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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of
Appeals

Appellate Case No. 2023-001147

APPEAL FROM BEAUFORT
COUNTY
Court of Common Pleas

Marvin H. Dukes III,
Master in Equity and Special
Circuit Court Judge
Case No. 2020-CP-07- 00977

BOKF Real Estate Holding, LLC

Respondent,

v.

T & S Management, Inc. and Turan Strange

Appellants

RECORD ON APPEAL

Submitted by:

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS**
	)	**CASE NO:** 2020-CP-07-00977
BOKF Real Estate Holdings, LLC, **Plaintiff(s)**,	)	**ORDER**
vs.	)	
T&S Management, Inc., et al., **Defendant(s).**	)	

This came before me June 2nd, 2023, on Plaintiff's Motion for Attorney Fees and Cost; filed May 15th, 2023, and on Defendant, T&S Management, Inc's Motion to Alter and Amend; filed May 18th, 2023.

Plaintiff's Motion for Attorney Fees and Cost was not heard and will be rescheduled at a later date.

I hereby deny Defendant's Motion to Alter and Amend.

IT IS SO ORDERED:

_____

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge
for Beaufort County

June _____, 2023
Beaufort, South Carolina

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Beaufort Common Pleas

Case Caption: Bokf Real Estate Holding Llc VS T&S Management Inc , defendant, et al

Case Number: 2020CP0700977

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2023 May 08 4:54 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **BOKF REAL ESTATE HOLDING, LLC,** **Plaintiff,** **vs.** **T&S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT** **CASE NO.: 2020-CP-07-00977** **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter come before the Court by motion of Plaintiff BOKF Real Estate Holding, LLC for summary judgment against Defendants T&S Management, Inc. and Turan Strange. The matter was argued by counsel, on March 28, 2023, at a hearing held via WEBEX remote video conference pursuant to and by consent of the parties and counsel. Present at the hearing were Edward M. Kubec, Esquire, CoffeyKubec, LLP, attorney for the Plaintiff, and Michael Mogil, Esquire, Mogil Law Firm, attorney for the Defendants.

Having considered the positions of the parties as argued by their respective counsel together with the pleadings and exhibits filed of record, motions, affidavits, and exhibits including the depositions of the parties with exhibits, as well as applicable statutory and case law, the Court hereby **GRANTS** the Plaintiff's Motion for Summary Judgment.

FINDINGS OF FACT

1. On April 11, 2016, Defendant T&S Management, LLC ("T&S"), as tenant, and WD-I Associates, LLC ("WD-I"), as landlord, entered into a written Lease Agreement ("Lease") for commercial property located at Suite 301 of the Sea Turtle Marketplace Shopping Center ("Shopping Center") at 430 Fording Island Rd., Hilton Head Island, South Carolina ("Premises") pursuant to which T&S was to operate a restaurant known as Another Broken Egg Cafe.

2. In order to further secure payment under the Lease, on or about April 11, 2016, the Defendant Turan Strange ("Strange") executed a written unconditional Guaranty

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("Guaranty"), whereby he guaranteed the payment of all rents and other sums and the performance of the terms, covenants and conditions by the tenant under the Lease.

3. The Lease includes the following terms relevant herein:

   a. T&S agreed to lease the Premises for a period of ten (10) years with an option to renew for three terms of five years each, and to pay the landlord the Minimum Rent at the monthly and yearly rates set forth in Lease. (§1(g).

   b. T&S agreed to pay the landlord Additional Rent which included a share of the real property taxes, insurance and other operating expenses incurred by the landlord to operate, maintain and manage the Shopping Center. The Minimum Rent and the Additional Rent are collectively referred to herein as the "Rent". (§6 and §7).

   c. Equipment and fixtures that are an integral part of the operation of the Premises or that are permanently installed in the Premises (such as built-in cabinets) shall not be considered trade fixtures. (§11).

   d. T&S agreed that any additions or improvements installed in the Premises immediately became property of the landlord and shall not be removed without landlord approval. (§17).

   e. Landlord shall undertake commercially reasonable efforts to re-let the premises and mitigate any damages suffered by landlord as a result of the tenant's default, however tenant's liability under the Lease shall not be affected by or diminished in any way whatsoever, for landlord's failure to re-let the Premises, of if the Premises are re-let, for landlord's failure to collect the rentals under such re-letting. (§25(b)).

   f. In the event of a tenant default, the landlord may re-let all or part of the Premises accepting any rents then obtainable, for a term or terms that may be greater or less than the balance of the term of the Lease, and landlord may grant concessions or free rent without in any way affecting tenant's liability for the Rent payable under this Lease. (§25(b)).

   g. In the event of a tenant default, the tenant is liable for the following damages:

      i. All Rent and damages that may be due or sustained by landlord up to the time the Lease terminates, the Premises are relet, or landlord takes possession of the Premises, whichever occurs later, and the performance of all other obligations of tenant accruing under this Lease through such date,

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(collectively "Accrued Damages") which Accrued Damages shall bear interest at the Default Rate until paid; and

ii. All reasonable costs, fees and expenses (including without limitation attorney's fees and expenses, brokerage commissions and fees) incurred by landlord in pursuit of its remedies under the Lease and in renting the Premises to others including, but not limited to Re-letting Preparations (all such Accrued Damages, costs, rents and expenses being referred to collectively as the "Default Damages"); and

iii. Future Damages, which, is the amount (the "Deficiency") by which (i) the Rent under the Lease until the expiration date or the Term exceeds (ii) the amount of rent, if any, that landlord receives during the same period from others to whom the Premises may be rented, and the Deficiency shall bear interest at the Default Rate until paid. (§25(c)).

h. The Default Rate of interest is 12% per annum. (§6(e)).

i. T&S agreed to pay all collection costs incurred by the landlord on account of a T&S' default, including collection costs, court costs and reasonable attorneys' fees. (§25(c)).

4. T&S took possession of the Premises and, on or about November 5, 2018, the Defendants opened Another Broken Egg Café for business to the public from the Premises.

5. T&S failed to pay Rent and other charges required by the terms of the Lease since September 1, 2019.

6. T&S shut down operations of Another Broken Egg Café and abandoned possession of the Premises on or about January 14, 2020.

7. In a Chapter 11 bankruptcy case in which WD-1 was the debtor, the United States Bankruptcy Court of South Carolina entered an Order on January 30, 2020 whereby the Court authorized WD-I's assumption and assignment of leases, including the subject Lease, and approved WD-I's sale of the Shopping Center to Plaintiff's affiliated company (the "Bankruptcy Order").

8. Pursuant to and consistent with the Bankruptcy Order, on February 28, 2020, Plaintiff and WD-I entered into an Assignment and Assumption of Leases by which WD-I assigned and transferred all of its right, title and interest in and to the Lease and Guaranty,

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including any Rent payment and other charges due under the Lease, to Plaintiff. The Assignment and Assumption of Leases contains terms indicating that Plaintiff would seek to collect rents due WD-I prior to the assignment.

9. Strange, who is the owner of T&S, admitted that Rent was not paid solely because T&S could no longer afford to pay it and Defendants decided to close the Another Broken Egg Café located in the Hilton Head Island and abandon the Premises so Defendants could continue to operate a second Another Broken Egg Café owned by Defendants in Pooler, Georgia.

10. On March 17, 2020, furniture, trade fixtures and equipment (FF&E) were removed from the Premises by third parties who were provided access to the Premises by Defendants. Plaintiff was unaware of the removal of the FF&E until after the fact and it did not authorize removal of the FF&E. The items left by Defendants at the Premises, including a range hood, walk-in cooler, sink and cabinetry, are improvements and not trade fixtures, and are therefore Plaintiff's property.

11. After T&S abandoned the Premises, Plaintiff undertook diligent efforts to procure another tenant for the Premises, which included its retaining a local commercial real estate broker to actively list and market the Premises for lease.

12. On or about February 12, 2021, Plaintiff entered into a lease for the Premises with a third-party commercial tenant, Gusto Restaurant, which began paying minimum rent and additional rent (common area maintenance charges) for the Premises to Plaintiff on July 1, 2021.

13. Plaintiff paid brokerage commissions of $16,707.13 to procure this new tenant for the Premises.

14. T&S failed to make payments for Rent and other charges due under the Lease and Plaintiff has demanded that Defendant Strange make those payments pursuant to the Guaranty.

15. Strange has failed to make the payments due to Plaintiff under the Guaranty.

16. Plaintiff has incurred damages of 312,425.73 (which includes an $8,875 offset for a security deposit paid by T&S to WD-I.

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17. The Guaranty provides at Section 9 that Plaintiff is entitled to recover costs of collection, reasonable attorneys' fees and costs of suit incurred by Plaintiff on account of Strange's default.

STANDARD OF REVIEW/LAW

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

"In determining whether a genuine issue of material fact exists, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456 (2009). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452 (2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Regions Bank v. Schmauch*, 354 S.C. 648, 660 (Ct. App. 2003). *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)(Once the moving party has established a prima facie case for summary judgment, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts.")

CONCLUSIONS OF LAW

1. Breach of the Lease by Defendant T&S Management

There is no genuine issue of material fact at issue on this cause of action.

To recover for a breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962).

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T&S and WD-I entered into a binding Lease and the Lease and all rights therein were properly assigned to Plaintiff. There is no dispute that T&S failed to perform as the Lease required. T&S breached the Lease, without any justification, by failing to pay Rent and other sums as they become due and by its vacating and abandoning the Premises. Indeed, Strange, the owner of T&S, admitted that T&S failed to pay rent because it could no longer afford to pay it due to the financial burden of operating two restaurants.

Defendants contend that Plaintiff or its predecessor in interest, WD-1, breached the Lease before T&S defaulted claiming that the shopping center failed to produce foot traffic, failed to implement anticipated marketing and merchant promotions, and failed to create a commercially acceptable appearance. However, no evidence was presented to support this position. In addition, the Lease does not require the landlord to perform any of these conditions. Moreover, the Lease contains an integration clause which precludes the Court from considering extrinsic evidence that is to be used to contradict the terms of the Lease. *Davis v. Kb Home of South Carolina Inc.*, 394 S.C. 116, 127 (S.C. Ct. App. 2011). ("The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument."); *U.S. Leasing Corp. v. Janicare, Inc*, 294 S.C. 312, 318 (S.C. Ct. App. 1988).

Evidence introduced by Plaintiff supports its claim that Plaintiff incurred damages of $321,300.73. Defendants contend that Plaintiff failed to mitigate its damages and that Plaintiff should be entitled to a set off for the value of fixtures and equipment installed by Tenant which remained in the Premises after Tenant vacated. I find to the contrary, the undisputed evidence shows that Plaintiff immediately engaged a commercial broker to market the Premises after it was vacated by T&S in March 2000 – at the outset of the Covid 2019 outbreak – and Plaintiff procured a replacement tenant within a reasonable period, notwithstanding the difficulties of doing such in the Covid environment. Moreover, Defendants specifically agreed in the Lease that in the event of a default their "liability under the Lease shall not be affected by or diminished in any way whatsoever, for Landlord's failure to re-let the Premises, or if the Premises are re-let, for Landlord's failure to collect the rentals under such re-letting." Defendants' lack of mitigation defense is without merit. I also decline to attribute value to the fixtures and equipment left in the premises because I find that that the lease allocates that property to the Landlord.

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Accordingly, the Court awards damages of $312,425.73 for Plaintiff against T&S (which includes an $8,875 offset for a security deposit paid by T&S to WD-I).

2. **Breach of Guaranty by Defendant Turan Strange**.

There is no genuine issue of material fact at issue on this cause of action.

As described herein, T&S owes the Plaintiff Rent, other charges and expenses pursuant to the Lease. Plaintiff demanded that Strange pay those monies pursuant to the Guaranty, but Defendant Strange has failed to make the required payment. As such, it is undisputed that Strange failed to perform his obligations under the Guaranty and has therefore breached the Guaranty.

Accordingly, the Court awards damages of $312,425.73 for Plaintiff against Strange.[1]

3. **Attorneys' Fees, Costs and Pre-Judgment Interest**.

Finally, Plaintiff as the prevailing party in this matter is entitled to its reasonable attorneys' fees and costs as provided in Section 25(c) of the Lease and Section 9 of the Guaranty, and therefore it is entitled to an award of its reasonable attorneys' fees and costs against Defendants T&S and Strange.

Plaintiff is further entitled to an award of pre-judgment interest on the damage award of $312,425.73. *Smith-Hunter Constr. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005)(the law has long allowed prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty); *Butler Contracting v. Court Street*, 369 S.C. 121, 133 (S.C. 2006)("The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.").

[1] Plaintiff abandoned its remaining claims in the Complaint, the Third (Conversion), Fourth (Declaratory Relief) and Fifth (Injunctive Relief) Causes of Action, based on this grant of summary judgment.

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Plaintiff shall within ten days of this Order file an affidavit of attorneys' fees and costs and a calculation of prejudgment interest through the date of this Order.

IT IS SO ORDERED.

