

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CAROLINA REAL ESTATE HOLDINGS,
LLC

Plaintiff,

v.

BRILIN ELECTRIC, LLC and W & L
SERVICES, LLC

Defendants.

IN THE GENERAL COURT OF COMMON
PLEAS SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-01145**ORDER ON POST-TRIAL MOTIONS**

This above referenced matter is before the Court for post-trial motions.

The underlying litigation arises from a commercial Lease relationship between Carolina Real Estate Holdings, LLC ("Plaintiff" or "Landlord") and Defendant Brilin Electric, LLC ("Defendant" or "Tenant"). After a lengthy trial, the jury was presented a general verdict form that addressed three claims: (1) the Plaintiff's Breach of Contract claim against the Defendant; (2) the Defendant's Breach of Contract counterclaim against the Plaintiff; and (3) the Defendant's counterclaim of a violation of the Unfair Trade Practices Act ("UTPA"). After concluding their deliberations, the jury's foreperson completed and signed the verdict form. The jury found for the Plaintiff on its breach of contract claim against the Defendant in the amount of \$10,513.88 as actual damages. The jury found for the Defendant on its breach of contract counterclaim against the Plaintiff in the amount of \$4,424.75 as actual damages; and found for the Defendant on its UTPA counterclaim against the Plaintiff in the amount of \$6,089.13 as actual damages. After the verdict was announced, both parties were provided an opportunity to raise any concerns or issues prior to the jury's dismissal. Hearing nothing from either side, the jury was dismissed.

Post-trial motions were timely filed by both parties. Both parties seek an award of attorney's fees pursuant to the Lease provision which provides for an award of reasonable attorney's fees to the prevailing party if litigation over the Lease occurs. Plaintiff also seeks a

JNOV on the jury determination on the UTPA counterclaim; and Plaintiff seeks a *nisi remittitur* as to the dollar amounts awarded on the UTPA (from \$6,089.13 to \$1.00) and the breach of contract claim against the Plaintiff (seeks a reduction in the amount of \$280.00). In addition to an award of reasonable attorney's fees pursuant to the Lease terms, the Defendant also seeks an award of reasonable attorney's fees pursuant to the UTPA. The Defendant also seeks to treble the jury's determination of actual damages of the UTPA award as mandated and required by the statute for willful conduct.

When determining the issue of "prevailing party" this Court has examined the case law offered by both sides and also considered the statutory references made by the parties and those cited in the *Seckinger* case. *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (1997). It is very clear to this Court that the Plaintiff is not the prevailing party. The only way the Plaintiff can be considered as the prevailing party is to isolate the jury determination of its award of \$10,513.88 of actual damages and to ignore the rest of the litigation involving the Lease. The jury's verdict, on its face, was clear that it did not want the Plaintiff to leave the courtroom with an award of money. In the jury's wisdom, it made an identical award of \$10,513.88 to the Defendant which it split between the defendant's contract claim and the UTPA claim. While the Plaintiff can and did argue through its motion of JNOV and *Nisi Remittitur* motions that the awards should be reduced, even if granted, the jury's message remains clear. The jury did not wish the Plaintiff to net a recovery of money. While the argument can be made that by awarding the identical amount to the Defendant, the jury also did not wish the defendant to net a recovery, the jury gave the Defendant a sum that was more than what was argued in the defendant's closing. The more logical and reasonable conclusion is that the jury accepted the Defendant's factual theory of the case and viewed the evidence in a manner that favored the

Defendant. Thus, the reasonable conclusion was that the Defendant prevailed in convincing the jury of the truth of the matters it asserted to them. Additionally, even if the Plaintiff's JNOV and *nisi* motions were granted, the Plaintiff still would not meet its burden of it being the prevailing party given the magnitude of the case it brought and actively pursued against the Defendant in relation to the award of damages it made to the Plaintiff. The testimony presented during the trial also supports this Court's conclusion. Given the overall nature of the case, the Defendant is the prevailing party as to the issues arising from the Lease.

It is worth noting that before trial, this Court made repeated attempts to encourage the parties to the litigation to resolve the dispute prior to trial. Both parties proposed informal offers, but neither party made a formal written offer as allowed by the statutes referenced in *Seckinger* (and no formal offer of judgment was made as allowed by the rules of civil procedure). As such, this Court is prohibited from using any settlement demands as a factor in determining the issue of prevailing party. This Court also examined the pleadings and could not find an exact amount demanded by either party. Notwithstanding, this Court's knowledge of the settlement discussions was a factor in determining the reasonableness of the award of attorney's fees as it relates to the work performed by the attorneys in preparing the case.

Because neither party desired to engage the jury with further questions after their verdict was announced, the issue of willfulness is made *de novo* by this Court. This Court's *de novo* review includes the credibility of the witnesses who testified at trial. Accordingly, this Court finds the Defendant has met its burden of establishing willfulness for purposes of the UTPA.

The UTPA, similar to the Lease provision, mandates the award of attorney fees when a willful violation is established. The same attorney fees analysis accomplished herein related to the Lease agreement can also apply to the award of attorney fees for UTPA.

As to the reasonableness amount of the fee, this Court has considered the traditional factors in South Carolina for setting attorney fees. This Court has also considered factors unique to this particular case. Given the dollar amount sought by the Plaintiff if it were determined to be the prevailing party, the amount awarded by this Court falls within the area of reasonableness. Furthermore, the fact that Plaintiff was successful on one of its claims against the Defendant is the primary factor in reducing the full amount sought by Defendant for attorney fees. The quality of legal work performed by all of the attorneys before this Court was of a very high caliber. While both hourly rates listed by the attorneys are reasonable, some consideration was given to the lower rate charged by Plaintiff's counsel. Also, some consideration was given to the fact that some charges appear to be for prelitigation matters. Another factor in not awarding the full amount presented by the defendant for attorney fees is that this Court has trebled the damages for the UTPA claim. In other words, this Court has made a diligent effort to determine a reasonable attorney fee to award in this case.

THEREFORE, it shall be the Order of the Court that:

1. That Defendant's jury award for damages for the Plaintiff's violation of the UTPA be trebled and awarded to the Defendant in the amount of \$18,267.99;
2. The Defendant is entitled to its reasonable attorney's fees of \$58,879.55 and costs of \$3,553.05, totaling \$62,432.60 pursuant to the prevailing party provision contained in section 28(g) of the Lease; and
3. The Plaintiff pay the Defendant's reasonable attorney's fees and costs as the prevailing party, and treble damages resulting from the Plaintiff's violation of the UTPA, in the total amount of \$80,700.59.

AND IT IS SO ORDERED.

HON. MARK J. HAYES
SIXTEENTH JUDICIAL CIRCUIT

November __, 2022
York, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-46-01145

Carolina Real Estate Holdings, LLC

Brilin Electric, LLC &

W & L Services, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Nathan A. White

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

DISPOSITION TYPE (CHECK ONE)

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Brilin Electric, LLC	Carolina Real Estate Services, LLC	\$80,700.59
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

Verdict, plus Order on Post-Trial Motions; see attached order.



York Common Pleas

Case Caption: Carolina Real Estate Holdings Llc VS Brilin Electric Llc , defendant,
et al
Case Number: 2020CP4601145
Type: Order/Judgment and Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2022-12-09 15:26:33 page 8 of 8

ELECTRONICALLY FILED - 2022 Dec 09 3:38 PM - YORK - COMMON PLEAS - CASE#2020CP4601145

ROA00015

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP4601145

Carolina Real Estate Holdings
Llc

Brilin Electric Llc

W & L Services Llc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

SEE ATTACHED VERDICT FORM

ORDER INFORMATION

This order ~~ends~~ does not end the case.
Additional Information for the Clerk: _____

*Jury Verdict \$10,513.85 for Plaintiff, \$4,424.75 for Defendant
and \$6,089.13 for Defendant*

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2132
Judge Code

7/21/2022
Date

For Clerk of Court Office Use Only

This judgment was entered on 11/19/23, and a copy mailed first class or placed in the appropriate attorney's box on 11/19/23, to attorneys of record or to parties (when appearing pro se) as follows:

Stephen David Dlazneski PO Box 10940 Rock Hill, SC
29731

Nathan Adam White 1420 E. 7Th St. Suite 100 Charlotte, NC
28204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: DCRP

David Hamilton - Clerk of Court

Court Reporter: DCRP: Ebony Love Taylor

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C/A No. 2020-CP-46-01145

CAROLNA REAL ESTATE HOLDINGS,
LLC

Plaintiff,

v.

BRILIN ELECTRIC, LLC and W & L
SERVICES, LLC

Defendants.

JURY VERDICT FORM

- I. As to the Plaintiff's claim of Breach of Contract against the Defendant, we unanimously find:

☒ for the Plaintiff and award
\$ 10,513.88 as actual damages
OR
☐ for the Defendant

- II. As to the Defendant's counterclaim of Breach of Contract against the Plaintiff, we unanimously find:

☐ for the Plaintiff
OR
☒ for the Defendant and award
\$ 4,424.75 as actual damages

III. As to the Defendant's counterclaim of a violation of the Unfair Trade Practice Act, we unanimously find:

_____ for the Plaintiff

OR

☒ for the Defendant and award

\$ 6,089.13 as actual damages

July 21, 2022
York, SC


JURY FOREPERSON

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Carolina Real Estate Holdings, LLC,)
)
Plaintiff,)
)
vs.)
)
Brilin Electric, LLC,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

SUMMONS
(NON-JURY ACTION)

CASE NO.: 2020-CP-46-_____

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the undersigned at HAMILTON MARTENS, LLC, at Post Office Box 10940, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the day of such service; and you are hereby notified that should you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

s/ Steve D. Dluzneski
Steve D. Dluzneski
S.C. Bar No.: 102019
HAMILTON MARTENS, LLC
P. O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
steve.dluzneski@hamiltonmartens.com
ATTORNEYS FOR PLAINTIFF

March 27, 2020
Rock Hill, South Carolina

FACTUAL BACKGROUND

5. Plaintiff realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

6. Plaintiff is the owner of a commercial property located at 2180 Carolina Place Drive, Suite 111 in Fort Mill, South Carolina (the "Premises").

7. On or about April 17, 2017, the Plaintiff entered a written lease agreement with Defendant for the Premises (the "Lease"). A true and accurate copy of the Lease is attached hereto as "Exhibit A" and its terms are incorporated herein by reference.

8. Among other provisions, the Lease provided for a three-year lease term commencing on May 1, 2017, and ending on April 30, 2020.

9. Paragraph 10 of the Lease provided that the Plaintiff "shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of [the Defendant], its employees, agents, invitees or contractors."

10. Paragraph 11(a) of the Lease provided that the Defendant, "throughout the initial term of [the Agreement], and any extension or renewal thereof, at its expense, shall maintain in good order and repair the [Premises], specifically including but not limited to any building and other improvements located thereon."

11. During the third year of the initial term of the Lease, the Plaintiff discovered multiple damages to the Premises that were caused by the negligence, recklessness, and/or intentional wrongful acts of the Defendant including, but not limited to, the following:

(a) There is damage to one or more interior walls inside the building at the Premises that must be repaired;

(b) Two of the overhead doors of the building at the Premises have been damaged and

must be repaired or replaced;

(c) The carpeting inside the office area of the building at the Premises has been soiled and must be professionally cleaned;

(d) The walls inside the office area of the building at the Premises have been damaged and must be re-painted;

(e) Asphalt paving outside the building at the Premises has been damaged in one or more areas and must be replaced; and,

(f) The brickwork in the area of the overhead door that opens on to the ramp at the building at the Premises has been damaged and must be repaired.

12. As a direct and proximate result and consequence of the negligence, recklessness, and/or intentional wrongful acts by the Defendant at the Premises, the Plaintiff has incurred damages in an amount to be determined by the trier of fact.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence)

13. The Plaintiff realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

14. The Defendant has a duty, throughout the lease term provided for in the Lease, to maintain the Premises in good order and repair.

15. The Defendant breached its duty to maintain the Premises in good order and repair, and the Defendant was negligent, grossly negligent, careless, willful and wanton in connection with its tenancy at the Premises in the following particulars:

(a) By causing damage to one or more of the interior walls inside the building at the Premises;

(b) By causing damage to two of the overhead doors of the building at the

Premises;

- (c) By engaging in actions and/or omissions that have caused the carpeting inside the office area of the building at the Premises to become soiled to the point of needing professional cleaning;
- (d) By engaging in actions and/or omissions that have caused the walls inside the office area of the building at the Premises to require re-painting of the same;
- (e) By causing damage to the asphalt paving outside the building at the Premises in one or more areas; and,
- (f) By causing damage to the brickwork in the area of the overhead door that opens on to the ramp at the building at the Premises.

16. The damages set out and described in Paragraphs #11 and 15 herein have proximately damaged the Plaintiff in an amount to be determined by the trier of fact.

17. Since the damages set out and described in Paragraphs #11 and 15 herein were committed with gross negligence and reckless disregard for the rights of others, the Plaintiff is entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

18. The Plaintiff realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

19. The Defendant breached the Lease by failing to maintain the Premises, including the building located thereon, in good order and repair during the lease term provided for in the Lease.

20. The Defendant's breach of the Lease has caused the Plaintiff to suffer damages, in that the Plaintiff must now repair the damages set out and described in Paragraphs #11 and 15

herein.

21. The Plaintiff is entitled to the remedies available to it pursuant to the Lease, and under the common and statutory law of this state.

WHEREFORE, having fully plead, the Plaintiff prays for the following relief:

- (1) For judgment against the Defendant, and for an award of such damages and relief as authorized by the terms of the Lease, at law or in equity;
- (2) For an award of attorney's fees and court costs incurred by the Plaintiff in bringing and prosecuting this action; and,
- (3) For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

s/ Steve D. Dluzneski

Steve D. Dluzneski

S.C. Bar No.: 102019

HAMILTON MARTENS, LLC

P. O. Box 10940

Rock Hill, South Carolina 29731

(803) 329-7672

steve.dluzneski@hamiltonmartens.com

ATTORNEYS FOR PLAINTIFF

March 27, 2020

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) **LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") by and between Carolina Real Estate Holdings, LLC, a North Carolina limited liability company, ("Landlord"), whose address is 15105-D John J. Delaney Drive, Suite 347, Charlotte, NC 28277-2741, or such other address as Landlord specifies in writing; and Berlin Electric LLC, ("Tenant"), whose address is 1974 Carolina Place Dr #108 Fort Mill SC 29708

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

BACKGROUND STATEMENT

A. Landlord is the owner of the building located at 2180 Carolina Place Drive, Fort Mill, York County, South Carolina, (the "Building").

B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises for the purposes and upon the terms and conditions hereinafter set forth.

PREMISES

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (hereinafter called the "Premises"), to wit: Suite 111, 2180 Carolina Place Drive, Fort Mill, SC 29715.

TERM AND CONSTRUCTION

2. (a) The term of this Lease shall commence on the date May 1, 2017 (the "Rent Commencement Date") and ends on April 30, 2020. All of the following conditions shall have been satisfied or waived by Tenant in writing:

2.1 Landlord has delivered actual possession and control of the Premises to Tenant;

2.2 Landlord has delivered a fully executed copy of this Lease to Tenant.

The first Lease Year Anniversary shall be the date twelve calendar months after the first day of the first full month immediately following the Rent Commencement Date and successive Lease Year Anniversaries shall be the date twelve calendar months from the previous Lease Year Anniversary. The lease shall terminate on the date which is the third Lease Year Anniversary (the "Initial Term"), unless sooner terminated pursuant to this Lease. Further, and so long as

this Lease has not been terminated and so long as Tenant is not then in default, Tenant shall have the right to renew the term of this Lease for one (1) successive period of three (3) years by providing written notice of its election to renew the term to Landlord one hundred eighty (180) days prior to the expiration of the then existing term of this Lease (as it may have been renewed). Rent for the additional three (3) period shall be \$3,200.00 per month, plus 3% per year.

(b) Tenant shall not permit any mechanic's, materialman's or similar lien to be filed against any portion of the Premises for any labor performed or material furnished in connection with any work performed or caused to be performed by Tenant, (and not relating to Landlord's failure to perform Landlord's obligations hereunder) to attach to the Premises or the Building or the interest of Landlord or Landlord's lessor, if any, therein or to Tenant's interest in this Lease or the Premises at any time. Tenant covenants and agrees to indemnify, defend and hold harmless Landlord from and against any such lien or claim of lien and any and all costs, expenses and liabilities relating thereto. If any such lien is filed, then Tenant shall fully pay or discharge the same or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof. If Tenant fails to fully pay or discharge such lien or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof, then Landlord shall have the immediate right (but not the obligation) to pay and/or discharge such lien at Tenant's cost and expense, and Tenant shall, within ten (10) days of written demand, pay all Landlord's costs and expenses incurred in paying or discharging such lien. Tenant's failure to fully pay or discharge said lien or post a bond within the time specified shall also constitute an immediate default under the Lease and Tenant may exercise its rights to terminate and pursue any other remedies available at law or in equity. Prior to the commencement of any improvements to the Premises, Tenant shall notify Landlord thereof so that Landlord may execute for Tenant, and Tenant may post in a conspicuous place upon the Premises, a notice of non-responsibility as contemplated by the South Carolina Code of Laws.

RENTAL

3. Beginning on the "Rent Commencement Date," Tenant agrees to pay Landlord without notice, demand, deduction or set off, rent in monthly installments in advance on the first day of each calendar month as follows: \$3,000.00 per month during the first Lease Year; \$3,090.00 per month during the second Lease Year; and \$3,182.70 per month during the third Lease Year. Rental for any period during the term hereof which is less than one month shall be the pro-rated portion of the monthly installment of rental due, based upon a 30-day month.

Tenant shall pay all rental to Landlord at the following address: Carolina Real Estate Holdings LLC, 15105-D John J. Delaney Dr., Suite 347, Charlotte, NC 28277.

LATE CHARGES

4. If Landlord fails to receive full rental payment within ten days after it becomes due. Tenant shall pay Landlord, as additional rental, a late charge equal to five percent (5.00%) of the overdue amount, plus any actual bank fees incurred for dishonored payments. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

SECURITY DEPOSIT

5. Upon the execution of this Lease, Tenant shall deposit with Landlord the sum of \$3,000.00 as a security deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The security deposit does not represent payment of and Tenant shall not presume application of same as payment of the last monthly installment of rental due under this Lease. Landlord shall have no obligation to segregate or otherwise account for the security deposit except as provided in this paragraph 5. If any of the rental or other charges or sums payable by Tenant shall be over-due and unpaid or should payments be made by Landlord on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary, to compensate toward the payment of the rents, charges or other sums due from Tenant, or towards any loss, damage or expense sustained by Landlord resulting from such default on the part of the Tenant; and in such event Tenant upon demand shall restore the security deposit to the amount set forth above in this paragraph 5. In the event Tenant furnishes Landlord with proof that all utility bills and other bills of Tenant related to the Premises have been paid through the date of Lease termination, and performs all of Tenant's other obligations under this Lease, the security deposit shall be returned to Tenant within sixty (60) days after the date of the expiration or sooner termination of the term of this Lease and the surrender of the Premises by Tenant in compliance with the provisions of this Lease.

UTILITY BILLS/SERVICE CONTRACTS

6. Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Premises shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable Service Obligations prior to delinquency. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Within thirty (30) days of the Lease Commencement Date, Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

Landlord shall be responsible for: Landscaping and Pest Control.

Tenant shall be responsible for: Sewer/Septic, Water, Electric, Gas, Telephone, HVAC (excluding semiannual service), Security System, Fiber Optic, and interior janitorial and cleaning.

Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Tenant, its employees, agents, invitees or contractors or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Premises, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord makes no representations or warranties with respect to the heating, ventilation and air conditioning system(s) or utility installations existing as of the date hereof or in the future. Subject to the provisions of this paragraph 6, Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Premises of utilities or the heating, ventilation and air conditioning system(s) and Tenant shall have no right to terminate this Lease or withhold rental because of the same.

RULES AND REGULATIONS

7. The rules and regulations, if any, attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with any Rules and Regulations of Landlord in connection with the Premises which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided such Rules and Regulations are in writing and are not in conflict with the terms and conditions of the Lease.

TAXES AND INSURANCE

8. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises as Landlord in its reasonable discretion may deem appropriate. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon.

INSURANCE; WAIVER; INDEMNITY

9. (a) During the term of this Lease, Tenant shall maintain commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than \$1,000,000.00 combined single limit, per occurrence, specifically including liquor liability insurance covering consumption of alcoholic beverages by customers or invitees of Tenant should Tenant choose to sell alcoholic beverages. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder. All policies of insurance provided for herein shall name as "additional insureds" Landlord, Landlord's Agent, all mortgagees of Landlord and such other individuals or entities as Landlord may from time to time designate upon written notice to Tenant. Tenant shall provide to Landlord,

at least thirty (30) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide evidence of all insurance required under this Lease to Landlord prior to the Lease Commencement Date.

(b) Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "all risks" insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only so long as available in the State of South Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

(c) Except as otherwise provided in paragraph 10(b), Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's employees, agents, invitees or contractors. Except as otherwise provided in paragraph 10(b), Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's employees, agents, invitees or contractors. The indemnity provisions in this paragraph 10 cover personal injury and property damage and shall bind the employees, agents, invitees or contractors of Landlord and Tenant (as the case may be). The indemnity obligations in this paragraph 10 shall survive the expiration or earlier termination of this Lease.

