Conway, SC 29527 (property's office address); his/her phone number is 843-397-5141 (office phone number); his/her email is shadymoss@boyd-mail.com (office email); Boyd Management, Inc., is the entity authorized to act for and on behalf of the Owner for purposes of service of process and receiving and receipting for demands and notice. (The name and address of the Registered Agent for Boyd Management, Inc., are Joseph P. Wilczewski, 7700 Trenholm Road, Columbia, SC 29223).

3. **TERM:** The term of this Lease shall be for one (1) year and shall commence on 10/1, 2020, and end at 12:00 noon on 09/30, 2021, unless terminated as hereafter provided. This Lease is renewable for successive terms of one (1) year by written agreement signed by all parties and attached to this Lease unless Tenant is subject to termination according to 7 CFR 3560.158 and 7 CFR 7 3560.159, or otherwise. The initial term and any successive terms are referred to as the "Term."

4. **RENT:** Tenant covenants to pay Landlord rent of \$ -56 per month, payable in advance on or before the first day of every month, the first and last month's rent to be prorated if applicable. The rent is payable at Shady Moss (name of property), or as Tenant may be advised from time to time by Landlord by written notice. Tenant covenants to pay a a ten (\$10.00) dollar late penalty if Landlord does not receive rent from Tenant on or before the tenth (10th) day of each month. IF RENT IS NOT PAID BY THE TENTH (10th) OF EACH MONTH, LANDLORD MAY, AT ITS SOLE OPTION, TERMINATE THIS LEASE AND HAVE SERVED AN EVICTION NOTICE IF REQUIRED OR DESIRED AND TAKE OTHER APPROPRIATE LEGAL ACTION. Rent shall not be deemed received unless honored by the institution upon which the check is drawn. Landlord may collect a fee in accordance with state law on any check that is not honored for payment and all future payments will be made by money order. Any and all other amounts Tenant may owe to Landlord from time to time pursuant to the terms of this Lease shall be deemed additional rent.

NOTICE TO TENANT: IF TENANT DOES NOT PAY RENT BY THE 10TH, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THIS LEASE, AS THIS CONSTITUTES WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS LEASE OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS UNIT. THIS IS YOUR NOTICE.

5. SECURITY DEPOSIT:

(a) Tenant hereby deposits \$ 200.00 as security hereunder. The deposit shall not exceed an amount equal to the net Tenant contribution for one month or basic rent, whichever is greater. Any refund of the security deposit shall be in accordance with Paragraph 5(b) below. All security deposits for this Community are held in a separate escrow account at BB & T (bank) in Columbia (city), SC (state).

(b) Tenant acknowledges that, prior to tendering the security deposit, Tenant was presented with a comprehensive list of damages to the Unit, and was given the ability to inspect the Unit prior to occupancy to determine the accuracy of the list of damages. Within three (3) days after Tenant vacates the Unit, Landlord shall inspect the Unit and compile a comprehensive list of damages during Tenant's occupancy, which shall be the basis for any charge against the security deposit. Within thirty (30) days after termination of this Lease or Tenant vacates the Unit, whichever occurs last, Landlord shall return the security deposit to Tenant, less any amount deducted as permitted herein, to the last known address of Tenant via first class mail. If Landlord retains any or all of the security deposit, Landlord shall provide Tenant with a written statement listing the exact reasons for the retention. Landlord may retain the security deposit and apply it to items including, but not necessarily limited to the following:

- i. Any past-due rent or late fees owed by Tenant to Landlord.
- ii. Any funds expended by Landlord to place or maintain the Unit in the same condition as the Unit was in on the initial date of occupancy by Tenant, reasonable wear and tear excepted. If the amount of Tenant's security deposit is not sufficient to cover the cost of repairs, Tenant agrees to promptly reimburse Landlord for costs in excess of the original security deposit.
- iii. Unpaid utility charges or other bills incurred as a result of Tenant's occupancy.
- iv. Any breach or default by Tenant resulting in an uncured Lease violation.
- v. Costs for removing Tenant's personal property after Landlord obtains a writ of ejectment against Tenant.
- vi. Cost of replacing keys not returned at move-out.

Tenant acknowledges it is Tenant's responsibility to provide Landlord an accurate forwarding address. If the letter containing the security deposit refund is returned to Landlord undelivered and if Landlord is unable to locate Tenant after reasonable effort, then Landlord has no further duty, responsibility, nor liability as to the security deposit refund.

6. USE:

(a) The Unit shall be used for residential purposes only and shall be occupied only by Tenant and any persons listed in Paragraph 7 of this Lease. Tenant shall be responsible for maintaining the Unit in a clean, healthy, safe, and attractive condition, including the interior of the Unit itself and any adjoining patios, porches, or balconies. Tenant shall not permit the Unit to be used for any purpose which will injure the reputation of the Community. Tenant shall not use or permit anything upon the Unit or Community which will invalidate the insurance on the Community or increase the rate thereof.

(b) Tenant and members of Tenant's household or guests may not engage in the following activities: behaving in a loud or obnoxious manner; disturbing or threatening the rights, comfort, health, safety, or convenience of others (including employees of the Owner's agent) in or near the Community; disturbing the Community business operations; engaging in or threatening violence; using or displaying firearms, BB guns, pellet guns, knives, slingshots, firecrackers and/or any comparable weapons or noise-makers within the Community; storing anything in closets having gas appliances; tampering with utilities or telecommunications; bringing hazardous materials into the Community; or injuring the Community's reputation by making bad faith allegations to others.

(c) It is understood that the use, possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, state, or Federal law) while in or on any part of this Community is an illegal act. It is further understood that such action is a material Lease violation. Such violations (hereafter called a "drug violation") may be evidenced upon the admission to or conviction of a drug violation.

(d) It is further understood that domestic violence will not be tolerated on Rural Housing properties, and such action is a material Lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the Unit in accordance with eligibility requirements.

(e) Landlord may require any Tenant or other adult member of the Tenant household occupying the Unit (or other adult or non-adult person outside the Tenant household who is using the Unit) who commits a drug violation or domestic violence to vacate the Unit permanently, within time frames set by Landlord, and not thereafter enter upon the Community or the Unit without Landlord's prior consent as a condition for continued occupancy by other members of the Tenant household. Landlord may deny consent for entry unless the person agrees to not commit a drug violation or domestic violence in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program.

Landlord may require any Tenant to show evidence that any non-adult member of the Tenant household occupying the Unit, who committed a drug violation or domestic violence, agrees to not commit a drug violation or domestic violence in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program within time frames specified by Landlord as a condition for continued occupancy in the Unit. Should a further drug violation or domestic violence be committed by any non-adult person occupying the Unit, Landlord may require the person to be severed from Tenancy as a condition for continued occupancy by Tenant.

If a person vacating the Unit as a result of one of the foregoing policies is one of the Tenants, the person shall be severed from the tenancy and the Lease shall continue among any other remaining Tenants and Landlord. Landlord may also, at the option of Landlord, permit another adult member of the household to be a Tenant.

Should any of the above provisions governing a drug or domestic violence violation be found to violate any of the laws of the land, the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of Tenant afforded by law.

7. OCCUPANTS: The designated occupants of the Unit are:

NAME: <u>Jeffery Rush</u>	Birth date: <u>01/27/65</u>
NAME: _____	Birth date: _____
NAME: _____	Birth date: _____
NAME: _____	Birth date: _____
NAME: _____	Birth date: _____
NAME: _____	Birth date: _____
NAME: _____	Birth date: _____

Only the persons designated above (or as subsequently modified and agreed to by Landlord in writing) shall reside in the Unit. Persons not currently listed on the Lease who reside in the household for a period of fifteen (15) days in a forty-five (45) day-period shall be considered living in the Unit, and may be required to be added to the tenant certification at Landlord's election. A Tenant allowing an unauthorized person(s) to occupy the Unit is a material Lease violation, and may be cause for termination of the Lease, and writ of ejectment.

Although Tenant is permitted from time to time to have guests, Landlord reserves the right to require a recorded declaration of domicile or proof of domicile if Landlord suspects that a guest is, in fact, an unauthorized household occupant. Landlord's suspicion on this issue is justified if a person is making repeated visits with Tenant, or if there is one extended visit as noted above. Should Tenant fail to provide proof of other domicile for the guest, or if there is other evidence reasonably demonstrating that the guest(s) has become an unauthorized occupant in the Unit, then these events shall be deemed a material non-compliance with the Lease, and cause for termination of the Lease, and writ of ejectment.

8. TENANT'S MAINTENANCE OF UNIT:

(a) **ORIGINAL CONDITION:** The Unit and its appliances and fixtures shall be deemed to be clean and acceptable, in good repair and operable, unless Landlord is given written notice within 48 hours of the commencement of the Term hereof. Landlord will provide Tenant with a written statement (Move-In Unit Inspection Report) of the condition of the Unit upon Tenant's initially entering into occupancy thereof and upon Tenant's vacating the same. With the Move-In Unit Inspection Report, Tenant shall be entitled to participate in the inspection, and Tenant will have the opportunity to note in writing any observed discrepancies, and both Landlord and Tenant will sign the Report. When vacating, Tenant may participate in the inspection of the Unit, upon request in writing given simultaneously with the notice of intent to vacate. Landlord will monitor the maintenance responsibilities pertaining to buildings and common areas for compliance with state and local codes, Agency rules, and fair housing requirements.