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-07-00977

BOKF REAL ESTATE HOLDING, LLC

PLAINTIFF(S)

T&S MANAGEMENT, INC. and

TURAN STRANGE

DEFENDANT(S)

Submitted by: Edward M. Kubec, Esq., CoffeyKubec, LLP	**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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 : Plaintiff to file a motion for an order granting attorneys' fees, court costs and pre-judgment interest.

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)
BOKF Real Estate Holding, LLC	T&S Management, Inc.	$312,425.73
BOKF Real Estate Holding, LLC	Turan Strange	$312,425.73
		$

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

ELECTRONICALLY FILED - 2023 May 08 4:54 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

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-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.

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Beaufort Common Pleas

Case Caption: Bokf Real Estate Holding Llc VS T&S Management Inc , defendant, et al

Case Number: 2020CP0700977

Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2023 May 18 2:58 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **BOKF REAL ESTATE HOLDING, LLC,** **Plaintiff,** **vs.** **T & S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT** **CASE NO.: 2020-CP-07-00977** **MOTION TO ALTER, AMEND AND RECONSIDER ORDER GRANTING SUMMARY JUDGMENT**

Defendants T & S Management, Inc. and Turan Strange, through their undersigned counsel, move the Honorable Court to reconsider, alter, and amend its Order granting Summary Judgment to Plaintiff entered May 8, 2023, pursuant to SCRCP Rule 59 and Rule 60.

This Motion requests that the Court reconsider, alter and amend its judgment to reflect the following non-exclusive particulars:

1. Mr. Turan Strange's uncontroverted affidavit states that the conduct of Plaintiff's predecessor in interest, WD-1, delayed Defendant from opening its business for more than one year according to Mr. Srange, and ultimately defeated Defendant's business purpose. Mr. Strange also testified regarding the promotional materials and promises made by WD-1 regarding shopping center foot traffic and aesthetics. Defendants argue that WD-1's conduct and ommissions and maintenance of the center were and are a breach of the lease which occurred prior to and was a direct cause of Defendant's alleged breach. The Order granting summary judgment does not

ELECTRONICALLY FILED - 2023 May 18 2:58 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

recognize that WD-1's conduct as a breach or that such conduct excused Defendant's performance or caused Defendant's alleged breach.

2. The Order does not give Defendants financial credit for fixtures and equipment left at the restaurant premises, which accrued to landlord's benefit. Defendant submitted an affidavit from Turan Strange documenting his valuation of the remaining fixtures and equipment. Defendants request leave from the Court to include in the record Mr. Strange's amended affidavit, which updates his damages calculations, but which was not yet executed as of the date of the final hearing in the matter.

3. The Order states that the Landlord under the lease did not have a duty to mitigate its damages. Defendants dispute this interpretation and request that the Court consider that no evidence was introduced that demonstrates that Plaintiff exercised any effort to mitigate damages or locate a new tenant. Rather, Plaintiff referred the matter to Sperry Van Ness, whom Plaintiff asked the court to presume exercised proper efforts based on its standing and reputation. Sperry did in fact produce a new tenant, which tenant was and is paying considerably less than Plaintiff for the same space, despite a much higher commercial market in 2021 and not factoring in the significant improvements that Defendant made to the property prior to vacating.

4. The Order granting summary judgment appears to assign credibility to Plaintiff's affiant witness, Warren Hill. At deposition approximately ten days before the subject hearing, Mr. Hill acknowledged that he did not prepare the financial damages calculations and that he did not have specific knowledge of how to calculate such damages. Further, Mr. Hill admitted at deposition that he did not have direct contact with the Defendants nor knowledge of the dealings between the prior landlord WD-1 and the Defendants prior to Plaintiff allegedly acquiring the

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leasehold interest. Mr. Hill admitted he had no knowledge regarding the history of the property site before BOKF took over in March, 2020, which was after Defendants had closed.

5. Defendants contend that Plaintiff's damages, if any, should not include damages for the period prior to March 1, 2020, which is on or about the date that Plaintiff acquired the subject shopping center. The bankruptcy sale documents introduced by Plaintiff document that Plaintiff acquired the subject property—upon information and belief the sale documents do not assign past due rents, late fees, additional rent or any other Defendant obligations which accrued prior to the acquisition. In sum, Defendants contend that Plaintiff's damages, if any, only accrued during the period between March 1, 2021 and October, 2022, when the property was allegedly sold to an unrelated third party.

6. Defendants argue that any damages awarded to Plaintiff should not include damages for late fees, penalty fees, or the differential between the lower rent that the new tenant, Gusto, is paying and the contract rent that T & S Management was paying pursuant to its lease.

In sum, Defendants established there were a number of unresolved fact issues, the resolution of which were and are necessary to find summary judgment in favor of Plaintiff as a matter of law. Defendants also argue that the damages awarded should be reduced for the factors stated herein.

Plaintiff requests the opportunity to prepare a full memorandum, referencing the fact record and legal precedent, and to amend Mr. Strange's affidavit regarding damages, before this Motion is argued.

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WHEREFORE, Defendants respectfully request that the Honorable Court reconsider, alter and amend is Order granting summary judgment, and for such other relief as the Honorable Court deems just and proper.

May 18, 2023

Hilton Head Island, SC

Respectfully Submitted,

Mogil Law Firm

/s/ Michael W. Mogil

_____

Michael W. Mogil, SC Bar No. 11933
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
(843) 785-8110
Attorney for Defendant(s)

ELECTRONICALLY FILED - 2023 May 31 1:39 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **BOKF REAL ESTATE HOLDING, LLC,** **Plaintiff,** **vs.** **T&S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT** **CASE NO.: 2020-CP-07-00977** **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 59(E) MOTION TO RECONSIDER AND ALTER OR AMEND**

Plaintiff BOFK Real Estate Holding, LLC ("Plaintiff"), by and through its undersigned counsel, files this Response in Opposition to Defendants' Rule 59(e) Motion to Reconsider and Alter or Amend the Court's Order granting the Plaintiff's Motion for Summary Judgment.

1. BACKGROUND

Plaintiff initiated this action on April 30, 2020 against Defendants T&S Management, Inc. and Turan Strange. The Complaint alleges that T&S Management breached a commercial lease ("Lease") to rent property to operate an *Another Broken Egg* restaurant franchise on Hilton Head Island and Strange breached his obligations under a Guaranty to the Lease.

On February 23, 2023, Plaintiff filed a Motion for Summary Judgment against both Defendants, the Motion was fully briefed, affidavits and exhibits submitted by both parties and hearings before the Court took place on March 28, 2023 (via Webex) and April 17, 2023 (via teleconference). On May 8, 2023, the Court entered an order granting Plaintiff's Motion for Summary Judgment against both Defendants.

2. LEGAL STANDARD

Defendants do not present a basis for reconsideration under Rule 59(e) and simply proffer the same six arguments the Court has already considered and properly ruled upon. "Motions under Rule 59 are limited in scope and are not to be used to 'rehash' the same arguments and facts previously presented… Furthermore, a motion to reconsider cannot appropriately be granted where

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the moving party simply seeks to have the Court rethink what the Court has already thought through." *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998), aff'd, 176 F.3d 745 (4th Cir. 1999) (citations and quotations omitted). *See Exxon Shipping Co. v. Baker,* 554 U.S. 471, 486 n. 5 (2008) (explaining that a Rule 59(e) motion "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment"). The Court has already appropriately evaluated the arguments presented by Defendants and applied the proper standard to grant summary judgment in favor of the Plaintiff.

A. Delayed Opening

Defendants rehash their arguments that the prior landlord, WD-1 Associates, LLC ("WD-1") delayed Defendants from opening the restaurant and failed to provide foot traffic and adequate aesthetics. The Court considered and rejected these arguments. With regard to the delayed opening, Defendants and WD-1 entered into three amendments to the original Lease, each time extending the opening date for the restaurant and deferring the commencement of rent payments. (Hill Affidavit, ¶4.) Thus, Defendants effectively waived any right to claim the landlord's delay was a breach of the Lease or excused Defendants' performance in any manner. Likewise, the Court noted at the hearings that the delays were caused in large part by hurricanes that impacted Hilton Head Island during the relevant time period.

As for the lack of foot traffic and poor aesthetics claim, the Court correctly ruled that no evidence was presented to support this position. The Court additionally found that the Lease does not require the landlord to perform any of these conditions and since the Lease contains an integration clause, the Court was precluded from considering extrinsic evidence to be used to contradict the terms of the Lease. *Davis v. KB Home of South Carolina Inc*., 394 S.C. 116, 127 (S.C. Ct. App. 2011). ("The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.").

B. Credit for Fixtures and Equipment

Defendants, once again, contend that they should receive credit for fixtures and equipment left at the restaurant when they abandoned the Premises. This issue was substantially addressed at the hearings and, among other things, the Court concluded that the items at issue, a stove hood,

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walk-in cooler and built-in cabinets and equipment, were an integral part of the operation of the Premises and were permanently installed in the Premises and cannot be considered trade fixtures. (Lease §11.) Accordingly, any additions or improvements installed by Defendants to the Premises immediately became property of the Plaintiff and could not be removed without the Plaintiff's approval - which approval was never sought by Defendants or given by Plaintiff. (Lease §17.)

C. Mitigation of Damages

Defendants misstate the Court's findings concerning Plaintiff's mitigation of damages and claim that no evidence of mitigation was presented by Plaintiff. To the contrary, the Court specifically found that the undisputed evidence shows that Plaintiff immediately engaged a commercial broker to market the Premises after it was vacated by T&S Management in March 2000 – at the outset of the Covid 2019 outbreak – and Plaintiff procured a replacement tenant within a reasonable period, notwithstanding the difficulties of doing such in the Covid environment.

Moreover, the Court found that Defendants specifically agreed in the Lease that in the event of a default their "liability under the Lease shall not be affected by or diminished in any way whatsoever, for Landlord's failure to re-let the Premises, or if the Premises are re-let, for Landlord's failure to collect the rentals under such re-letting" and, as a result, the Court concluded that Defendants' lack of mitigation defense is without merit.

D. Hill Affidavit

Defendants do not identify any specific findings from the Court that were solely based on an assessment of the credibility of Plaintiff's affiant witness, Warren Hill.

E. Damages Prior to Plaintiff's Acquisition of the Shopping Center

Defendants re-argue their position that Plaintiff is not entitled to recover lease damages that occurred prior to Plaintiff's obtaining ownership of the Premises. The Court, however, specifically found that "pursuant to and consistent with the Bankruptcy Order, on February 28, 2020, Plaintiff and WD-I entered into an Assignment and Assumption of Leases by which WD-I assigned and transferred "***all of its right, title and interest in and to the Lease and Guaranty, including any Rent payment and other charges due under the Lease, to Plaintiff.***" (Emphasis

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added.) The Court further correctly found that the Assignment and Assumption of Leases contains terms indicating that Plaintiff would seek to collect rents due WD-I prior to the assignment.

F. Damage Calculation

Defendants repeat their argument that Plaintiff's damages should not include late fees or the differential between the lower rent that the new tenant, Gusto, is paying and the rent that T & S Management was paying pursuant to the Lease. As noted above, Plaintiff acquired all of the landlord' s "right, title and interest in and to the Lease and Guaranty, including any Rent payment ***and other charges*** due under the Lease." Therefore, Plaintiff is entitled to recover accrued late fees as provided for in the Lease. In addition, the Court correctly found that the Lease (at §25(c)) entitles Plaintiff to recover as "future damages" the differential between the lower amount paid by the new tenant, Gusto Restaurant, and the amount paid by T&S Management under the Lease terms.

3. CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests the Court deny Defendants' Motion for Reconsideration of the May 8, 2023 Order granting the Plaintiff's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED BY:

COFFEYKUBEC, LLP
By: /s/ *Edward M. Kubec*
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May 31, 2023
Hilton Head Island, SC

ELECTRONICALLY FILED - 2023 Feb 23 1:57 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **BOKF REAL ESTATE HOLDING, LLC,** **Plaintiff,** **vs.** **T&S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT** **CASE NO.: 2020-CP-07-00977** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO: DEFENDANTS AND THE LAW OFFICES OF MICHAEL W. MOGIL, ATTORNEYS FOR DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that Plaintiff BOKF Real Estate Holding, LLC, by and through its undersigned attorneys, hereby gives notice that ten days after the service of this Notice of Motion and Motion for Summary Judgment, or as soon thereafter as counsel may be heard, will move before the Master in Equity, Beaufort County, South Carolina, pursuant to Rule 56, SCRCP, for summary judgment as to First and Second Causes of Action in the Complaint. In support of the motion, Plaintiff relies on the pleadings, the written discovery and depositions to date, the Affidavits of Warren E. Hill and Edward M. Kubec, Esq. in support of the motion filed simultaneously herewith, the applicable law, and any memorandum of law that may be filed.

There are no genuine issues of material fact and Plaintiff is entitled to judgment as a matter of law on the following claims for the following reasons:

1. On April 11, 2016, Defendant T&S Management, LLC ("T&S"), as tenant, and WD-I Associates, LLC ("WD-I"), as landlord, entered into a written Lease Agreement ("Lease") for commercial property located at Suite 301 of the Sea Turtle Marketplace Shopping Center ("Shopping Center") at 430 Fording Island Rd., Hilton Head Island, South Carolina ("Premises") pursuant to which T&S was to operate a restaurant known as *Another Broken Egg Cafe*.