REPAIRS BY LANDLORD

10. Landlord agrees to keep in good repair the roof, foundation, structural supports and exterior walls of the buildings located on the Premises (exclusive of all glass and exclusive of all exterior doors) and, except as may be specifically allocated to Tenant in paragraph 12 herein, Landlord agrees to be responsible for capital repairs and replacements on the Premises; provided that Landlord shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of Tenant, its employees, agents, invitees or contractors. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions. Tenant agrees to pay, within thirty (30) days of receipt of an invoice detailing such increase, Tenant's Proportionate Share (18%) of any increase in the Common Area Maintenance over the Base Year of 2016. The term "**Common Area Maintenance Expenses**" shall mean and include the total cost and expense typically paid or incurred in operating and maintaining the Common Areas of property of this type, including but not limited to landscaping, parking lot repair, painting, lighting, insurance, removal of trash and payment for exterior lighting and water.

REPAIRS BY TENANT

11. (a) Tenant accepts the Premises in their present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Premises, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon, all light bulb and ballast replacements, plumbing fixtures and systems repairs within the Premises and water heater repairs. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contractor as to any repairs in excess of \$3,000.00.

Landlord warrants to Tenant that all components of the building shall be in good first class condition and working order at the time Tenant first occupies the Premises. Landlord shall either assign to Tenant or enforce on Tenant's behalf, all warranties on the HVAC system and any other systems and equipment installed on or within the Premises.

Tenant, at its expense, shall maintain the heating, ventilation and air conditioning system(s) in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Provided that Tenant shall have obtained Landlord's prior written approval of the contractor and the repair or replacement expenses for heating, ventilation and air conditioning equipment, Tenant shall not be liable for more than \$ 200.00 (per occurrence) or \$600.00 (annually), and Landlord shall reimburse Tenant for the amount in excess of the stated amount upon the written request of Tenant.

(b) Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease, in as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph 12.

ALTERATIONS

12. Other than Tenant's Initial Improvements, Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this paragraph 13 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant shall have the right to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and shall restore the Premises to its prior condition, all at Tenant's expense. Tenant may remove any of Tenant's machinery, equipment or trade fixtures. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the

removal of any such machinery, equipment or trade fixtures. It is Tenant's intention to have a third party install and own certain work station and divider equipment within the Premises. Landlord consents to this installation and waives any lien as to such third party property.

DESTRUCTION OF OR DAMAGE TO PREMISES

13. (a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Landlord shall have the right to terminate this Lease on written notice to Tenant within thirty (30) days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Premises are damaged but not wholly destroyed by any such casualties or if the Landlord does not elect to terminate the Lease under paragraph 14(a) above, Landlord shall commence (or shall cause to be commenced) reconstruction of the Premises within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed

two hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Premises within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event of any casualty at the Premises during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of reconstruction of the Premises, Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

(e) In the event of the termination of this Lease under any of the provisions of this paragraph 14, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

GOVERNMENTAL ORDERS

14. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance,

regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Premises, (b) the rules and regulations of any applicable governmental insurance authority or any similar body, relative to the Premises and Tenant's activities therein; (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time and (d) the Americans with Disabilities Act (42 U.S.C.S. § 12101, et seq.) and the regulations and accessibility guidelines enacted pursuant thereto, as the same may be amended from time to time. Landlord and Tenant agree, however, that if in order to comply with such requirements the cost to Tenant shall exceed a sum equal to one (1) year's rent, then Tenant may terminate this Lease by giving written notice of termination to Landlord in accordance with the terms of this Lease, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements, unless, within thirty (30) days of receiving such notice, Landlord agrees in writing to be responsible for such compliance, at its own expense, and commences compliance activity, in which case Tenant's notice given hereunder shall not terminate this Lease.

CONDEMNATION

15. (a) If the entire Premises shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

(b) If more than twenty-five percent (25%) of the floor area of any building of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

(c) Landlord and Tenant, immediately after learning of any taking, shall give notice thereof to each other.

(d) If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (i) at Landlord's cost and expense and as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Premises remaining to a complete unit of like quality and character as existed prior to such appropriation or taking, and (ii) the annual rent provided for in paragraph 3 and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any

partial taking of the Premises.

(c) Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this paragraph 16, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ASSIGNMENT AND SUBLETTING

16. Tenant shall not assign this Lease or any interest hereunder or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. No sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.

EVENTS OF DEFAULT

17. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental or any other monetary obligation as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

REMEDIES UPON DEFAULT

19. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant

damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant's agent, without terminating this Lease, may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on re-letting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default and expressly shall have no duty to mitigate Tenant's damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

EXTERIOR SIGNS

19. Any and all signs placed on the Premises shall be in compliance with governmental rules and regulations governing such signs. Tenant shall provide the Landlord with the basic design of any exterior building sign proposed to be installed on the exterior of the building for approval, approval shall not be unreasonably withheld. Tenant may place additional signs and shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

LANDLORD'S ENTRY OF PREMISES

20. Landlord may advertise the Premises "For Rent" or "For Sale" 90 days before the termination of this Lease. Landlord may enter the Premises upon prior notice at reasonable hours to exhibit same to prospective purchasers or tenants, to make repairs required of Landlord under the terms hereof, for reasonable business purposes and otherwise as may be agreed by Landlord and Tenant. Landlord may enter the Premises at any time without prior notice, in the event of an emergency or to make emergency repairs to the Premises. Upon request of Landlord, Tenant shall provide Landlord with a functioning key to the Premises and shall replace such key if the locks to the Premises are changed.

QUIET ENJOYMENT

21. So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, subject to the terms hereof.

HOLDING OVER

22. If Tenant remains in possession of the Premises after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law. In such event, commencing on the date following the date of expiration of the term, the

monthly rental payable under Paragraph 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

ENVIRONMENTAL LAWS

23. (a) Tenant covenants that with respect to any Hazardous Materials (as defined below) it will comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). Tenant shall remove all Hazardous Materials from the Premises, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all Hazardous Materials Requirements.

(b) Tenant shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Tenant shall provide Landlord with copies of all such items upon request. Tenant shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Tenant, or related in any manner to Hazardous Materials. In addition, Tenant shall provide Landlord with copies of all responses to such correspondence at the time of the response.

(c) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the premises if such Hazardous Materials were stored on the Premises by Tenant, its agents, employees, invitees or successors in interest.

(d) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria,

virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(e) The warranties and indemnities contained in this paragraph 24 shall survive the termination of this Lease.

SUBORDINATION; ATTORNMEN; ESTOPPEL

24. (a) This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future mortgages affecting the Premises. Within ten (10) days after the receipt of a written request from Landlord or any Landlord mortgagee, Tenant shall confirm such subordination by executing and delivering Landlord and Landlord's mortgagee a recordable subordination agreement and such other documents as may be reasonably requested, in form and content satisfactory to Landlord and Landlord's mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable mortgagee must agree that mortgagee shall not unilaterally, materially alter this Lease and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant acknowledges that any Landlord mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

(b) If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or non-judicially, or otherwise acquired, by a Landlord mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, upon the request of Landlord or Landlord's successor, execute an attornment agreement confirming the same, in form and substance acceptable to Landlord or Landlord's successor and Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior to such sale, transfer or conveyance; and Tenant agrees to look solely to the successor in interest of Landlord for the performance of those covenants accruing after such sale, transfer or conveyance. Such agreement shall provide, among other things, that said successor shall not be bound by (a) any prepayment of more than one (1) month's rental (except the Security Deposit) or (b) any material amendment of this Lease made after the later of the Lease Commencement Date or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment.

(c) Within ten (10) days after request from Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts then in existence concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel Certificate within said ten (10) day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential mortgagee or transferee the statements contained in such estoppel certificate without exception.

ABANDONMENT

25. Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises, at the option of Landlord, shall be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

MEDIATION

26. If any dispute relating to this lease between the Parties is not resolved through informal discussion within 14 days from the date a dispute arises, the Parties agree to submit the issue before a mediator. The decision of the mediator will be binding on the Parties. Any mediator must be a neutral party acceptable to both Parties. The cost of any mediation will be shared equally by the Parties.

NOTICES

27. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the address shown at the beginning of this Lease, except that upon Tenant taking possession of the Premises, then the Premises shall be Tenant's address for such purposes. Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Paragraph 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

GENERAL TERMS

28. (a) "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title to the Premises. "Agent" as used in this Lease shall mean the party designated as same in Paragraph 3, its heirs, representatives, assigns and successors. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sub lessees as to the Premises covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

(b) No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

(c) Time is of the essence in this Lease.

(d) This Lease may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Lease may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Lease shall not affect the validity of any other provisions hereof and this Lease shall be construed and enforced as if such invalid provisions were not included.

(e) Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the part' for whom he or she signs and that his or her signature binds such party. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Lease are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Lease.

(f) Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same.

(g) If legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Lease to be duly executed.

LANDLORD

Carolina Real Estate Holdings, LLC

By: _____

Title: _____

Date: _____

TENANT

Beilin Electric

By: CRussell

Title: Owner

Date: 4/17/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Carolina Real Estate Holdings, LLC,	)	
	)	ANSWER & COUNTERCLAIMS
Plaintiff,	)	
	)	(Jury Trial Demanded)
vs.	)	
	)	CASE NO.: 2020-CP-46-01145
Brilin Electric, LLC,	)	
	)	
Defendant.	)	

Defendant Brilin Electric, LLC ("Brilin" or "Defendant"), answering the Complaint of Plaintiff Carolina Real Estate Holdings, LLC ("CREH"), filed March 27, 2020, responds as follows:

FIRST DEFENSE AND ANSWER

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted that there is written lease agreement between Brilin and CREH. Admitted that the leased premises are in York County. Except as admitted, denied.
4. Admitted.
5. Brilin incorporates by reference its responses to the preceding paragraphs.
6. Admitted.
7. Admitted that Brilin signed the Lease on April 17, 2017, and that the document at Exhibit A is a true and accurate copy of the Lease. Except as admitted, denied.
8. The Lease is a writing that speaks for itself. Except as admitted, denied.
9. The Lease is a writing that speaks for itself. Except as admitted, denied.
10. The Lease is a writing that speaks for itself. Except as admitted, denied.

11. Denied. All subparagraphs, denied.
12. Denied
13. Brilin incorporates by reference its responses to the preceding paragraphs.
14. Denied.
15. Denied. All subparagraphs, denied.
16. Denied.
17. Denied.
18. Brilin incorporates by reference its responses to the preceding paragraphs.
19. Denied.
20. Denied.
21. Denied.
22. WHEREFORE, Defendant Brilin Electric, LLC denies that Plaintiff is entitled to the relief requested in the "WHEREFORE" Paragraph set forth in its Complaint, including all subsections, one through three, and the costs and fees demanded.

GENERAL DENIAL

23. Unless specifically admitted herein, Brilin denies each and every allegation set forth in CREH's Complaint. All affirmative defenses are subject to and do not waive other responses and defenses.

SECOND AFFIRMATIVE DEFENSE **(Failure to State a Claim, Rule 12(b), SCRCP)**

24. Subject to and without waiving the above responses and other defenses, CREH's claims, in whole or in part, are barred for failure to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE
(Unclean Hands)

25. CREH's claims are barred by the doctrine of unclean hands, and the balance of the equities favors Brilin.

FOURTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

26. CREH's claims are barred in whole or in part because repairs were made to the Premises by Brilin as directed by CREH and CREH reviewed, supervised, and approved the repairs. CREH's acceptance of the repairs made by Brilin for damage allegedly caused by Brilin constitutes an accord and satisfaction.

FIFTH AFFIRMATIVE DEFENSE
(Ratification and Waiver)

27. CREH's claims are barred in whole or in part by the doctrines of ratification and waiver.

SIXTH AFFIRMATIVE DEFENSE
(Unfair or Deceptive Trade Practices)

28. Brilin is informed and believes that the acts of CREH constitute unfair and deceptive trade practices as defined in the South Carolina Unfair Trade Practices Act, Article 1, Chapter 5, Title 39, S.C. Code of Laws.

SEVENTH AFFIRMATIVE DEFENSE
(Brilin's Conduct in Conformity with Law or Contract)

29. CREH's claims are barred because Brilin has behaved in conformity with the law and all contractual obligations, to the extent any valid or enforceable contract exists between CREH and Brilin.

EIGHTH AFFIRMATIVE DEFENSE
(Laches, Estoppel, Release)

30. CREH's claims are barred in whole or in part by the doctrines of laches, estoppel, including equitable estoppel, and release.

NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

31. CREH failed to mitigate its damages or has suffered no damages.

TENTH AFFIRMATIVE DEFENSE
(Absence of Damages Suffered)

32. CREH has suffered no actual damages.

ELEVENTH AFFIRMATIVE DEFENSE
(Negligence of Others)

33. Any damage allegedly sustained by CREH was caused or contributed to or by the negligence of persons, firms, corporations, or entities other than Brilin, and such negligence of other parties bars CREH's recovery against Brilin, and/or comparatively reduces Brilin's percentage of fault, if any. Any acts or omissions by Brilin were superseded by the negligence and wrongful conduct of others.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Allege Facts Sufficient to Show Malice, Recklessness or Intentional Misconduct)

34. CREH's Complaint fails to state sufficient factual content to plausibly suggest that Brilin acted with malice, gross negligence, recklessness and outrageous indifference and disregard for the rights of others, such that CREH would be entitled to an award of punitive damages.

THIRTEENTH AFFIRMATIVE DEFENSE
(Speculative Damages)

35. CREH's damages, if any, are entirely speculative, and CREH is therefore not entitled to an award of damages against Brilin.

FIFTEENTH AFFIRMATIVE DEFENSE
(Justification and Privilege)

36. CREH's claims are barred, in whole or in part, because Brilin's conduct was justified in that the actions taken by Brilin were in good faith, acting for a legitimate business purpose, and in furtherance of its own interests by means that are lawful.

SIXTEENTH AFFIRMATIVE DEFENSE
(Barred by Contract)

37. CREH's claims are barred by the terms of the Lease.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Reservation)

38. Brilin specifically reserves the right to file and assert any and all additional defenses in response to CREH's Complaint, including any additional affirmative or special defenses, or any such other matters constituting avoidance, which may subsequently come to the attention of Brilin, to the full extent permitted by the law, including those that become available or apparent during discovery.

BY WAY OF COUNTERCLAIMS AGAINST PLAINTIFF

1. Brilin incorporates by reference its responses in all preceding paragraphs as if restated herein verbatim. All capitalized terms not defined shall have the meaning ascribed to them above or in the Lease unless defined otherwise in these Counterclaims.

2. This Court has subject matter and personal jurisdiction over these Counterclaims.

3. Brilin is a commercial electrician business and provides expertise in all commercial electrical installation and repair. Brilin has over 40 employees.

4. Brilin and CREH are parties to a Lease Agreement (the "Lease"), signed by Brilin on April 17, 2017.

5. The Lease was for a three-year term commencing May 1, 2017 and ending April 30, 2020 (the "Initial Term").

6. Brilin was the "Tenant" and CREH was the "Landlord" and, collectively, are the "Parties" to the Lease.

7. The Lease was for Suite 111, 2180 Carolina Place Drive, Fort Mill, South Carolina, 29715 (the "Premises").

8. The Premises are part of a "Building" consisting of multiple commercial/industrial suites. The Premises are situated on the far-right side of the Building.

9. Only Brilin utilized the right of the Building. The front of the Building is a parking lot for employees and guests, the rear of the Building consists of loading docks with concrete pads and rear entrances servicing the various suites and a large, an unpaved gravel and dirt surface area, and the left side of the Building is a paved surface area allowing for the ingress/egress of commercial trucks to/from the rear of the Building.

10. Commercial vehicles are not permitted in the front Building side parking lot.

11. The Premises contain three large garage doors, two to the rear and one to the right side of the Premises/Building. The two garage doors to the rear (the "Loading Dock Garage Doors") are elevated to allow for the loading/off-loading of large commercial vehicles. The one garage door to the right (the "Side Garage Door") is serviced by a ramp with a sloping grade out to a paved surface area. The garage doors allow for the loading/unloading of heavy equipment stored in the warehouse section of the Premises, which comprises approximately 75% of the square footage of the Premises.

12. Because Brilin is a commercial electrical services company, Brilin does not use large commercial delivery trucks and instead employs a fleet of lighter duty pickup trucks, vans,

and smaller delivery trucks to transport its electrical equipment to and from the Premises to the various jobsites. As such, the Loading Dock Garage Doors cannot be used to directly load/unload equipment on/off Brilin's vehicles. Instead, Brilin used its forklift truck to haul heavy equipment from the warehouse to the rear of the Premises via the Side Garage Door, the ramp, and the right Building side surface area and vice versa.

13. From the outset of the initial term, CREH was aware that Brilin used a forklift truck and that the use of the forklift truck was an essential part of Brilin's business.

14. Brilin would typically load up to 20 vehicles each day before they went off to various jobsites. Using a forklift truck at the Premises was a commercially reasonable thing to do.

15. CREH was also aware that the Side Garage Door and ramp was an essential part of Brilin's business because it could not use the Loading Dock Garage Doors for direct loading/unloading.

16. When the Initial Term commenced, the ramp connecting the Side Garage Door to the paved surface area to the right Building side surface consisted of asphalt. At times, Brilin's forklift truck could not get sufficient traction to climb up the ramp and Landlord agreed to replace the asphalt ramp with a concrete ramp.

17. Concrete is a more suitable surface area for a ramp connected to a large garage door and warehouse where forklift trucks are likely to be employed.

Repaving the Asphalt

18. In the summer of 2019, CREH caused the paved surface areas to the front and sides of the Building to be re-paved. CREH provided no advance notice to Brilin of this construction activity.

19. CREH had the contractor pave the front and right Building side surface areas to a certain thickness and the left Building side surface area to a greater thickness.

20. CREH had the left Building side surface area paved to a greater thickness because, upon information and belief, that was the sole ingress/egress for commercial trucks going to/from the back of the Building and because of the greater weight this surface area would be required to bear.

21. The thickness of the asphalt used for the front and right Building surface areas was suitable only for standard-sized automobiles.

22. CREH, knowing that Brilin utilized a forklift truck to load/unload equipment from the Side Garage Door and that Brilin's use of the forklift truck was commercially reasonable, failed to repave the right Building side with asphalt for a suitable thickness to bear the weight of a forklift truck.

23. The commercially reasonable thing to do would have been for CREH to have the right Building side surface repaved with concrete, the appropriate material to bear the heavy weight of a forklift truck.

24. Repaving with concrete was commercially reasonable for the same reasons the loading docks on the rear of the Building were serviced by concrete pads.

25. Instead of repaving the right Building side surface area with concrete or to the appropriate asphalt thickness to bear the weight of a forklift truck, CREH's "solution" to the problem of its own making was to put up Jersey barriers that precluded Brilin's ability to access the Side Garage Door with a forklift truck.

26. The repaving and blocking of the right Building side surface area impacted Brilin's ability to load and unload using the Side Garage Door. Because of the inability to load/unload

equipment directly into the vehicles using the Loading Dock Garage Doors, and in order to mitigate the impact, Brilin was required to rent out an additional forklift truck in order to expedite loading/unloading by having the forklifts raise up and lower equipment from the Loading Dock Garage Doors, with one forklift truck on the inside and the other forklift truck on the outside.

27. Brilin complained to CREH about this impact and stated it would deduct from its August rent an amount equal to the amount of funds Brilin expended on renting the additional forklift truck, or \$1,144,75.

28. CREH never objected to Brilin's reduction in the rent amount until months later. CREH retained an attorney, sent a Notice of Eviction, and threatened legal action against Brilin including ejectment in Magistrate Court and a money damages suit in Common Pleas, and forced Brilin to pay the full rent amount, plus additional fees.

29. Eventually, CREH relented and allowed Brilin to resume use of the Side Garage Door, the ramp, and the right Building side surfacing area. Brilin continued to use its forklift to transport to/from the warehouse and to load/unload equipment from its vehicles.

30. The repaved surface area began to deteriorate near the concrete ramp. Brilin, at its own expense, had a strip of the asphalt repaved in concrete after CREH refused to make the repairs.

31. After CREH's threats to eject and sue Brilin, the Parties agreed to an onsite meeting on or about October 31, 2019. CREH's owner complained of the items that form the substance of CREH's Complaint. The meeting concluded with Brilin's owner having the distinct impression that CREH's owner only cared about Brilin getting everything fixed and that the issues were largely resolved.

32. Despite the positive outcome of the meeting, and Brilin's assurances that Brilin would repair anything that needed to be repaired, CREH continued to complain about various

items and in February of 2020, began insisting that all repairs be done by contractors selected by CREH or approved by CREH.

33. The Lease divides repair responsibilities between Landlord and Tenant. For those repairs for which Tenant is responsible, Tenant is required to hire licensed contractors and to obtain preapproval from Landlord for any work to be done in excess of \$3,000.

34. It is an implied term of the Lease that Landlord preapprovals will not be unreasonably withheld.

35. CREH also demanded Brilin provide its security access codes so CREH could inspect the Premises at unreasonable hours. CREH claimed this was necessary in part because of the acrimonious relationship between CREH's property manager and Brilin's owner.

36. The Lease does not allow for the Landlord to come upon the Premises at unreasonable hours or for any purpose it so deems without agreement with Tenant, excepting emergency situations.