(b) **CLEANLINESS:** Tenant shall keep Unit and appliances and fixtures in a reasonably clean and tenantable condition. Upon vacating the Unit, Tenant shall leave them in the condition existing at the commencement hereof, ordinary wear from other than Tenant's deliberate or negligent misuse or abuse excepted, or pay Landlord for the cost of restoring said Unit, fixtures, and appliances to their original condition. Tenant is responsible for the trash around the immediate area of the Unit.

(c) **REPAIRS:** Tenant shall keep the Unit and the appliances and fixtures in as good repair as they are in at the commencement hereof, ordinary wear and tear excepted. Tenant shall pay the cost of service to any appliance or fixture, or of repairing any damage resulting from Tenant's deliberate or negligent misuse or abuse of the Unit and/or the appliances and fixtures or the Community of which they are a part, upon demand by Landlord.

(d) **ALTERATIONS:** No alterations or changes in or to the Unit or the appliances or fixtures shall be made without Landlord's prior written consent at Landlord's sole discretion. Tenant shall not paint or wallpaper any portion of the Unit without Landlord's prior written consent at Landlord's sole discretion. Tenant shall be responsible for the cost of restoring the Unit to its original condition if any such modifications are made without Landlord's prior written consent. All modifications to the Unit shall become the property of Landlord. A disabled Tenant may request a reasonable modification to the Unit which will be considered by Landlord in accordance with Landlord's reasonable accommodation and modification policy and applicable law.

(e) **FIXTURES AND APPLIANCES:** Tenant shall not use fixtures or appliances furnished by Landlord for any improper or unauthorized purposes. If Tenant does use such fixtures or appliances for any improper or unauthorized purpose, Landlord may after timely written notice charge Tenant for damages incurred due to the improper or unauthorized use of the fixtures or appliances, and Tenant shall pay the sum upon demand.

(f) **NOTIFICATION:** Tenant shall notify Landlord of any item becoming out of repair and of any roof leaks and spigot, pipe, or commode leakage. Tenant shall immediately notify the Site Manager in writing, by telephone, or in person of repairs needed.

(g) **DAMAGE:** Tenant will be responsible for the breakage of all glass, windows, and doors to the Unit regardless of how the same was broken (except breakage by Landlord or its employees or agents). Landlord will replace the broken glass at Tenant's expense. Tenant is responsible for all damages to the Unit and the Community caused by Tenant, Tenant's guests, and others under Tenant's control. Tenant agrees to not destroy, deface, damage, or remove any part of the Unit, common areas, or Community grounds. Deliberate or negligent misuse or abuse by Tenant or any person in the Unit with Tenant's permission, may be considered a material Lease violation, with all remedies available to Landlord. Tenant covenants to pay Landlord, upon demand after timely written notice, for any and all damage to the Unit and Community caused by Tenant, Tenant's guests, and others under Tenant's control. Tenant covenants to pay Landlord, upon demand after timely written notice, for any and all damage caused by Tenant to the Unit and the Community, to include, but not limited to, the lawn and shrubbery.

(h) **SMOKE DETECTOR:** IF THERE IS A PROBLEM WITH TENANT'S SMOKE DETECTOR, IT IS TENANT'S RESPONSIBILITY TO NOTIFY THE SITE MANAGER IMMEDIATELY. Tenant shall not tamper with the smoke detector. Landlord is responsible for maintaining the smoke detectors. Tenant will be responsible for the payment of any damages to the smoke detector caused by Tenant. If smoke detector is not operable due to tampering or if the smoke detector battery is dislodged or removed, there is a fifty (\$50.00) charge for repairing the damaged smoke detector or replacing the battery. Tampering with smoke alarms by Tenant will be considered a material breach and act of noncompliance under the Lease and dispossession proceedings may be brought against Tenant.

9. **LANDLORD'S MAINTENANCE OF COMMUNITY:** Landlord will maintain the building and any unassigned community areas in a decent, safe, and sanitary condition in accordance with local and county housing codes and regulations and RHS regulations, but failure to do so shall not be grounds for nonpayment of the sums due by Tenant to Landlord hereunder or the nonperformance of Tenant's other obligations hereunder, except that notwithstanding this provision, Landlord will comply with South Carolina Residential Landlord - Tenant law in affording Tenant all rights and means of redress indicated therein. Tenant shall promptly notify Landlord in writing of any accident to or defect in water pipes, gas pipes, electric wires or fixtures, and heating and cooling apparatus in order that Landlord may make the necessary repairs. Landlord shall not be liable for damages or inconvenience resulting from the unanticipated temporary breakdown or interruption of same.

10. **HOUSING ALLOWANCES:** A copy of the completed and approved Utility Allowance Form is attached hereto.

11. **UTILITIES, SERVICES AND EQUIPMENT:**

(a) Tenant agrees to pay all charges for the following utilities promptly when due: (check those that are responsibility of Tenant)

☐ Water ☐ Sewer ☒ Electric ☐ Gas ☐ Trash collection

Tenant shall pay and be responsible for all services and utilities separately metered to the Unit. Tenant will deal with such utility and service companies individually, applying for such service or utilities in Tenant's own name and paying any deposit that may be required by any utility company. Landlord shall be responsible and pay for any utilities or services not individually metered to the Unit but served by a master meter (if applicable). For any utility or service which is master metered and paid by Landlord, Tenant is authorized to use only so much of such service or utility as is customary for the Unit. The flagrant wasting of energy by Tenant (such as the running of heating or air conditioning systems with the doors and/or windows open) shall be deemed grounds for termination of this Lease.

Failure by Tenant to maintain essential utilities will be grounds for termination of this Lease.

(b) Landlord agrees to furnish the following: (check those that are responsibility of Landlord)

☒ Refrigerator ☒ Range ☒ HVAC ☒ Trash collection ☐ Other: _____

(Specify other major appliance/utility, if applicable)

12. **ASSIGNMENT OR SUBLEASE:** Tenant shall not assign its leasehold interest or sublet the Unit in whole or in part under any circumstances.

13. **DESTRUCTION OF OR DAMAGE TO UNIT:** If during the Term the Unit or Community is damaged by fire or the elements, they shall be repaired by Landlord with reasonable diligence. If the damage is too extensive to enable Landlord to effect such repairs as are required to render the Unit fit for occupancy within forty-eight (48) hours after the damaging event, the rent shall cease from the date of damage until so repaired, and the tenancy shall not be terminated unless such repairs shall require more than sixty (60) days, in which event Tenant shall have the option of terminating the Lease; provided, that there shall be no cessation of rent if the damages shall have been the result of negligence, default, or willful act of Tenant or anyone occupying the Unit.

14. **CONDEMNATION:** Tenant hereby waives any injury, loss, or damage, or claim thereof against Landlord resulting from any exercise of a power of eminent domain over all or any part of the Community. All awards of the condemning authority for the taking of land, parking areas, or buildings shall belong exclusively to Landlord. In the event substantially all of the Community shall be taken, this Lease shall terminate as of the date the right to possession vests in the condemning authority and rent shall be apportioned as of that date. In the event any part of the Community and/or building or buildings of which the Unit is a part (whether or not the Unit shall be affected) shall be taken as the result of the exercise of a power of eminent domain, and the remainder shall not, in the opinion of Landlord in its sole discretion, constitute an economically feasible operating unit, Landlord may, by written notice to Tenant given within sixty (60) days after the date of taking, terminate this Lease as of a date set out in the notice not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of the termination date.

15. **ABANDONMENT BY TENANT:** Either (i) the unexplained absence of Tenant from the Unit for a period of fifteen (15) days or more after default in the payment of rent or (ii) if Tenant has voluntarily terminated the utilities for the Unit and there is an unexplained absence of Tenant after default in payment of rent, then there shall be deemed an abandonment of the Unit, and this Lease may be immediately terminated by Landlord by written notice to Tenant, and Landlord may reenter and take possession of the Unit by eviction proceedings in accordance with South Carolina law. Tenant shall give the Site Manager prior notice of any planned absence from the Unit for a period of two (2) weeks or more.

16. **NOTICE:** Except as otherwise set forth herein, notice to Tenant shall be deemed given when given in writing and delivered in hand to Tenant or mailed to Tenant at the Unit registered or certified mail. Except as otherwise set forth herein, notice to Landlord shall be deemed given when in writing and mailed to **1705 Shady Moss Court, Conway, SC 29527** by first class mail, postage prepaid. It is agreed and understood that Boyd Management is acting only as an agent for Landlord and has no liability hereunder.

17. **OPERATING EXPENSES:** The parties hereby agree that in the event of an extraordinary increase or decrease in utility or operating expenses for which Landlord is responsible, Landlord may adjust the monthly basic and/or note rate rental payments upon approval by RHS and upon giving Tenant thirty (30) days written notice of such increase or decrease.

18. **ELIGIBILITY CERTIFICATION:**

(a) Tenant agrees that the household income, household composition, and other eligibility requirements shall be deemed substantial material factors of his/her tenancy with respect to the amount of rental he/she will be obligated to pay and his/her right of occupancy, and that Tenant's obligation to report these things accurately and timely is a substantial material requirement of this Lease.