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2. In order to further secure payment under the Lease, on or about April 11, 2016, the Defendant Turan Strange ("Strange") executed a written unconditional Guaranty ("Guaranty"), whereby the payment of all rents and other sums and the performance of the terms, covenants and conditions by the tenant under the Lease were guaranteed by Defendant Strange.
3. Pursuant to the terms of the Lease, Defendant T&S agreed to lease the Premises for a period of ten (10) years with an option to renew for three terms of five years each, and to pay the landlord or its assigns the Minimum Rent at the monthly and yearly rates set forth in Lease. Defendant T&S further agreed under the terms of the Lease to pay the landlord or its assigns Additional Rent which included a share of the real property taxes, insurance and other operating expenses incurred by the landlord to operate, maintain and manage the Shopping Center. The Minimum Rent and the Additional Rent are collectively referred to herein as the "Rent".
4. WD-I made the Premises available to the Defendant T&S and Defendant T&S took possession of the Premises and, on or about November 5, 2018, the Defendants opened *Another Broken Egg Café* for business to the general public from the Premises.
5. Defendant T&S failed to pay Rent and other charges under the terms of the Lease since September 1, 2019 and it shut down operations of *Another Broken Egg Café* and abandoned possession of the Premises on or about January 14, 2020.
6. On February 28, 2020, Plaintiff and WD-I entered into an Assignment and Assumption of Leases by which WD-I assigned and transferred all of its right, title and interest in and to the Lease and Guaranty, including any rent payment and other charges due under the Lease, to Plaintiff.
7. Despite demands made by Plaintiff and the predecessor landlord, Defendants T&S and Strange have failed and refused to pay the amounts due under the Lease and Guaranty.
8. Plaintiff is entitled to summary judgment as a matter of law on the First Cause of Action for Breach of Contract because the undisputed facts show:
    a. The Lease is a binding agreement between Plaintiff and Defendant T&S.
    b. Defendant Strange, who is the owner of Defendant T&S, admitted that Rent was not paid solely because Defendant T&S could no longer afford to pay it.

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Defendants decided to close the *Another Broken Egg Café* located in the Hilton Head Island and abandon the Premises so Defendants could continue to operate a second *Another Broken Egg Café* owned by Defendant T&S in Pooler, Georgia.

c. Defendant T&S breached the Lease by failing to pay Rent and other sums as they become due, by its abandonment of the Premises and by its unauthorized and improper removal of FF&E.

d. As a direct and proximate result of the Defendant T&S' breach of the Lease, the Plaintiff has suffered damages consisting of $344,856.22 in past damages (accrued as of February 14, 2023) and $191,136.81 in future damages (the present value of the Rent differential).

9. As a result of the breach of the Lease, Plaintiff is entitled to a judgment against Defendant T&S in the amount of $535,993.03 as of February 14, 2023.

10. Plaintiff is entitled to summary judgment on the Second Cause of Action as a matter of law against Defendant Strange because the undisputed facts show:

a. The Guaranty is a binding agreement between Plaintiff and Defendant Strange.

b. Defendant T&S failed to make payments for Rent and other charges due under the Lease and Plaintiff has demanded that Defendant Strange make those payments pursuant to the Guaranty.

c. Defendant Strange has failed to make the payments due to Plaintiff under the Guaranty.

d. As a direct and proximate result of the Defendant Strange's breach of the Guaranty, the Plaintiff suffered damages consisting of $344,856.22 in past damages (accrued as of February 14, 2023) and $191,136.81 in future damages (the present value of the Rent differential).

11. As a result of the breach of the Guaranty, Plaintiff is entitled to a judgment against Defendant Strange in the amount of $535,993.03 as of February 14, 2023.

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12. The Lease (¶25(e) and Guaranty (¶9) both provide that Plaintiff is entitled to recover costs of collection, reasonable attorneys' fees and costs of suit incurred by Plaintiff on account of the Defendants' default.

For the reasons explained above, Plaintiff's Motion should be granted and costs and attorneys' fees awarded to Plaintiff.

RESPECTFULLY SUBMITTED BY:

COFFEYKUBEC, LLP
By: /s/ *Edward M. Kubec*
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Attorneys for Plaintiff

February 23, 2023
Hilton Head Island, SC

ELECTRONICALLY FILED - 2023 Mar 27 6:04 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BOKF REAL ESTATE HOLDING, LLC, Plaintiff, vs. T&S MANAGEMENT, INC. and TURAN STRANGE, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO.: 2020-CP-07-00977 **AFFIDAVIT OF EDWARD M. KUBEC**

I, Edward M. Kubec, having been being duly sworn, depose and state:

1. My name is Edward M. Kubec, I am more than twenty-one years of age and I am competent to make this affidavit and to testify to the matters stated herein. The statements contained herein are within my personal knowledge.

2. I am counsel of record in the above-referenced action for Plaintiff BOKF Real Estate Holding, LLC.

3. True and correct copies of excerpted pages from the transcript of testimony by Turan Strange taken by deposition in this matter on May 11, 2022 are attached hereto as Exhibit "H". These transcript pages supplement other deposition testimony of Turan Strange submitted to the Court in my prior Affidavit in connection with Plaintiff's Motion for Partial Summary Judgment.

FURTHER AFFIANT SAYEHT NAUGHT.

Edward M. Kubec

Sworn to and subscribed before me
this 27 day of March 2023

Maureen T. Coffey

Notary Public, State of South Carolina

My Commission Expires: 2-20-20

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one. I mean, it was -- I should have but I didn't.

Q After closing the doors, did you take any other steps with regard to that location?

A The steps that we took had to do with, first of all, we tried to get -- let me go back. I took steps of trying to get that location sold to another franchisee. It was a company called Double R. They were franchisees; they owned about 30 locations in the entire system and they sent a representative down. He came, he looked at the location, and they decided that they were not going to acquire the location. Wheeler was aware -- they were aware of that that I had somebody else looking at that location, okay? So they knew that that was a possibility.

So when that didn't pan out -- and actually that happened before I even closed the doors, but what end happening when that did not pan out and I knew I wouldn't be able to make it, then that's when I called corporate and they said -- not they, but basically we made a decision to try to get something for all the movable equipment that was in the location. So we sold all of the FF&E that we could and we got

$70,000 for the furniture, fixtures and equipment, and that $70,000 went directly to United Community Bank. I did not get any of those funds; it went straight to the bank to pay what we could. In fact, $70,000 for -- and as much as I paid for the equipment, $70,000 for everybody that I went to. So that was a pretty good figure because once you close a restaurant, the equipment basically is almost of no value; you'd be lucky to get 10 cent on the dollar for it.

Q Did you inform the landlord prior to the selling the furniture, fixtures and equipment that you were going to do so?

A No, I did not.

Q Why not?

A Because the lien on the property and the equipment was with the bank. So the bank actually owned the equipment and that's who I was paying the mortgage to so as a result, since the bank was the one that was getting the money, I didn't feel it necessary to let the landlord know that that was going to be going to the bank. The other part was that there was -- it was probably in the neighborhood of 175- to

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there's an attachment that refers to Foodservice Solutions?

A That's Dykes, right.

Q And there's are some handwritten notations on there. Can you explain to me if you recognize those?

A Yes, the walk-in cooler which I said that was still there.

Q So if you see to the right of that, there's references of walk-in cooler, there's an X through it; correct?

A Correct.

Q And there's a handwritten notation "no". Is that something you wrote or do you know --

A That is something I wrote.

Q Okay. What does the no mean; it wasn't delivered?

A It wasn't taken.

Q And if it says yes, that means it was taken?

A Yes.

Q Okay, that's all I know need to know about this.

And what day, to your knowledge, was --

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since this agreement is not dated except for March 2020, when was the property removed from the premises?

A I can only tell you it was in January of '20, but I can't --

Q Was it immediately after the doors were closed or was it a period of time after the doors were closed?

A It was a period of time.

Q A week, two weeks, a month?

A Maybe a month.

Q Did you have to negotiate the terms of this agreement with Abe-Hyde Park?

A Yes.

Q Did you do that personally?

A Yes.

Q Was Mr. Chernett involved also?

A No.

Q And at no point in time did you involve the landlord in that discussion; correct?

A No.

Q You kept it a secret from the landlord?

MR. MOGIL: Object to the form of the question.

MR. KUBEC: You can answer it.

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continue to pay. I just didn't have the money to do it.

Q Did you ever send the landlord a -- did you communicate with the landlord in any way prior to stop paying rent about any reasons why you were displeased with that location?

A No.

(Whereupon, Plaintiff's Exhibit Number 3 was marked for identification.)

BY MR. KUBEC:

Q Mr. Strange, I've handed you what's marked as Plaintiff's Exhibit Number 3, which is the answer of T & S Management, Inc. and Turan Strange in this particular lawsuit, and I'd like to refer you to page two and let's go to the second paragraph. It starts with "The impact of Hurricanes Matthew 2016, Irma 2017 and a third threatened hurricane and evacuation in 2018 significantly delayed development of the shopping center and in particular defendants' planned restaurant space." Is that an accurate statement?

A Yes.

Q In what way did the hurricanes delay

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BY MR. KUBEC:

Q Let's go back to your answer again, which is Exhibit 3. We're kind of in the middle of that paragraph I was reading, and one of the things it says in this introductory paragraph is that "No formal shopping center marketing plan was developed, and foot traffic at the center was almost nonexistent through the date of the alleged breach of the lease." To your knowledge, does the lease require any marketing plan be developed for the shopping center?

A Not that I'm aware of.

Q Did does lease require a minimal level of foot traffic at the shopping center?

A No.

Q Have you ever had a lease that you entered into on behalf of McDonald's or anyone else that had a requirement for foot traffic?

A No.

Q Let's refer to paragraph 16.

A What page are you on?

Q Page four, please. This paragraph says, "Defendant Strange admits that he executed a document entitled Guaranty". Is that the same guaranty that you saw earlier today at this

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and times and that kind of stuff. And then, again, it talks about the lease, the original lease agreement that I had. So now you asked me about the first one and the third one. So the original lease was April 11th that we had at Pooler, okay, and it was supposed to be ready come September 1st of 2016; that was the timeline that I was looking for. It wasn't there, okay? Of course, the landlord had financial issues which resulted in construction delays so this resulted in that first lease amendment that we ended signing off on, on January 6th of 2017 --

Q I'll stop you there. What did the first lease amendment say?

A It moved the timeline in terms of when they were going to have the space ready.

Q Okay. And you agreed to that?

A I agreed, okay, and I will unequivocally tell you I was -- I think I said i was -- what was the word I used, arrogant in thinking that I could pull this off, okay? But at that point I shortened my timeline, okay, and that's the thing I want to make sure you understand. When you shorten a timeline like

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that, you don't have that -- now, along with this, there's training that was required of employee, myself, my management staff, my general managers and my kitchen managers, so I had to send people off to Florida for training. Now, of course, they had six, seven weeks of training, okay, and then all of us was supposed to return; and what corporate would do, they would send a group of corporate employees who would work with you and train your staff. This is what we did for the first two weeks and, of course, you'd have a day where you did -- we did Boys & Girls Club and then we did the Animal Protection League where we donated the funds that they were able to gather. Guests came in and they ate for free. We asked them to give a donation to those two organizations, okay, so that's how we would open it.

Then after that first delay, okay, from the January time period, okay, we're sitting here thinking, you know, this thing got delayed here so maybe we need to start looking because we need to start looking for a second location because we didn't know when it was going to open, especially hearing that the landlord --

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and this isn't the group that has it now but this was the Wheeler group. The Wheeler group was suffering financially trying to get themselves together so we didn't know when it was going to open, okay? So what we did, we decided, okay, let's start looking for another location. We happened up on the Pooler location and, of course, when we happened up on that Pooler location, we were immediately able to kind of get in there. Well, of course, shortly thereafter, that's when we had the hurricanes; then we had to enter into that second lease amendment which was October 17th; we had that second one, okay? So that really forced us, okay, we really need to work on trying to get another location because we don't know when this place is going to open, okay?