37. CREH also demanded Brilin disclose the names of all contractors it used for repairs and demanded Brilin cause its contractors for repairs to provide certificates of insurance, including demanding that the certificates of insurance include CREH as an additional insured.

38. No Lease provision requires Tenant to provide contractor certificates of insurance and/or to cause the certificates of insurance to name CREH as an additional insured.

39. No Lease provision requires Tenant to provide contractor names to CREH for any repairs less than \$3,000.

The Demising Wall

40. During the Initial Term, in June 2019, CREH alleged that Brilin caused damaged and a displacement of the demising wall separating the Premises from the remainder of the Building.

41. Brilin, at its own expense, hired a contractor to repair the demising wall and return the demising wall to its original location. The contractor opened the wall from the opposite side of the demising wall and made the necessary repairs.

42. CREH's property manager or other of its agents directed, observed, supervised and ultimately approved the repairs. Until May 2020, CREH did not raise any issues or concerns with the repairs or that it had any additional concerns with the condition of the demising wall.

43. During the final month of the Initial Term, once Brilin had removed most of its equipment of the warehouse, Brilin performed repair work on the demising wall on the Premises side, which consisted primarily of repairing various patches in the gypsum board of the drywall.

44. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising was never in a first-class condition, because the materials used in its construction were marginal or not to the appropriate specifications, and that the demising wall was not properly constructed and situated properly when constructed.

45. To the extent there remains any additional issues with the demising wall, upon information and belief, those issues are due marginal materials or improper initial construction of the demising wall.

Other Claimed Damages

46. During the course of the final months of the Initial Term, Brilin caused to be replaced the Side Garage Door and one of the Loading Dock Garage Doors. Brilin replaced the garage doors with like-kind garage doors in terms of quality, components, and color.

47. The repair estimates for the garage doors was over \$3,000. Brilin sought CREH's approval to make the repairs and CREH refused to approve the repair. Instead, CREH insisted that the repairs be done by a contractor it selected who quoted the replacement of one garage door at twice the cost of the Brilin's contractor to replace both garage doors.

48. CREH's refusal to approve Brilin's request was unreasonable.

49. Brilin repaired and repainted the walls in the office area, Brilin professionally cleaned the carpeting in the office area, and Brilin replaced the handful of damaged bricks over the top right corner of the Side Garage Door.

50. Brilin received quotes to replace a section of damaged asphalt on the right Building side with like kind asphalt of the same thickness, but once again, CREH refused and insisted that Brilin use its selected contractor. Brilin was able to obtain a quote from CREH's paving contractor, which was the same contractor that paved the surface areas in summer of 2019. The quote was for a thickness of asphalt greater than what was in place.

51. At the conclusion of the Initial Term, Brilin requested and attempted to have a final walkthrough to enable CREH to inspect all of the conditions for which CREH had issues or to enable CREH to identify any concerns so that Brilin could address them. CREH refused to have a final walkthrough inspection.

52. The Lease requires Tenant to leave the Premises in a certain condition.

53. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

54. CREH denied Brilin that opportunity and instead waited until the expiration of the Initial Term to register additional complaints about the condition of the Premises.

55. The Initial Term has expired and Tenant has returned possession of the Premises to Landlord.

FOR A FIRST CAUSE OF ACTION
(Breaches of Contract)

56. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

57. The Lease provides for Brilin to peacefully and quietly have and enjoy the possession of the Premises.

58. All conditions precedent for Brilin to avail itself of the covenant of quiet enjoyment have been satisfied.

59. CREH had a duty to not breach the covenant of quiet enjoyment or any other term of the Lease.

60. CREH breached the covenant of quiet enjoyment throughout the Initial Term, and other terms of the Lease.

61. Throughout the Initial Term, CREH's property manager came upon the Premises uninvited, harassed Brilin's employees, and interfered with Brilin's business operations, thereby breaching the Lease and the covenant of quiet enjoyment.

62. CREH insisted on its entry of the Premises without prior notice at unreasonable hours without prior agreement with Brilin in violation of the Lease.

63. CREH began to repave the surface areas without providing adequate notice to Brilin and the failure to give said notice had a material impact on Brilin's business operations.

64. CREH erected Jersey barriers to deliberately, willfully, and maliciously interfere with Brilin's ability to use its forklift truck to move equipment from the warehouse to Brilin's vehicles by way of the Side Door Garage, ramp, and surface area.

65. CREH further harassed Brilin for months and demanded Brilin perform obligations not set forth in the Lease, to wit: demanding Brilin provide the names of all contractors used for repairs; demanding Brilin use only contractors for repairs approved by and selected by CREH; demanding Brilin obtain certificates of insurance for all repairs, including the demand that all certificates of insurance for repairs include CREH as an additional insured; and demanding that Brilin make repairs to the right Building side surface area which was damaged solely because of CREH's own negligence in using commercially unsuitable materials.

66. When Brilin proceeded with replacing two of the garage doors despite Brilin's unreasonable refusal of preapproval, CREH's property manager called the local police to the Premises to further harass and intimidate Brilin.

67. The Lease requires that any disputes between the Parties be resolved through informal mediation or, subsequently, binding mediation.

68. Instead, CREH proceeded to threaten Brilin with ejectment and with a money damages lawsuit.

69. CREH never attempted to submit any disputes to binding mediation before bringing its action, in violation of the Lease.

70. Despite meetings to discuss CREH's concerns and Brilin actively performing its obligations under the Lease, CREH proceeded without notice to file this lawsuit.

71. Despite Brilin performing all repairs and all other conditions precedent under the Lease, upon information and belief, CREH has refused or will refuse to return to Brilin its security deposit within sixty (60) after surrender of the Premises as required by the Lease.

72. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising wall is not of a first-class condition, meaning it is comprised of marginal or inadequate materials and was improperly constructed.

73. CREH's failure to provide Premises in first class condition constitutes a breach of the Lease.

74. CREH's multiple breaches of the Lease deprived Brilin of the full value of the Lease, deprived Brilin of its right to quiet enjoyment of the Premises, and have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith & Fair Dealing)

75. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

76. In every contract, under South Carolina law, there is an implied covenant of good faith and fair dealing. The covenant prohibits one party to a contract from acting in such a manner as to prevent the other party from performing its obligations.

77. The Lease imposes an obligation on Tenant to perform certain repairs. When those repairs cost in excess of \$3,000, Tenant must obtain Landlord's preapproval.

78. Implied in this term is the obligation that Landlord not unreasonably withhold its approval.

79. When Brilin sought to replace two garage doors with like-kind garage doors, CREH refused to approve the repair solely on the basis that CREH wanted a contractor of its choosing to make the repairs.

80. Such refusal was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

81. The Lease contemplates that when the Initial Term ended, there would be a surrender of possession of the Premises from Tenant to Landlord, and that Tenant had to satisfy certain conditions, including repairs and any outstanding payments.

82. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

83. Given all of the repairs CREH demanded Brilin make, it was entirely reasonable for Brilin to request a final walkthrough inspection to ensure CREH's approval of the repairs.

84. It is customary in commercial leases in South Carolina for the parties to conduct a final walkthrough so that any issues may be resolved without undue delay or unfair surprise.

85. CREH refused Brilin's requests for a final walkthrough inspection and instead insisted on conducting its own inspection of the Premises after the Initial Term had expired so that, upon information and belief, CREH could manufacture various problems with the Premises, repair those problems, and then pass on those costs to Brilin by way of this lawsuit.

86. CREH's refusal to conduct a final walkthrough inspection and allow for formal surrender of possession of the Premises was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

87. Throughout the course of the various complaints and issues raised by CREH against Brilin, a common theme is apparent, and that is CREH's attempt to cause Brilin to perform work that are effectively upgrades to the Premises.

88. CREH's multiple breaches of the implied covenant of good faith and fair dealing have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

89. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

90. Brilin's obligations under the Lease are confined to the Premises. The paved surface areas and other common areas are outside the scope of the Lease and Brilin has no obligations under the Lease to make repairs to other parts of the Building or the land upon which it is situated.

91. When CREH resurfaced the paved surfaces, CREH negligently paved the right Building side surface area with inadequate and commercially unreasonable materials. CREH should have resurfaced the right Building side surface area with concrete or asphalt of a greater thickness.

92. When a portion of the asphalt began to deteriorate through, among other things, Brilin's commercially reasonable use of a forklift truck, Brilin requested and CREH refused to make repairs to the asphalt where it connected to the concrete ramp.

93. As part of its campaign of harassment and as a claim under this lawsuit, CREH demanded Brilin repair some exterior bricks, despite such repairs being the responsibility of CREH.

94. Brilin, at its own expense, repaired this area with a proper material, concrete, of a depth and thickness that will avoid the same deterioration from recurring.

95. The Lease requires CREH to keep in good repair, among other things, the exterior walls of the buildings.

96. Throughout the last year of the Initial Term, CREH interfered with Brilin's quiet enjoyment of the Premises, interefered with Brilin's business operations, harassed its employees and invitees, to include calling the police out to the Premies, threatened ejectment and lawsuits, such that Brilin was deprived of the full bargained-for value of the Lease.

97. When CREH repaved the surface areas, it materially impacted Brilin's business operation, which Brilin sought to offset through renting an additional forklift truck.

98. By making the surface repairs and repairing the bricks and paying full rent in the last year of the Initial Term, Brilin conferred upon CREH a benefit.

99. Brilin has vacated the Premises and CREH and the successor tenant have realized and continue to realize the physical benefits conferred by Brilin and CREH has realized the benefits of Brilin's rent payments.

100. CREH demanded full rental payment for August, despite CREH incurring costs related to the hiring of an additional forklift truck, costs which should have been offset by a deduction in the rental.

101. Retention by CREH of these benefits without reimbursing Brilin its costs or refunding some amount of rent equal to the diminution in value of the Lease and it would be unjust for CREH to retain these benefits under these conditions.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation; S.C. Code §§ 39-5-10 *et seq.*)

102. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

103. CREH has over the past year and continuing through to the present day, continuously attempted to manufacture problems with the Premises, attempt or have made repairs to the Premises in excess of what needed to be repaired, and then demand payment from Brilin for said repairs.

104. In conjunction with these manufactured problems, CREH has bullied Brilin with demands to perform obligations not contemplated by the Lease and to threaten Brilin with ejectment, lawsuits, and other threats.

105. CREH has demanded Brilin repair the asphalt which it negligently and inadequately repaved with inferior materials.

106. CREH has presented a quote for repairs that includes repaving the asphalt at a greater thickness than the prior repaving thereby admitting by implication that its prior repaving was negligent and inadequate.

107. CREH has demanded Brilin replace the garage doors with a more expensive product.

108. CREH after Tenant vacated the Premises has complained about additional damage to the demising wall that it could have raised when repairs were previously made on the opposite side – repairs that were directed by CREH and observed supervised, and approved by CREH – or when Brilin made repairs to the Premises side, or at a final walkthrough inspection which CREH refused to undertake.

109. Since the filing of its lawsuit, CREH has “discovered” new issues with the demising wall and has demanded Brilin pay over \$10,000 for the repairs to be made.

110. CREH has hired an engineer who is charging an exorbitant rate for every site visit and who has made absurd and excessive recommendations on what needs to be done to inspect the demising wall.

111. CREH has already procured replacement metal studs and gypsum board to replace sections of the demising wall CREH has deemed need to be replaced.

112. None of these newly-discovered issues were raised at any point during the Initial Term, not when the demising wall had been opened up and repaired previously in June 2019 or when additional repairs were made in April 2020 near the conclusion of the Initial Term.

113. Upon information and belief, CREH stands to gain directly and indirectly through payments made to the contractors hired to make repairs to the Premises. This is the reason why CREH is insistent on selecting the contractors to be used for any repairs.

114. Upon information and belief, CREH knows or has reason to believe that the materials used in the demising wall are marginal or inadequate, and the initial construction of the demising wall was insufficient or improper.

115. Upon information and belief, CREH refused a walkthrough inspection because it had every intention of “discovering” issues with the demising wall in order to cause repairs to be made with suitable materials and then pass those costs on to Brilin under the subterfuge that Brilin damaged the demising wall and is solely responsible for the condition of the demising wall.

116. The demising wall issues, the garage doors attempted upgrade, the demand for repair of an upgraded asphalt surface, and the demand that CREH select the contractors are part of

a concerted effort by CREH to upgrade the Premises in a greater condition than required under the Lease at the conclusion of the Initial Term.

117. CREH's attempts to "upgrade" the Premises through subterfuge at the expense of Brilin constitutes an unlawful trade practice. Any pecuniary incentives received by CREH for repairs made to the Premises constitutes an unlawful trade practice.

118. Brilin has suffered actual, ascertainable damages, including special and consequential damages, that are a natural and proximate result of CREH's use of its unlawful trade practices and deceptive conduct.

119. If CREH or other lessors of real property or chattel goods are permitted to compel lessees into upgrading leased premises or improving the chattel goods under the guise of required repairs at the conclusion of every tenancy or lease period, such unlawful practices would have an adverse impact on the public interest. CREH's actions have an adverse impact on the public interest.

WHEREFORE, Brilin prays the Court that:

1. That this Court dismiss CREH's claims with prejudice and that CREH have and recover nothing from Brilin.
2. That Brilin recover judgment against CREH on its counterclaims, and for an award of such damages and relief as authorized by the Lease, at law, and in equity in an amount to be proven at trial.
3. That Brilin have a jury trial on issues of fact to the extent entitled under the law.
4. That Brilin have and recover its attorneys' fees as authorized by the Lease and to the extent allowed by law.

5. That this Court treble Brilin's damages incurred through CREH's violation of the SCUTPA (S.C. Code §§ 39-5-10 et seq.) and award attorneys' fees incurred for the same.
6. For such other and further relief as the Court may deem just and proper.

ALEXANDER RICKS PLLC

/s/ Nathan A. White
Nathan A. White
SC Bar No. 74015
1420 E. 7th Street, Suite 100
Charlotte, North Carolina 28204
Telephone: (980) 498-6105
Facsimile: (704) 365-3676
nathan@alexanderricks.com

Counsel for Defendant Brilin Electric,
LLC

May 29, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER & COUNTERCLAIMS** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

Steve D. Dluzneski, Esq.
Hamilton Martens, LLC
241 Oakland Avenue
Rock Hill, South Carolina 29731
Attorney for Plaintiff

ALEXANDER RICKS PLLC

/s/ Nathan A. White

Nathan A. White
SC Bar No. 74015

1420 E. 7th Street, Suite 100
Charlotte, North Carolina 28204
Telephone: (980) 498-6105
Facsimile: (704) 365-3676
nathan@alexanderricks.com

Attorney for Defendant Brilin Electric, LLC

May 29, 2019.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Carolina Real Estate Holdings, LLC,)
Plaintiff,)
vs.)
Brilin Electric, LLC and W & L Services,)
LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

AMENDED SUMMONS

CASE NO.: 2020-CP-46-01145

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the undersigned at HAMILTON MARTENS, LLC, at Post Office Box 10940, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the day of such service; and you are hereby notified that should you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

s/ Steve D. Dluzneski
Steve D. Dluzneski
S.C. Bar No.: 102019
HAMILTON MARTENS, LLC
P. O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
steve.dluzneski@hamiltonmartens.com
ATTORNEYS FOR PLAINTIFF

June 25, 2020
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Carolina Real Estate Holdings, LLC,	)	
	)	AMENDED COMPLAINT
Plaintiff,	)	
	)	
vs.	)	
	)	CASE NO.: 2020-CP-46-01145
Brilin Electric, LLC and W & L Services,	)	
LLC,	)	
	)	
Defendants.	)	

The Plaintiff, Carolina Real Estate Holdings, LLC, complaining of the above-named Defendants, would respectfully show unto the Court and allege:

PARTIES AND JURISDICTION

1. The Plaintiff, Carolina Real Estate Holdings, LLC ("CREH"), is a limited liability company organized and existing under the laws of the State of North Carolina, which is qualified to do business in the State of South Carolina, and is presently in good standing.

2. Upon information and belief, Defendant Brilin Electric, LLC ("Brilin") is a South Carolina limited liability company that conducts business and maintains its principal place of business in York County, South Carolina.

3. Upon information and belief, Defendant W & L Services, LLC ("W & L") is a limited liability company organized and existing under the laws of the State of North Carolina, which is qualified to do business in the State of South Carolina, and is presently in good standing.

4. The Court has jurisdiction over the parties to this action, and venue is appropriate in York County, South Carolina because the most substantial part of the acts or omissions giving rise to this case occurred here.

FACTUAL BACKGROUND

5. CREH realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

6. On or about April 17, 2017, CREH entered into a Lease Agreement ("Agreement") with Brilin for a commercial unit located at 2180 Carolina Place Drive, Fort Mill, South Carolina 29715 ("Subject Property"). A copy of the Agreement is attached hereto as "Exhibit A" and is incorporated herein by reference.

7. The Agreement provided, among other things, for a three-year lease term commencing on May 1, 2017, and ending on April 30, 2020.

8. Paragraph 10 of the Agreement provides that CREH "shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of [Brilin], its employees, agents, invitees or contractors."

9. Paragraph 11(a) of the Agreement provides that Brilin, "throughout the initial term of [the Agreement], and any extension or renewal thereof, at its expense, shall maintain in good order and repair the [Subject Property], specifically including but not limited to any building and other improvements located thereon."

10. Prior to the expiration of the lease term provided for in the Agreement, upon information and belief, Brilin contracted with W & L to complete certain repair work involving the interior partition wall inside the building at the Subject Property that separated Brilin's warehouse space from the neighboring commercial tenant's warehouse space. The damage to the interior partition wall that necessitated this repair work resulted from Brilin's negligence, recklessness, and/or intentional wrongful acts inside the warehouse, which caused damage to both the exterior covering of the partition wall as well as the internal structural elements of the partition

wall.

11. Rather than removing the exterior drywall covering to assess the damage to the structural elements inside the partition wall and repairing the damaged internal structural elements along with the damaged exterior drywall covering, upon information and belief, W & L only repaired/replaced and re-painted the exterior drywall covering of the interior partition wall. In this way, W & L failed to properly repair the damaged interior partition wall inside the building at the Subject Property.

12. Upon information and belief, Brilin represented to CREH prior to the expiration of the lease term provided for in the Agreement that the damages to the interior partition wall inside the building at the Subject Property had been properly repaired, and Brilin intended that CREH rely on its representations in this regard.

13. At the time that Brilin made the representations discussed in Paragraph 12 herein to CREH, upon information and belief, Brilin knew that the damaged structural elements inside the partition wall had not been properly repaired and that the only repairs that had been made to the interior partition wall were to the exterior covering of the partition wall. Brilin intended to conceal the true extent of the damages involving the interior partition wall from CREH.

14. During the third year of the lease term provided for in the Agreement, CREH discovered multiple damages to the Subject Property that were caused by the negligence, recklessness, and/or intentional wrongful acts of Brilin including, but not limited to, the following:

- (a) There was significant and still-existing damage to the interior partition wall inside the building at the Subject Property. Upon further inspection, CREH discovered that Brilin and W & L had not, in fact, properly repaired all of the damages to the interior partition wall as Brilin previously represented to CREH. Specifically, CREH discovered that the

internal structural elements of the partition wall were severely damaged and needed to be repaired or replaced in order to ensure the structural soundness of the partition wall;

(b) Two of the overhead doors of the building at the Subject Property were damaged and needed to be replaced. After the lease term provided for in the Agreement expired, Brilin replaced both of the damaged overhead doors with new ones; however, upon information and belief, the overhead doors with which Brilin replaced the damaged ones are of inferior quality and do not satisfy the use requirements for overhead doors at the Subject Property;

(c) The carpeting inside the office area of the building at the Subject Property was soiled and must be professionally cleaned;

(d) The asphalt paving outside the building at the Subject Property was damaged in one or more areas and must be replaced. Prior to the expiration of the lease term provided for in the Agreement, Brilin patched the damaged asphalt in one location with concrete; however, upon information and belief, there still remain other areas of significantly damaged asphalt at the Subject Property that must be replaced, and the concrete patch that Brilin completed is inadequate to prevent further damage to the asphalt in that area; and,

(e) The brickwork in the area of the overhead door that opens on to the ramp at the building at the Subject Property was damaged and must be repaired.

15. As a direct and proximate result and consequence of the negligence, recklessness, and/or intentional wrongful acts by the Defendants at the Subject Property, CREH has incurred damages.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence – As To Brilin)

16. CREH realleges all prior allegations, except those inconsistent herewith, as if fully

set forth hereinafter.

17. Brilin had a contractual duty, throughout the lease term provided for in the Agreement, to maintain the Subject Property in good order and repair.

18. Brilin breached its duty to maintain the Subject Property in good order and repair, and Brilin was negligent, grossly negligent, careless, willful and wanton in connection with its tenancy at the Subject Property in the following particulars:

- (a) By causing significant external and internal damage to the partition wall inside the building at the Subject Property;
- (b) By causing damage to two of the overhead doors of the building at the Subject Property;
- (c) By engaging in actions and/or omissions that have caused the carpeting inside the office area of the building at the Subject Property to become soiled to the point of needing professional cleaning;
- (d) By causing significant damage to the asphalt paving outside the building at the Subject Property in multiple areas; and,
- (e) By causing damage to the brickwork in the area of the overhead door that opens on to the ramp at the building at the Subject Property.

19. The damages set out and described herein have proximately damaged CREH in an amount to be determined by the trier of fact.