(b) Rents will be determined in accordance with (RD 3560-8) Tenant Certification.

(c) Eligibility will be in accordance with RD 3560 guidelines and maximum adjusted income for each particular county.

(d) Tenant understands that income certification is a requirement of occupancy and agrees to promptly provide any certification documents and income/asset verifications required by Landlord (usually income/asset verifications and names and ages of household members) to permit determination of eligibility and, when applicable, the monthly Tenant contribution to be charged.

(e) Tenants or members of Tenant's household may become ineligible after date of move-in when they fail to meet either the the income or occupancy requirements for the Unit, or other eligibility requirements. Landlord agrees to promptly give a (30) thirty day written notice of such ineligibility, informing Tenant if the ineligibility can be cured, or if Tenant must vacate the Unit within thirty (30) days or at the end of the Lease Term (whichever is longer). In these instances, the Ineligible Lease Addendum will be executed and becomes a part of this Lease.

(f) Unit size will be determined in accordance with Landlord's occupancy guidelines as follows:

Unit Size	Minimum	Desired Density	Maximum
One Bedroom	1	2	3*
Two Bedroom	2	4	5*
Three Bedroom	3	6	7*
Four Bedroom	4	8	9*

*cannot exceed local building codes.

Some exceptions may be made with RHS and/or Landlord approval. Such approval must be in writing and signed by the approval official. Such approval authorization becomes part of this Lease. Tenant may be temporarily assigned to a larger or smaller unit than indicated in the occupancy guidelines above. In this event, Tenant acknowledges and agrees that Tenant will be required to transfer to a correctly sized unit when one becomes available, and that Tenant must pay all costs associated with moving to the correctly sized unit. In addition, it is Tenant's responsibility to move to the next available appropriately sized unit if Tenant's household becomes over-housed or under-housed in Tenant's then-current unit. If Tenant is no longer eligible for occupancy under the foregoing occupancy rules or does not meet the criteria set forth in 7 CFR §3560.155(c) and (e), then Tenant must vacate the Unit within 30 days of being notified by Landlord that Tenant is no longer eligible for occupancy or at the expiration of this Lease, or whichever is greater, unless (1) The waiting list for the specific rental unit type has no eligible applicants; or (2) The required time period for vacating the unit would create a hardship on Tenant household.

(g) Tenant agrees that a recertification of income shall be made to Landlord annually from the date hereof; provided, however, that in any event Tenant shall recertify his income upon the execution of any subsequent agreement concerning the Unit.

(h) Tenant agrees to notify Landlord when changes occur in Tenant's income or assets, Tenant's qualifications for adjustments to income, or the number of persons living in the Unit. Tenant agrees that the monthly rental payment is subject to adjustment by Landlord to reflect such changes. Tenant agrees to be bound by such adjustments. Landlord agrees to give a thirty (30) day written notice of any such adjustment to Tenant when the new rent has increased and Tenant has complied with the re-certification process in a timely manner. A new Lease or Addendum will be executed at such time.

(i) Tenant agrees that Landlord must process a Tenant Certification whenever a permanent change of \$100 or more per month occurs in Tenant's income, Tenant's qualifications for adjustments to income change, or the number of persons living in the Unit changes. Landlord must recertify for such changes, including income changes of \$50 per month, if Tenant requests that such a change be made. Tenant agrees to supply Landlord information concerning such changes within thirty (30) days of such changes.

(j) Tenant agrees to pay RHS restitution when unauthorized assistance is received due to (1) Tenant's fraud or misrepresentation of Tenant's initial income certification or Tenant's recertification or in any other information furnished to Landlord, or (2) Tenant's failure to supply income recertifications when required or to supply information required by this Lease. All instances of unauthorized assistance are reported to RHS at the same time notice is sent to Tenant. Failure to repay such unauthorized assistance could result in the initiation of legal action by the Agency.

(k) Tenant understands that Tenant will no longer be eligible for occupancy in this Community if Tenant's income exceeds the maximum allowable adjusted income as defined periodically by the Rural Housing Service for South Carolina. Landlord agrees to give written notice to Tenant of Tenant's ineligibility to occupy the Unit due to income limitation. The Lease shall terminate at the end of the Lease term and Tenant shall agree to vacate the Unit at such end of Lease term, or within a thirty (30) day period, whichever is longer, unless eligibility can be established by approval of a waiver by RHS at the request of Landlord.

(l) Tenant agrees to notify Landlord within thirty (30) days of the occurrence of any change in income or assets, qualifications for adjustments to income, or the number of persons living in the Unit. Tenant understands that rent or benefits may be affected as a result of this information. Tenant also understands that failure to report such changes may result in loss of benefits to which Tenant may be entitled or may result in Landlord taking corrective action if benefits were mistakenly received. Tenant understands the corrective action Landlord may take includes the initiation of a demand for repayment of any benefits or rental subsidies improperly received, initiation of a notice to cancel any rental assistance or Section 8 assistance being received for the balance of Tenant's certification period, initiation of a notice to increase Tenant's monthly rent to current Note Rate Rent as approved by the Agency during the term of this Lease, or initiation of a notice of termination. Tenant understands that one or more of these remedies, or other appropriate remedies, may be initiated at the option of Landlord.

(m) Tenant understands that Tenant must promptly notify Landlord of any extended absences, and that if Tenant does not personally reside in the Unit for a period exceeding sixty (60) consecutive days, for reasons other than health or emergency, the net monthly Tenant contribution shall be raised to current Note Rate Rent as approved by the Agency during the term of this Lease for the period of Tenant's absence exceeding sixty (60) consecutive days. Tenant also understands that should any rental assistance be suspended or reassigned to other eligible tenants, Tenant is not assured that it will still be available to Tenant upon Tenant's return. Tenant also understands that if an absence continues, that Landlord may take the appropriate steps to terminate tenancy.

(n) **RENTAL ASSISTANCE:** (check the applicable section):

☒ **Tenant is participating in the USDA, RD Rental Assistance Program:** Tenant understands and agrees that as long as Tenant receives rental assistance, the gross monthly Tenant contribution (as determined on the latest Form RD 3560-8, which must be attached to this Lease) for rent and utilities will be \$ 45.00 ("Gross Tenant Contribution"). If Tenant pays any or all utilities directly (not including telephone, Internet or cable TV), a utility allowance of \$ 101.00 will be deducted from the Monthly Tenant Contribution and the resulting net monthly contribution will be \$ -56 ("Net Contribution"). If the Net Contribution would be less than zero (0), Landlord will pay Tenant \$ 56.00. Tenant also understands and agrees that the Monthly Tenant Contribution under this Lease may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this Lease. Should Tenant no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the Landlord and the Agency expires, Tenant understands and agrees that the Monthly Tenant Contribution may be adjusted to no less than the current Basic Rent as approved by the Agency nor more than the current Note Rate Rent as approved by the Agency during the remaining term of this Lease, except that based on the escalation clause in this Lease these rates may be changed by an Agency approved rent change. Tenant understands that every effort will be made to provide rental assistance so long as Tenant remains eligible and the rental assistance agreement between the Landlord and Agency remains in effect. However, should this assistance be terminated, Tenant may arrange to terminate this Lease, giving proper notice as set forth elsewhere in this Lease.

☐ **Tenant is occupying Unit under Interest Credit Plan II:** Tenant understands and agrees that Tenant's gross monthly contribution as determined on the latest Form RD 3560-8, which must be attached to this Lease, for rent and utilities will be \$_____ ("Gross Monthly Contribution"). If Tenant pays any or all utilities directly (not including telephone or cable TV), a utility allowance of \$_____ will be deducted from the gross monthly rent except that Tenant will pay not less than the basic rent or more than the note rate stated below. Tenant's net monthly rent will be \$_____. Tenant understands that should Tenant receive rental subsidy benefits (interest credit) to which Tenant is not entitled, Tenant may be required to make restitution, and agrees to pay any amount of benefit to which Tenant was not entitled. Tenant also understands and agrees that the monthly Tenant rent under this Lease may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this Lease. Tenant's rent will not, however, be less than the current Basic Rent as approved by the Agency nor more than the current Note Rate Rent as approved by the Agency during the term of this Lease, except that based on the escalation clause in this Lease these rental rates may be changed by an Agency approved rent change and the adjustment clause in this Lease.

(o) **LIHTC/TEB, WHEN APPLICABLE:** In the event this Community is subject to provisions of Section 42 IRS as it pertains to Low Income Housing Tax Credit and/or Low Income Housing Tax Credit/Tax Exempt Bond, the following requirements are in effect as they relate to this Lease:

(i) Tenant must be, and remain, eligible under the provisions of this Lease; and

(ii) Tenant's eligibility shall be based upon the Low Income Housing Tax Credit/Tax Exempt Bond/RD515 Certification executed at initial occupancy, during the term of the Lease, if any, and upon each anniversary date of the original Lease. Tenant agrees to provide all information pertaining to income, assets, and household characteristics promptly when requested by the Landlord. Tenant certifies the accuracy of the information provided in connection with the examination or re-examination of the eligibility of the household of Tenant.