And, of course, that's when we entered into another agreement on March 18th with Pooler, okay, and then they started their construction stuff. Well, of course, once the hurricane hit, or whatever, during that time period, then that's when, all of a sudden, we ended up with that third lease amendment which was January 29th of '18, okay, and they were

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saying then that they could give us the shell of the building in July. Well, by then, all of a sudden, I got Pooler that, all of a sudden, in April they started construction here and then they're saying, okay, you can have it in July. Well, if you do it in July and they start construction, you're going end up with a conflict with these two restaurants, trying to open literally at the same time. And, you know, you got all the costs that are mounting up, mounting up, mounting up, but in the meantime, what you're trying to also do, you got to have income coming in from these restaurants that will offset that. Well, of course, we're spending all the cash; and, of course, when it came to my reserves as far as what I had, my reserves are dwindling. So, of course, that third lease amendment, when we signed that one in January -- it was January of 2018 when we signed that one, okay? So, of course, they promised the shell then in July and then, of course, we ended up opening the restaurant in November. And I'll be candid; I was very frustrated at that particular point trying to open Pooler, and everything is going 100 percent

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over there as far as getting it open. I had three delays over here dealing with financial things with the landlord, as well as the fact I'm dealing with Wheeler. And he can't control that and we talked about that earlier. You know, God controlled that; it wasn't him that controlled that. So it just -- again, it just created that type of scenario where, all of a sudden, I'm pushed back into the corner where he's pushing me to accept it. So I accepted it, okay, thinking I could do it. I couldn't pull it off, okay? And, again, I had three personal friends that I borrowed money from. Is there a record of it, no. The only record that you have you'll see money that will show up into the account, and I had to borrow money just to try to stay afloat, okay? And that was right when we first opened up and I'm trying to figure out how to pay bills. So when you asked me, you know, why didn't you try to pay, I'm running around borrowing money from any and everybody. And I have personal friends, did they ask me for a note, no. They didn't even ask me for a note. Pay me when you can get it and that's what I did, so. So this is what happened and, listen,

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I did the best I could.
Q Understand. Other than what you've testified to today, is there any other reason why you believe the landlord is at fault?
A Again, I think a lot of that was -- a lot of those delays and things, no, I don't have anything other than the fact that all of the delays that took place and it just forced me to try to open two restaurants.
Q But then you signed three amendments, right?
A Yes, I did.
Q And that was of your own volition?
A Yes.
MR. KUBEC: No further questions.
MR. MOGIL: I have a couple questions.

CROSS-EXAMINATION

BY MR. MOGIL:

Q Following what Mr. Kubec just asked you, was there anything else the landlord did that you were blaming for the default? Going back to when you were negotiating the lease, did you negotiate the lease or did someone else do it for you?

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ELECTRONICALLY FILED - 2023 Mar 27 10:01 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BOKF REAL ESTATE HOLDING, LLC, Plaintiff, vs. T&S MANAGEMENT, INC. and TURAN STRANGE, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO.: 2020-CP-07-00977 **SUPPLEMENTAL AFFIDAVIT OF WARREN E. HILL**

I, Warren E. Hill, having been being duly sworn, depose and state:

1. My name is Warren E. Hill, I am more than twenty-one years of age and I am competent to make this affidavit and to testify to the matters stated herein. The statements contained herein are within my personal knowledge.

2. I am a Senior Vice President and Manager of REO Special Assets/Facilities for BOKF Real Estate Holding, LLC (the "Plaintiff"). My duties and responsibilities for Plaintiff include oversight of company-owned commercial real estate and activities relating to the collection of delinquent tenant accounts. As such, I am very familiar with the circumstances surrounding this litigation and the Plaintiff's business relationship with Defendants T&S Management, Inc. and Turan Strange (collectively the "Defendants").

3. This case involves a lease ("Lease") between Defendant T&S Management, LLC ("T&S"), as tenant, and WD-I Associates, LLC ("WD-I"), as landlord, ("Lease") for commercial property located at Suite 301 of the Sea Turtle Marketplace Shopping Center ("Shopping Center") at 430 Fording Island Rd., Hilton Head Island, South Carolina ("Premises") pursuant to which T&S was to operate a restaurant known as *Another Broken Egg Cafe*. A true and correct copy of the Lease is attached to my prior Affidavit as **Exhibit "A"**.

4. Plaintiff acquired the Shopping Center and the Lease rights to the Premises from WD-I pursuant to the following documents and instruments:

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a. January 30, 2020 Bankruptcy Court (District of South Carolina (Case #19-02517-jw)) Order (i) Authorizing Assumption and Assignment of Leases and (ii) Approving Sale of Substantially all of the Assets, Free and Clear of Liens.
b. Real Estate Purchase Agreement by and between WD-1 and Plaintiff's assignee, BOKF, N.A., of January 27, 2020.
c. Limited Warranty Deed from WD-I to Plaintiff dated February 28, 2020 and recorded in the Beaufort County Register of Deeds at Book 3841 at Page 1330.
d. Assignment and Assumption of Leases between WD-I and Plaintiff dated February 28, 2020.

True and correct copies of these documents and instruments are attached hereto as Exhibit "**F**".

5. The subject Shopping Center, including the Premises, was sold by Plaintiff on October 11, 2022 (the "Sale Date").

6. This Supplemental Affidavit is made and submitted in connection with Plaintiff's Motion for Partial Summary Judgment to correct the damage calculation of Plaintiff's damages presented in my prior Affidavit, which inadvertently included damages for the period after the subject Shopping Center was sold.

7. The Accrued Damages owed to Plaintiff by the Defendants for payments due through July 1, 2021, the date the Premises was relet to a new tenant, are as follows:

a. Minimum Rent through July 1, 2021:	$162,750.00
b. Additional Rent through July 1, 2021:	$23,625.00
c. Late Fees through July 1, 2021:	$9,318.75
d. Interest on unpaid Minimum, Additional Rent and Late Fees through the Sale :	$51,540.60
e. Broker Commissions	$16,707.13
f. Total	$263,941.48

A true and correct copy of a summary detailing the Plaintiff's damages is attached hereto as **Exhibit "G"**.

8. The current Deficiency damages owed to Plaintiff by the Defendants for the amount of the Minimum Rent payments due from Plaintiff less the Minimum Rent payments received from the new tenant from July 1, 2021 through the Sale Date are as follows:

a. Minimum Rent through the Sale Date	$53,155.51

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b. Interest on unpaid Minimum Rent through the Sale Date: $4,203.73

c. Total $57,359.24

9. The total amount of damages incurred by Plaintiff, exclusive of collection costs and attorneys' fees, is $321,300.73. Except for a security deposit of $8,875, there are no other credits or offsets due and owing, although I am informed that Defendants claim an offset for certain abandoned personal property and/or fixtures that remained on Premises after it was vacated by the Defendants.

10. Pursuant to Section 25(c) of the Lease, Defendants agreed to pay all collection costs incurred by the Plaintiff on account of the Defendants' default, including collections costs, court costs and reasonable attorneys' fees.

FURTHER AFFIANT SAYEHT NAUGHT.

Warren E. Hill

Sworn to and subscribed before me
this 16th day of March 2023

Notary Public, State of Oklahoma

My Commission Expires: 02-24-2026

Notary Public
State of Oklahoma
CYNTHIA S KERN
TULSA COUNTY
COMMISSION #10001519
Comm. Exp. 02-24-2026

EXHIBIT F

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **19-02517-jw**

ORDER (1) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF LEASES; AND (2) APPROVING SALE OF SUBSTANTIALLY ALL OF THE ASSETS, FREE AND CLEAR OF LIENS

The relief set forth on the following pages, for a total of 54 pages including this page, is hereby ORDERED.

FILED BY THE COURT
01/30/2020

UNITED STATES BANKRUPTCY COURT DISTRICT OF SOUTH CAROLINA

Entered: 01/30/2020

John E. Waites

US Bankruptcy Judge
District of South Carolina

ELECTRONICALLY FILED - 2023 Mar 27 10:01 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

EXHIBIT F

ELECTRONICALLY FILED - 2023 Mar 27 10:01 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

WD-I ASSOCIATES, LLC

CASE NO.: 19-02517-jw
CHAPTER 11

DEBTOR

ORDER (1) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF LEASES; AND (2) APPROVING SALE OF SUBSTANTIALLY ALL OF THE ASSETS, FREE AND CLEAR OF LIENS

THIS MATTER came before the Court on January 28, 2020, upon the Motion of WD-I Associates, LLC (the "Debtor") for an Order (1) Authorizing Assumption and Assignment of Lease; and (2) Approving Sale of Substantially All of the Assets, Free and Clear of Liens (the "Sale Motion"). A hearing on the Sale Motion was scheduled for November 19, 2019 (the "Original Sale Hearing"), with proper notice of the Hearing served on all creditors and parties in interest. At the Original Sale Hearing, the Court approved the Debtor's Motion of Debtor in Possession for Order (A) Establishing Bidding Procedures for the Sale of Substantially All of the Property of the Debtor, (B) Approving the Form and Manner of Notice of Sale, and (C) Approving a Break-Up Fee to the Prospective Purchaser (the "Bid Procedure Motion"). An order on the Bid Procedure Motion was entered on December 23, 2019 (the Bid Procedure Order") and the Court scheduled a final hearing on the Sale Motion for January 28, 2020. Based upon the proffers and evidence presented, the Court hereby makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**:

1. On May 7, 2019 (the "Petition Date"), WD-I filed a Voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code.

2. The Debtor continues to operate its business as a Debtor in Possession pursuant to 11 U.S.C. §§ 1101(1), 1107 and 1108.

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3. Jurisdiction to consider this matter is vested in this Court pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

4. The relief sought by the Debtor is in accordance with the provisions of sections 363 and 365 of the Bankruptcy Code.

Real Property

5. The Debtor is a single asset real estate entity that owns seven parcels of real property in Hilton Head Island, South Carolina (the "Real Property") with the legal description set forth on Exhibit 1. The Real Property, the Leases (defined below) and the business operated thereon shall be referred to as the "Shopping Center."

Leases

6. Attached as Exhibit 2 is the rent roll reflecting the following information, as of January 2020, for each of the leases (the "Leases"):

a. Corporate name of tenant (TENANT);

b. Square footage (SF);

c. Gross leasable area (GLA);

d. Lease commencement date (L.C.D.);

e. Rent commencement date (R.C.D.); and

f. Expiration date (EXPIRATION), which date is subject to various extensions exercisable in accordance with the applicable lease agreement.

7. As to each of the foregoing Leases (excluding the lease with Foam Mitchell, LLC) (the "Leases"), (a) each Lease is in full force and effect and has not been amended or modified (or, if amended or modified, sets forth such amendments or modifications); (b) except for amounts that might be due arising from CAM reconciliations, each tenant is not owed any credit or offset in rent due under its Lease; (c) there are no defaults by the Debtor, as landlord under the Lease; (d) no rent has been paid more than thirty (30) days in advance, except for any security deposit under the applicable Lease, if any; and (e) the effective date of the Lease, the

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expiration date of the Lease and any renewal or extension options granted under the Lease are accurately reflected on Exhibit 2.

8. Except as set forth on Exhibit 2, the Debtor is not aware of any Landlord defaults or actual pecuniary loss due to any defaults under the Leases. To the extent that there are any Landlord defaults under the Leases, the Debtor and/or Bank of Arkansas has provided adequate assurance of a prompt cure of such defaults under the Leases.

9. Based upon the assignment of the Leases to Bank of Arkansas (defined below), the Debtor is able to provide adequate assurance of future performance under the Leases.

10. Upon conveyance of the Shopping Center to the Bank, Bank of Arkansas will perform the continuing obligations of the Debtor and provide adequate assurance of future performance to the tenants under the Leases.

11. The assumption and assignment of the Leases is in the best interest of the Estate and will not prejudice any creditor or party in interest.

Parker Contract for Parcel E

12. The Debtor has negotiated a Contract of Sale (the "Parcel E Sale Agreement") with Drayton-Parker Companies, LLC ("Parker") Parker for the Parcel E. The Parcel E Sale Agreement is attached as Exhibit 5.

13. Bank of Arkansas, as the entity tendering the highest and best offer for the Shopping Center, desires to receive an assignment of the Parcel E Sale Agreement pursuant to the terms of the Lender Purchase Agreement (defined below).

Secured Claims

14. By a Construction Loan Agreement dated September 28, 2016, BOKF dba Bank of Arkansas ("Bank of Arkansas" or "Lender") provided a loan to the Debtor as evidenced by a promissory note dated September 28, 2016 from Borrower in favor of Bank of Arkansas in the face amount of $16,000,000.00 (the "Senior Note").

15. The Senior Note is secured by, among other things, a first lien against the Real Property pursuant to a Mortgage of Real Estate and Security Agreement dated September 28,

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2016 (the "Mortgage"). The Mortgage was recorded in the Beaufort County Office of the Register of Deeds (the "Real Estate Records") on September 29, 2016.

16. The Senior Note is also secured by (a) an Assignment of Rents and Leases from the Debtor to Bank of Arkansas (the "Assignment of Rents"), which Assignment of Rents was recorded in the Real Estate Records on September 29, 2016; (b) a financing statement filed in the Real Estate Records; and (c) a financing statement filed with the Virginia State Corporation Commission.

17. The Senior Note, in November of 2017, was increased from $16.0 million to $20.0 million. The Mortgage and Assignment of Rents were modified to account for the increase in the amount of the Senior Note. The modified Senior Note, Mortgage and Assignment of Rents shall be referred to as the "Senior Loan Documents."

18. On or about September 28, 2016, the Debtor executed and delivered certain promissory notes in favor of Pineland Associates II, LLC and Wheeler REIT, L.P. (the "Subordinated Lenders") which total $12.0 million (collectively the "Subordinated Notes"). The note payable to Wheeler REIT, L.P. is in the face amount of $11.0 million and the note payable to Pineland Associates II, LLC is in the face amount of $1.0 million. Wheeler REIT, L.P. is the sole member of Pineland Associates II, LLC.