20. Since the damages set out and described herein were committed with gross negligence and reckless disregard for the rights of others, CREH is entitled to an award of punitive damages.

29. At the time that Brilin made its misrepresentation(s) to CREH that the damaged partition wall had been properly repaired, CREH was unaware that there was still significant damage to the internal structural elements of the partition wall.

30. CREH reasonably relied on the misrepresentation(s) of Brilin.

31. CREH had the right to rely on the misrepresentation(s) of Brilin.

32. As a proximate result of Brilin's fraudulent misrepresentation(s) that the damaged partition wall had been properly repaired, CREH has suffered damages in the form of having work redone, mitigated, and completed, all at a significant cost.

FOR A FOURTH CAUSE OF ACTION
(Negligence – As To W & L)

33. CREH realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

34. W & L had a duty to repair the damaged partition wall inside the building located at the Subject Property, which included an implied duty for W & L to use due care in the repair work and to complete the repair work in accordance with industrial and legal standards.

35. W & L breached this duty by failing to use due care in the repair work involving the damaged partition wall and to complete the repair work in accordance with industrial and legal standards. W & L failed to repair/ replace the damaged internal structural elements of the partition wall and only repaired the damaged exterior of the partition wall.

36. As a proximate result of W & L's negligent actions and/or omissions with respect to the damaged partition wall inside the building at the Subject Property, CREH has suffered damages in the form of having work redone, mitigated, and completed, all at a significant cost.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy – As To Both Defendants)

37. CREH realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

38. Brilin and W & L combined as two or more entities in the context of the improper and negligent repairs to the damaged partition wall inside the building at the Subject Property.

39. By engaging in repair work that they knew would not fully and properly repair the damages to the partition wall inside the building at the Subject Property, and that would only mask the true extent of the damages thereto, Brilin and W & L undertook the improper and negligent repair work involving the damaged partition wall for the purpose of injuring CREH.

40. CREH has suffered damages that it would not have otherwise suffered but for the combined efforts of Brilin and W & L.

WHEREFORE, having fully plead, CREH prays for the following relief:

- (1) As to the First Cause of Action, that this Court enter judgment in favor of CREH and against Brilin for an appropriate amount of actual and punitive damages as the evidence presented at trial supports for negligence and gross negligence;
- (2) As to the Second Cause of Action, that this Court enter judgment in favor of CREH and against Brilin for an appropriate measure of damages and relief as authorized by the Agreement and under the common and statutory law of this state for breach of contract;
- (3) As to the Third Cause of Action, that this Court enter judgment in favor of CREH and against Brilin for an appropriate amount of actual damages as the evidence presented at trial supports for fraudulent misrepresentation;

- (4) As to the Fourth Cause of Action, that this Court enter judgment in favor of CREH and against W & L for an appropriate amount of actual damages as the evidence presented at trial supports for negligence;
- (5) As to the Fifth Cause of Action, that this Court enter judgment in favor of CREH and against both Defendants for an appropriate amount of actual and special damages as the evidence presented at trial supports for civil conspiracy;
- (6) For an award of attorney's fees and court costs incurred by CREH in bringing and prosecuting this action; and,
- (7) For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

s/ Steve D. Dluzneski

Steve D. Dluzneski

S.C. Bar Number: 102019

HAMILTON MARTENS, LLC

Post Office Box 10940 (29731)

241 Oakland Avenue (29730)

Rock Hill, South Carolina

T: (803) 329-7672

F: (803) 329-7678

E-mail: steve.dluzneski@hamiltonmartens.com

Attorneys for the Plaintiff

June 25, 2020

Rock Hill, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") by and between Carolina Real Estate Holdings, LLC, a North Carolina limited liability company, ("Landlord"), whose address is 15105-D John J. Delaney Drive, Suite 347, Charlotte, NC 28277-2741, or such other address as Landlord specifies in writing; and Brellin Electric LLC ("Tenant"), whose address is 1974 Carolina Place Dr #108 Fort Mill, SC 29708

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

BACKGROUND STATEMENT.

A. Landlord is the owner of the building located at 2180 Carolina Place Drive, Fort Mill, York County, South Carolina, (the "Building").

B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises for the purposes and upon the terms and conditions hereinafter set forth.

PREMISES

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (hereinafter called the "Premises"), to wit: Suite 111, 2180 Carolina Place Drive, Fort Mill, SC 29715.

TERM AND CONSTRUCTION

2. (a) The term of this Lease shall commence on the date May 1, 2017 (the "Rent Commencement Date") and ends on April 30, 2020. All of the following conditions shall have been satisfied or waived by Tenant in writing:

2.1 Landlord has delivered actual possession and control of the Premises to Tenant;

2.2 Landlord has delivered a fully executed copy of this Lease to Tenant.

The first Lease Year Anniversary shall be the date twelve calendar months after the first day of the first full month immediately following the Rent Commencement Date and successive Lease Year Anniversaries shall be the date twelve calendar months from the previous Lease Year Anniversary. The lease shall terminate on the date which is the third Lease Year Anniversary (the "Initial Term"), unless sooner terminated pursuant to this Lease. Further, and so long as

this Lease has not been terminated and so long as Tenant is not then in default, Tenant shall have the right to renew the term of this Lease for one (1) successive period of three (3) years by providing written notice of its election to renew the term to Landlord one hundred eighty (180) days prior to the expiration of the then existing term of this Lease (as it may have been renewed). Rent for the additional three (3) period shall be \$3,200.00 per month, plus 3% per year.

(b) Tenant shall not permit any mechanic's, materialman's or similar lien to be filed against any portion of the Premises for any labor performed or material furnished in connection with any work performed or caused to be performed by Tenant, (and not relating to Landlord's failure to perform Landlord's obligations hereunder) to attach to the Premises or the Building or the interest of Landlord or Landlord's lessor, if any, therein or to Tenant's interest in this Lease or the Premises at any time. Tenant covenants and agrees to indemnify, defend and hold harmless Landlord from and against any such lien or claim of lien and any and all costs, expenses and liabilities relating thereto. If any such lien is filed, then Tenant shall fully pay or discharge the same or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof. If Tenant fails to fully pay or discharge such lien or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof, then Landlord shall have the immediate right (but not the obligation) to pay and/or discharge such lien at Tenant's cost and expense, and Tenant shall, within ten (10) days of written demand, pay all Landlord's costs and expenses incurred in paying or discharging such lien. Tenant's failure to fully pay or discharge said lien or post a bond within the time specified shall also constitute an immediate default under the Lease and Tenant may exercise its rights to terminate and pursue any other remedies available at law or in equity. Prior to the commencement of any improvements to the Premises, Tenant shall notify Landlord thereof so that Landlord may execute for Tenant, and Tenant may post in a conspicuous place upon the Premises, a notice of non-responsibility as contemplated by the South Carolina Code of Laws.

RENTAL

3. Beginning on the "Rent Commencement Date," Tenant agrees to pay Landlord without notice, demand, deduction or set off, rent in monthly installments in advance on the first day of each calendar month as follows: \$3,000.00 per month during the first Lease Year; \$3,090.00 per month during the second Lease Year; and \$3,182.70 per month during the third Lease Year. Rental for any period during the term hereof which is less than one month shall be the pro-rated portion of the monthly installment of rental due, based upon a 30-day month.

Tenant shall pay all rental to Landlord at the following address: Carolina Real Estate Holdings LLC, 15105-D John J. Delaney Dr., Suite 347, Charlotte, NC 28277.

LATE CHARGES

4. If Landlord fails to receive full rental payment within ten days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to five percent (5.00%) of the overdue amount, plus any actual bank fees incurred for dishonored payments. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

SECURITY DEPOSIT

5. Upon the execution of this Lease, Tenant shall deposit with Landlord the sum of \$3,000.00 as a security deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The security deposit does not represent payment of and Tenant shall not presume application of same as payment of the last monthly installment of rental due under this Lease. Landlord shall have no obligation to segregate or otherwise account for the security deposit except as provided in this paragraph 5. If any of the rental or other charges or sums payable by Tenant shall be over-due and unpaid or should payments be made by Landlord on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary, to compensate toward the payment of the rents, charges or other sums due from Tenant, or towards any loss, damage or expense sustained by Landlord resulting from such default on the part of the Tenant; and in such event Tenant upon demand shall restore the security deposit to the amount set forth above in this paragraph 5. In the event Tenant furnishes Landlord with proof that all utility bills and other bills of Tenant related to the Premises have been paid through the date of Lease termination, and performs all of Tenant's other obligations under this Lease, the security deposit shall be returned to Tenant within sixty (60) days after the date of the expiration or sooner termination of the term of this Lease and the surrender of the Premises by Tenant in compliance with the provisions of this Lease.

UTILITY BILLS/SERVICE CONTRACTS

6. Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Premises shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable Service Obligations prior to delinquency. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Within thirty (30) days of the Lease Commencement Date, Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

Landlord shall be responsible for: Landscaping and Pest Control.

Tenant shall be responsible for: Sewer/Septic, Water, Electric, Gas, Telephone, HVAC (excluding semiannual service), Security System, Fiber Optic, and interior janitorial and cleaning.

Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Tenant, its employees, agents, invitees or contractors or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Premises, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord makes no representations or warranties with respect to the heating, ventilation and air conditioning system(s) or utility installations existing as of the date hereof or in the future. Subject to the provisions of this paragraph 6, Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Premises of utilities or the heating, ventilation and air conditioning system(s) and Tenant shall have no right to terminate this Lease or withhold rental because of the same.

RULES AND REGULATIONS

7. The rules and regulations, if any, attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with any Rules and Regulations of Landlord in connection with the Premises which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided such Rules and Regulations are in writing and are not in conflict with the terms and conditions of the Lease.

TAXES AND INSURANCE

8. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises as Landlord in its reasonable discretion may deem appropriate. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon.

INSURANCE; WAIVER; INDEMNITY

9. (a) During the term of this Lease, Tenant shall maintain commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than \$1,000,000.00 combined single limit, per occurrence, specifically including liquor liability insurance covering consumption of alcoholic beverages by customers or invitees of Tenant should Tenant choose to sell alcoholic beverages. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder. All policies of insurance provided for herein shall name as "additional insureds" Landlord, Landlord's Agent, all mortgagees of Landlord and such other individuals or entities as Landlord may from time to time designate upon written notice to Tenant. Tenant shall provide to Landlord,

at least thirty (30) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide evidence of all insurance required under this Lease to Landlord prior to the Lease Commencement Date.

(b) Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "all risks" insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only so long as available in the State of South Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

(c) Except as otherwise provided in paragraph 10(b), Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's employees, agents, invitees or contractors. Except as otherwise provided in paragraph 10(b), Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's employees, agents, invitees or contractors. The indemnity provisions in this paragraph 10 cover personal injury and property damage and shall bind the employees, agents, invitees or contractors of Landlord and Tenant (as the case may be). The indemnity obligations in this paragraph 10 shall survive the expiration or earlier termination of this Lease.

REPAIRS BY LANDLORD

10. Landlord agrees to keep in good repair the roof, foundation, structural supports and exterior walls of the buildings located on the Premises (exclusive of all glass and exclusive of all exterior doors) and, except as may be specifically allocated to Tenant in paragraph 12 herein, Landlord agrees to be responsible for capital repairs and replacements on the Premises; provided that Landlord shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of Tenant, its employees, agents, invitees or contractors. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions. Tenant agrees to pay, within thirty (30) days of receipt of an invoice detailing such increase, Tenant's Proportionate Share (18%) of any increase in the Common Area Maintenance over the Base Year of 2016. The term "Common Area Maintenance Expenses" shall mean and include the total cost and expense typically paid or incurred in operating and maintaining the Common Areas of property of this type, including but not limited to landscaping, parking lot repair, painting, lighting, insurance, removal of trash and payment for exterior lighting and water.

REPAIRS BY TENANT

11. (a) Tenant accepts the Premises in their present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Premises, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon, all light bulb and ballast replacements, plumbing fixtures and systems repairs within the Premises and water heater repairs. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contractor as to any repairs in excess of \$3,000.00.

Landlord warrants to Tenant that all components of the building shall be in good first class condition and working order at the time Tenant first occupies the Premises. Landlord shall either assign to Tenant or enforce on Tenant's behalf, all warranties on the HVAC system and any other systems and equipment installed on or within the Premises.

Tenant, at its expense, shall maintain the heating, ventilation and air conditioning system(s) in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Provided that Tenant shall have obtained Landlord's prior written approval of the contractor and the repair or replacement expenses for heating, ventilation and air conditioning equipment, Tenant shall not be liable for more than \$ 200.00 (per occurrence) or \$600.00 (annually), and Landlord shall reimburse Tenant for the amount in excess of the stated amount upon the written request of Tenant.

(b) Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease, in as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant, Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph 12.

ALTERATIONS

12. Other than Tenant's Initial Improvements, Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this paragraph 12 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant shall have the right to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and shall restore the Premises to its prior condition, all at Tenant's expense. Tenant may remove any of Tenant's machinery, equipment or trade fixtures. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the

removal of any such machinery, equipment or trade fixtures. It is Tenant's intention to have a third party install and own certain work station and divider equipment within the Premises. Landlord consents to this installation and waives any lien as to such third party property.

DESTRUCTION OF OR DAMAGE TO PREMISES

13. (a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Landlord shall have the right to terminate this Lease on written notice to Tenant within thirty (30) days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Premises are damaged but not wholly destroyed by any such casualties or if the Landlord does not elect to terminate the Lease under paragraph 14(a) above, Landlord shall commence (or shall cause to be commenced) reconstruction of the Premises within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed two hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Premises within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event of any casualty at the Premises during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of reconstruction of the Premises, Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

(e) In the event of the termination of this Lease under any of the provisions of this paragraph 14, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

GOVERNMENTAL ORDERS

14. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance,

regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Premises, (b) the rules and regulations of any applicable governmental insurance authority or any similar body, relative to the Premises and Tenant's activities therein; (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time and (d) the Americans with Disabilities Act (42 U.S.C.S. § 12101, et seq.) and the regulations and accessibility guidelines enacted pursuant thereto, as the same may be amended from time to time. Landlord and Tenant agree, however, that if in order to comply with such requirements the cost to Tenant shall exceed a sum equal to one (1) year's rent, then Tenant may terminate this Lease by giving written notice of termination to Landlord in accordance with the terms of this Lease, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements, unless, within thirty (30) days of receiving such notice, Landlord agrees in writing to be responsible for such compliance, at its own expense, and commences compliance activity, in which case Tenant's notice given hereunder shall not terminate this Lease.

CONDEMNATION

15. (a) If the entire Premises shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

(b) If more than twenty-five percent (25%) of the floor area of any building of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

(c) Landlord and Tenant, immediately after learning of any taking, shall give notice thereof to each other.

(d) If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (i) at Landlord's cost and expense and as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Premises remaining to a complete unit of like quality and character as existed prior to such appropriation or taking, and (ii) the annual rent provided for in paragraph 3 and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any

partial taking of the Premises.

(e) Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this paragraph 16, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ASSIGNMENT AND SUBLETTING

16. Tenant shall not assign this Lease or any interest hereunder or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. No sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.

EVENTS OF DEFAULT

17. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental or any other monetary obligation as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

REMEDIES UPON DEFAULT

19. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant

damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant's agent, without terminating this Lease, may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on re-letting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default and expressly shall have no duty to mitigate Tenant's damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

EXTERIOR SIGNS

19. Any and all signs placed on the Premises shall be in compliance with governmental rules and regulations governing such signs. Tenant shall provide the Landlord with the basic design of any exterior building sign proposed to be installed on the exterior of the building for approval, approval shall not be unreasonably withheld. Tenant may place additional signs and shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

LANDLORD'S ENTRY OF PREMISES

20. Landlord may advertise the Premises "For Rent" or "For Sale" 90 days before the termination of this Lease. Landlord may enter the Premises upon prior notice at reasonable hours to exhibit same to prospective purchasers or tenants, to make repairs required of Landlord under the terms hereof, for reasonable business purposes and otherwise as may be agreed by Landlord and Tenant. Landlord may enter the Premises at any time without prior notice, in the event of an emergency or to make emergency repairs to the Premises. Upon request of Landlord, Tenant shall provide Landlord with a functioning key to the Premises and shall replace such key if the locks to the Premises are changed.

QUIET ENJOYMENT

21. So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, subject to the terms hereof.

HOLDING OVER

22. If Tenant remains in possession of the Premises after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law. In such event, commencing on the date following the date of expiration of the term, the

monthly rental payable under Paragraph 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

ENVIRONMENTAL LAWS

23. (a) Tenant covenants that with respect to any Hazardous Materials (as defined below) it will comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). Tenant shall remove all Hazardous Materials from the Premises, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all Hazardous Materials Requirements.

(b) Tenant shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifests, filings, lists and invoices covering those Hazardous Materials and Tenant shall provide Landlord with copies of all such items upon request. Tenant shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Tenant, or related in any manner to Hazardous Materials. In addition, Tenant shall provide Landlord with copies of all responses to such correspondence at the time of the response.

(c) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the premises if such Hazardous Materials were stored on the Premises by Tenant, its agents, employees, invitees or successors in interest.

(d) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria,

virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(c) The warranties and indemnities contained in this paragraph 24 shall survive the termination of this Lease.

SUBORDINATION; ATTORNMEN; ESTOPPEL

24. (a) This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future mortgages affecting the Premises. Within ten (10) days after the receipt of a written request from Landlord or any Landlord mortgagee, Tenant shall confirm such subordination by executing and delivering Landlord and Landlord's mortgagee a recordable subordination agreement and such other documents as may be reasonably requested, in form and content satisfactory to Landlord and Landlord's mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable mortgagee must agree that mortgagee shall not unilaterally, materially alter this Lease and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant acknowledges that any Landlord mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

(b) If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or non-judicially, or otherwise acquired, by a Landlord mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, upon the request of Landlord or Landlord's successor, execute an attornment agreement confirming the same, in form and substance acceptable to Landlord or Landlord's successor and Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior to such sale, transfer or conveyance; and Tenant agrees to look solely to the successor in interest of Landlord for the performance of those covenants accruing after such sale, transfer or conveyance. Such agreement shall provide, among other things, that said successor shall not be bound by (a) any prepayment of more than one (1) month's rental (except the Security Deposit) or (b) any material amendment of this Lease made after the later of the Lease Commencement Date or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment.

(c) Within ten (10) days after request from Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts then in existence concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel Certificate within said ten (10) day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential mortgagee or transferee the statements contained in such estoppel certificate without exception.

ABANDONMENT

25. Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises, at the option of Landlord, shall be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

MEDIATION

26. If any dispute relating to this lease between the Parties is not resolved through informal discussion within 14 days from the date a dispute arises, the Parties agree to submit the issue before a mediator. The decision of the mediator will be binding on the Parties. Any mediator must be a neutral party acceptable to both Parties. The cost of any mediation will be shared equally by the Parties.

NOTICES

27. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the address shown at the beginning of this Lease, except that upon Tenant taking possession of the Premises, then the Premises shall be Tenant's address for such purposes. Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Paragraph 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

GENERAL TERMS

28. (a) "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title to the Premises. "Agent" as used in this Lease shall mean the party designated as same in Paragraph 3, its heirs, representatives, assigns and successors. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sub lessees as to the Premises covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

(b) No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law,

(c) Time is of the essence in this Lease.

(d) This Lease may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Lease may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Lease shall not affect the validity of any other provisions hereof and this Lease shall be construed and enforced as if such invalid provisions were not included.

(e) Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the party for whom he or she signs and that his or her signature binds such party. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Lease are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Lease.

(f) Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same.

(g) If legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Lease to be duly executed.

LANDLORD

Carolina Real Estate Holdings, LLC

By: _____

Title: _____

Date: _____

TENANT

Brill Electric

By: PK Umel

Title: Owner

Date: 4/17/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Carolina Real Estate Holdings, LLC,	)	
	)	ANSWER TO AMENDED COMPLAINT &
Plaintiff,	)	COUNTERCLAIMS
	)	
vs.	)	(Jury Trial Demanded)
	)	
Brilin Electric, LLC and W & L Services,	)	CASE NO.: 2020-CP-46-01145
LLC,	)	
	)	
Defendants.	)	

Defendant Brilin Electric, LLC ("Brilin" or "Defendant"), answering the Amended Complaint of Plaintiff Carolina Real Estate Holdings, LLC ("CREH" or "Plaintiff"), filed June 25, 2020, responds as follows:

FIRST DEFENSE AND ANSWER

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted, upon information and belief.
4. Admitted as pertaining to Brilin. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. To the extent such a response is required, admitted upon information and belief.
5. Brilin incorporates by reference its responses to the preceding paragraphs.
6. Admitted there is written lease agreement (the "Lease") between Brilin and CREH. The Lease is a writing that speaks for itself. To the extent this paragraph contains allegations inconsistent with the Lease, denied.
7. The Lease is a writing that speaks for itself. To the extent this paragraph contains allegations inconsistent with the Lease, denied.

8. The Lease is a writing that speaks for itself. To the extent that this paragraph contains allegations inconsistent with the Lease, denied.

9. The Lease is a writing that speaks for itself. To the extent that this paragraph contains allegations inconsistent with the Lease, denied.

10. Admitted that Brilin engaged Defendant W & L Services, LLC ("W&L") to make repairs at the Lease premises, repairs of which CREH was well aware of and, in part, supervised and approved. Except as admitted, denied.

11. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. To the extent such a response is required, denied.

12. Admitted that Brilin caused repairs to be made to the interior partition wall as directed by CREH. Except as admitted, denied.

13. Denied.

14. Admitted that Brilin caused to be replaced two overhead doors with like-kind overhead doors; admitted that Brilin had the carpeting professionally cleaned before vacating the Premises; admitted that Brilin at its own expense repaired a portion of the exterior surface area with concrete; admitted that Brilin repaired the brickwork; except as admitted, denied.

15. Denied.

16. Brilin incorporates by reference its responses to the preceding paragraphs.

17. This paragraph makes indirect reference to the Lease, which is a writing that speaks for itself. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent a response is required, denied.

18. Including all subparagraphs, denied.

19. Denied.

20. Denied.
21. Brilin incorporates by reference its responses to the preceding paragraphs.
22. Denied.
23. Denied.
24. Denied.
25. Brilin incorporates by reference its responses to the preceding paragraphs.
26. Denied.
27. Denied.
28. Denied.
29. Denied.
30. Denied.
31. Denied.
32. Denied.
33. Brilin incorporates by reference its responses to the preceding paragraphs.
34. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent such a response is required, denied.
35. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent such a response is required, denied.
36. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent such a response is required, denied.

37. Brilin incorporates by reference its responses to the preceding paragraphs.

38. Denied.

39. Denied.

40. Denied.

41. WHEREFORE, Defendant Brilin Electric, LLC denies that Plaintiff is entitled to the relief requested in the "WHEREFORE" Paragraph set forth in its Complaint, including all subsections, one through seven, and the costs and fees demanded.

GENERAL DENIAL

42. Unless specifically admitted herein, Brilin denies each and every allegation set forth in CREH's Complaint. All affirmative defenses are subject to and do not waive other responses and defenses.

SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim, Rule 12(b), SCRPC)

43. Subject to and without waiving the above responses and other defenses, CREH's claims, in whole or in part, are barred for failure to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE
(Unclean Hands)

44. CREH's claims are barred by the doctrine of unclean hands, and the balance of the equities favors Brilin.

FOURTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

45. CREH's claims are barred in whole or in part because repairs were made to the Premises by Brilin as directed by CREH and CREH reviewed, supervised, and approved the repairs. CREH's acceptance of the repairs made by Brilin for damage allegedly caused by Brilin constitutes an accord and satisfaction.

FIFTH AFFIRMATIVE DEFENSE
(Ratification and Waiver)

46. CREH's claims are barred in whole or in part by the doctrines of ratification and waiver.

SIXTH AFFIRMATIVE DEFENSE
(Unfair or Deceptive Trade Practices)

47. Brilin is informed and believes that the acts of CREH constitute unfair and deceptive trade practices as defined in the South Carolina Unfair Trade Practices Act, Article 1, Chapter 5, Title 39, S.C. Code of Laws.

SEVENTH AFFIRMATIVE DEFENSE
(Brilin's Conduct in Conformity with Law or Contract)

48. CREH's claims are barred because Brilin has behaved in conformity with the law and all contractual obligations, to the extent any valid or enforceable contract exists between CREH and Brilin.

EIGHTH AFFIRMATIVE DEFENSE
(Laches, Estoppel, Release)

49. CREH's claims are barred in whole or in part by the doctrines of laches, estoppel, including equitable estoppel, and release.

NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

50. CREH failed to mitigate its damages or has suffered no damages.

TENTH AFFIRMATIVE DEFENSE
(Absence of Damages Suffered)

51. CREH has suffered no actual damages.

ELEVENTH AFFIRMATIVE DEFENSE
(Negligence of Others)

52. Any damage allegedly sustained by CREH was caused or contributed to or by the negligence of persons, firms, corporations, or entities other than Brilin, and such negligence of other parties bars CREH's recovery against Brilin, and/or comparatively reduces Brilin's percentage of fault, if any. Any acts or omissions by Brilin were superseded by the negligence and wrongful conduct of others.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Allege Facts Sufficient to Show Malice, Recklessness or Intentional Misconduct)

53. CREH's Complaint fails to state sufficient factual content to plausibly suggest that Brilin acted with malice, gross negligence, recklessness and outrageous indifference and disregard for the rights of others, such that CREH would be entitled to an award of punitive damages.

THIRTEENTH AFFIRMATIVE DEFENSE
(Speculative Damages)

54. CREH's damages, if any, are entirely speculative, and CREH is therefore not entitled to an award of damages against Brilin.

FIFTEENTH AFFIRMATIVE DEFENSE
(Justification and Privilege)

55. CREH's claims are barred, in whole or in part, because Brilin's conduct was justified in that the actions taken by Brilin were in good faith, acting for a legitimate business purpose, and in furtherance of its own interests by means that are lawful.

SIXTEENTH AFFIRMATIVE DEFENSE
(Barred by Contract)

56. CREH's claims are barred by the terms of the Lease.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Reservation)

57. Brilin specifically reserves the right to file and assert any and all additional defenses in response to CREH's Complaint, including any additional affirmative or special defenses, or any such other matters constituting avoidance, which may subsequently come to the attention of Brilin, to the full extent permitted by the law, including those that become available or apparent during discovery.

BY WAY OF COUNTERCLAIMS AGAINST PLAINTIFF

1. Brilin incorporates by reference its responses in all preceding paragraphs as if restated herein verbatim. All capitalized terms not defined shall have the meaning ascribed to them above or in the Lease unless defined otherwise in these Counterclaims.

2. This Court has subject matter and personal jurisdiction over these Counterclaims.

3. Brilin is a commercial electrician business that provides expertise in all forms of commercial electrical installation and repair. Brilin has over 40 employees.

4. Brilin and CREH are parties to a Lease Agreement (the "Lease"), signed by Brilin on April 17, 2017.

5. The Lease was for a three-year term commencing May 1, 2017, and ending April 30, 2020 (the "Initial Term").

6. Brilin was the "Tenant" and CREH was the "Landlord" and, collectively, are the "Parties" to the Lease.

7. The Lease was for Suite 111, 2180 Carolina Place Drive, Fort Mill, South Carolina, 29715 (the "Premises").

8. The Premises are part of a "Building" consisting of multiple commercial/industrial suites. The Premises are situated on the far-right side of the Building.

9. Only Brilin utilized the right side of the Building. The front of the Building is a parking lot for employees and guests, the rear of the Building consists of loading docks with concrete pads and rear entrances servicing the various suites and a large, unpaved gravel and dirt surface area, and the left side of the Building is a paved surface area allowing for the ingress/egress of commercial trucks to/from the rear of the Building.

10. Commercial vehicles are not permitted in the front Building side parking lot.

11. The Premises contain three large garage doors, two to the rear and one to the right side of the Premises/Building. The two garage doors to the rear (the "Loading Dock Garage Doors") are elevated to allow for the loading/off-loading of large commercial vehicles. The one garage door to the right (the "Side Garage Door") is serviced by a ramp with a sloping grade out to a paved surface area. The garage doors allow for the loading/unloading of heavy equipment stored in the warehouse section of the Premises, which comprises approximately 75% of the square footage of the Premises.

12. Because Brilin is a commercial electrical services company, Brilin does not use large commercial delivery trucks and instead employs a fleet of lighter duty pickup trucks, vans, and smaller delivery trucks to transport its electrical equipment to and from the Premises to the various jobsites. As such, the Loading Dock Garage Doors cannot be used to directly load/unload equipment on/off Brilin's vehicles. Instead, Brilin used its forklift truck to haul heavy equipment from the warehouse to the rear of the Premises via the Side Garage Door, the ramp, and the right Building side surface area and vice versa.

13. From the outset of the initial term, CREH was aware that Brilin used a forklift truck and that the use of the forklift truck was an essential part of Brilin's business.

14. Brilin would typically load up to 20 vehicles each day before they went off to various jobsites. Using a forklift truck at the Premises was a commercially reasonable thing to do.

15. CREH was also aware that the Side Garage Door and ramp was an essential part of Brilin's business because it could not use the Loading Dock Garage Doors for direct loading/unloading.

16. When the Initial Term commenced, the ramp connecting the Side Garage Door to the paved surface area to the right Building side surface consisted of asphalt. At various times, Brilin's forklift truck could not get sufficient traction to climb up the ramp and Landlord agreed to replace the asphalt ramp with a concrete ramp.

17. Concrete is a more suitable surface area for a ramp connected to a large garage door and warehouse where forklift trucks are likely to be employed.

Repaving the Asphalt

18. In the summer of 2019, CREH caused the paved surface areas to the front and sides of the Building to be re-paved. CREH provided no advance notice to Brilin of this construction activity.

19. CREH had the contractor pave the front and right Building side surface areas to a certain thickness and the left Building side surface area to a greater thickness.

20. CREH had the left Building side surface area paved to a greater thickness because, upon information and belief, that was the sole ingress/egress for commercial trucks going to/from the back of the Building and because of the greater weight this surface area would be required to bear.

21. The thickness of the asphalt used for the front and right Building surface areas was suitable only for standard-sized automobiles.

22. CREH, knowing that Brilin utilized a forklift truck to load/unload equipment from the Side Garage Door and that Brilin's use of the forklift truck was commercially reasonable, failed to repave the right Building side with asphalt for a suitable thickness to bear the weight of a forklift truck.

23. The commercially reasonable thing to do would have been for CREH to have the right Building side surface repaved with concrete, the appropriate material to bear the heavy weight of a forklift truck.

24. Repaving with concrete was commercially reasonable for the same reasons the loading docks on the rear of the Building were serviced by concrete pads.

25. Instead of repaving the right Building sight surface area with concrete or to the appropriate asphalt thickness to bear the weight of a forklift truck, CREH's "solution" to the problem of its own making was to put up Jersey barriers that precluded Brilin's ability to access the Side Garage Door with a forklift truck.

26. The repaving and blocking of the right Building side surface area impacted Brilin's ability to load and unload using the Side Garage Door. Because of the inability to load/unload equipment directly into the vehicles using the Loading Dock Garage Doors, and in order to mitigate the impact, Brilin was required to rent out an additional forklift truck in order to expedite loading/unloading by having the forklifts raise up and lower equipment from the Loading Dock Garage Doors, with one forklift truck on the inside and the other forklift truck on the outside.

27. Brilin complained to CREH about this impact and stated it would deduct from its August rent an amount equal to the amount of funds Brilin expended on renting the additional forklift truck, or \$1,144,75.

28. CREH never objected to Brilin's reduction in the rent amount until months later. CREH retained an attorney, sent a Notice of Eviction, and threatened legal action against Brilin including ejectment in Magistrate Court and a money damages suit in Common Pleas, and forced Brilin to pay the full rent amount, plus additional fees.

29. Eventually, CREH relented and allowed Brilin to resume use of the Side Garage Door, the ramp, and the right Building side surfacing area. Brilin continued to use its forklift to transport to/from the warehouse and to load/unload equipment from its vehicles.

30. The repaved surface area began to deteriorate near the concrete ramp. Brilin, at its own expense, had a strip of the asphalt repaved in concrete after CREH refused to make the repairs.

31. After CREH's threats to eject and sue Brilin, the Parties agreed to an onsite meeting on or about October 31, 2019. CREH's owner complained of the items that form the substance of CREH's Complaint and Amended Complaint. The meeting concluded with Brilin's owner having the distinct impression that CREH's owner only cared about Brilin getting everything fixed and that the issues were largely resolved.

32. Despite the positive outcome of the meeting, and Brilin's assurances that Brilin would repair anything that needed to be repaired, CREH continued to complain about various items and in February of 2020, began insisting that all repairs be done by contractors selected by CREH or approved by CREH.

33. The Lease divides repair responsibilities between Landlord and Tenant. For those repairs for which Tenant is responsible, Tenant is required to hire licensed contractors and to obtain preapproval from Landlord for any work to be done in excess of \$3,000.

34. It is an implied term of the Lease that Landlord preapprovals will not be unreasonably withheld.

35. CREH also demanded Brilin provide its security access codes so CREH could inspect the Premises at unreasonable hours. CREH claimed this was necessary in part because of the acrimonious relationship between CREH's property manager and Brilin's owner.

36. The Lease does not allow for the Landlord to come upon the Premises at unreasonable hours or for any purpose it so deems without agreement with Tenant, excepting emergency situations.

37. CREH also demanded Brilin disclose the names of all contractors it used for repairs and demanded Brilin cause its contractors for repairs to provide certificates of insurance, including demanding that the certificates of insurance include CREH as an additional insured.

38. No Lease provision requires Tenant to provide contractor certificates of insurance and/or to cause the certificates of insurance to name CREH as an additional insured.

39. No Lease provision requires Tenant to provide contractor names to CREH for any repairs less than \$3,000.

The Demising Wall

40. During the Initial Term, in June 2019, CREH alleged that Brilin caused damage and a displacement of the demising wall separating the Premises from the remainder of the Building.

41. Brilin, at its own expense, hired a contractor to repair the demising wall and return the demising wall to its original location. The contractor opened the wall from the opposite side of the demising wall and made the necessary repairs.

42. CREH's property manager or other of its agents directed, observed, supervised and ultimately approved the repairs. Until May 2020, CREH did not raise any issues or concerns with the repairs or that it had any additional concerns with the condition of the demising wall.

43. During the final month of the Initial Term, once Brilin had removed most of its equipment from the warehouse, Brilin performed repair work on the demising wall on the Premises side, which consisted primarily of repairing various patches in the gypsum board of the drywall.

44. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising was never in a first-class condition, because the materials used in its construction were marginal or not to the appropriate specifications, and that the demising wall was not properly constructed and situated properly when constructed.

45. To the extent there remains any additional issues with the demising wall, upon information and belief, those issues are due to marginal materials or improper initial construction of the demising wall.

Other Claimed Damages

46. During the course of the final months of the Initial Term, Brilin caused to be replaced the Side Garage Door and one of the Loading Dock Garage Doors. Brilin replaced the garage doors with like-kind garage doors in terms of quality, components, and color.

47. The repair estimates for the garage doors was over \$3,000. Brilin sought CREH's approval to make the repairs and CREH refused to approve the repair. Instead, CREH insisted that the repairs be done by a contractor it selected who quoted the replacement of one garage door at twice the cost of the Brilin's contractor to replace both garage doors.

48. CREH's refusal to approve Brilin's request was unreasonable.

49. Brilin repaired and repainted the walls in the office area, Brilin professionally cleaned the carpeting in the office area, and Brilin replaced the handful of damaged bricks over the top right corner of the Side Garage Door.

50. Brilin received quotes to replace a section of damaged asphalt on the right Building side with like kind asphalt of the same thickness, but once again, CREH refused and insisted that Brilin use its selected contractor. Brilin was able to obtain a quote from CREH's paving contractor, which was the same contractor that paved the surface areas in summer of 2019. The quote was for a thickness of asphalt greater than what was in place.

51. At the conclusion of the Initial Term, Brilin requested and attempted to have a final walkthrough to enable CREH to inspect all of the conditions for which CREH had issues or to enable CREH to identify any concerns so that Brilin could address them. CREH refused to have a final walkthrough inspection.

52. The Lease requires Tenant to leave the Premises in a certain condition.

53. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

54. CREH denied Brilin that opportunity and instead waited until the expiration of the Initial Term to register additional complaints about the condition of the Premises.

55. The Initial Term has expired and Tenant has returned possession of the Premises to Landlord.

FOR A FIRST CAUSE OF ACTION
(Breaches of Contract)

56. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

57. The Lease provides for Brilin to peacefully and quietly have and enjoy the possession of the Premises.

58. All conditions precedent for Brilin to avail itself of the covenant of quiet enjoyment have been satisfied.

59. CREH had a duty to not breach the covenant of quiet enjoyment or any other term of the Lease.

60. CREH breached the covenant of quiet enjoyment throughout the Initial Term, and other terms of the Lease.

61. Throughout the Initial Term, CREH's property manager came upon the Premises uninvited, harassed Brilin's employees, and interfered with Brilin's business operations, thereby breaching the Lease and the covenant of quiet enjoyment.

62. CREH insisted on its entry of the Premises without prior notice at unreasonable hours without prior agreement with Brilin in violation of the Lease.

63. CREH began to repave the surface areas without providing adequate notice to Brilin and the failure to give said notice had a material impact on Brilin's business operations.

64. CREH erected Jersey barriers to deliberately, willfully, and maliciously interfere with Brilin's ability to use its forklift truck to move equipment from the warehouse to Brilin's vehicles by way of the Side Door Garage, ramp, and surface area.

65. CREH further harassed Brilin for months and demanded Brilin perform obligations not set forth in the Lease, to wit: demanding Brilin provide the names of all contractors used for repairs; demanding Brilin use only contractors for repairs approved by and selected by CREH; demanding Brilin obtain certificates of insurance for all repairs, including the demand that all certificates of insurance for repairs include CREH as an additional insured; and demanding that Brilin make repairs to the right Building side surface area which was damaged solely because of CREH's own negligence in using commercially unsuitable materials.

66. When Brilin proceeded with replacing two of the garage doors despite Brilin's unreasonable refusal of preapproval, CREH's property manager called the local police to the Premises to further harass and intimidate Brilin.

67. The Lease requires that any disputes between the Parties be resolved through informal mediation or, subsequently, binding mediation.

68. Instead, CREH proceeded to threaten Brilin with ejectment and with a money damages lawsuit.

69. CREH never attempted to submit any disputes to binding mediation before bringing its action, in violation of the Lease.

70. Despite meetings to discuss CREH's concerns and Brilin actively performing its obligations under the Lease, CREH proceeded without notice to file this lawsuit.

71. Despite Brilin performing all repairs and all other conditions precedent under the Lease, upon information and belief, CREH has refused or will refuse to return to Brilin its security deposit within sixty (60) after surrender of the Premises as required by the Lease.

72. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising wall is not of a first-class condition, meaning it is comprised of marginal or inadequate materials and was improperly constructed.

73. CREH's failure to provide Premises in first class condition constitutes a breach of the Lease.

74. CREH's multiple breaches of the Lease deprived Brilin of the full value of the Lease, deprived Brilin of its right to quiet enjoyment of the Premises, and have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith & Fair Dealing)

75. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

76. In every contract, under South Carolina law, there is an implied covenant of good faith and fair dealing. The covenant prohibits one party to a contract from acting in such a manner as to prevent the other party from performing its obligations.

77. The Lease imposes an obligation on Tenant to perform certain repairs. When those repairs cost in excess of \$3,000, Tenant must obtain Landlord's preapproval.

78. Implied in this term is the obligation that Landlord not unreasonably withhold its approval.

79. When Brilin sought to replace two garage doors with like-kind garage doors, CREH refused to approve the repair solely on the basis that CREH wanted a contractor of its choosing to make the repairs.

80. Such refusal was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

81. The Lease contemplates that when the Initial Term ended, there would be a surrender of possession of the Premises from Tenant to Landlord, and that Tenant had to satisfy certain conditions, including repairs and any outstanding payments.

82. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

83. Given all of the repairs CREH demanded Brilin make, it was entirely reasonable for Brilin to request a final walkthrough inspection to ensure CREH's approval of the repairs.

84. It is customary in commercial leases in South Carolina for the parties to conduct a final walkthrough so that any issues may be resolved without undue delay or unfair surprise.

85. CREH refused Brilin's requests for a final walkthrough inspection and instead insisted on conducting its own inspection of the Premises after the Initial Term had expired so that, upon information and belief, CREH could manufacture various problems with the Premises, repair those problems, and then pass on those costs to Brilin by way of this lawsuit.

86. CREH's refusal to conduct a final walkthrough inspection and allow for formal surrender of possession of the Premises was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

87. Throughout the course of the various complaints and issues raised by CREH against Brilin, a common theme is apparent, and that is CREH's attempt to cause Brilin to perform work that are effectively upgrades to the Premises.

88. CREH's multiple breaches of the implied covenant of good faith and fair dealing have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

89. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

90. Brilin's obligations under the Lease are confined to the Premises. The paved surface areas and other common areas are outside the scope of the Lease and Brilin has no obligations under the Lease to make repairs to other parts of the Building or the land upon which it is situated.

91. When CREH resurfaced the paved surfaces, CREH negligently paved the right Building side surface area with inadequate and commercially unreasonable materials. CREH should have resurfaced the right Building side surface area with concrete or asphalt of a greater thickness.

92. When a portion of the asphalt began to deteriorate through, among other things, Brilin's commercially reasonable use of a forklift truck, Brilin requested and CREH refused to make repairs to the asphalt where it connected to the concrete ramp.

93. As part of its campaign of harassment and as a claim under this lawsuit, CREH demanded Brilin repair some exterior bricks, despite such repairs being the responsibility of CREH.

94. Brilin, at its own expense, repaired this area with a proper material, concrete, of a depth and thickness that will avoid the same deterioration from recurring.

95. The Lease requires CREH to keep in good repair, among other things, the exterior walls of the buildings.

96. Throughout the last year of the Initial Term, CREH interfered with Brilin's quiet enjoyment of the Premises, interefered with Brilin's business operations, harassed its employees and invitees, to include calling the police out to the Premies, threatened ejectment and lawsuits, such that Brilin was deprived of the full bargained-for value of the Lease.

97. When CREH repaved the surface areas, it materially impacted Brilin's business operation, which Brilin sought to offset through renting an additional forklift truck.