(iii) Based upon the Low Income Housing Tax Credit/Tax Exempt Bond/RD515 Certification after move-in, should Tenant be ineligible under the program guidelines, Tenant agrees to vacate the Unit within thirty (30) days after receiving notification of ineligible status.

(iv) Based upon the Tenant Certification in effect, Tenant understands that as long as the Unit and household are counted in the "qualified basis", the maximum rent chargeable is the restricted rent, as determined periodically by HUD, minus the Utility Allowance.

(p) **PREPAYMENT OF RHS LOAN:** In the event Owner prepays the Section 515 loan, Tenant will be afforded protections as provided for in accordance with current Agency regulations (7CFR 3560, subpart N).

(q) **ESCALATION CLAUSE:** Changes in basic and/or market rents prior to the expiration of this Lease are permitted.

Rent changes would normally be necessary due to changing utility and other operating costs. Tenant contribution may be changed prior to expiration of the Lease if the change is due to changes in Tenant status, as documented on the Tenant Certification form, or Tenant's failure to properly recertify. All changes must be approved by RHS according to RHS HB-2-3560 Chapter 7.

(r) In the event that Tenant is temporarily assigned a unit that is a designated accessible unit but neither Tenant nor other designated occupants require such accessibility, Tenant understands that the following is applicable: Tenant acknowledges that Tenant is occupying a designated accessible unit. Tenant acknowledges that priority for such units is given to those needing special physical design features. Tenant acknowledges that Tenant is permitted to occupy the unit until management issues a notice that a priority applicant is on the waiting list and that Tenant must move to another suitably sized vacant unit in the Community. Upon receiving this notice, Tenant agrees to move at Tenant's expense within thirty (30) calendar days to the suitably sized vacant unit within the Community when one is available. Tenant further understands that the rental rate will change, when appropriate, to the rental rate for the unit Tenant moves to and this Lease will be modified accordingly. If a suitably sized unit is not available in the Community within thirty (30) days, Tenant understands that Tenant may remain in the designated accessible unit until the first available unit in the Community becomes available and then Tenant agrees to move within thirty (30) days.

(s) Should any Federal subsidies paid to Landlord on behalf of tenants in the Community be suspended or canceled, due to a monetary or non-monetary default by Landlord, the monetary payment made by Tenant to Landlord (or, when applicable, the monetary payment received by Tenant from Landlord) shall not change over that which would have been required had the subsidy remained in place for the term of the Lease.

(t) In the event Agency determines the Owner in default of its loan on this Community and legal proceedings have been initiated, the following requirements are in effect as they relate to this Lease:

(i) The Tenant contribution must remain as if interest credit and/or rental subsidy were still in place and available had acceleration not occurred; and

(ii) The terms of the Lease will remain in effect until the date acceleration and/or foreclosure is resolved.

19. **PETS:** Tenant understands that pets are not allowed in the Unit unless this Community is designated as "Elderly" by the Agency, except for assistance animals for tenants with a verified disability. When verified, an addendum to the Lease will be executed outlining certain rules and regulations regarding assistance animals. Additional deposits are not required for assistance animals. Guests are prohibited from bringing pets into the Unit and the Community. Failure to comply will constitute grounds for termination of the Lease and a writ of ejectment.

20. **TENANT'S PERSONAL PROPERTY:** All personal property in the Unit shall be at the risk of Tenant only. Landlord recommends Tenant obtain insurance coverage ("renter's insurance") for Tenant's personal property. Tenant acknowledges that personal property is subject to loss by fire, theft, and other perils of man and nature, and Tenant acknowledges that Landlord will not be responsible for such losses to Tenant's personal property. A Tenant's obligation to abide by the terms of this Lease still exists during the time that Tenant's household personal possessions remain in the Unit after the Tenant household has personally ceased occupancy with the intent to vacate and leave the Unit, until such time as the personal possessions have been removed voluntarily or by legal means, subject to the provisions of State or local law.

21. **PEACEFUL ENJOYMENT:** Landlord covenants that Tenant, on paying the rent and performing covenants hereof, shall and may peaceably and quietly have, hold and enjoy Unit for the Term, subject, however, to the terms and conditions hereof, without hindrance or interruption by Landlord.

22. **REASONABLE ACCOMMODATIONS:** Tenants who meet the definition of disabled (definition attached to the apartment application that Tenant completed, or may be requested from the site manager) may have need of reasonable accommodations or modifications during the time covered by this Lease. Requests for reasonable accommodations and modifications may be made by contacting the site manager and obtaining the forms to be completed for approval consideration by Landlord. These requests may be for live-in assistants, accessible units with special design features, and/or modifications to the present Unit.

23. **CONDITION OF UNIT AT TERMINATION:** Tenant shall deliver up the Unit at the termination of this Lease in as good condition as the Unit is in on the commencement date of the Lease, reasonable wear and tear excepted. Any addition made or fixture added shall be left with the Unit and become the property of Landlord at termination of this Lease, whether such fixture was added with written consent of Landlord or done in violation of this Lease.

24. **INABILITY OF LANDLORD TO DELIVER POSSESSION:** Should Landlord be unable to deliver possession of the Unit on the commencement date of this Lease through no fault of Landlord's, Landlord shall not be liable to Tenant for any damages other than to rebate any advanced rent and damage deposit paid. If possession cannot be given within seven (7) days from the commencement date, this Lease, with written notice, may be terminated by either party.

25. **LANGUAGE:** In areas with a concentration of non-English speaking tenants, this Lease may be available to tenants in both English and the appropriate additional language, upon written request. In areas where it is not feasible for a copy of this Lease in other than English to be obtained, the name and address of an interpreter will be provided.

26. **TERMINATION OF LEASE:**

(a) Tenant shall be in default in the event of the happening of any of the following (hereinafter referred to singularly as "Event of Default"). For an Event of Default, Landlord may terminate this Lease, evict Tenant, recover actual damages and obtain injunctive relief, all as allowed by law:

(i) Tenant fails to timely make monthly payments of rent and late charges, or any of them, whether the same be demanded or not, and same are not paid when they become due or within ten (10) days thereafter;

(ii) Tenant fails to comply with this Lease or the rules and regulations of the Community other than the non-payment of rent and late charges;

(iii) Tenant's material failure to carry out obligations under the South Carolina Residential Landlord-Tenant Act;

(iv) Action or conduct by Tenant which disrupts the livability of the Community or adversely affects the health and safety of any person, or the right of any other occupant to the quiet enjoyment of the Unit or the Community, or which has an adverse financial effect on the Community or constitutes harassment of the management staff at the Community;

(v) Determination made by Landlord that a household member is illegally using a drug;

(vi) Determination made by Landlord that illegal use of drugs interferes with the health, safety, or right to peaceful enjoyment of the Unit by other tenants;

(vii) Criminal activity by a Tenant, any member of Tenant's household, or a guest or another person under Tenant's control that threatens the health, safety, or right to peaceful enjoyment of the residences or Community by others (including other tenants and property management staff), regardless of whether the Tenant, any member of the Tenant's household, a guest or another person under the Tenant's control has been arrested or convicted for such activity;

(viii) Tenant is fleeing to avoid prosecution or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual is fleeing;

(ix) Tenant is violating a condition of probation or parole under Federal or State law;

(x) Determination made by Landlord that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the Unit by other tenants;

(b) Any termination of this Lease by Landlord must be in accordance with USDA regulations, State and local law, and the terms of this Lease. Landlord shall give Tenant thirty (30) days' notice to vacate after Lease termination unless (i) the breach is for nonpayment of rent; or (ii) the severity of Tenant's Lease violation(s) is such that Landlord determines that Tenant is an immediate threat to the health or safety of Tenant himself or other members of the household, other tenants, guests, Landlord, Landlord's agents or staff, Landlord's property or other persons in the immediate vicinity of the Community.

* (c) Notices of Lease termination from Landlord shall: (i) specify the date this Agreement will be terminated; (ii) state the grounds for termination with enough detail for Tenant to prepare a defense; and (iii) advise Tenant that he/she has 10 days within which to discuss the proposed termination with Landlord.

(d) The 10-day period set forth above will begin on the date the notice is served upon Tenant. If Tenant requests a meeting with Landlord, Landlord agrees to discuss the proposed termination with Tenant and advise Tenant of his/her right to defend the action in court.

(e) Any Tenant or household member who is a victim of domestic violence or sexual assault or stalking as defined under South Carolina law may terminate this Lease providing Landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the Landlord's receipt of the notice.

27. LANDLORD'S RIGHT OF ENTRY: In the event of emergency, Landlord may enter the unit at any time with or without notice. When Tenant has requested services in the unit, Landlord may enter the unit between the hours of 8:00 AM and 8:00 PM after announcing the intent to do so for the purpose of addressing the requested services. (Twenty-four hour notice is not required.) For providing regularly-scheduled periodic services, such as changing furnace and air-conditioning filters, providing termite, insect, or pest treatment, and the like, Landlord may enter the unit between the hours of 9:00 AM and 6:00 PM after announcing the intent to do so. (Twenty-four hour notice is not required.) For other reasons and purposes, Landlord shall give Tenant at least twenty-four hours' notice of Landlord's intent to enter and may only enter at reasonable times. The reasons Landlord will need to enter the unit from time to time will include, but are not necessarily limited to the following:

(a) To inspect the Unit to determine whether Tenant is fulfilling the obligation to maintain the Unit as required of Tenant herein. Inspections for this purpose are made quarterly during a specified week between the hours of 9:00 AM – 6:00 PM. Tenant will be notified prior to inspections.