19. The Subordinated Notes are secured by a subordinated lien against the Real Property by virtue of a South Carolina Mortgage dated September 28, 2016, for the benefit of the Subordinated Lenders (the "Second Mortgage"). The Second Mortgage was recorded in the Real Estate Records on September 29, 2016. There is no assignment of rents in favor of the Subordinated Lenders. The Subordinated Notes and Second Mortgage are subject to a subordination agreement in favor of Bank of Arkansas.

20. Bank of Arkansas filed a proof of claim reflecting that its Secured claim as of the Petition Date was $21,845,076.85.

21. The Subordinated Lenders filed proofs of claim reflecting that their Secured claims, as of the Petition Date, were in the amount of at least $15,262,552.00.

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Marketing of Shopping Center and Notice of Sale

22. The Debtor retained Lee & Associates of Charleston, LLC ("Lee & Associates"), by Order entered on July 3, 2019, to market and sell the Shopping Center. Through the marketing efforts of Lee & Associates, the Debtor on August 30, 2019, received numerous letters of intent for the purchase of the Shopping Center. The Debtor, with its lenders, identified the highest and best offer, negotiated and then entered into a Real Estate/Asset Purchase Agreement, which was subject to two amendments (as amended the "Morgan Purchase Agreement") with Mid-Atlantic Commercial Properties, LLC (the "Morgan Group"). As part of the Bid Procedure Motion, the Court approved the form of the Morgan Purchase Agreement.

23. Pursuant to the terms of the Second Amendment to the Morgan Purchase Agreement, the Morgan Group was permitted, on or before January 10, 2020, to terminate the Morgan Purchase Agreement upon certain grounds. The Morgan Group takes the position that it properly terminated the Purchase Agreement prior to January 10, 2020 and the Debtor disagrees. Morgan Group is unwilling to purchase the Shopping Center in accordance with the Morgan Purchase Agreement.

24. In order to maintain the sale process and timing approved in the Bid Procedure Order, Bank of Arkansas executed and submitted the Real Estate/Asset Purchase Agreement attached as Exhibit 3 (the "Lender Purchase Agreement").

25. On or about January 27, 2020, Lee & Associates provided an updated notice to the interested purchasers engaged in the sale process that stated, among other things:

> The Stalking Horse Purchaser has terminated its purchase agreement, and as such the Break-up Fee is no longer applicable. The BOKF, N.A. has exercised its right to Credit Bid as the new Buyer at $18,750,000. In light of this Credit Bid and the absence of the Break-up Fee, the bidding will begin in $100,000 Increments over the Credit Bid amount of $18,750,000.

26. The Debtor timely complied with the bidding procedures set forth in the Bid Procedure Order:

a. Lee & Associates and/or Crowley Liberatore P.C. mailed the Notice of Sale in the form attached hereto as Exhibit 4 by first class mail to (i) the leading

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commercial real estate brokers in the Hilton Head Island real estate market, (ii) all creditors and parties in interest in the case; (iii) all parties who previously expressed an interest in the Shopping Center or signed a non-disclosure agreement; and (iv) all other persons identified by counsel for the Debtor, counsel for Lender and counsel for the Subordinated Lenders as potentially interested in the Property.

b. Lee & Associates circulated the Notice of Sale in the form attached hereto as Exhibit 6 through an email blast service targeting commercial real estate buyers and investors which email blast service had been identified by the Debtor and the Lender and Subordinated Lenders.

27. The Notice of Sale complied with the requirements of the Bid Procedure Order.

28. A credit bid by Bank of Arkansas was approved as part of the Bid Procedure Order.

29. Due and proper notice of the sale and the Motion was provided to all creditors and parties in interest.

30. The proposed sale of the Shopping Center to Bank of Arkansas will constitute a sale of substantially all of the assets of the Debtor.

31. The sale of the Shopping Center is justified by a sound business reason

32. The sale price for the Shopping Center is fair and reasonable.

33. The Debtor and Bank of Arkansas propose this sale in good faith. Bank of Arkansas is proceeding in good faith.

34. The Subordinated Lenders consent to the sale of the Property free and clear of its liens encumbering the Property subject to the terms set forth in this Order.

35. Lee & Associates agreed to the modification of its commission and has agreed that its administrative expense claim shall be limited to 2% of the purchase price under the Lender Purchase Agreement. In addition, in the event that the sale to Parker pursuant to the Parcel E Sale Agreement is consummated, then Lee & Associates shall receive an additional fee equal to 1% of the final sale price paid by Parker, such fee to be paid upon closing of the Parker contract from the proceeds of that separate sale.

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36. The affirmative relief granted by this Order, and the findings relative to that relief, arise from a core proceeding, over which the court has original referred jurisdiction, pursuant to 28 U.S.C. § 157(b)(2)(N). This Order is a judgment, as described in Bankruptcy Rule 9021, and contains findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052. This Order is an order authorizing the use, sale and lease of property, as contemplated by Bankruptcy Rule 7062.

Based upon the foregoing, it is hereby ADJUDGED, ORDERED and DECREED as follows:

A. The Sale Motion of the Debtor shall be, and hereby is, granted, the Lender Purchase Agreement between the Debtor and Bank of Arkansas is approved.

B. Simultaneously with the closing, the Debtor is authorized to assume the Leases and assign them to Bank of Arkansas, in accordance with 11 U.S.C. § 365.

C. Simultaneously with the closing, the Debtor is authorized to assign the Parcel E Sale Agreement to Bank of Arkansas.

D. Upon closing, the Shopping Center shall be transferred to Bank of Arkansas, outside of the ordinary course of business, free and clear of all liens, claims and encumbrances, including, without limitation, the liens of Bank of Arkansas and the liens of the Subordinated Lenders, pursuant to 11 U.S.C. Sections 363(b) and (f). The cash proceeds from the sale shall be distributed in accordance with paragraph (F) below;

E. The Debtor and Bank of Arkansas shall be bound by all of the provisions of the Lender Purchase Agreement;

F. Upon closing, the cash proceeds from the sale shall be distributed as follows:

(1) To taxing authorities with statutory liens against the Property, in the amount of the statutory lien;

(2) Commission to Brokers – 2% of the sale price totaling $375,000.00;

(3) U.S. Quarterly Fees (“Trustee’s Fees”) - The administrative claim for the US Trustee fees shall be calculated and paid solely upon the basis of

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actual distributions payable from the bankruptcy estate, and the non-cash portion of the Credit Bid shall not be deemed as such distribution.

(4) Set aside for Administrative Claimants and Trustee's Fees - $100,000 of the sale proceeds shall be set aside, in the Debtor's operating debtor-in-possession account, to fund any potential administrative claims and Trustee's Fees , which amount shall be available to pay allowed administrative claims asserted through the date of the Closing on the sale in addition to Trustee's Fees and allowed professional fees associated with the sale, closing and closure of the Chapter 11. The funds remaining in the debtor's operating debtor in possession account, after payment of allowed administrative expense claims and the payment of the $200,000 carve out for non-priority, general unsecured claims as set forth in below paragraph, shall continue to be subject to the lien of Bank of Arkansas and shall be remitted to Bank of Arkansas until its claim is paid in full.

(5) Unsecured Creditors – $200,000 of the sale proceeds shall be paid into a segregated account established by the Debtor and shall be used solely to pay allowed non-priority, general unsecured claims, including but not limited to any unsecured portion of the secured claims filed by the Subordinated Lenders, and shall be used to satisfy allowed non-priority, general unsecured claims regardless of how the Debtor's bankruptcy case is ultimately resolved whether pursuant to a confirmed chapter 11 plan, dismissal or otherwise. Notwithstanding the foregoing, no deficiency claim of Bank of Arkansas shall be paid from this $200,000.00. This provision shall be binding on any trustee appointed in this Bankruptcy Case.

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G. Bank of Arkansas shall be entitled to the protections afforded by 11 U.S.C. § 363(m) in the event that this Order, or any part of it, is reversed or modified on appeal and entry of this order shall bar all parties with notice of the Motion from bringing any actions, proceedings or claims arising under 11 U.S.C. § 363(n);

H. The 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is waived.

AND IT IS SO ORDERED.

SEEN AND AGREED:

/s/ Michael H. Conrady
Michael H. Conrady, ID
Campbell Law Firm, PA
P.O. Box 684
Mt. Pleasant, SC 29464
(843) 8834-6874 and

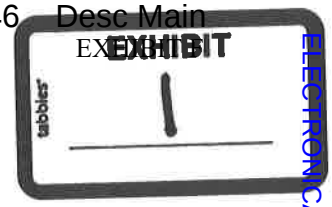
Karen M. Crowley, VSB #35881
Crowley Liberatore P.C.
150 Boush Street, Suite 300
Norfolk, VA 23510
757-333-4500

Counsel to the Debtor

SEEN AND AGREED:

/s/ Ivan N. Nossokoff
Ivan N. Nossokoff
D.Ct. # 2556
IVAN N. NOSSOKOFF, LLC
Attorney for BOKF, NA dba Bank of Arkansas
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(843) 571-5442

/s/ Samuel S. Ory
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Attorneys for BOKF, NA dba Bank of Arkansas

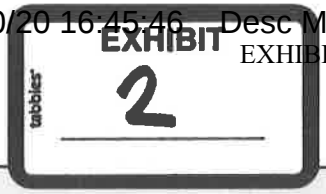


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EXHIBIT A

Legal Description

All of Parcels A, B, C, D, E, F and G as shown on plat of Boundary Reconfiguration of Parcels 98B, 98E, 156, 247, 248 and 249, Map 8, District 511, Hilton Head Island, Beaufort County, South Carolina and prepared by Mark R. Renew PLS SC No. 25437, Sea Island Land Survey, LLC and dated 22nd February, 2016, and record in Plat Book 145, Page 30 in the Beaufort County ROD Office.



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RENT ROLL
SEA TURTLE MARKETPLACE
10/1/2019

SUITE #	TENANT	SF	GLA	L.C.D	R.C.D.	EXPIRATION	OPTIONS
A-600	Starbucks Corp. #8292	2,200	1.5792%	1/1/2019 *estimated*	11/1/2019 *estimated*	4/30/2029 *estimated*	4 (5) YR OPTIONS; 180 DYS NTC REQ
B-101	Stein Mart, Inc. #212	29,530	21.1973%	10/28/1999	7/24/2015	10/31/2024	2(5) YR OPTIONS REMAIN; 1 YR NTC REQ
C-103	West Marine Products, Inc.	13,233	9.4990%	6/1/2017	5/30/2018	5/31/2027	3 (5) YR OPTIONS; 180 DYS NTC REQ
C-105	**VACANT**	3,207	2.3021%				
C-120	Petsmart, Inc. #2701	17,955	12.8885%	10/23/2017	3/9/2018	1/31/2028	4 (5) YR AUTOMATIC OPTIONS; 180 DYS
C-109	**VACANT**	18,160	13.0357%				
D-80	**VACANT** (parcel - build to suit/sell)	30,155	21.6460%				
E-401	**VACANT**	2,900	2.0817%				
E-402	**VACANT**	1,400	1.0050%				
E-403	**VACANT**	1,400	1.0050%				
E-404	**VACANT**	1,400	1.0050%				
E-405	**VACANT**	2,900	2.0817%				
F-301	T & S Management, Inc. dba Another Broken Egg Ca	3,085	2.2145%	7/1/2018	2/26/2019	2/28/2029	3 (5) YR OPTIONS; 180 DYS NTC REQ
F-302	Foam Mitchell, LLC dba Dream Boutique	1,400	1.0050%				
F-303	Thanh TA, Inc. dba Island Nails & Spa	1,470	1.0552%	9/20/2018	2/17/2019	2/28/2024	1 (5) YR OPTION; 180 DYS NTC REQ
F-304	VACANT	1,400	1.0050%				
F-305	**VACANT**	2,595	1.8628%				
G-201	Wbisland, Inc. dba Jersey Mikes	1,275	0.9152%	2/16/2018	6/24/2018	6/30/2028	2 (5) YR OPTIONS; 180 DYS NTC REQ
G-202-204	Kelly O, LLC dba Orangetheory Fitness	3,645	2.6165%	6/16/2018	10/14/2018	10/31/2028	2 (5) YR OPTIONS; 180 DYS NTC REQ
	TOTALS	**139,310**	**100.00%**				

Occupied Sqft.	73,793	9 Units	52.97%
Vacant Sqft.	65,517	10 Units	47.03%
Total Sqft.	139,310	19 Units	100.00%

EXHIBIT
EXHIBIT F
3

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REAL ESTATE/ASSET PURCHASE AGREEMENT

THIS REAL ESTATE/ASSET PURCHASE AGREEMENT ("Agreement") is made as of January 14, 2020 (the "Effective Date"), by and between **WD-I ASSOCIATES, LLC, Debtor in Possession** in the Chapter 11 bankruptcy case filed in the US Bankruptcy Court for the District of South Carolina ("Bankruptcy Court"), Case #19-02517-jw (hereinafter the "Seller"), and BOKF, N.A. or its designee (hereinafter, "Purchaser" or "Credit Bid Buyer").