98. By making the surface repairs and repairing the bricks and paying full rent in the last year of the Initial Term, Brilin conferred upon CREH a benefit.

99. Brilin has vacated the Premises and CREH and the successor tenant have realized and continue to realize the physical benefits conferred by Brilin and CREH has realized the benefits of Brilin's rent payments.

100. CREH demanded full rental payment for August, despite CREH incurring costs related to the hiring of an additional forklift truck, costs which should have been offset by a deduction in the rental.

101. Retention by CREH of these benefits without reimbursing Brilin its costs or refunding some amount of rent equal to the diminution in value of the Lease and it would be unjust for CREH to retain these benefits under these conditions.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation; S.C. Code §§ 39-5-10 *et seq.*)

102. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

103. CREH has over the past year and continuing through to the present day, continuously attempted to manufacture problems with the Premises, attempt or have made repairs to the Premises in excess of what needed to be repaired, and then demand payment from Brilin for said repairs.

104. In conjunction with these manufactured problems, CREH has bullied Brilin with demands to perform obligations not contemplated by the Lease and to threaten Brilin with ejection, lawsuits, and other threats.

105. CREH has demanded Brilin repair the asphalt which it negligently and inadequately repaved with inferior materials.

106. CREH has presented a quote for repairs that includes repaving the asphalt at a greater thickness than the prior repaving thereby admitting by implication that its prior repaving was negligent and inadequate.

107. CREH has demanded Brilin replace the garage doors with a more expensive product.

108. CREH after Tenant vacated the Premises has complained about additional damage to the demising wall that it could have raised when repairs were previously made on the opposite side – repairs that were directed by CREH and observed supervised, and approved by CREH – or when Brilin made repairs to the Premises side, or at a final walkthrough inspection which CREH refused to undertake.

109. Since the filing of its lawsuit, CREH has “discovered” new issues with the demising wall and has demanded Brilin pay over \$10,000 for the repairs to be made.

110. CREH has hired an engineer who is charging an exorbitant rate for every site visit and who has made absurd and excessive recommendations on what needs to be done to inspect the demising wall.

111. CREH has already procured replacement metal studs and gypsum board to replace sections of the demising wall CREH has deemed need to be replaced.

112. None of these newly-discovered issues were raised at any point during the Initial Term, not when the demising wall had been opened up and repaired previously in June 2019 or when additional repairs were made in April 2020 near the conclusion of the Initial Term.

113. Upon information and belief, CREH stands to gain directly and indirectly through payments made to the contractors hired to make repairs to the Premises. This is the reason why CREH is insistent on selecting the contractors to be used for any repairs.

114. Upon information and belief, CREH knows or has reason to believe that the materials used in the demising wall are marginal or inadequate, and the initial construction of the demising wall was *insufficient or improper*.

115. Upon information and belief, CREH refused a walkthrough inspection because it had every intention of “discovering” issues with the demising wall in order to cause repairs to be made with suitable materials and then pass those costs on to Brilin under the subterfuge that Brilin damaged the demising wall and is solely responsible for the condition of the demising wall.

116. The demising wall issues, the garage doors attempted upgrade, the demand for repair of an upgraded asphalt surface, and the demand that CREH select the contractors are part of a concerted effort by CREH to upgrade the Premises in a greater condition than required under the Lease at the conclusion of the Initial Term.

117. CREH’s attempts to “upgrade” the Premises through subterfuge at the expense of Brilin constitutes an unlawful trade practice. Any pecuniary incentives received by CREH for repairs made to the Premises constitutes an unlawful trade practice.

118. Brilin has suffered actual, ascertainable damages, including special and consequential damages, that are a natural and proximate result of CREH’s use of its unlawful trade practices and deceptive conduct.

119. If CREH or other lessors of real property or chattel goods are permitted to compel lessees into upgrading leased premises or improving the chattel goods under the guise of required repairs at the conclusion of every tenancy or lease period, such unlawful practices would have an adverse impact on the public interest. CREH’s actions have an adverse impact on the public interest.

WHEREFORE, Brilin prays the Court that:

1. That this Court dismiss CREH's claims with prejudice and that CREH have and recover nothing from Brilin.
2. That Brilin recover judgment against CREH on its counterclaims, and for an award of such damages and relief as authorized by the Lease, at law, and in equity in an amount to be proven at trial.
3. That Brilin have a jury trial on issues of fact to the extent entitled under the law.
4. That Brilin have and recover its attorneys' fees as authorized by the Lease and to the extent allowed by law.
5. That this Court treble Brilin's damages incurred through CREH's violation of the SCUTPA (S.C. Code §§ 39-5-10 et seq.) and award attorneys' fees incurred for the same.
6. For such other and further relief as the Court may deem just and proper.

ALEXANDER RICKS PLLC

/s/ Nathan A. White
 Nathan A. White
 SC Bar No. 74015
 1420 E. 7th Street, Suite 100
 Charlotte, North Carolina 28204
 Telephone: (980) 498-6105
 Facsimile: (704) 365-3676
nathan@alexanderricks.com

Counsel for Defendant Brilin Electric,
 LLC

July 27, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Carolina Real Estate Holdings, LLC,	)	
Plaintiff,	)	REPLY TO COUNTERCLAIMS
vs.	)	
Brilin Electric, LLC and W & L Services,	)	CASE NO.: 2020-CP-46-01145
LLC,	)	
Defendants,	)	

Plaintiff Carolina Real Estate Holdings, LLC ("Plaintiff" or "CREH"), replying to the Answer to Amended Complaint and Counterclaims of Defendant Brilin Electric, LLC ("Defendant" or "Brilin"), alleges and states as follows:

FOR A FIRST DEFENSE

1. Plaintiff hereby denies each and every allegation of Brilin's Answer and Counterclaims not hereinafter specifically admitted or qualified in this Reply.

2. Paragraphs 1 through 57 of Brilin's Answer and Counterclaims constitute its answer and affirmative defenses to Plaintiff's amended complaint, to which no reply by Plaintiff is required. To the extent a response is deemed necessary, Plaintiff refers to the allegations set forth in its Amended Complaint and denies any allegations inconsistent therewith. Plaintiff further denies that any of Brilin's affirmative defenses are valid, that they are legally sufficient or appropriate defenses to Plaintiff's causes of action, or that the said defenses are supported by the evidence.

[Space Intentionally Left Blank – Continued on Next Page]

AS TO PARAGRAPHS 1-55 LABELED "BY WAY OF COUNTERCLAIMS AGAINST PLAINTIFF"

3. Paragraph 1 does not require a response.
4. Plaintiff admits the allegations of Paragraph 2.
5. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 3, and denies the same on that basis and demands strict proof thereof.
4. Responding to the allegations of Paragraphs 4, 5, 6, 7, the Parties' written Lease Agreement speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.
5. Plaintiff admits the allegations of Paragraphs 8, 9, 10, and 11.
6. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 12, and denies the same on that basis and demands strict proof thereof.
7. Plaintiff denies the allegations of Paragraph 13 and demands strict proof thereof.
8. Responding to the allegations of Paragraph 14, Plaintiff lacks sufficient information to form an opinion or belief as to the number of vehicles that Brilin loaded and unloaded per day during the term of the Lease Agreement, and denies the same on that basis and demands strict proof thereof. Plaintiff denies the remaining allegations of Paragraph 14 and demands strict proof thereof.
9. Plaintiff denies the allegations of Paragraphs 15, 16, and 17, and demands strict proof thereof.
10. Plaintiff admits the allegations of Paragraph 18 only insofar as it alleges that, in the summer of 2019, Plaintiff caused the paved surface areas to the front and sides of the Building to be re-paved. Plaintiff denies the remaining allegations of Paragraph 18 and demands strict proof

thereof.

11. Plaintiff denies the allegations of Paragraphs 19, 20, 21, 22, 23, 24, 25, and 26, and demands strict proof thereof.

12. Responding to the allegations of Paragraph 27, Plaintiff admits that Brilin attempted to unilaterally reduce its August 2019 rent by the amount that it expended on renting the additional forklift truck. However, Plaintiff would affirmatively allege and show that it never approved or consented to the said reduction in Brilin's August 2019 rent payment, and that such reduction is not permitted by the Parties' written Lease Agreement.

13. Responding to the allegations of Paragraph 28, Plaintiff admits that it retained counsel to represent it in this matter; sent written notice to Brilin advising that Plaintiff was terminating the Lease Agreement due to Brilin's default of the same, which the Plaintiff was authorized and privileged to do under the terms of the Lease Agreement; and advised Brilin that it would take legal action against Brilin if necessary to protect the Plaintiff's legal rights under the Lease Agreement. Plaintiff denies the remaining allegations of Paragraph 28 and demands strict proof thereof.

14. Plaintiff denies the allegations of Paragraph 29 and demands strict proof thereof.

15. Responding to the allegations of Paragraph 30, the Plaintiff would affirmatively allege and show that the damage to and/or deterioration of the paved surface area near the concrete ramp was the result of Brilin using that area of paved surface in an inappropriate manner, despite being asked several times by the Plaintiff to cease doing so because such manner of use would cause damage to the paved surface. In further response to Paragraph 30, the Plaintiff denies that it refused to make repairs to the damaged and/or deteriorated paved surface area, and would

affirmatively allege and show that it intended and desired to retain the same company that repaved the surface areas to the front and sides of the Building in the summer of 2019. Brilin had the asphalt repaved in concrete before the Plaintiff had an opportunity to make the repairs, and without the consent or approval of the Plaintiff.

16. Responding to the allegations of Paragraph 31, the Plaintiff admits that the Parties had an onsite meeting at the Premises on or about October 31, 2019. The Plaintiff also admits that, during the onsite meeting, CREH's owner discussed with Brilin's owner several of the items that form the substance of Plaintiff's Complaint and Amended Complaint. The Plaintiff further admits that the onsite meeting concluded with an agreement between CREH's owner and Brilin's owner that Brilin was to repair the items discussed during the meeting prior to the end of Brilin's Lease Term, and that CREH would have a fair opportunity to inspect those repairs.

17. Responding to the allegations of Paragraph 32, the Plaintiff would affirmatively allege and show that, after the October 31, 2019, onsite meeting, multiple issues arose between Brilin and CREH. These issues included, among other things, Brilin negligently and recklessly causing damage to the Building and the Premises; Brilin commissioning repairs to be made to the Building and the Premises without the Plaintiff's knowledge or consent; and Brilin further antagonizing CREH, its agents, and employees.

18. The allegations of Paragraphs 33 and 34 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

19. Plaintiff denies the allegations of Paragraph 35 and demands strict proof thereof.

20. The allegations of Paragraph 36 refer to the Parties' Lease Agreement, which is a

written document that speaks for itself. Plaintiff denies any allegation of Paragraph 36 that is inconsistent with the terms of the Parties' written Lease Agreement.

21. Responding to the allegations of Paragraph 37, Plaintiff admits that it requested that Brilin disclose to CREH the names of all contractors that Brilin used for repairs, and that Plaintiff requested that Brilin cause its contractors for repairs to provide certificates of insurance naming CREH as an additional insured. However, Plaintiff would affirmatively allege and show that these requests were reasonable and were made for a proper purpose.

22. The allegations of Paragraphs 38 and 39 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

23. Plaintiff admits the allegations of Paragraph 40.

24. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 41, and denies the same on that basis and demands strict proof thereof. Plaintiff also specifically denies that the contractor hired by Brilin to make the necessary repairs to the demising wall performed those repairs completely and in a commercially reasonable manner.

25. Plaintiff denies the allegations of Paragraph 42 and demands strict proof thereof.

26. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 43, and denies the same on that basis and demands strict proof thereof.

27. The allegations of Paragraph 44 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 44 that is inconsistent with the terms of the Parties' written Lease Agreement. Plaintiff also denies the allegations of Paragraph 44 related to the condition of the demising wall at the time Brilin first

occupied the Premises, the quality of the materials that were used in the construction of the demising wall, and manner in which the demising wall was constructed. Plaintiff demands strict proof of all of these allegations.

28. Plaintiff denies the allegations of Paragraph 45 and demands strict proof thereof.

29. Plaintiff admits the allegations of Paragraph 46 only to the extent that it alleges that Brilin caused to be replaced the Side Garage Door and one of the Loading Dock Garage Doors during the course of the final months of the Initial Lease Term. Plaintiff denies that Brilin replaced the garage doors with like-kind garage doors with regard to quality, components, and color, and demands strict proof thereof. Further responding to the allegations of Paragraph 46, Plaintiff would affirmatively allege and show that Brilin replaced the aforementioned garage doors on its own and without the consent or approval of the Plaintiff; that Brilin replaced the said garage doors with garage doors of inferior quality that were not suited for the commercial purposes for which the said garage doors were to be used; and that Brilin improperly removed the existing garage doors from the Premises without advising the CREH of where Brilin was taking them, despite multiple requests by CREH that Brilin disclose how and where it disposed of the garage doors that were removed from the Building.

30. Responding to the allegations of Paragraph 47, Plaintiff admits that the replacement estimates for the garage doors was over \$3,000, that Brilin sought CREH's approval to replace the said garage doors, and that CREH refused to approve the contractor that Brilin intended to use to replace the said garage doors. However, Plaintiff would affirmatively allege and show that its refusal of the contractor that Brilin intended to use to replace the said garage doors was reasonable.

31. Plaintiff denies the allegations of Paragraph 48 and demands strict proof thereof.

32. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 49, and denies the same on that basis and demands strict proof thereof.

33. Responding to the allegations of Paragraph 50, Plaintiff lacks sufficient information to form an opinion or belief as to the allegations regarding the quotes that Brilin received for the replacement of the damaged section of asphalt on the right side of the Building, and denies the same on that basis and demands strict proof thereof. Plaintiff admits that it refused to approve the contractor that Brilin intended to use to replace the said damaged section of asphalt, but Plaintiff would affirmatively allege and show that such refusal was reasonable. Plaintiff denies the remaining allegations of Paragraph 50 and demands strict proof thereof.

34. Plaintiff denies the allegations of Paragraph 51 and demands strict proof thereof.

35. The allegations of Paragraphs 52 and 53 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

36. Plaintiff denies the allegations of Paragraph 54 and demands strict proof thereof.

37. Plaintiff admits the allegations of Paragraph 55.

**AS TO PARAGRAPHS 56-74 LABELED "FOR A FIRST CAUSE OF ACTION
(BREACHES OF CONTRACT)"**

38. Paragraph 56 does not require a response.

39. The allegations of Paragraph 57 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 57 that is inconsistent with the terms of the Parties' written Lease Agreement.

40. Plaintiff denies the allegations of Paragraph 58 and demands strict proof thereof.

41. Paragraph 59 is a legal conclusion that does not require a response.

42. Plaintiff denies the allegations of Paragraphs 60, 61, 62, 63, 64, 65, and 66, and demands strict proof thereof.

43. The allegations of Paragraph 67 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 67 that is inconsistent with the terms of the Parties' written Lease Agreement.

44. Responding to the allegations of Paragraph 68, Plaintiff admits that it retained counsel to represent it in this matter; sent written notice to Brilin advising that Plaintiff was terminating the Lease Agreement due to Brilin's default of the same, which the Plaintiff was authorized and privileged to do under the terms of the Lease Agreement; and advised Brilin that it would take legal action against Brilin if necessary to protect the Plaintiff's legal rights under the Lease Agreement. Plaintiff denies the remaining allegations of Paragraph 68 and demands strict proof thereof.

45. Responding to the allegations of Paragraph 69, Plaintiff admits that it never submitted any disputes to binding mediation, but Plaintiff denies that not doing so is a violation of the Parties' written Lease Agreement. Plaintiff would also affirmatively allege and show that Brilin never requested to stay the present litigation pending binding mediation after the filing of the Plaintiff's complaint in this matter.

46. Plaintiff denies the allegations of Paragraphs 70 and 71, and demands strict proof thereof.

47. The allegations of Paragraph 72 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 72 that is inconsistent with the terms of the Parties' written Lease Agreement. Plaintiff also denies the

allegations of Paragraph 72 related to the condition of the demising wall at the time Brilin first occupied the Premises, the quality of the materials that were used in the construction of the demising wall, and manner in which the demising wall was constructed. Plaintiff demands strict proof of all of these allegations.

48. Plaintiff denies the allegations of Paragraphs 73 and 74, and demands strict proof thereof.

**AS TO PARAGRAPHS 75-88 LABELED "FOR A SECOND CAUSE OF ACTION
(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)"**

49. Paragraph 75 does not require a response.

50. Paragraph 76 is a statement of the law in South Carolina regarding the implied covenant of good faith and fair dealing. Plaintiff denies any portion of Paragraph 76 that does not accurately reflect prevailing South Carolina law.

51. The allegations of Paragraphs 77 and 78 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

52. Plaintiff denies the allegations of Paragraphs 79 and 80, and demands strict proof thereof.

53. The allegations of Paragraphs 81 and 82 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

54. Plaintiff denies the allegations of Paragraphs 83, 84, 85, 86, 87, and 88, and demands strict proof thereof.

**AS TO PARAGRAPHS 89-101 LABELED "FOR A THIRD CAUSE OF ACTION
(QUANTUM MERUIT / UNJUST ENRICHMENT)"**

55. Paragraph 89 does not require a response.

56. Plaintiff denies the allegations of Paragraphs 90, 91, 92, 93, and 94, and demands strict proof thereof.

57. The allegations of Paragraph 95 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 95 that is inconsistent with the terms of the Parties' written Lease Agreement.

58. Plaintiff denies the allegations of Paragraphs 96, 97, 98, and 99, and demands strict proof thereof.

59. Responding to the allegations of Paragraph 100, Plaintiff admits that it demanded payment from Brilin of the full amount of rent due under the Parties' written Lease Agreement for the month of August 2019, which is the amount that Brilin is contractually obligated to pay. Plaintiff denies the remaining allegations of Paragraph 100 and demands strict proof thereof.

60. Plaintiff denies the allegations of Paragraph 101 and demands strict proof thereof.

**AS TO PARAGRAPHS 102-119 LABELED "FOR A FOURTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES ACT VIOLATION; S.C. CODE §§ 39-5-10 *ET SEQ.*)"**

61. Paragraph 102 does not require a response.

62. Plaintiff denies the allegations of Paragraphs 103, 104, 105, 106, 107, and 108, and demands strict proof thereof.

63. Responding to the allegations of Paragraph 109, Plaintiff would affirmatively allege and show that the "new issues" with the demising wall that it has discovered since the filing of the present litigation were issues that Brilin, with the assistance of Co-Defendant W & L

Services, concealed from CREH, and which CREH was only able to discover during an inspection of the Building and the Premises after Brilin vacated the Building and the Premises. After discovering these concealed damages, CREH reasonably asked Brilin to pay for the necessary repairs to the demising wall because, upon information and belief, the damages were caused by Brilin during its tenancy at the Building and the Premises.

64. Plaintiff admits the allegations of Paragraph 110 only to the extent that they allege that CREH has hired an engineer to inspect the damaged demising wall and make recommendations as to what repairs are necessary based upon the engineer's professional training and expertise. Plaintiff denies all other allegations of Paragraph 110 and demands strict proof thereof.

65. Responding to the allegations of Paragraph 111, Plaintiff admits that it has procured replacement metal studs and gypsum board to repair damaged sections of the demising wall, but the Plaintiff would affirmatively allege and show that its actions in this regard were based upon the professional recommendations and guidance of CREH's retained engineer as well as a licensed general contractor that CREH retained to inspect the damaged demising wall and oversee the necessary repairs.

66. Plaintiff denies the allegations of Paragraphs 112, 113, 114, 115, 116, 117, 118, and 119, and demands strict proof thereof.

FOR A SECOND DEFENSE

67. Plaintiff re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

68. Brilin's counterclaims fail to state a claim upon which relief can be granted against

Plaintiff. Therefore, Brilin's counterclaims against Plaintiff should be dismissed as a matter of law pursuant to Rule 12(b)(6), S.C.R. Civ. P.

FOR A THIRD DEFENSE

69. Plaintiff re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

70. Brilin does not have clean hands with regard to the allegations contained in its counterclaims against Plaintiff. Plaintiff pleads the doctrine of unclean hands as a complete bar to Brilin's counterclaims.

WHEREFORE, having fully answered Brilin's counterclaims, the Plaintiff prays for dismissal of the same; for judgment in Plaintiff's favor as asserted in the Amended Complaint; for costs and reasonable attorney's fees; and for such other and further relief as the Court deems just and proper.

s/ Steve D. Dluzneski
Steve D. Dluzneski
S.C. Bar # 102019
HAMILTON MARTENS, LLC
241 Oakland Avenue (29730)
Post Office Box 10940 (29731)
Rock Hill, South Carolina
(803) 329-7672 (voice)
(803) 329-7678 (facsimile)
steve.dluzneski@hamiltonmartens.com

ATTORNEY FOR THE PLAINTIFF

August 25, 2020
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Carolina Real Estate Holdings, LLC,	)	
	)	C/A No. 2020-CP-46-01145
Plaintiff,	)	
v.	)	
Brilin Electric, LLC and W & L Services, LLC,	)	DEFENDANT BRILIN ELECTRIC, LLC'S
	)	MOTION FOR TREBLE DAMAGES AND
Defendants.	)	ATTORNEY'S FEES

Now Comes Defendant Brilin Electric, LLC ("Brilin"), pursuant to South Carolina Rules of Civil Procedure 7, 58, and otherwise, and moves this Court to treble its damages under the South Carolina Unfair Trade Practices Act (the "UTPA") and to award it attorney's fees under the prevailing party provision of the Lease Agreement (the "Lease") and/or the UTPA. In support thereof, Brilin would show the Court the following:

I. OVERVIEW

1. This matter came before the Court for trial on July 18, 2022.
2. Plaintiff Carolina Real Estate Holdings, LLC ("CREH") filed this suit seeking to recover damages for a breach of the Lease, gross negligence, negligence, and fraudulent misrepresentation.
3. Brilin filed counterclaims seeking to recover for CREH's breach of the Lease and for violations of the UTPA.
4. At the close of CREH's case, the Court granted a directed verdict in favor of Brilin and dismissed CREH's claims of gross negligence, negligence, and fraudulent misrepresentation.
5. On July 21, 2022, CREH argued to the jury that it was entitled to approximately \$28,500.00 in damages for breach of the Lease. The jury disagreed and only awarded \$10,513.88

on its breach claim, the amount associated with alleged damages related to the demising wall. The jury dismissed CREH's claims regarding the garage doors, the bricks, the cleanliness of the office area, the ductwork, and the asphalt damage.