(b) To perform any preventive or routine maintenance to the Unit or Complex or as part of any pest control.

(c) To make necessary repairs, decorations, alterations or improvements to the Unit.

(d) To show the Unit to prospective or actual purchasers, mortgagees, Tenants, workmen, contractors, or governing agencies.

(e) To inspect when Landlord has reasonable cause to believe Tenant has abandoned or surrendered the Unit.

(f) After Tenant has provided a vacating notice, Landlord may enter the Unit for the purpose of inspection, cleaning, and redecorating if such work can be done without disturbance to Tenant or damage to Tenant's property.

(g) To conduct smoke detector tampering inspections. If smoke alarm is not operable due to tampering or if the smoke alarm battery is dislodged or removed, there is a fifty (\$50.00) charge for repairing the damaged smoke detector or replacing the battery.

(h) For any other reason or purpose from time to time, which Landlord may reasonably deem necessary.

28. HUD SECTION 8 VOUCHER HOLDERS: The household's tenancy is subject to compliance with the terms of this Lease. The agency issuing the HUD Section 8 Voucher may also require Tenant to execute its Lease. If Landlord terminates this Lease early due to Tenant's violations of this Lease, the agency that issued the Section 8 Voucher will be notified.

29. TENANT GRIEVANCE PROCEDURES: Tenant's grievance or appeal from Landlord's decisions relative to this Lease, and/or other adverse action, shall be resolved, if properly requested by Tenant, in accordance with procedures consistent with RHS HB-2-3560, CFR 3560.160 covering such procedures, such being posted and available for inspection at the site manager's office. Tenant may request a hearing within (10) calendar days after Tenant receives written notice of any adverse action. All changes to this Lease or any additional addenda executed thereof will not take effect until thirty (30) days following the date of execution by Tenant and Landlord. A copy of these rights will be given to Tenant at move-in and each renewal of this Lease.

30. RULES AND REGULATIONS: The following rules and regulations apply to all residents and their guests. Violations should be reported promptly to the Site Manager.

(a) Motor Vehicles:

i. The maximum speed limit in the Community is 15 mph. Tenant and guests of Tenant must comply with this regulation. Parking must be within the lined spaces: one vehicle per marked space. Although parking places are not assigned, please be respectful of your neighbors and advise your guests accordingly.

ii. Driveways, parking areas (except for cars), sidewalks, entrances, passageways, courts, stairways, walks, lawns, and hallways must be kept free and clear of obstacles at all times. No possessions of residents can be placed in common areas.

iii. Accessible parking spaces are designated at the property. All vehicles must have proper identification displayed to allow their vehicle to be parked in the designated spot.

iv. All motor vehicles belonging to Tenant and guests of Tenant shall be parked in the areas provided for parking.

v. Motor vehicles are prohibited from driving onto sidewalks and lawn/grassed areas.

vi. Vehicles of any type without mufflers are prohibited at the Community. Furthermore, vehicles must be in good repair. Vehicles leaking any type of fluid may be towed at the owner's expense from the Unit and Tenant will be responsible for any damages.

vii. Washing and waxing of motor vehicles are not permitted unless the Community has a specific car wash amenity for such purposes. Mechanical work on motor vehicles is not allowed on Community grounds. No vehicles can be placed on blocks or dismantled while on Community grounds.

viii. Motorcycles and scooter bikes must be parked only in assigned areas. Such items cannot be stored in hallways, apartments, nor on sidewalks and lawns.

ix. Inoperable motor vehicles - including ones with flat tires, no license tag or an expired license tag are not permitted in the Community, and will be towed at the owner's expense.

x. No boats, trailers, etc., will be allowed on the Unit of the Community.

(b) Achieving Compatible Living in Common Areas: Harmony Among Residents:

i. The use of firearms, BB guns, pellet guns, slingshots, firecrackers and/or any comparable weapons (knives) or noise-makers within the Community is strictly prohibited.

ii. No loud noises or public nuisances will be tolerated in residential areas. No Tenant and/or Tenant's guest(s) will disturb others with unlawful noises. No nuisances shall be allowed upon the Community; and no use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Community by its residents will be tolerated. If law enforcement officers are called to resolve a disturbance, whether involving Tenant(s) and/or their guest(s), Tenant may receive a 30-day notice to vacate. However, if a tenant is a victim of domestic violence, dating violence, and/or stalking, such victims will be granted all protections mandated by law. Eviction proceedings may be initiated after two confirmed complaints are received about Tenant.

iii. Tenant shall maintain reasonable noise levels at all times. TV, radio, and stereo volumes shall not be played loudly to the extent of being heard outside of the room where the equipment is in use between the hours of 11:00 PM and 7:00 a.m.

iv. Music lessons are not permitted in apartments. Musical instruments must be played with due consideration for other residents.

v. Climbing on roofs, fences, dumpsters, and/or any other equipment is prohibited. Only authorized workers are allowed on any roof area or on any portion of the Community's external structures (fences, retaining walls, etc.).

vi. Signs, advertisements, and/or any other type of lettering will not be exhibited or affixed to any door, building, or elsewhere by Tenant.

vii. Mops, clothing, rugs, and/or other items shall not be hung outside of the Unit so as to be in the view of the public area. No clotheslines or clothes-drying structures are permitted outside of the Unit.

viii. Patios and balconies cannot be used as storage areas. No large appliances (such as freezers) or interior-type furniture can be placed on apartment balconies and patios.

ix. Exterior radio aerials, television antennae, satellite dishes, or similar items must be installed in accordance with FCC Guidelines and only in an area where Tenant has exclusive use, and wiring must be installed correctly, and with written Landlord permission.

x. All trash and garbage must be placed in the containers provided and not strewn on the Community. Dumpsters are conveniently located throughout each Community. Lids to these dumpsters should be kept closed. All items for disposal must be placed inside the dumpster. Dumpsters are for household items only. All furnishings including, but not limited to, couches, mattresses, tables, chairs, etc. are the responsibility of the household to remove. No dumping allowed.

xi. All necessary light bulbs for use in the Unit shall be furnished and installed by Tenant.

xii. Playing is only allowed in designated play areas.

xiii. Loitering on the Community is not allowed.

xiv. Alcoholic beverages are prohibited in all common areas.

(c) Structural Modifications/Alterations:

i. Tenant shall not make any structural modifications or alterations to an apartment, or remove any portion thereof, or make any additions thereto, or do anything that would jeopardize the safety or soundness of such units or buildings, adversely affect any of the common elements, or impair any easement, without first obtaining approval in writing from Landlord.

ii. Painting, staining, and/or any other interior alterations will not be permitted without written approval from Landlord. Painting or staining any exterior portion of the building, including patios and balconies, is not permitted.

iii. Appropriate picture hanging devices or small nails are to be used to hang pictures. Avoid using stick-on hangers and toggle bolts or a charge to Tenant upon move-out will be incurred for repairing walls. The hanging of flags and banners from apartments is prohibited, except that an American flag of reasonable size may be displayed appropriately and respectfully, subject to the discretion and approval of the Landlord.

iv. Only authorized personnel may adjust water valves and/or other common area equipment.

v. White backed drapes or white mini-blinds only are allowed to show from the outside.

vi. Water beds are not permitted.

(d) **Keys, Rent Payments, and Collections:**

i. In most instances, the Community is responsible for the mailboxes. An original set of keys to the mailbox will be provided upon payment of the first month's rent. All keys must be returned when Tenant vacates the apartment. If keys are not returned or replaced during tenancy, \$25.00 per mailbox key will be assessed. In certain localities, the Post Office is responsible for the distribution and maintenance of the postal service, keys, and mailboxes. Landlord shall provide tenant with the local Post Office contact information when this occurs.

ii. An original set of entrance door, and storage door where applicable, keys will be provided upon payment of the first month's rent. All keys must be returned when Tenant vacates the apartment. If the keys are not returned or replaced during tenancy, a charge of \$5.00 per door key will be assessed.

iii. If eviction proceedings are filed against Tenant a second time for non-payment of rent during any 12-month period, the eviction will not be stopped and Tenant must vacate the apartment.

iv. Tenant who have checks returned for non-sufficient funds will incur a NSF fee of \$30.00 (the fee charged to the Landlord by the bank), plus a late fee if applicable as described in Paragraph 4 of this Lease. After Tenant's second NSF fee, no checks will be accepted for payments. We will only accept money orders.

v. All monies submitted to the office must be check or money order. **NO CASH WILL BE ACCEPTED.**

(e) **Safety Reminders:**

i. Nothing shall be done or maintained in the Unit or upon any common or limited common area, which will result in the cancellation of insurance, or any increase in the rate thereof on any apartment, building, or grounds in the Community.

ii. At least one adult Tenant must be in attendance to supervise cooking.

iii. "Cookers" or crock-pots are not to be left burning or warming while no one is at home. Please be reminded that the range hood filters are to be cleaned on a frequent basis. Do not wrap the oven burners or the stove top drip pans in aluminum foil. Do not remove or tamper with the Firestop Range Queens located on the underside of the range hood.

iv. Handles of cooking containers must be placed away from the front of the stove to avoid accidents.

v. When cooking with grease, use extreme caution. It can become overheated quickly and originate a kitchen fire.

vi. Individual personal grills are not allowed. Check with management if the Community has a community grill area. No storage of flammable material is allowed. No burning of any trash is permitted.

vii. The burning of candles and/or incense is prohibited.

viii. Egress is defined as "a place or means of going out or exiting". In the event of an emergency, all means of egress or exit must not be blocked; therefore furniture may not be placed where it will impede means of egress (escape) if so designed.

ix. All trip hazards must be removed from the interior of the units. Specifically, electrical cords may not be across pathways, nor run up the interior of steps.