Whereas, the Purchaser is the first lien holder on the below described Property, with a balance on its indebtedness of approximately $22,540,000.00. The Purchaser is allowed to credit bid on the purchase of the Property pursuant to Order of this Court establishing Bidding Procedures, et al., entered in the Bankruptcy Court on December 23, 2019 (generally, "the Bidding Procedures Order") and also pursuant to 11 U.S.C. Section 363. The Purchaser now desires to exercise its right to credit bid as stated herein.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Property. Seller agrees to sell and convey to the Purchaser and the Purchaser agrees to purchase (a) all that certain tract, piece or parcel of land and all improvements situated in Hilton Head Island, South Carolina commonly known as Sea Turtle Marketplace, and more particularly described on Exhibit "A" attached hereto, together with all easements and appurtenances thereto, all leases and all personal property associated therewith (hereinafter collectively the "Real Property"); and (b) all site plans, engineering plans, architects plans and drawings, permits, zoning applications and approvals, subdivision plats (preliminary and final), surveys, development plans, governmental permits, approvals, entitlements and consents, warranties and guaranties, and the right to the use thereof (collectively, the "Intangible Property" and together with the Real Property, the "Property").

2. Purchase Price.

(a) The purchase price for the Property shall be $18,750,000.00 (the "Total Purchase Price"), the consideration for the Total Purchase price shall be (A) the total of the Required Cash Payments set forth below, and (B) a credit bid ("Credit Bid") in an amount that together with the total amount of the Required Cash Payments equal $18,750,000.00, subject to adjustments for appropriate and customary prorations as provided for in this Agreement. For an example only, if the Required Cash Payments total $400,000, then the Credit Bid would be $18,350,00.00 (subject to adjustments and prorations). Since no cash is being remitted for the Credit Bid, the administrative claim for the US Trustee fees shall be calculated and paid solely upon the basis of actual distributions from the bankruptcy estate, and the non-cash

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portion of the Credit Bid shall not be deemed as such distribution.

(b) Required Cash Payments. As part of the overall Purchase Price, the Purchaser shall pay as Required Cash Payments (a) to the extent due and payable, unpaid real estate taxes, plus the pro-rated amount of any real estate taxes accruing in the period prior to closing; (b) any closing costs required to be paid to third parties (including recordation costs and similar closing costs); (c) the sum of up to $100,000.00 in the event cash on hand in the estate is insufficient to pay allowed administrative expense claims, including US Trustee fees, and (d)$200,000.00 for Unsecured Creditors, subject to and as more fully described in Paragraphs H(4) and (5) of the Bidding Procedures Order.

3. Earnest Money Deposit. Since this is a lender Credit Bid, no Earnest Money Deposit is required and is therefore waived.

4. Documents from Seller. Seller has delivered to Purchaser, through the data room with Seller's Broker (defined below) all documents in its possession relating to the Property or the development of the Real Property (to the extent not already delivered to Purchaser), including but not limited to leases, most recent survey, most recent title policy and title exception documents, environmental site assessments, geotechnical reports, building inspection reports, warranties for all improvements and real estate tax records (collectively, the "Property Documents").

5. Due Diligence Period. [Intentionally deleted]

6. Title. At Settlement, Seller shall deliver to Purchaser (a) a limited warranty deed conveying title to the Real Property to the Purchaser free and clear of all liens and encumbrances except applicable zoning ordinances, real estate taxes not yet due and payable and the Permitted Exceptions, as defined below; and (b) a Bill of Sale and Blanket Assignment conveying and assigning to Purchaser the Development Documents and Intangible Property, all free and clear of any liens or encumbrances (the "Bill of Sale"). Notwithstanding anything contained herein to the contrary, Purchaser's acceptance of such conveyance and the assumption of the Development Documents and Intangible Personal Property shall not constitute an assumption of any liabilities or obligations with respect thereto and arising or accruing prior to the date of such assumption.

a. "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) zoning and subdivision restrictions of record; and (iii) matters to which Purchaser does not timely object hereunder, or matters which Seller does not agree to cure, under this section and Purchaser has agreed to waive (or is deemed to have waived) its objection thereto.

b. Seller shall convey title to the Property free and clear of any Monetary Liens. The term "Monetary Liens" shall mean (x) any mortgage, deed to secure debt or deed of

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trust lien in record title against the Property, (y) any other monetary liens or judgments against the Property existing before or after the Effective Date (specifically excluding any resulting from the acts or omissions of Purchaser, its officers, employees, members, managers, agents and contractors or any predecessors in title), and (z) any mechanics' liens for unpaid work at the Property performed prior to Settlement. Liens for ad valorem taxes not yet due and payable are not included in the definition of Monetary Liens. In addition to the foregoing, if new matters of title are recorded against the Property subsequent to the date of the Title Report (collectively, "New Title Matters"), such New Title Matters shall immediately be deemed Title Objections which Seller shall be obligated to cure prior to Settlement, Seller's failure to so cure such New Title Matter or Title Matters being deemed a default hereunder.

c. At Settlement, Seller shall assign all its rights and interest as "Developer" under that certain Declaration of Covenants and Reciprocal Easement Agreement dated September 8, 2017 and recorded in Book 3606, Page 1626 of the Beaufort County ROD Office (as amended, the "Declaration") to Purchaser in a written instrument to be recorded in the Beaufort County ROD Office at Settlement (the "Assignment of Declarant Rights"). Purchaser and Seller shall agree upon the form of the Assignment of Declarant Rights prior to the expiration of the Due Diligence Period, which Assignment of Declarant Rights shall provide that Purchaser shall not be obligated for any obligations or liabilities of "Developer" under the Declaration arising or accruing prior to Settlement.

7. Delivery and possession. Except as otherwise expressly set forth in this Agreement or in the documents to be delivered by Seller at Settlement, Seller shall deliver possession of the Property to Purchaser at Settlement subject only to the Leases and the Permitted Exceptions, AS-IS, WHERE-IS.

8. Settlement.

a. Settlement ("Settlement") shall be held on the date which is not later than (i) February 20, 2020 or of: (ii) ten (10) days after an order, in form and substance reasonably satisfactory to Purchaser, approving this Agreement (the "Approval Order") is entered by the United States Bankruptcy Court for the District of South Carolina (the "Bankruptcy Court") and becomes final and non-appealable (the "Settlement Date"), provided that at the time of the Settlement the Order shall be final and not be subject to a stay. The Order shall provide, among other things, that (i) the sale of the Property is free and clear of all Liens and other interests pursuant to Bankruptcy Code § 363(f); (ii) Purchaser is a "good faith purchaser" and is afforded all protections granted to such persons under the Bankruptcy Code; (iii) Purchaser shall not be deemed a successor to Seller for any purpose, including but not limited to any and all liabilities or claims of any kind whatsoever that may exist against Seller or any of its Affiliates; and (v) no appeal, stay or other injunction shall apply to the transfer of the Property.

b. Settlement shall be held through the offices of Purchaser's counsel and shall

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be performed via "mail-away" delivery and receipt of documents.

c. The following are to be apportioned between Purchaser and Seller as of 12:01 a.m. on the Closing Date (provided, however, that in the event that any of the Leases or subleases, if any, covering all or part of any Property provide that the tenants or subtenants thereunder are responsible for direct payment of any of the expenses, such expenses will not be apportioned as between Seller and Purchaser):

i. Property taxes including (i) monthly payments made by tenants under the Leases to Seller, as landlord, toward reimbursement of real estate taxes that are paid on a current basis and applied to real estate taxes payable in the current calendar year, and (ii) annual payments made, or required to be made, by tenants under the Leases for the Property to the Seller, as landlord, toward reimbursement of real estate taxes that are paid on a current or forward basis and applied to real estate taxes payable in the current or next proceeding calendar year.

ii. Rents if, as and when collected including base rents, escalations, additional rents and percentage rents ("Rents") as further described below;

iii. Water, sewer, gas, electric, vault and fuel charges, if any;

iv. Operating expenses for the Property;

v. Amounts paid pursuant to all transferable licenses and permits, on the basis of the fiscal year for which levied; and

vi. Assessments but only for the annual installment for the fiscal year in which the Closing occurs.

d. Rents. Purchaser will receive a credit for all prepaid Rents, if any, paid by any tenants. Rents under the Leases will be adjusted and pro-rated on an "if as and when collected" basis. After the Closing Date, Purchaser will use commercially reasonable efforts to collect any and all past due Rents under the Leases. If, on the Closing Date, there are any unpaid rents for the month of Closing or past due Rents owing by any tenant for any prior period, Rents collected by Purchaser after the Closing Date from such tenants will be applied: first, to the actual costs incurred by Purchaser in collecting such past due Rents; second to amounts due Purchaser for periods following the month in which the Closing occurred; third, to the prorated amounts due to Seller and Purchaser for the Rent for the month of Closing; and fourth, to amounts due Seller for the month prior to the month in which the Closing occurred. The party receiving such amount will pay to the other party the portion to which it is entitled, within thirty (30) days of its receipt of same. Advance rents shall be paid to the Purchaser at Settlement.

e. Seller shall pay for the preparation of the deed and for any applicable grantor's tax imposed in connection with the recordation of the deed and any other closing costs

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for which the Seller in Beaufort County, South Carolina usually and customarily pays the closing costs. Purchaser shall be responsible for the payment of all other recording fees and taxes. Each party shall pay its own attorney's fees.

f. Seller shall assign to Purchaser all leases and executory contracts relating to the lease of Real Property to the Tenants, as hereinafter defined (each a "Lease" and collectively, the "Leases"), the form of such assignment to be agreed upon between Seller and Purchaser prior to the expiration of the Due Diligence Period (the "Assignment of Leases"). From and after Settlement, Purchaser shall carry out the Landlord's obligations under the Leases. Purchaser shall be credited at Settlement for all security deposits actually paid by tenants under the Leases (each a "Tenant" and collectively, the "Tenants").

g. All risks of loss of or damage to the Property or any portion thereof by any casualty, or the taking of the Real Property, or any portion thereof by eminent domain, or for personal liability as to the Property, shall remain with the Seller until Settlement. In the event of any casualty or condemnation (threatened, proposed or otherwise) at the Property prior to Settlement, Seller shall send notice thereof to Purchaser, which notice shall include all pertinent information relating thereto. Purchaser shall have the right to terminate this Agreement and receive a refund of the Deposit by notifying the Seller in writing within thirty (30) days following the date the Purchaser receives notice of such occurrence. Should such a casualty and/or condemnation occur following the expiration of the Due Diligence Period, the Settlement Date shall be extended accordingly to permit for the aforementioned 30-day period. If Purchaser elects not to terminate this Agreement, Seller shall, at Settlement, assign to Purchaser the proceeds of the condemnation or insurance proceeds, as the case may be.

9. Representations and Warranties of Seller. Seller represents to the best of Seller's knowledge, and warrants and covenants to Purchaser as follows, which shall terminate at Settlement:

a. Liens and Encumbrances. Seller has, or as of Settlement shall have, good and marketable and insurable fee simple title to the Real Property free and clear of all liens and encumbrances (except for such liens and encumbrances to be fully released upon Settlement), and all restrictions, leases, rights of others, defects, conditions or easements, of any kind whatsoever except for the Permitted Exceptions and the Leases. Seller shall not permit any New Title Matters to be recorded against the Property without Purchaser's prior written consent.

b. Transfers. Seller shall not transfer any interest in, or grant any easements or enter into any contractual agreement or understanding, written or oral, with respect to the Property or any portion thereof without the prior written consent of Purchaser.

c. Condemnation. No condemnation or eminent domain proceedings are pending or, to the best of Seller's knowledge, threatened against the Real Property or any portion thereof, and there is no change or proposed change in the route, grade, or width of, or otherwise

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affecting, any street or road that is contiguous to the Real Property or any portion thereof.

d. Contracts. From and after the Effective Date, Seller will not negotiate or execute any lease agreements or other contracts for all or any part of the Real Property without prior consultation with and written approval by Purchaser.

e. Access. To the best of Seller's knowledge, the Real Property (and each of the separate tracts making up the Real Property) has full and free access to and from public highways, streets and roads and there are no threatened proceedings of any type which would impair or result in the termination of such access.

f. Assessments. To the best of Seller's knowledge, no assessments for public improvements have been made against the Real Property or any portion thereof which remain unpaid, including, without limitation, those for construction or sewer or water lines or mains, streets, sidewalks and/or curbs.

g. Leases. There are no Leases of the Real Property other than as set forth on Schedule B. Except as set forth on Schedule B, all the tenants under the Leases (the "Tenants") have paid all rent due and owing pursuant to the Leases and prior to the Effective Date, no Tenant is in default of the Leases as of the Effective Date and no Tenant shall be in default of any of the Leases as of the Settlement.

h. OFAC. Neither Seller nor any of Seller's partners, members, shareholders or other equity owners, and none of its officers or directors is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

i. Maintenance of Property. Seller shall maintain the Property in good repair and condition prior to Settlement and continue to operate the Property in conformity consistent with its maintenance during the Chapter 11 case.

j. Hazardous Materials. Except as disclosed in the data room, Seller has not violated, has not received any notices of violation, and has no knowledge of any existing facts or conditions which have resulted in or which may result in any violations of any zoning, safety, environmental, health or other codes, laws, ordinances or regulations with respect to the Property, and Seller is not aware of any spills, releases or discharges of Hazardous Materials (as hereinafter defined) which have occurred on the Property or have impacted the Property. For the purposes of this Agreement, "Hazardous Materials" shall mean any (i) petroleum products or used or waste petroleum products, flammables, explosives, radioactive materials, asbestos in any form, urea formaldehyde insulation, lead or lead-based paint, polychlorinated biphenyls, radon gas, discarded

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tires, discarded batteries or parts thereof, or construction or demolition debris; (ii) any chemicals, emissions, materials, substances, pollutants, discharges, or wastes which are defined or characterized as "solid" "hazardous," "toxic," "special," "medical," "biohazard," or other words of similar import, pursuant to any applicable environmental laws; and (iii) any other chemical, material, substance, waste, emission, discharge, or pollutant, exposure to which is prohibited, limited, or regulated by any governmental authority, or shown to be a carcinogen, mutagen, or otherwise is adverse to human health or the environment.

k. Declarant Status and Declaration. Seller is the only "Developer" under the Declaration. No portion of the Real Property, nor any occupant thereof, is in violation of the terms of the Declaration and all expenses charged to the occupants and owners thereof have been paid in full.