6. The jury found in favor of Brilin on its breach of Lease claim in the amount of \$4,424.75, the exact amount requested by Brilin. The jury also found in favor of Brilin on its claim for CREH's violation of the UTPA in the amount of \$6,089.13.

7. The damages awarded to Brilin completely offset any recovery to CREH, leaving CREH with a net recovery of \$0.00.

8. The jury through its verdict sent a clear and unmistakable message that CREH's claims – other than those related to the demising wall – were without merit and CREH's actions offended "established public policy and/or were immoral, unethical, or oppressive" and because of CREH's appalling conduct, CREH deserved to recover nothing from Brilin.

9. Accordingly, the Court should exercise its authority to grant Brilin treble damages and award it its reasonable attorney's fees and costs.

II. BRILIN IS ENTITLED TO TREBLE DAMAGES PURSUANT TO UTPA

10. A party may recover treble damages pursuant to the UTPA where "the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20." S.C. Code §§ 39-5-140(a). "[I]f a person of ordinary prudence who was engaged in trade or commerce could have ascertained that his conduct violated the UTPA, such conduct is willful within the meaning of the statute." *Maybank v. BB&T Corporation*, 416 S.C. 541, 578, 787 S.E.2d 498, 517 (2016) (citing *Wright v. Craft*, 372 S.C. 1, 23-24, 640 S.E.2d 486, 498 (Ct. App 2006)). Brilin put forth sufficient evidence to show that CREH's conduct was a willful violation through, among other things, the creation of fraudulent

invoices, demands for damages that CREH never actually sustained, and CREH's ongoing harassment of Brilin throughout the course of the Lease term.

11. The jury in this matter found that CREH engaged in unfair or deceptive trade practices and that Brilin was damaged in an amount of \$6,089.13. Based on this verdict and CREH's willful violations, the Court should award Brilin \$18,267.39, trebling the jury's award.

III. BRILIN IS ENTITLED TO ITS ATTORNEY'S FEES PURSUANT TO THE UTPA AND PREVAILING PARTY PROVISION OF THE LEASE

A. UTPA

12. "The SCUTPA mandates that a court award attorney's fees and costs to a successful party." *Liberty Mut. Ins. Co. v. Employee Resource Management, Inc.*, 176 F.Supp. 2d 510, 531(D.S.C. 2001). "Upon the finding by the court of a violation of this article, the court *shall* award to the person bringing such action under this section reasonable attorney's fees and costs" (emphasis in original). *Id.*, (quoting S.C. Code §§ 39-5-140(a)).

13. The jury in this matter found that CREH engaged in unfair or deceptive trade practices and that Brilin was damaged in an amount of \$6,089.13.

14. As evidenced by the Affidavit of Nathan A. White filed contemporaneously herewith, Brilin has incurred \$99,027.55 in reasonable attorney's fees and costs to date.

15. Based on the jury's verdict, the Court should award Brilin \$99,027.55, which represents its reasonable attorney's fees and costs in this matter.

B. Prevailing Party Provision of the Lease

16. Additionally, the Court should grant Brilin its attorney's fees as it prevailed in this matter as the verdict resulted in CREH recovering nothing.

17. Section 28(g) of the Lease states "[i]f any legal proceedings are instituted to enforce any provision of this lease, the prevailing party in the proceeding shall be entitled to recover from

the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding."

18. "In the context of statutes allowing attorney fees, our supreme court has defined a 'prevailing party' as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.'" *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (1997) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990)).

19. "According to *Heath*, 'a party need not be successful as to all issues in order to found to be a prevailing party.'" *Id.*

20. *Seckinger* dealt with statutory attorney's fees in the mechanics lien context. However, S.C. Code Ann. § 29-5-10(b) is also instructive regarding settlement offers versus verdicts and sets forth that if written offers are made by the parties, "the party whose offer is closer to the verdict reached is considered the prevailing party in the action." *Id.*, 326 S.C. at 389 (quoting S.C. Code Ann. § 29-5-10(b)).

21. In May of 2022, Brilin offered \$20,000 to settle the case. Prior to this point, Brilin made offers to settle the case at multiple points, including at the outset of the lawsuit and at mediation. CREH ignored or rejected all offers and never made a counteroffer until the first day of trial, when CREH offered to accept \$65,000 to settle the case.¹ Using the provisions of S.C. Code Ann. § 29-5-10(b) as an analog, it is indisputable that CREH's recovery of nothing was far closer to Brilin's settlement offer than CREH's.

¹ Given CREH requested approximately \$28,500 in damages during its closing argument to the jury, it is clear that well over 50% of CREH's settlement offer contemplated Brilin paying CREH some or all of CREH's attorney's fees.

22. CREH ultimately failed to recover any damages from its claim for a breach of contract because it lost on Brilin's counterclaims and the jury awarded damages on Brilin's claims equal to the award to CREH on its claim.

23. Moreover, when factoring in Brilin is entitled to treble its damages pursuant to the UTPA, not only did CREH recover nothing, but will have a judgment against it requiring CREH to pay Brilin \$12,178.26.

24. Brilin clearly prevailed: (i) because it eliminated Plaintiff's damages for the alleged breach of lease; (ii) as it is entitled to treble damages; and (iii) because Brilin's best settlement offer was greatly in excess of the amount CREH received.

25. As evidenced by the Affidavit of Nathan A. White filed contemporaneously herewith, Brilin has incurred \$99,027.55 in reasonable attorney's fees and costs to date.

26. Based on the jury's verdict and the prevailing party's attorney's fees provision in the Lease, the Court should award its reasonable attorney's fees and costs of \$99,027.55.

IV. CONCLUSION

Wherefore, based on the foregoing, Brilin Electric, LLC requests the Court:

1. Enter an order trebling the jury's award of damages for CREH's violation of the UTPA and enter judgment in Brilin's favor in the amount of \$12,178.26;
2. Enter an order requiring CREH to pay Brilin's reasonable attorney's fees and costs for CREH's violation of the UTPA and a judgment in Brilin's favor in the amount of \$99,027.55;
3. Enter an order requiring CREH to pay Brilin's reasonable attorney's fees and costs pursuant to the prevailing party provision contained in section 28(g) of the Lease
4. Enter a judgment in Brilin's favor in the amount of \$99,027.55 (such amount being concurrent with any attorney's fee award pursuant to the UTPA); and

5. Provide such other relief as the Court deems just and proper.

Respectfully submitted,

ALEXANDER RICKS PLLC

/s/ Nathan A. White

Nathan A. White

SC Bar No. 74015

1420 E. 7th Street, Suite 100

Charlotte, North Carolina 28204

Tel: (980) 498-6105

Fax: (704) 365-3676

nathan@alexanderricks.com

Counsel for Brilin Electric, LLC

This the 2nd day of August, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
 Carolina Real Estate Holdings, LLC,	)	 C/A No. 2020-CP-46-01145
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S POST-TRIAL MOTIONS
	)	
Brilin Electric, LLC and W & L Services,	)	
LLC,	)	
	)	
Defendants.	)	

Plaintiff makes the following post-trial motions:¹

Factual Overview

On or about April 17, 2017, Carolina Real Estate Holdings, LLC ("CREH" or "Plaintiff") entered into a Commercial Lease Agreement ("Lease") with Brilin Electric, LLC ("Brilin" or "Defendant") in relation to CREH's commercial property located at 2180 Carolina Place, Suite 111, Fort Mill, SC 29708. Pl. Ex. 2. The Lease provided for a three-year term, commencing on May 1, 2017, and ending on April 30, 2020. Pl. Ex. 2 ¶ 2. The Lease obligated Brilin, during the lease term, to "maintain in good order and repair the Premises," and to "use only licensed contractors for repairs." The Lease also afforded to CREH, as the Landlord, the contractual right to approve the contractor selected by Brilin as to any repairs made to the Premises when the cost of such repairs exceeded \$3,000.00. Pl. Ex. 2 ¶ 11(a). The Lease required Brilin, upon the expiration of its lease term, to return the Premises to CREH "in as good condition and repair" as Brilin received the Premises at the beginning of its lease term. Pl. Ex. 2 ¶ 11(b).

¹ At the close of trial, the trial judge extended the deadline for the filing of post-trial motions until 5:00 P.M. (EST) on Wednesday, August 17, 2022.

In the early portion of Brilin's lease term, interactions and dealings between CREH and Brilin were, for the most part, copacetic. There was an open line of communication between the parties, and there were no significant issues. However, in 2019, the parties' relationship began to take a turn in a negative direction. During Brilin's third lease year, the Lease set the monthly rental amount as \$3,182.70 per month. Pl. Ex. 2 ¶ 3. Brilin took it upon itself to only pay \$2,037.95 to CREH as rent during the month of August 2019, which amounts to \$1,144.75 that Brilin unilaterally (i.e., without notifying or speaking with CREH in advance) decided to withhold from its rent payment for that month. Around this same time, CREH became aware of various damages to the Premises that were caused, to a significant degree, by Brilin's careless, negligent, and perhaps reckless operation of a forklift both inside and outside of the warehouse space that Brilin occupied. As it was CREH's commercial property, and because CREH was cognizant of the fact that it would have future commercial tenants occupying the Premises after Brilin vacated, CREH was understandably concerned about Brilin's non-payment of rent and causing damage to CREH's commercial space. CREH attempted to resolve these issues directly with Brilin, to no avail. Consequently, CREH was forced to retain counsel in or about September 2019 to represent it in a dispute with a commercial tenant (Brilin) that CREH was concerned had "gone rogue."

CREH, through counsel, sent a certified letter to Brilin on September 24, 2019, in which CREH reiterated its concerns about Brilin's actions and omissions as of that date. Pl. Ex. 3. In its September 24 letter to Brilin, CREH instructed Brilin to not operate any forklifts or other heavy machinery in the parking lot outside the warehouse building "due to the damage that this activity has already caused thereto." Pl. Ex. 3 ¶ 6. CREH also instructed Brilin to not "attempt any repairs of the damages discussed [in the letter]" because CREH was concerned about the quality of those repairs if Brilin were to make them, and because CREH wanted to ensure that the contractors who

would ultimately be repairing the damages that Brilin had caused to the Premises would be properly licensed and insured. Pl. Ex. 3 ¶ 5. CREH's September 24 certified letter to Brilin was returned as "undeliverable" because Brilin failed and/or refused to pick it up from the post office. Fearing what may happen to the Premises as additional time passed without Brilin seeing the September 24, 2019, letter from CREH's counsel, Brad Decker, the Principal of CREH, posted copies of the letter on the exterior doors of the warehouse building at the Premises. Brilin ultimately received the September 24, 2019, letter once Mr. Decker posted it at the Premises, and retained counsel to address the issues contained therein.

Following some e-mail correspondence between counsel regarding the issues addressed in the aforementioned September 24 letter, the parties ultimately decided to meet in person at the Premises, with counsel present, for the purpose of inspecting the Premises and discussing resolution of CREH's concerns expressed in the September 24 letter. This meeting at the Premises occurred on October 31, 2019, with Brad Decker of CREH, Bryon Russell of Brilin, and their respective attorneys present. The undersigned attorney for CREH was present on site at the Premises during the October 31 meeting, and continued representing CREH thereafter in the subsequent litigation. At the time of the parties' on-site meeting at the Premises, Brilin was represented by Ryan Hoffman, an attorney at Alexander Ricks who is not licensed to practice in South Carolina.² During the October 31 on-site meeting, Mr. Decker, Mr. Russell, and both attorneys walked the Premises and discussed CREH's concerns and the damages that Brilin had caused to the Premises as of that date. Notably, Mr. Russell refused to allow Mr. Decker to perform a proper inspection of the demising wall inside Brilin's warehouse space during the October 31

² Once CREH filed suit in this matter against Brilin, Nathan White at Alexander Ricks, who is licensed to practice in South Carolina, began representing Brilin as counsel of record in the litigation.

meeting due to racks with Brilin's inventory and equipment being attached to the demising wall at that time; however, Mr. Russell did assure Mr. Decker, in the presence of both attorneys, that he would allow and provide for a proper inspection of the demising wall once all of Brilin's inventory and equipment were removed at the end of Brilin's lease term. Mr. Decker reluctantly agreed. Mr. Russell also told Mr. Decker during the October 31 meeting about some HVAC ductwork directly below the roof on the inside of the warehouse space that Brilin had damaged and then reconfigured to better suit Brilin's needs. Mr. Decker was unaware that Brilin had reconfigured the HVAC ductwork, as no one from Brilin had spoken with anyone at CREH prior to the reconfiguration work being done. Mr. Decker told Mr. Russell that the HVAC ductwork reconfiguration would be addressed at the end of Brilin's lease term. At the conclusion of the October 31, 2019, on-site meeting at the Premises, Mr. Decker and Mr. Russell shook hands, and Mr. Russell promised that he would not perform any more work at the Premises without CREH's knowledge and approval. Mr. Decker believed that Mr. Russell was being genuine with his promise in this regard, which also occurred in the presence of both attorneys, and agreed to take him at his word. Both parties genuinely believed that the October 31 meeting had gone well and was productive, and that there would not be any future issues or problems at the Premises.

Unfortunately, it did not take long after the October 31 on-site meeting for Mr. Russell to throw the promise that he made to Mr. Decker at the end of the meeting to the wind. Within a matter of weeks of the parties' on-site meeting at the Premises, CREH learned from its property manager, Wayne Schulte, as well as from one or more neighboring businesses that Brilin was causing additional damages to the Premises by way of its forklift, and that Brilin was also having work performed at the Premises without CREH's knowledge or approval. These discoveries were in direct contravention to the promise that Mr. Russell made to Mr. Decker at the conclusion of

the October 31 meeting, and CREH was justifiably distressed and concerned upon learning this information. Therefore, CREH, through counsel, communicated with Brilin, through counsel, to try to figure out what Brilin was doing at CREH's commercial property. In some instances, Brilin's counsel was unaware of what Brilin was doing at the Premises and responded that he would speak with Brilin and then follow up with CREH's counsel. This back-and-forth persisted for a period of time, with CREH renewing its belief that Brilin had "gone rogue," and would continue to exclude CREH from knowing what Brilin was doing (or not doing) with and at CREH's commercial property. At this point, in early 2020, CREH reasonably and justifiably feared what Brilin was doing at and to the commercial property that CREH owned. As a result, CREH decided that it had no other choice but to file suit against Brilin, which it did on March 27, 2020.

The case by CREH against Brilin proceeded through initial pleadings, discovery, and mediation, and was ultimately called for jury trial during the July 18-22, 2022, Common Pleas Jury Term before The Honorable J. Mark Hayes, II. The jury trial of this case lasted for 4 days, with the jury ultimately reaching a verdict in the afternoon of Thursday, July 21, 2022. During CREH's case-in-chief, CREH showed the jury photographs of the damages that Brilin caused to the Premises during its lease term. Pl. Exs. 5, 7, 8, 11, 13, 14, 15, 16, and 21. CREH also presented the jury with documentation supporting all of the damages that CREH was claiming against Brilin. Pl. Exs. 6, 9, 10, 12, 17, 18, 20, 22, 23, 25, 26, and 27. Brilin did not present any evidence of any damages that it sustained as a result of any actions or inactions by CREH during its case-in-chief; however, during its closing argument, Brilin argued that it was entitled to the return of its \$3,000.00 security deposit³ as well as the \$1,144.75 that Brilin unilaterally withheld from its August 2019

³ At the conclusion of Brilin's case-in-chief, but before the parties presented closing arguments to the jury, the parties stipulated that Brilin did not receive its \$3,000.00 security deposit back from CREH.

rent payment. Curiously, Brilin did not present any evidence of, nor did it ask for from the jury during its closing argument, any actual damages that Brilin allegedly sustained as a result of CREH's alleged unfair trade practices toward Brilin.⁴ The only damages that Brilin asked the jury to award in its favor and against CREH in its closing argument were \$3,000.00 for its security deposit and \$1,144.75, for a total of \$4,144.75 in actual damages on Brilin's breach of contract counterclaim against CREH. With respect to its Unfair Trade Practices counterclaim, Brilin asked the jury for \$1.00 in actual damages during its closing argument. Even though Brilin did not present any evidence of actual damages sustained by Brilin in relation to its Unfair Trade Practices counterclaim against CREH, and despite Brilin arguing during its closing argument that Brilin believed that it was only entitled to \$1.00 from CREH on its Unfair Trade Practices counterclaim, the jury nonetheless returned a verdict, much to CREH's surprise and dismay, awarding Brilin \$6,089.13 in actual damages on its Unfair Trade Practices counterclaim. The jury also awarded Brilin \$4,424.75 in actual damages on Brilin's breach of contract counterclaim, which is more than the amount of actual damages that Brilin requested from the jury during its closing argument and presented evidence at trial for.

It is worth noting that, during its closing argument, Brilin referred to this case as a "bad movie," and referred to Mr. Decker as "Dr. Evil" and CREH's property manager, Wayne Schulte, as "Lurch." In fact, the central theme of its closing argument that Brilin argued to the jury was that this case was a bad movie in which Dr. Evil (Brad Decker) took advantage of the feeble and defenseless Brilin, and that he did so primarily by and through Lurch (Wayne Schulte), his trusty henchman. Mr. Decker, who was present during the entirety of the jury trial of this case, was

⁴ In addition to its counterclaim against CREH for breach of contract, Brilin also counterclaimed against CREH for allegedly violating the South Carolina Unfair Trade Practices Act.

deeply offended when he heard these characterizations during Brilin's closing argument, and he was justifiably concerned about how this name-calling behavior would affect the jury's consideration of the case. In other words, by and through its closing argument at trial, Brilin presented derogatory and inflammatory statements (and, in fact, a derogatory and inflammatory theory of the case) about a party to this case that the jury heard and undoubtedly considered during its deliberations. As the evidence presented at trial showed, Brilin took unilateral and unauthorized liberties during its three-year lease term at CREH's commercial property, and those unilateral and unjustified liberties continued up through and including Brilin's closing argument at trial.

Motion for Attorney's Fees and Costs

Paragraph 28(g) of the Lease states that "[i]f legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding." Pl. Ex. 2 ¶ 28(g). In this case, CREH filed suit against Brilin to enforce several provisions of the Lease; namely, Paragraphs 10, 11(a), and 11(b) of the Lease. Therefore, for the reasons set out and discussed herein *infra*, CREH moves the Court for an award of its attorney's fees and costs incurred in connection with this matter against Brilin.

"In the context of statutes allowing attorney fees, our supreme court has defined a 'prevailing party' as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, *even though not to the extent of the original contention* [and] is the one in whose favor the decision or verdict is rendered and judgment entered'" (emphasis added). Seckinger v. Vessel Excaliber, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (Cl. App. 1997) (quoting Heath v. County of Aiken, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711

(1990)). “According to Heath, ‘a party need *not* be successful as to all issues in order to be found to be a prevailing party’” (emphasis added). Id.

Here, the “main issue” involved in CREH’s case against Brilin was Brilin’s alleged breach of the Lease. In its closing argument at trial, CREH asked the jury to award approximately \$28,500 on its breach of contract claim against Brilin. Ultimately, the jury unanimously found for CREH on CREH’s breach of contract claim against Brilin and awarded \$10,513.88 in actual damages. If we consider this result in the context of the definition of “prevailing party” established by the South Carolina Supreme Court and recited by the South Carolina Court of Appeals in Seckinger, CREH fits squarely within the definition because it successfully prosecuted the action and prevailed on the main issue of whether Brilin breached the Lease.

It is true that the jury did not award CREH the full amount of actual damages that it requested during its closing argument, but the definition of “prevailing party” recited in Seckinger does not require a party to prevail “to the extent of the original contention” in order to be, nevertheless, deemed a prevailing party in the action. It is also true that the jury returned verdicts in favor of Brilin on its breach of contract and Unfair Trade Practices counterclaims against CREH, with the said counterclaims constituting additional issues in this case. However, the Court of Appeals in Seckinger also made clear that, “a party need not be successful as to all issues in order to be found to be a prevailing party.” Id. In other words, the fact that the jury returned verdicts in favor of Brilin on Brilin’s counterclaims against CREH *does not* affect CREH’s status as a prevailing party in this case. The fact of the matter is that the jury rendered a verdict in CREH’s favor on its breach of contract claim against Brilin, which, according to Seckinger, necessitates the conclusion that CREH is a prevailing party in this case, and, consequently, is entitled to an award of its attorney’s fees and costs pursuant to Paragraph 28(g) of the Lease.