31. **SECURITY:** Tenant, all occupants, and guests must exercise due care for his or her own and others' safety and security, especially in the use of smoke detectors, deadbolt locks, keyless bolting devices, window latches, and other safety or security devices. Tenant should dial 911 or immediately call local medical emergency, fire, or police personnel in case of accident, fire, smoke, or suspected criminal activity, or other emergency involving imminent harm. Tenant shall not treat any of Landlord's security measures as an express or implied warranty of security, or as a guarantee against crime or of reduced risk of crime. Unless otherwise provided by law, Landlord is not liable to Tenant or any guests or occupants for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism, or other crimes. Landlord is not obliged to furnish security personnel, security lighting, security gates or fences, or other forms of security unless required by statute. Landlord is not responsible for obtaining or failing to obtain criminal history checks on any tenants, occupants, guests, or contractors in the apartment community. If Tenant or any occupant or guest is affected by a crime, Tenant must make a written report to Landlord's representative and to the appropriate local law enforcement agency. Tenant also must furnish us with the law enforcement agency's incident report number upon request.

32. **MOLD AND MILDEW:** Tenant acknowledges that mold is found virtually everywhere in our environment, and consists of naturally occurring microscopic organisms which reproduce by spores. Mold breaks down and feeds on organic matter in the environment. The mold spores spread through the air and the combination of excessive moisture and organic matter allows for mold growth. Reducing moisture and using proper housekeeping practices significantly reduces the chance of mold and mold growth. Because mold occurs naturally and can grow almost anywhere, Landlord cannot guarantee that the Unit is, or ever will be, a mold-free environment. Tenant acknowledges that he/she will take the following actions to reduce the possibility of mold and mildew in the Unit:

Climate Control: Tenant agrees to use all air conditioning in a reasonable manner, and further agrees to use heating systems in moderation. Do not leave the fan in the ON position; always operate the HVAC system on AUTO. Summer thermostat settings should not be set higher than 78. Winter thermostat settings should not be set lower than 70. Note: The HVAC system must operate at all times. Do not turn off the HVAC system at any point, even if you are leaving your home for an extended period of time.

Tenant agrees to:

- (a) not close any HVAC vent register in order to direct air flow or for any other reason
- (b) keep the Unit clean, and regularly dust, vacuum and mop
- (c) use kitchen exhaust fan when cooking, cleaning and dishwashing

- d) keep Unit free of excessive furniture to allow proper ventilation
- e) inspect for leaks under sinks
- f) check all washer hoses if applicable
- g) regularly empty dehumidifier if applicable
- h) wipe down any and all visible moisture, including from windows and window sills
- i) avoid excessive amounts of indoor plants
- j) water all indoor plants outdoors
- k) use exhaust fans when bathing/showering and leave on for a sufficient amount of time to remove moisture
- l) use ceiling fans if present
- m) wipe down bathroom walls, counters and fixtures after bathing/showering
- n) avoid air-drying dishes
- o) not "hang-dry" clothes indoors, or place wet items on doors
- p) open blinds/curtains to allow light into Unit
- q) ensure that all baths must have vinyl liner or shower curtain which should be inside bathtub when showering
- r) securely close shower doors during showering and leave bathroom and shower doors open after use
- s) use dryer for wet towels
- t) regularly use household cleaners on any hard surfaces
- u) remove any moldy or rotting food and remove garbage regularly

Tenant acknowledges and agrees that if Tenant fails to take steps necessary to prevent or reduce moisture in the Unit or fails to maintain the Unit in a clean condition, Tenant will be creating an environment that could result in mold growth. Tenant agrees to notify Landlord immediately of the following:

- (a) visible or suspected mold
- (b) moldy clothing
- (c) refrigerator leaks
- (d) all issues concerning the HVAC including pan overflows or drips from the line
- (e) leaks, moisture accumulations
- (f) moisture dripping from or around any leaks
- (g) musty odors
- (h) shower/bath/sink/toilet overflows
- (i) loose, missing, or failing grout/caulk
- (j) leaking faucets or other plumbing fixtures
- (k) discoloration of walls, baseboards, doors, countertops, or vents
- (l) leaks at window frames or on ceilings

Small areas of mold: If mold has occurred on a small non-porous surface such as ceramic tile, Formica, vinyl flooring, metal, or plastic and the mold is not due to an ongoing leak or moisture problem, Tenant agrees to clean the areas with soap (or detergent) and small amounts of water, let the surface dry, and then within 24 hours apply a non-staining cleaner such as Lysol Disinfectant®, PineSol Disinfectant®, Tilex Mildew Remover® or Clorox Cleanup®.

Illness; Damage to Personal Property: As to any illness or adverse health consequences whatsoever suffered by Tenant, any member(s) of Tenant's household, or guests, Tenant understands and agrees that Tenant and all Tenant's household members and guests occupy the Unit at their own risk. Tenant hereby agrees and warrants that Tenant will be solely responsible for any adverse health consequences and related costs suffered by Tenant, any members of Tenant's household, or guests, as a result of mold or other air-quality issues in the Unit, and that under no circumstances will Landlord be responsible.

Similarly, as to any damage or harm suffered to personal property belonging to Tenant, members of Tenant's household, or guests, Tenant understands and agrees that Tenant and all Tenant's household members and guests occupy the Unit at their own risk. Tenant hereby warrants and agrees that Tenant will be solely responsible for any and all damage caused by mold or other air-quality problems to personal property belonging to Tenant, members of Tenant's household, or guests, and that under no circumstances will Landlord be responsible. Furthermore, Tenant acknowledges the importance of maintaining "Renter's Insurance" for protection of personal property, and for liability coverage.

Furthermore, Tenant agrees to reimburse Landlord for any damage to the Unit resulting from acts or omissions of Tenant, members of Tenant's household, or guests which contribute to the presence of mold, or from Tenant's failure to notify Landlord of the presence of mold, or conditions which are conducive to the presence of mold. Tenant agrees to cooperate fully with Landlord in Landlord's efforts to investigate and correct any conditions that could result in, or have resulted in, mold growth, including, without limitation, upon Landlord's request, vacating the Unit for such time as is necessary to allow for any investigation and corrective action deemed necessary by Landlord. If Tenant is required to vacate the Unit temporarily while mold is being remediated, Landlord may, but expressly will not be required, to abate Tenant's rent for the period Tenant was required to vacate, all at Landlord's sole discretion.

Tenant warrants that he/she has reviewed and understands his/her obligations under this Paragraph, and that Tenant's failure to abide by the terms of this Paragraph shall be a material default under the Lease. Landlord reserves the right to terminate the tenancy, and Tenant agrees to vacate the Unit in the event Landlord in its sole reasonable judgment determines that there is mold or mildew present in the Unit which may pose a safety or health hazard to Tenant or other persons and Tenant's actions or inactions are causing a condition which is conducive to mold growth. Tenant shall indemnify and hold Landlord harmless for damage or injury to persons or property or both as a result of Tenant's failure to comply with the terms of this Lease. Tenant agrees that Landlord may conduct inspections of the Unit at any time with reasonable notice.

33. **BED BUGS:** Landlord has inspected the unit and is aware of no bed bug infestation upon move-in by Tenant. Tenant has also inspected the unit prior to move-in, and sees no indication of bed bugs. Tenant(s) states that all furnishings and personal properties to be moved into the premises are free of bed bugs. Tenant(s) hereby agrees to prevent and control possible infestation by adhering to the below list of responsibilities for the duration of the Tenancy: Inspection. Check for hitch-hiking bed bugs. If you stay in a hotel or another home, inspect your clothing, luggage, shoes and personal belongings for signs of bed bugs before re-entering your apartment. Check backpacks, shoes and clothing after using public transportation or visiting public places. After guests visit, inspect beds, bedding and upholstered furniture for signs of bed bug infestation.

(a) Duty to Report. Tenant shall report any problems immediately to the site manager. Even a few bed bugs can rapidly multiply to create a major infestation that can spread to other units. Manager will then be given access to rental unit for inspection within 24 hours of providing written notice to Tenant.

(b) Mandatory Cooperation. Tenant shall cooperate with pest control efforts. If your unit or a neighbor's unit is infested, a pest management professional will be called in to inspect and treat the infestation.