10. Conditions Precedent to Settlement.

a. Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment (or waiver in writing by Purchaser at its sole discretion), on or prior to the Settlement Date, of each of the following conditions:

i. Representations and Warranties. The representations and warranties made by Seller contained herein shall be true and correct at and as of the date hereof or thereof and at the time of Settlement. At Settlement, Seller shall deliver to Purchaser a certificate stating that such representations and warranties are true and correct at and as of Settlement ("Seller's Certificate").

ii. Performance and Compliance. Seller, on or before the Settlement Date, shall have performed and complied with all agreements, obligations, and conditions required by this Agreement to be so performed or complied with by Seller at or before the Settlement.

iii. Settlement Deliveries. Seller shall have delivered to Purchaser all items required to be delivered by it pursuant to this Agreement.

iv. Governmental Action. No order, ruling or regulation (general or specific) of any governmental authority shall have been issued or promulgated which has the purpose or would have the effect of prohibiting the transactions herein contemplated.

v. Approval Order and Procedure Order. The Approval Order, in form and substance reasonably satisfactory to Purchaser, shall have been entered by the Bankruptcy Court, shall not have been stayed as of the Settlement Date, shall be final and not appealable, and there shall have been no change to this Agreement other than changes which Purchaser shall, in its discretion, have approved. The Approval Order shall set forth, as to each Tenant subject to a Lease, that: (i) the Lease is in full force and effect and has not been amended or modified (or, if

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amended or modified, setting forth such amendments or modifications); (ii) said Tenant is not owed any credit or offset in rent due under its Lease; (iii) there are no defaults by such Tenant or Seller, as landlord under the Lease; (iv) that no rent has been paid more than thirty (30) days in advance, except for any security deposit under the Lease, if any; and (v) the effective date of the Lease, the expiration date of the Lease and any renewal or extension options granted under the Lease (the "Lease Certifications").

vi. Material Adverse Change. Seller shall not have suffered any material adverse change in its financial condition, business, operations, Assets or prospects with respect to the Property since the date of this Agreement.

b. The obligations of Seller to consummate the transaction contemplated by this Agreement shall be subject to the fulfillment (or waiver in writing by Seller at its sole discretion) on or prior to the Settlement Date of each of the following conditions:

i. Representations and Warranties. The representations and warranties made by Purchaser contained herein shall be true and correct at and as of the date hereof and at and as of the time of the Settlement.

ii. Performance and Compliance. Purchaser, on or before the Settlement Date, shall have performed and complied with all agreements, obligations, covenants and conditions required by this Agreement to be so performed or complied with by Purchaser at or before the Settlement.

iii. Settlement Deliveries. Purchaser shall have delivered to Seller all items required to be delivered by Purchaser pursuant to this Agreement.

iv. Governmental Action. No order, ruling or regulation (general or specific) of any governmental authority shall have been issued or promulgated which has the purpose or would have the effect of prohibiting the transactions herein contemplated.

v. Approval Order. The Approval Order, in form and substance reasonably satisfactory to the Purchaser, shall have been entered by the Bankruptcy Court, shall not have been stayed as of the Settlement Date, and shall not have been amended or modified in any manner which Purchaser has determined, in its reasonable judgment, to be materially adverse to the interests of Purchaser.

11. At or prior to Settlement, Seller shall deliver to the Purchaser the following:

a. A limited warranty deed conveying title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments and restrictions

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except the Permitted Exceptions;

b. The Assignment of Declarant Rights;

c. The Bill of Sale;

d. The Assignment of Leases;

e. The Parker Contract Assignment (as defined in Section 26 and if applicable);

f. The Seller's Certificate;

g. A certificate and affidavit of non-foreign status ("FIRPTA Affidavit"), executed by Seller as of the Settlement Date, in a form reasonably acceptable to Purchaser;

h. A completed and executed South Carolina Form I-295 Nonresident Seller Withholding Affidavit, and, if Seller is not a resident or deemed resident thereunder, an Affidavit of Gain and South Carolina Form I-290 Nonresident Real Estate Withholding Form;

i. A settlement statement, in a form reasonably acceptable to Purchaser and Seller ("Closing Statement"), executed by Seller;

j. 1099-S as to the sale of the Property;

k. Appropriate evidence reasonably required by Purchaser and the title company to evidence Seller's good standing, together with Seller's resolutions and entity documentation necessary to confirm Seller's authority to execute and deliver the closing documents contemplated hereby and sell the Property;

l. A certificate of tax compliance for Seller issued by the South Carolina Department of Revenue;

m. A title affidavit and indemnity agreement in a form reasonably satisfactory to Purchaser's title insurer and sufficient to delete the standard printed exceptions and to satisfy any requirements of the issuance of a title policy to Purchaser (and Purchaser's lender, if applicable) for the Property;

n. A broker's lien waiver from Seller's Broker (as hereinafter defined); and

o. All other documents reasonably necessary to effectuate the transaction.

12. At the Settlement, Purchaser shall deliver to Seller the following:

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a. The Additional Cash Payments, payable as set forth in section 2 above, to the order of Seller and/or such other order as Seller shall have directed by written notice to Purchaser and as may be required pursuant to the Approval Order;

b. The Assignment of Declarant Rights;

c. The Bill of Sale;

d. The Assignment of Leases;

e. The Parker Contract Assignment;

f. The Closing Statement executed by Purchaser; and

g. Appropriate evidence reasonably required by Purchaser and the title company to evidence Purchaser good standing, together with Purchaser resolutions and entity documentation necessary to confirm Seller's authority to execute and deliver the closing documents contemplated hereby and sell the Property.

13. Real Estate Commission. Seller has been represented by Lee & Associates Charleston, LLC ("Seller's Broker"), which is the only broker authorized to be employed by the Bankruptcy Court. In the event Settlement shall occur hereunder, Seller shall pay the real estate fees or commissions due to Seller's Broker pursuant to a separate agreement between Seller and Seller's Broker. Notwithstanding anything to the contrary contained herein, for purposes of this Agreement, Seller's Broker's commission on this Sale as an administrative expense shall be limited to 2% of the Total Purchase Price. As stated below, the Purchaser shall assume the contract to sell Parcel E to Parker. In the event that the sale to Parker is consummated, then the Seller's Broker shall receive an additional fee equal to 1% of the final sale price paid by Parker, such fee to be paid upon closing of the Parker contract from the proceeds of that separate sale. The Seller and Purchaser warrant that there are no other real estate brokers involved in this transaction.

14. Expenses. , Purchaser and Seller shall each pay their respective counsel, accountants and other expenses incurred in connection with the negotiation and consummation of the transactions contemplated hereby.

15. Default. Neither Purchaser nor Seller shall declare a default hereunder unless it has first given ten (10) days' written notice of default.

a. Default by Purchaser. In the event Purchaser is not entitled to terminate this Agreement under any of the provisions hereof, and provided Seller is not in default in the performance of or compliance with any of the terms hereof, then, in the event of default by Purchaser in the consummation of its purchase of the Property, Seller shall be entitled to retain the Deposit as complete and agreed upon liquidated damages; whereupon, Seller shall have no further

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remedies against Purchaser for such default, it being understood and agreed that the amount of damages Seller might incur are difficult or impossible to ascertain and that the parties agree that the Deposit is a fair estimate of such damages.

b. Default by Seller. If the sale of the Property contemplated by this Agreement is not consummated because of a default by Seller, after performance by Purchaser of all obligations under this Agreement, Purchaser may (a) waive the default and proceed to Settlement; (b) proceed to enforce this Agreement by an action of specific performance in a court of competent jurisdiction; or (c) terminate this Agreement.

16. Assignment. Purchaser reserves the right to assign its rights under this Agreement to a special purpose entity owned, controlled or operated by Purchaser or members of Purchaser; provided Purchaser remains liable for any breach by the assignee through the completion of Settlement. Seller shall not be entitled to assign this Agreement.

17. Parties in Interest. All terms and provisions of this Agreement shall be binding and inure to the benefit of and be enforceable by and against the respective successors and assigns of the parties hereto.

18. Notices. All notices, requests, demands and other communications required or desired to be given hereunder shall be in writing and shall be deemed to have been properly given when sent by e-mail on the date of delivery or on the next business day, if sent via overnight courier (such as Federal Express) for "overnight" delivery, as follows:

If to Purchaser:
BOKF, N.A.
Attn: Eric R. Ernst
SVP/Director, Special Assets
One Williams Center, 12SW
Tulsa, OK 74172
Email: eernst@bokf.com

Copy to:
Samuel S. Ory, Member
Frederic Dorwart, Lawyers PLLC
124 East Fourth Street
Tulsa, OK 74103-5010
Email: SOry@fdlaw.com

If to Seller:
WD-I ASSOCIATES, LLC
Jon Wheeler, Manager
1055 Laskin Road, Suite 100

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Virginia Beach, VA 23501
Email: jon@wrei.net

Copy to: Karen Crowley, Esq.
Crowley Liberatore P.C.
150 Boush Street, Suite 300
Norfolk, VA 23510
Email: kcrowley@clrbfirm.com

Any notice required or permitted under this Agreement may be given by counsel for the party giving such notice.

19. Further Transfers. The Seller and the Purchaser, at any time and from time to time after Settlement, will execute and delivery such further instruments of conveyance and transfer and will take such additional action as may reasonably be requested to affect, consummate, confirm or evidence the transactions contemplated by this Agreement. The Seller and the Purchaser will execute such documents as may be necessary to assist the Purchaser in preserving or perfecting its rights in the Property.

20. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the applicable provisions and laws of the State of South Carolina

21. Interpretation. When the context in which the words are used in this Agreement indicates that such is the intent, words of the singular number shall include the plural and the vice-versa, and words of the masculine gender shall include the feminine and neuter genders and vice-versa.

22. Validity. If any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement, which remainder shall remain in full force and effect.

23. Captions. All section or paragraph titles or captions contained in this Agreement are for convenience and/or reference purposes only, and shall not be deemed a part of or construed to affect the context of this Agreement.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but a single instrument. Any signatures delivered via e-mail or facsimile shall be deemed originals signatures.

25. Time is of the essence in regard to the provisions of this Agreement.

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26. Parker Contract. Seller has entered into that certain Contract of Sale with Drayton-Parker Companies, LLC ("Parker") dated August 30, 2019 (as may be amended, the "Parker Contract") for the sale of a portion of the Real Property and as more particularly set forth in the Parker Contract (the "Parker Parcel"). The Seller shall assume and assign the Parker Contract to Purchaser so that it may go forward to closing in accordance with its terms.

27. Entire Agreement. This Agreement constitutes the entire Agreement between the parties, and there are no other promises or obligations except as contained in this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

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Witness the following signatures and seals:

SELLER:

WD-I ASSOCIATES, LLC
a Virginia limited liability company,
Debtor in Possession

By:_____(SEAL)

Name: _____

Title: _____

PURCHASER:

BOKF, N.A.

By:_____(SEAL)
Name: MICHAEL LEATHERLAND

Title: SENIOR VICE PRESIDENT

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EXHIBIT A

Legal Description

All of Parcels A, B, C, D, E, F and G as shown on plat of Boundary Reconfiguration of Parcels 98B, 98E, 156, 247, 248 and 249, Map 8, District 511, Hilton Head Island, Beaufort County, South Carolina and prepared by Mark R. Renew PLS SC No. 25437, Sea Island Land Survey, LLC and dated 22nd February, 2016, and record in Plat Book 145, Page 30 in the Beaufort County ROD Office.



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NOTICE OF SALE

TYPE OF SALE: Private sale subject to higher and better offers in accordance with approved bid procedures

PROPERTY TO BE SOLD: Real property and leases for seven parcels with the legal description on Exhibit A (the Property").