In its motion for attorney's fees and costs filed with the Court on August 2, 2022, Brilin discussed Section 29-5-10(b) and indicated that this Section "is also instructive" and should be considered by the Court in this case in the determination of the parties' competing motions for attorney's fees and costs. Def.'s Mtn. for Treble Damages and Atty's Fees ¶ 20. At the outset, it is important to note that Section 29-5-10(b) applies to the "prevailing party" determination for purposes of attorney's fees awards in mechanic's lien foreclosure cases. It has no applicability whatsoever to a contract dispute such as this one.

Even if the Court finds that Section 29-5-10(b) is somehow applicable to this case, Brilin did not comply with the requirements of the Section, which renders the definition of "prevailing party" found therein inapplicable. Specifically, Brilin's motion is correct when it states that Brilin "made offers to settle the case at multiple points," with its final written settlement offer of \$20,000 being made in May of 2022. Def.'s Mtn. for Treble Damages and Atty's Fees ¶ 21. The problem, though, is that none of Brilin's written settlement offers to CREH stated that they were made under Section 29-5-10(b), nor were any of them filed with the Court. In Seckinger, Mark Seckinger made a written offer to settle to Richard P. McDonnell, III on July 11, 1994. Like with Brilin's various written settlement offers in this case, though, "Seckinger's July 11, 1994, written offer did not state that it was made under Section 29-5-10(b)[,] nor was it filed with the court." As a result, the Court found that Seckinger's written offer did not comply with the requirements of Section 29-5-10(b) and that, consequently, the definition of "prevailing party" found in Section 29-5-10(b) was not applicable. Id. at 391. Similarly, in this case, in the event that the Court determines that Section 29-5-10(b) is somehow applicable to this contract dispute, the Court should find, as did the Court of Appeals in Seckinger, that Brilin did not comply with the requirements of Section 29-

5-10(b), and that, as a result, the definition of “prevailing party” found therein is not applicable here and should not be considered in any way in the Court’s determination of prevailing party.

Returning to the South Carolina Supreme Court’s established definition of “prevailing party” recited in Seckinger, CREH respectfully requests and moves the Court to find that it is a “prevailing party” in this action because CREH successfully prosecuted its breach of contract claim against Brilin and prevailed on the “main issue” of whether Brilin breached the Lease in one or more particulars. According to the Court in Seckinger, it matters not that the jury did not award CREH the full amount of damages that CREH was seeking against Brilin on its breach of contract claim. It also matters not, according to Seckinger and Heath, that the jury also returned verdicts in favor of Brilin on Brilin’s counterclaims against CREH. By way of the jury’s unanimous verdict in favor of CREH on its breach of contract claim, CREH is a prevailing party in this case and is, consequently, entitled to an award of its attorney’s fees and costs pursuant to Paragraph 28(g) of the Lease. Accordingly, CREH respectfully moves for a determination by the Court that it is a prevailing party in this case. CREH also respectfully moves for an award of its attorney’s fees and costs against Brilin for CREH’s attorney’s fees and costs incurred in this action.

An Affidavit of CREH’s Attorney’s Fees and Costs in this matter is being filed contemporaneously herewith.

Motion for JNOV

“A trial court should grant JNOV when the evidence is insufficient to support the jury’s verdict.” Helms Realty, Inc. v. Gibson-Wall Co., 383 S.C. 334, 338, 611 S.E.2d 485, 487 (2005) (citing Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003)). CREH is entitled to JNOV as to Brilin’s counterclaim for Unfair Trade Practices because Brilin failed to establish one or more essential elements of its counterclaim.

It is well-established that, “[t]o recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public policy; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act.” Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

In this case, Brilin did not present any evidence of any actual damages that it suffered as a result of any alleged unfair or deceptive act by CREH. As discussed herein *supra*, the only damages that Brilin presented during the trial of this case and requested that the jury award were the \$3,000.00 of its security deposit to which the parties stipulated and the \$1,144.75 that Brilin unilaterally decided to withhold from its August 2019 rent payment. Neither one of these monetary damages amounts were tied or related to any allegedly unfair or deceptive act by CREH toward Brilin. The best that Brilin was able to do at trial was to allege that CREH generated fraudulent invoices to Brilin during Brilin’s lease term. However, each and every witness that Brilin questioned regarding the allegedly fraudulent invoices denied that they were fraudulent, and there was no evidence that Brilin ever actually paid any of the allegedly fraudulent invoices.

It is also quite revealing that, during its closing argument at trial, Brilin only asked the jury to award \$1.00 on its Unfair Trade Practices counterclaim as “nominal damages.” Had Brilin suffered any actual damages as a result of any alleged unfair or deceptive act by CREH, CREH is certain that Brilin would have presented those damages during trial. Brilin did not present evidence of any such actual damages for the simple fact that it did not sustain any actual damages as a result of any alleged unfair or deceptive act by CREH.

Since Brilin did not present one shred of evidence of any actual damages that it suffered as a result of CREH’s alleged unfair or deceptive behavior, CREH is entitled to JNOV as to Brilin’s

counterclaim for Unfair Trade Practices. In the words of the Court in Helms Realty, the evidence that Brilin presented in this regard is simply insufficient to support the jury's verdict. Accordingly, since Brilin woefully failed to establish that it suffered any actual damages as a result of any alleged unfair or deceptive acts by CREH, CREH is entitled to JNOV as to Brilin's counterclaim for Unfair Trade Practices.

CREH is also entitled to JNOV as to Brilin's counterclaim for Unfair Trade Practices because Brilin did not establish that any alleged unfair or deceptive act by CREH toward Brilin affected public policy. "To be actionable under the UTPA, an unfair or deceptive act or practice must have an impact upon the public interest." Id. at 29. "Since 1986, South Carolina courts have required that a plaintiff bringing a private cause of action under UTPA allege and prove the defendant's actions adversely affected the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition." Id.

This case involves a private lease dispute between two corporate entities. Brilin did not present any evidence at trial, nor did Brilin argue to the jury during its closing argument, that any alleged unfair or deceptive act by CREH toward Brilin are capable of repetition, or have been repeated, in any other lease dispute that CREH has had with any of its former or current commercial tenants. In fact, Mr. Decker commented during the jury trial that this case is the very first time that he has ever been involved in a jury trial in his capacity as Principal of CREH. The most that Brilin was able to offer in this regard at trial was during argument on CREH's motion for directed verdict as to Brilin's Unfair Trade Practices counterclaim. In particular, Brilin argued that the allegedly fraudulent invoices that it contended that CREH generated, which each and every CREH witness denied, show that that kind of conduct is capable of repetition because CREH allegedly did it in this case, so Brilin supposedly had reason to believe that CREH might repeat it

in the future. Brilin's contentions in this regard are nothing but mere speculation, and unfortunately for Brilin, mere speculation and conjecture is simply insufficient to meet Brilin's burden of proof as to the second element of an Unfair Trade Practices claim. Therefore, CREH is also entitled to JNOV as to Brilin's counterclaim for Unfair Trade Practices because Brilin failed to establish that CREH's alleged unfair or deceptive act affected public policy.

Motions for Remittitur

"The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive. The decision of the trial judge to reduce the verdict will not be disturbed unless it clearly appears that the exercise of discretion was controlled by a manifest error of law." Rush v. Blanchard, 310 S.C. 375, 381, 426 S.E.2d 802, 806 (1993). CREH is entitled to remittitur as to the jury's awards on both of Brilin's counterclaims against CREH because the amounts of both of the said awards are excessive.

I. Breach of Contract

During its case-in-chief, Brilin presented no evidence of damages as to its counterclaim against CREH for breach of contract. However, after Brilin rested its case, but before the parties delivered their respective closing arguments to the jury, the parties stipulated that Brilin did not receive its \$3,000.00 security deposit back from CREH. Brilin subsequently included this \$3,000.00 in its closing argument, along with the \$1,144.75 that Brilin unilaterally decided to withhold from its August 2019 rent payment, in its damages calculation that Brilin requested from the jury. Brilin presented no other evidence of damages at trial. The jury ultimately awarded Brilin \$4,424.75 in actual damages on its breach of contract counterclaim, which is \$280.00 more than the total amount that Brilin's evidence presented at trial supports and that Brilin asked the jury to award. Consequently, CREH respectfully requests that the Court grant remittitur as to the

jury's award on Brilin's breach of contract counterclaim and reduce the said actual damages award to \$4,144.75, which reflects the total amount of actual damages for which Brilin presented evidence at trial and requested that the jury award during its closing argument.

II. Unfair Trade Practices

Brilin presented no evidence that Brilin suffered any actual damages whatsoever as a result of any alleged unfair or deceptive act by CREH. The most that Brilin did in this regard was to present and question CREH's witnesses about one or more invoices that CREH purportedly generated to Brilin that Brilin believed were fraudulent. However, all of the CREH witnesses that Brilin questioned about the allegedly fraudulent invoices denied that they were fraudulent, and Brilin presented no evidence at all showing that Brilin ever paid any of the allegedly fraudulent invoices. Brilin also did not argue to the jury during its closing argument that it paid any of the allegedly fraudulent invoices that CREH purportedly generated, nor did Brilin argue to the jury that it suffered any actual damages as a result of any alleged unfair or deceptive act by CREH. In fact, Brilin asked the jury to award a mere \$1.00 as "nominal damages" against CREH on its counterclaim for Unfair Trade Practices. Despite the complete lack of evidence of actual damages as to Brilin's Unfair Trade Practices counterclaim presented at trial, and Brilin's own request that the jury award a mere \$1.00 on this counterclaim, the jury, for reasons that elude comprehension, returned a verdict in Brilin's favor of \$6,089.13 in actual damages on the Unfair Trade Practices counterclaim. The jury, of course, returned this verdict not long after hearing Brilin's closing argument, in which Brilin referred to this case as a "bad movie," and referred to Brad Decker, CREH's Principal, as "Dr. Evil" and Wayne Schulte, CREH's Property Manager, as "Lurch."

Upon receiving the jury's verdict on Brilin's Unfair Trade Practices counterclaim, and after recalling the derogatory and inflammatory characterizations of this case and of CREH that Brilin

incorporated into its closing argument, CREH was deeply concerned that the jury's award of a seemingly exorbitant amount of actual damages on Brilin's Unfair Trade Practices counterclaim was the result not of the evidence actually presented at trial, but of a desire to punish "Dr. Evil." It remains unclear, and is frankly stunning and shocking to the conscience, as to how the jury arrived at a verdict of an exorbitant \$6,089.13 in actual damages on Brilin's counterclaim for Unfair Trade Practices when Brilin did not present any evidence of any actual damages that it suffered as a result of any allegedly unfair or deceptive act by CREH and when Brilin itself asked the jury for a mere \$1.00 in actual damages on its Unfair Trade Practices counterclaim. In this way, the amount of the jury's award of actual damages on Brilin's Unfair Trade Practices counterclaim is wholly unsupported by the evidence presented at trial.

Therefore, CREH respectfully requests that the Court also grant remittitur as to the jury's award on Brilin's Unfair Trade Practices counterclaim and reduce the said actual damages award to either \$0.00, which is the amount of actual damages actually supported by Brilin's evidence presented at trial, or in the alternative, \$1.00, which is the amount of actual damages that Brilin requested from the jury during its closing argument. This motion for remittitur, of course, is presented as an alternative to the requested JNOV as to Brilin's Unfair Trade Practices counterclaim, which CREH requests in the event that the Court is not inclined to grant JNOV in CREH's favor on Brilin's Unfair Trade Practices counterclaim.

August 17, 2022

Attorney Signature Page to Follow

/s/ Steve D. Dluzneski

Steve D. Dluzneski

S.C. Bar Number: 102019

HAMILTON MARTENS, LLC

Post Office Box 10940 (29731)

241 Oakland Avenue (29730)

Rock Hill, South Carolina

T: (803) 329-7672

F: (803) 329-7678

steve.dluzneski@hiltonmartens.com

ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Carolina Real Estate Holdings, LLC,	)	C/A No. 2020-CP-46-01145
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF ATTORNEY'S FEES
v.	)	AND COSTS
	)	
Brilin Electric, LLC and W & L Services,	)	
LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Nathan A. White, who being first duly sworn, deposes and says:

1. I am an attorney with the law firm of Alexander Ricks PLLC, and I aver my competency to testify as a sworn witness to the matters contained herein.
2. This case is an action related to disputes regarding a lease of real property located in York County, South Carolina and for collection of sums due arising from a breach of lease and counterclaims for breach of the lease and a violation of the South Carolina Unfair Trade Practices Act ("UTPA").
3. The subject Lease specifically provides that the prevailing party in any litigation is entitled to the recovery of attorney's fees and costs associated with enforcing any provision of the lease.
4. Furthermore, the UTPA entitles a party who prevails on a claim for unfair or deceptive trade practices to recover its attorney's fees.
5. Our firm was retained by Defendant Brilin Electric, LLC ("Brilin") to assist it with responding to a demand letter and then to defend this action once Plaintiff Carolina Real Estate Holdings, LLC ("CREH") brought suit before the conclusion of the Lease term. Brilin also

brought counterclaims resulting from CREH's breach of the Lease and counterclaims under the UTPA. The standard hourly rates of the attorneys who worked on this matter were \$350 per hour or less, said amounts being fair and reasonable given the nature of the dispute and costs associated with trial.

6. Despite repeated attempts to settle this matter, it went to trial before the Honorable Judge J. Mark Hayes II on July 18, 2022. I tried this matter, with the assistance of my associate Jack Spencer and paralegal support, from July 18 through July 21, 2022.

7. Brilin has incurred \$95,474.50 in legal fees and \$3,553.05 in court costs and expenses related to its enforcement of the Lease.

8. According to *Dedes v. Strickland*, 414 S.E.2d 134, 137 (S.C. 1992), the Supreme Court of South Carolina has set forth the following factors to be considered in an award of attorney's fees. These factors include: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. These factors, as applied in this case, are as follows:

- a. Nature, Extent and Difficulty of the Legal Services Rendered. This is an action to defend and to bring suit for breach of a commercial lease and to bring suit for violation of the UTPA. The factual and legal issues presented were complex and detailed in nature. Various attorneys as well as experienced paralegal staff have been responsible for, and expended extensive professional time in, the preparation and/or review and analysis of the various pleadings and other documents.
- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. The time and labor devoted to this case were necessary to properly prepare this case for the Court. The extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual difficulty. Attorneys and paralegals have spent hundreds of hours working on this matter including trying to resolve the matter before litigation, answering the complaint and the amended

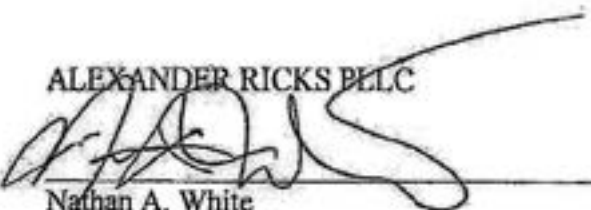
complaint, extensive discovery, and preparing for and trying the case to verdict before a jury.

- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I have practiced law for approximately 17 years. I am experienced in the field of real property law, commercial landlord-tenant law, creditor's rights, and commercial collections.
- d. Fee Customarily Charged in the Locality for Similar Legal Services. I am aware from discussions with clients and other similarly situated attorneys and law firms in South Carolina that this firm's hourly rates are in line with those customarily charged by counsel with similar experience and at similar law firms.
- e. Beneficial Results Obtained. I have obtained beneficial results for Brilin in this action by enforcing Brilin's rights with regard to the subject Lease. CREH recovered nothing of Brilin and will be required to pay Brilin damages once Brilin's UTPA damages are trebled. Accordingly, it is submitted that beneficial results were obtained by this firm on Brilin's behalf.

9. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the fee customarily charged in the locality for similar legal services, and the beneficial results obtained, the undersigned believes that attorney's fees in the amount of \$95,474.50 and costs in the amount of \$3,553.05 are fair and reasonable in this case, and that Brilin is entitled to these amounts pursuant to the provisions of the loan documents.

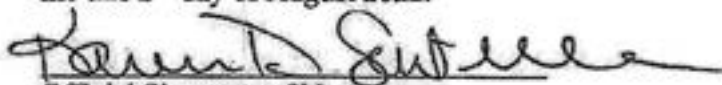
Further, Affiant sayeth not.

ALEXANDER RICKS PLLC


Nathan A. White
SC Bar No. 74015
1420 E. 7th Street, Suite 100
Charlotte, North Carolina 28204
Tel: (980) 498-6105
Fax: (704) 365-3676
nathan@alexanderricks.com

Counsel for Brilin Electric, LLC

Sworn to and subscribed before
me this 2nd day of August 2022.


Official Signature of Notary

Karen D. Sentelle

Notary's printed or typed name

My Commission Expires:

(Official Seal)

8/11/2024



CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AFFIDAVIT OF ATTORNEY'S FEES AND COSTS** has been served upon each of the parties to this action or their attorneys of record by email addressed as follows:

Steve D. Dluzneski
Hamilton Martens, LLC
P.O. Box 10940
Rock Hill, SC 29731
steve.dluzneski@hamiltonmartens.com

Counsel for Plaintiff

ALEXANDER RICKS PLLC

/s/ Nathan A. White
Nathan A. White
SC Bar No. 74015
1420 E. 7th Street, Suite 100
Charlotte, North Carolina 28204
Telephone: (980) 498-6105
Facsimile: (704) 365-3676
nathan@alexanderricks.com

Counsel for Brilin Electric, LLC

This the 2nd day of August, 2022.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Carolina Real Estate Holdings, LLC,)

C/A No. 2020-CP-46-01145

Plaintiff,)

v.)

Brilin Electric, LLC and W & L Services,)
LLC,)

Defendants.)

PLAINTIFF'S
AFFIDAVIT REGARDING ATTORNEY'S
FEES AND COSTS

PERSONALLY appeared before me, Steve D. Dluzneski, who, being duly sworn, deposes and says:

1. I represent Carolina Real Estate Holdings, LLC, the plaintiff in the above-referenced matter, and have served as its counsel throughout this action. As such, I am personally familiar with the services performed in this matter, and I make this affidavit based on my personal knowledge and the billing records that my firm has generated and maintained in the ordinary course of business.

2. I was admitted to the South Carolina Bar in May 2015, and I was engaged in the general practice of law at Charles S. Bradford, P.A. from January 2017 through December 2019. On January 1, 2020, I moved to the law firm of Hamilton Martens, LLC, where I have continued to engage in the general practice of law. I would estimate that approximately 85% of my practice at Charles S. Bradford, P.A. was devoted to litigation, and that approximately 95% of my practice at Hamilton Martens, LLC is devoted to litigation. I am currently a member in good standing with both the South Carolina Bar Association and the York County Bar Association. I am also admitted

to practice in the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

3. My present billing rate is \$265 per hour. The fees generated for this matter have been based on that rate, and my other hourly billing rates since I became involved in this matter in 2019, and the amount of time that I actually devoted to this matter. I also advanced costs related to this matter and billed my client accordingly.

4. As set forth in Plaintiff's Post-Trial Motions, which are being filed with the Court contemporaneously herewith, Plaintiff is entitled to attorney's fees pursuant to Paragraph 28(g) of its Commercial Lease Agreement with Brilin Electric, LLC if the Court determines that the Plaintiff is a "prevailing party" in this action.

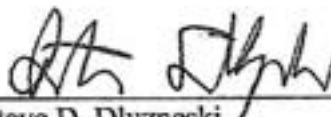
5. To date, the attorney's fees and costs billed to Carolina Real Estate Holdings, LLC ("Plaintiff") have totaled \$45,728.95. At the time of this Affidavit, the fees incurred for this matter, which have not been billed, are \$2,199.50 as of the time of this affidavit, but I expect more since this affidavit is being prepared before the hearing on the parties' post-trial motions. I will make the detailed invoices available to the Court for in camera review if requested by the Court.

6. Plaintiff is current in all payments to me under my billing criteria. I anticipate that Plaintiff will incur additional attorney's fees and costs related to the pending post-trial motions as well as other matters that may be necessary to bring this matter to a conclusion and collect on the judgment rendered.

7. Plaintiff is submitting this Affidavit to the Court in connection with its Motion for Attorney's Fees and Costs in this matter. In the event that the Court determines that Plaintiff is a "prevailing party" in this action, Plaintiff requests that the Court enter an award in favor of Plaintiff for all of Plaintiff's attorney's fees and costs incurred in this matter.

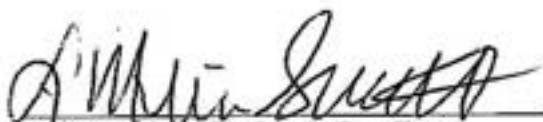
FURTHER DEPONENT SAYETH NOT.

HAMILTON MARTENS, LLC



Steve D. Dluzneski
S.C. Bar Number: 102019
HAMILTON MARTENS, LLC
Post Office Box 10940 (29731)
241 Oakland Avenue (29730)
Rock Hill, South Carolina
T: (803) 329-7672
F: (803) 329-7678
E-mail: steve.dluzneski@hamiltonmartens.com
Attorneys for the Plaintiff

SWORN TO AND SUBSCRIBED
before me this 17th day of August, 2022.



Notary Public for South Carolina
My Commission Expires: 6-15-32