(c) Bed Bug Treatment. In the event of a bed bug issue, Tenant must comply with recommendations and requests from Landlord and the pest control specialist prior to professional treatment, including but not limited to:

(i) Place all bedding, drapes, curtains, and small rugs in plastic bags for transport to laundry or dry cleaners.

(ii) Heavily infested mattresses are not salvageable and must be sealed in plastic and disposed of properly. Empty dressers, night stands and tightly seal washable items separately from non-washable items. Used plastic bags must be disposed of properly.

(iii.) Wash all machine-washable bedding, drapes, and clothing, etc. on the hottest water temperature and dry on the highest heat setting. Items that cannot be washed must be taken to a dry cleaner who MUST be informed of the issue. You must safely discard ALL items that cannot be decontaminated.

(iv.) Vacuum all floors, including the inside of closets. Vacuum all furniture including inside drawers and nightstands, mattresses and box springs. Carefully remove vacuum bags, sealing them tightly in plastic and discarding them properly (outside of the unit). Use a brush attachment to dislodge eggs prior to vacuuming.

(v.) Move furniture toward the center of the room so that technicians can easily treat carpet edges where bed bugs congregate, as well as walls and furniture surfaces. Items must be removed from the closets to allow for treatment.

(d) Property Insurance. It is acknowledged that the Landlord shall not be liable to Tenant or others for any loss of personal property belonging to the Tenant, members of Tenant's household, or guests as a result of an infestation of bed bugs. It is strongly recommended that Tenant obtain personal property insurance ("Renter's Insurance") to cover such losses. It is also acknowledged that Landlord will not be liable to Tenant, members of Tenant's household, or guests for medical expenses or similar resulting from exposure to bed bugs. Tenant hereby expressly agrees to be responsible for all such losses, costs, and expenses. If Tenant is required to vacate the Unit temporarily to allow for treatment of bed bugs, Tenant understands and agrees that Tenant will nevertheless be responsible for full rent, with no abatement for the time Tenant was required to vacate.

(e) Cost of Treatment. It is understood and agreed that in most cases Resident will be responsible for the cost of treatment required for bed bugs in Resident's apartment. The Landlord will arrange all required treatment(s), as the Landlord has an established relationship and a preferential price structure with a trusted exterminator. However, the Resident may be responsible for all costs, which will be considered a damage charge. Tenant's repayment of costs to Landlord is due immediately after treatment is provided. Notwithstanding the Tenant's responsibility for costs, as a precautionary and preventive measure, the Landlord may elect to voluntarily pay for initial treatments required within a given apartment complex. (Under no circumstances will the Landlord ever pay for repeat treatments, if required.) Similarly, the Landlord may elect to allow Tenant to repay costs of treatment in monthly installments. These courtesies are entirely voluntary on the part of the Landlord, and will be provided solely at the Landlord's discretion, and should not be presumed nor expected by the Tenant.

34. **SMOKE FREE HOUSING:** Definition of Smoking: The term "smoking" means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, or other tobacco product or similar lighted product in any manner or in any form.

(a) **Smoke-Free Restrictions.** Tenant agrees and acknowledges that the Community, including the Unit to be occupied by Tenant and members of Tenant's household, has been designated as a smoke-free living environment. Tenant and members of Tenant's household, Tenant's guests or visitors shall not smoke within the Unit or within 25 feet of any building, common areas such as, but not limited to, gazebos, benches, playgrounds, and other amenities in the Community.

(b) **Landlord to Promote No-Smoking Policy.** Landlord shall post no-smoking signs at entrances and exits, common areas, hallways, and/or in such conspicuous places as may be appropriate to effect implementation of this policy. Tenant shall promptly give Landlord notice of any incident of smoking or migrating secondhand smoke.

(c) **Landlord is not a Guarantor of Smoke-Free Environment.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the Community as smoke-free, do not make Landlord or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Unit and the common areas of the Community. Landlord shall take reasonable steps to enforce the smoke-free terms of its leases; however, Tenant acknowledges that Landlord's ability to police, monitor, and enforce the no-smoking policy is dependent in significant part on compliance by the residents. Landlord specifically disclaims any implied or express warranties that the Community will have any improved air quality or higher air quality standards than any other rental property. Landlord cannot and does not warrant or promise that the Unit or the Community will be free from smoke. Landlord is not required to take steps in response to smoking unless Landlord has actual knowledge of said smoking or has been given written notice of said smoking.

(d) **Effect of Violation and Right to Terminate Lease.** A violation of this Paragraph by Tenant, any member of Tenant's household, or any guest shall be a material breach of the Lease and an Event of Default and Landlord may exercise any and all remedies under this Lease for such breach.

35. **WAIVER AND AMENDMENT:** The failure of either party to insist in any instance on strict performance of any covenant or condition hereof shall not be construed as a waiver of such covenant or condition. No modification, change, or cancellation hereof shall be valid unless in writing and executed by all parties hereto.

36. **REMEDIES AND LIMITATION ON ACTIONS:** All rights and remedies of Landlord under this Lease shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

37. **PRONOUNS:** For purposes hereof, any masculine pronoun shall include the feminine, any feminine pronoun shall include the masculine, any plural pronoun shall include the singular, and any singular pronoun shall include the plural pronoun.

38. **CAPTIONS:** Any headings preceding the text of any paragraph hereof are inserted solely for convenience of reference and shall not constitute a part of this Lease nor shall they affect its meaning, construction, or effect.

39. **BINDING EFFECT:** The provisions of this Lease shall be binding upon and inure to the benefit of Landlord and Tenant, and their respective heirs, successors, legal representatives, and assigns. Should the Community of which the Unit is a part be sold to a buyer approved by RHS this Lease will be transferred to the new owner(s).

40. **SAVINGS CLAUSE:** If any provisions of this Lease are determined to be in conflict with the laws of the State of South Carolina, RHS regulations, or any other applicable law thereby making said provision(s) null and void, the nullity shall not affect the other provisions of this Lease which can be given effect without the said provision(s), and to this end, provisions of this Lease are severable.

[Acknowledgment and Signature Page Follows]

41. **ACKNOWLEDGEMENT:**

TENANT HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS LEASE, THE RENTAL APPLICATION AND THE RULES AND REGULATIONS, AND THAT THE SITE MANAGER HAS EXPLAINED THESE RULES AND REGULATIONS. TENANT UNDERSTANDS THAT HE/SHE MUST COMPLY IN ALL RESPECTS WITH THE TERMS AND PROVISIONS OF THIS LEASE AND ANY SUCH RULES AND REGULATIONS.

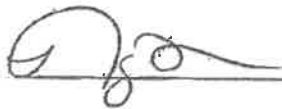
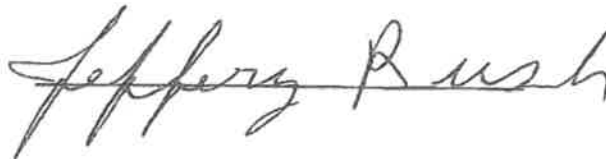
TENANT FURTHER ACKNOWLEDGES THAT IF HE/SHE HAS ENTERED THE COMMUNITY WITH A LETTER OF PRIORITY ENTITLEMENT (ISSUED BY RHS) AND IS TEMPORARILY OCCUPYING A UNIT FOR WHICH HE/SHE IS NOT OCCUPANCY ELIGIBLE, HE/SHE WILL MOVE TO AN ELIGIBLE UNIT WHEN AN ELIGIBLE UNIT BECOMES AVAILABLE CONSISTENT WITH PARAGRAPH 18(r) OF THIS LEASE. TENANT WILL EXECUTE THE INELIGIBLE LEASE CLAUSE IN THIS CASE AND IT BECOMES PART OF THIS LEASE.

Nothing contained in this agreement shall be construed as waiving any of Landlord's or Tenant's rights under the laws of the State of South Carolina. Tenant hereby understands that the property manager will verify, in writing through a third party, the information provided on the application and Tenant certification. Tenant also understands that RHS (The Agency) may verify through a third party the information concerning household wages, other income and expenses.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this instrument in duplicate the day and year first above written.

Landlord

Tenant (Signed by all household members 18 & older)


_____

DATE 9-16-20

Attachments:

Form 3560-8, Tenant Certification

Utility Allowance Form

VAWA Addendum

Ineligible Lease Addendum, when applicable

Pet Regulations/Addendum, when applicable

Other as required: _____



Notice of Lease Agreement Violation

Date: 02/08/2021

Delivered by: First Class Certified Mail &
By Hand to Unit

Tenant Name: Jeffery Rush

Unit: 6C

Dear Jeffery Rush:

In accordance with the provisions of your lease agreement dated 09/16/2020, you are hereby notified of the following lease agreement violation:

Section 2.6: V. Drug related criminal activity engaged in on or near
community, by any tenant, household member or guest or any such activity;
on the community by any other person under tenants control
Check one:

☐ You can correct this violation by _____ (14 days after the date of this letter). If you have not corrected the violation by this date, you are hereby advised that we may seek judicial action by terminating your lease agreement.

You may request an informal meeting to discuss this violation. You are further advised that you have the right to request a formal hearing or appeal of this decision. Your request must be submitted within fourteen (14) calendar days after the date of this notice.

☒ You cannot correct this violation since it is due to material and/or other good cause. You will be further notified that we will be seeking judicial action by termination of your lease.

Sincerely,

Shady Moss Apartments

Address: 1705 Shady Moss Ct Conway SC 29527

Phone: 843-804-6741

Fax: 843-804-6741

Email: shadymoss@boyd-mail.com

TTY Relay #: 711

cc: Resident file

"The Fair Housing Act prohibits discrimination in real estate related transaction, or in the terms of conditional of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U.S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777."



CHL-TCC, 10/2020 v1



Date: 2/12/21

Delivered by: Certified Mail

Tenant Name: Jeffery RushUnit: 6cDear Jeffery Rush:

You are advised that your lease agreement is terminated. This termination of tenancy is due to material and/or other good cause violation of your Lease Agreement. Please refer to Section 26 of your Lease: V. Drug Related criminal activity engaged in on or near community by any tenant, household member or guest or any such activity on community by any other person under tenants control. You may choose to voluntarily vacate the premises. If you so choose, you should notify this office and return all keys on the date you vacate. However, if you have not vacated by 3/12/21 (30+ days from the above date), you are advised that eviction proceedings may be sought through the appropriate judicial process according to State Law at which time you may present a defense.

You and your attorney may view your file and copy any information it contains to aid you in your defense. Attached to this notice are a copy of the Notice of Occupancy Rights for VAWA Victims (5380) and the VAWA Certification Form (5382).

Sincerely,

Kara LoganManager of Shady Moss ApartmentsAddress: 1705 Shady Moss Ct Conway SC 29527Telephone: 843-804-6741Fax: 843-804-6741Email: shadymoss@boyd-mail.com

For the hearing impaired TTY Relay #: 711

Cc: Resident file; copy to CMI Compliance Department



"The Fair Housing Act prohibits discrimination in real estate related transaction, or in the terms of conditional of such a transaction, race, color, religion, sex, disability, familial status, or national origin. The Federal agency that is responsible for enforcing this law is the U.S. Department of Housing and Urban Development. If a person believes that they have been discriminated against in violation of this law, they should contact the U.S. Department of Housing and Urban Development, Washington, D.C. 20410 or call (800) 669-9777."



INCIDENT REPORT

CASE NUMBER

82015

INC. ENT'D.

2 0 2 0 0 2 2 2 1 7

INCIDENT TYPE										COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TITLE VICTIM	
1. 35A - Drug/Narcotic Violations - D - Distributing/Selling - Society/Public										YES	NO	20		Individual	
2. 320 - Weapon Law Violations - P - Possessing/Carrying - Society/Public										YES	NO	20		Business	
										YES	NO			Financial	
										YES	NO			Governmental	
										YES	NO			Religious	
										YES	NO			Security	
										YES	NO			Other	
										YES	NO			Unknown	
										YES	NO			Police	
INCIDENT LOCATION (HOUSE, APARTMENT AND TRAILER, STREET NAME AND NUMBER)										ZIP CODE		WEAPON TYPE			
1700 SHADY MOSS CT										29527					
INCIDENT DATE		24HR. CLOCK		TO		DATE		24HR. CLOCK		DISPATCH DATE/TIME		24HR. CLOCK		LOCATION NO.	
12/30/2020		15:00								12/30/2020		14:25		15:55	
COMPLAINANT NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT				RESIDENT		RACE		SEX		AGE	
								J S O U							
ADDRESS				CITY				STATE		ZIP CODE		LOCATION NO.			
VICTIM NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT				RESIDENT		RACE		SEX		AGE	
Society/Public								J S O U							
HEIGHT		WEIGHT		HAIR		EYES		SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECuliarITIES, ETC.							
ADDRESS				CITY				STATE		ZIP CODE		LOCATION NO.			
VICTIM UNEMPLOYED (YES) ☐ NO ☐ (YES) ☐ NO ☐										COMPLAINANT OF ANY NON-VISIBLE INJURY ☐ YES ☐ NO ☐					
INQUIRY NO. 1 ☐ USUAL ALCOHOL ☐ YES ☐ NO ☐ US ☐ OTHER ☐ YES ☐ NO ☐ US ☐ TYPE															
TWO-WAY ☐ ONE-WAY ☐ DETECTIVE PLANE ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ 1- This Jurisdiction										S- State D- Out of State U- Unknown					
☐ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE		SEX		AGE		DOB		DATE OF BIRTH		HEIGHT	
☐ WITNESS		MELVIN, TERRENCE LAMOUNT		B		M		38		N		1/1982			
☐ VICTIM		SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECuliarITIES, ETC.													
☐ WITNESS															
☐ ARREST		ADDRESS				CITY				STATE		ZIP CODE		LOCATION NO.	
☐ JAIL						CONWAY				SC		29526			
☐ SUBMISSION		SUBJECT (NO. 1) ☐ USUAL ALCOHOL ☐ YES ☐ NO ☐ US ☐ TYPE				APPROXIMATE OFFENSE CODE				☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST	
		BRIEF ☐ YES ☐ NO ☐ US ☐ TYPE				TOTAL ARRESTED 1						12/30/2020 3:00:00 PM		12/30/2020 3:30:00 PM	
On Wednesday, December 30th 2020, Conway Investigations was assisting the US Marshals Task Force in attempting to locate an NCIC wanted person out of Conway City for Attempted Murder. The Marshals Task force had information that the arrestee was located at 1708 Shady Moss Court Apt C6. On arrival contact was made with the occupants at which time the listed arrestee was seen standing inside the apartment. While apprehending the listed arrestee it was noted in plain view that there was a green leafy vegetation that due to officers training and experience identified as marijuana was seen on the living room table. At that point all occupants were asked to leave the residence and that apartment was secured while a search warrant for the apartment was obtained. Det. Edwards then obtained and search warrant and brought it to the location. Once the search warrant was obtained the apartment was processed. Located inside the residence was approximately 9.6 grams of a green leafy vegetation that was identified as marijuana by officer training and experience. Along with the marijuana approximately 1.0 grams of a brown powdery substance that was identified as heroin by officers training and experience. Also located with the heroin inside the small black pack located in the living room was a 9mm Smith and Wesson Shield bearing SN: _____ The next item seized was a black and blue Nokia cell phone with IMEI _____ that was located within close proximity to the bag containing _____															
JURISDICTION OF FBI LAW ENFORCEMENT AGENCY										JURISDICTION OF LOCAL LAW ENFORCEMENT AGENCY					
TYPE GROUP		20		33		23		77						TOTAL VALUE	
ATTORNEY															
BANKRUPT															
BURNED															
RECOVERED															
SUITED		1771		1		1		4						1782	
SUBJECT IDENTIFIED		☐ YES ☐ NO ☐		SUBJECT LOCATED		☐ YES ☐ NO ☐		ACTIVE		☐ YES ☐ NO ☐		ARRESTED UNDER 18		☐ YES ☐ NO ☐	
								UNFOUNDED		☐ YES ☐ NO ☐		ARRESTED UNDER 18		☐ YES ☐ NO ☐	
REASON FOR ENTRY (NON-CLEARANCE)		1- OFFENSE DEATH		2- NO PROSECUTION		3- EXTRADITION DENIED		4- VICTIM DECEASED COOPERATION		5- AVAILABLE FOR QUESTION					
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE		UNIT NUMBER					
Hudson, Alvin		12/30/2020		C924											
FOLLOWUP INVESTIGATION		☐ YES ☐ NO		OFFICER											

narcotics and the firearm, in the living room. The final thing that was seized was \$ ——— in US Currency that belong to the listed arrestee. This currency was noted be in small denominations which is consistent with street level narcotic sales.

The listed arrestee was transported to HCDC by CPD Patrol and a hold was placed for the located items inside the residence. The evidence was then transported back to CPD where it was processed. The narcotics was placed into SLED

BEST Kit # B323571. The \$ ——— was placed onto a Currency Domination form and placed into Currency Bag # 4294794 after being double verified by CSI Bauman and I. All evidence was then placed into the evidence locker.

Warrants will be obtained for the listed narcotics and possession of a firearm by certain person as the listed arrestee in a convicted of a felon.

INC.	ENTD.
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1.9.1

RECEIVED

Aug 21 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2022-001353

Jeffery Rush,

Appellant

v.

Shady Moss Apartments,

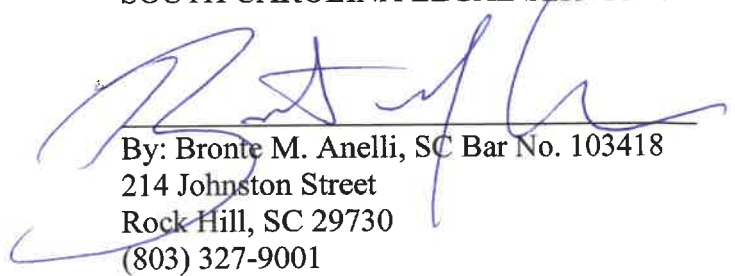
Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

SOUTH CAROLINA LEGAL SERVICES

August 21, 2023


By: Bronte M. Anelli, SC Bar No. 103418
214 Johnston Street
Rock Hill, SC 29730
(803) 327-9001

Attorney for Appellant