STALKING HORSE PRICE: Mid-Atlantic Commercial Properties, LLC ("Stalking Horse Purchaser") has made an offer to purchase, as reflected in a Purchase Agreement (the "Purchase Agreement"), the Shopping Center for a purchase price of $18,750,000.00.

FOR MORE INFORMATION CONTACT: John Orr, Lee & Associates of Charleston, LLC, 960 Morrison Drive, Suite 400, Charleston, SC 29403; (843) 906-0043; john@johnorr.com.

BID PROCEDURES FOR PERSONS DESIRING TO SUBMIT HIGHER AND BETTER OFFERS:

1. Any person that desires to determine whether to submit a bid shall be provided a complete copy of the Purchase Agreement and shall sign a non-disclosure agreement. It shall then receive access to the data room established by Lee & Associates. The information in the data room shall not be deemed a warranty of matters stated therein.

2. Lee & Associates shall provide and coordinate access to all interior and exterior spaces in the Shopping Center.

3. Any interested party that desires to purchase the Shopping Center shall deliver a written copy of its Qualifying Bid (defined below) to John Orr, Lee & Associates of Charleston, LLC, 960 Morrison Drive, Suite 400, Charleston, SC 29403; (843) 906-0043; john@johnorr.com and to the Debtor, c/o Karen Crowley, Esq., kcrowley@clrbfirm.com, Crowley Liberatore P.C., 150 Boush Street, Suite 604, Norfolk, VA 23510, not later than 10:00 a.m., EST, on or before January 22, 2020(the "Bid Deadline").

4. A Qualifying Bid[1] must

   a. contain the identity of the bidder and an irrevocable offer to purchase all of the Property under terms that are at least as beneficial to the Debtor's bankruptcy estate as set forth in the Stalking Horse Bid contained in the Purchase Agreement, including without limitation that

      i. the bidder will post a bid deposit of $300,000.00 (the "Bidder's Deposit");

      ii. notwithstanding any of the other terms and conditions of such offer, such offer shall be required to close in full the later of (a) February 20, 2019 or (b) two days following the date on which the order approving the sale

[1] The order entered by the Bankruptcy Court approving these procedures (the "Bid Procedure Order") includes additional language governing how secured creditors may tender a Qualifying Bid which contains a credit bid component. A copy of the Bid Procedure Order is available upon request.

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("Approval Order") has been entered by the U.S. Bankruptcy Court, D. South Carolina and becomes final;

iii. Include a copy of the Purchase Agreement marked to show all changes to the Purchase Agreement that such Bidder proposes;

b. Contain a purchase price having a value exceeding the Purchase Price set forth in the Stalking Horse bid contained in the Agreement by not less than $387,500.00 (the "Minimum Overbid") payable in cash at the closing on the sale.

c. Be accompanied by delivery of the Bidder's Deposit;

d. Include proof satisfactory to Debtor and it lenders of the Bidder's financial ability to complete the transaction contemplated by such offer;

e. Contain a provision that the offer is irrevocable until the closing of the purchase of the Shopping Center, whether to such Qualified Bidder or another Qualified Bidder;

f. Contain a provision that there are no unsatisfied contingencies;

g. Certify that the bidder is not affiliated, directly or indirectly, with the Debtor, its attorneys, the U.S. Trustee or will disclose such affiliation regardless of how remote.

An entity or individual that complies with the foregoing is a "Qualified Bidder."

5. At noon on the Bid Deadline, Lee & Associates, counsel for the Debtor and counsel for the Lenders shall open the Bids. Counsel for the Debtor and Counsel for the Lenders shall jointly evaluate the Bids and shall notify each bidding party whether its bid constitutes a Qualified Bid. Any dispute as to whether a bid is a Qualified Bid shall be determined by the Court.

6. Copies of all Qualified Bids shall be saved in a computer-readable format and be available by mid-night on the date that the Qualified Bids are due, upon request to counsel for the Debtor who shall make the Qualified Bids available to the Lenders. Only Qualified Bids will be eligible for participation at the Auction (as defined herein).

7. If the Debtor receives more than one Qualified Bid, the Court will conduct an auction (the "Auction") with respect to the Shopping Center at 1100 Laurel Street, Columbia South Carolina, 29201 on January 28, 2020, beginning at 9:30 a.m., local time.

8. Unless otherwise ordered by the Court, only the Stalking Horse Purchaser and each Qualified Bidder that has submitted a Qualified Bid are eligible to participate at the Auction, but any party in interest may attend.

9. If the Debtor receives one or more Qualified Bids, the bidding will start at the purchase price and upon the terms proposed in the Qualified Bid with the highest purchase price (the "Opening Bid"). The Court will conduct an open auction until there is only one remaining Qualified Bidder (the "Successful Bidder"). Incremental overbids following the Minimum Overbid shall exceed the immediately preceding bid by an amount not less than $100,000.00, or such other amount as the Court shall approve.

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10. In the event that the Successful Bidder does not close, the Bidder's Deposit shall be retained as liquidated damages, and Debtor shall seek to close with the next highest and best bidder. The second highest and best offer shall remain open and subject to acceptance by the Debtor as a back-up bid until Closing on the property by the party designated as the Successful Bidder.

11. At the conclusion of the Auction, the Court will approve the Successful Bid at the hearing on approval of the sale, which will be conducted immediately following the Auction ("Sale Hearing").

12. Immediately upon entry of the order approving the Successful Bid, counsel for the Debtor shall return the deposit to each of the unsuccessful bidders, except as otherwise retained as part of the back-up bid.

13. Any party seeking to inspect the Property must do so prior to the Bid Deadline and all due diligence must be completed prior to the Bid Deadline.

Exhibit A – Legal Description

All of Parcels A, B, C, D, E, F and G as shown on plat of Boundary Reconfiguration of Parcels 98B, 98E, 156, 247, 248 and 249, Map 8, District 511, Hilton Head Island, Beaufort County, South Carolina and prepared by Mark R. Renew PLS SC No. 25437, Sea Island Land Survey, LLC and dated 22nd February, 2016, and record in Plat Book 145, Page 30 in the Beaufort County ROD Office.

EXHIBIT 5

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Exhibit 1

CONTRACT OF SALE

THIS CONTRACT OF SALE ("Contract") is made and entered into as of the Effective Date (as defined herein) by and between **WD-I ASSOCIATES LLC,** a Virginia limited liability company ("Seller"), and **DRAYTON-PARKER COMPANIES, LLC,** a Georgia limited liability company, its successors or assigns ("Purchaser").

1. DEFINITIONS

As used herein the following terms shall have the following meanings:

1.1 Bankruptcy Matter – the Seller's current bankruptcy filing with the U.S. Bankruptcy Court for the District of South Carolina with Case # 19-02517-jw.

1.2 Closing Date - Except as otherwise provided in this Contract, the date that is thirty (30) days after the last day of the Inspection Period (as may be extended per Section 9.3 hereof). If the Closing Date ends on a Saturday, Sunday, or legal holiday it shall be extended until the end of the next following business day.

1.3 Documented Costs - Purchaser's documented out-of-pocket costs and expenses incurred by Purchaser in connection with its proposed acquisition of the Property, including, without limitation, title examination charges, surveying costs and other costs incurred by Purchaser in performing its due diligence.

1.4 Earnest Money - The Initial Deposit plus the Extension Deposit and any additional deposits, if any, deposited with Escrow Agent under the terms of this Contract.

1.5 Effective Date - The later of the following dates: (i) the date Purchaser has accepted and signed this Contract, or (ii) the date Seller has accepted and signed this Contract, as shown on the signature pages to this Contract.

1.6 Escrow Agent – Sawyer Law Group, LLC

1.7 Extension Period – As defined in Section 9.3.

1.8 Initial Deposit - The initial deposit in the amount of Twenty-Five Thousand and no/100 Dollars ($25,000.00) deposited with Escrow Agent pursuant to this Contract.

1.9 Initial Inspection Period – The period beginning on the earlier to occur of (a) the expiration of Seller's Diligence Period (as defined herein), or (b) the date Seller provides to Purchaser written confirmation to Purchaser's reasonable satisfaction that Seller has fulfilled Seller's Diligence Contingency (as defined herein), and ending one hundred twenty (120) days thereafter, unless extended as provided for herein.

1.10 Inspection Period – The Initial Inspection Period together with the Extension Period, if any, exercised in accordance with Section 9.3. If the Initial Inspection Period

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and/or any Extension Period ends on a Saturday, Sunday, or legal holiday it shall be extended until the end of the next following business day.

1.11 Land - That certain approximately 1.55-acre parcel or tract of real property situate, lying and being at the intersection of William Hilton Parkway and Mathews Drive in Hilton Head Island, South Carolina, with PIN R511-008-000-0248-0000, and commonly known as 430 William Hilton Parkway, which parcel is more particularly shown as Parcel E on the plat attached hereto as Exhibit "A", which plat is incorporated herein, together with access rights to and from William Hilton Parkway and Mathews Drive. Purchaser and Seller acknowledge and agree that there is no uncertainty as to the definition of Land and each hereby waives any right to claim or assert that this Contract is void for lack of certainty of the legal description of the Land.

1.12 Permitted Exceptions - The Permitted Exceptions defined in Section 4.1.

1.13 Property - The Land together with all rights, privileges, hereditaments, appurtenances, and easements related to the Land, including all improvements, tangible and intangible personal property, rights, rights-of-way, roadways, roadbeds, reversions, strips, gores, and any interests in any alleys, streets, or roads abutting or adjacent to the Land.

1.14 Purchase Price - The Purchase Price shall be One Million Eight Hundred Seventy-Five Thousand and no/100 Dollars ($1,875,000.00).

1.15 Seller's Diligence Period - The period beginning on the Effective Date and ending thirty (30) days thereafter for the purpose of pursuing Seller's Diligence Contingency; provided, however, that in the event Seller's Diligence Contingency is not satisfied within thirty (30) days following the Effective Date, provided Seller is working diligently to satisfy the same, Seller may extend such 30-day period by an additional thirty (30) days, upon written notice to Purchaser, in which event the term "Seller Diligence Period" appearing in this Agreement shall be deemed to include such additional 30-day period, for all purposes under this Agreement.

1.16 Survey - The Survey of the Property that may be obtained by Purchaser under this Contract in accordance with Section 7.1.I.

2. PURCHASE AND SALE

For and in consideration of the mutual covenants and consideration recited herein, including, but not limited to $50.00 of the Initial Deposit being hereby deemed as independent consideration for the inspection rights granted to Purchaser herein, which $50.00 shall be nonrefundable to Purchaser and delivered to Seller in the event Purchaser terminates this Contract within the Inspection Period, Seller agrees to sell and Purchaser agrees to buy the Property for the Purchase Price subject to the terms and conditions hereof.

3. CLOSING

3.1 The consummation of the sale and purchase of the Property pursuant to this Contract (the "Closing") shall occur on the Closing Date. Purchaser also may elect to have the

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Closing prior to any scheduled Closing Date upon at least three (3) business days advance written notice to Seller in which event the date designated by Purchaser in its notice shall be the Closing Date. Additionally, Seller shall be obligated to move to Closing prior to the end of the Inspection Period in the event all required approvals (e.g., entitlements, permits, zoning, etc.) for Purchaser's intended use of the Property have been received, Seller has performed all of its obligations hereunder (or the remaining obligations have been expressly waived by Purchaser in writing), and Purchaser chooses to proceed to Closing. In such event, Purchaser shall provide at least three (3) business days advance written notice to Seller that it is ready to proceed to Closing, which notice shall state the date of the Closing.

3.2 The Closing shall take place in escrow through the Sawyer Law Group, LLC (the "Closing Agent"). All deliveries provided for below shall be delivered in trust to the Closing Agent on or before the Closing Date if not otherwise delivered directly to the party entitled to receipt of such items. Upon Closing, the Closing Agent shall record and disburse only in accordance with the parties' escrow instructions. The items to be delivered are as follows:

A. Seller shall deliver to the Purchaser or Closing Agent (as applicable) the following:

(i) A limited warranty deed conveying title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments and restrictions except the Permitted Exceptions. If the legal description derived from the Survey is not substantially in accordance with the Seller's vesting deed, the legal description contained within the Seller's vesting deed shall be the legal description used on the limited warranty deed executed by Seller at Closing and the Seller shall execute a quitclaim deed of the legal description derived from the Survey.

(ii) Bill of Sale and Assignment (without warranty) of all plans, permits, rights, or privileges benefitting the Property, if any.

(iii) A certificate and affidavit of non-foreign status ("FIRPTA Affidavit"), executed by Seller as of the Closing Date, in a form reasonably acceptable to Purchaser;

(iv) A completed and executed South Carolina Form I-295 Nonresident Seller Withholding Affidavit, and, if Seller is not a resident or deemed resident thereunder, an Affidavit of Gain and South Carolina Form I-290 Nonresident Real Estate Withholding Form;

(v) A closing statement, in a form reasonably acceptable to Purchaser and Seller ("Closing Statement"), executed by Seller;

(vi) Such affidavits or letters of indemnity, as well as any and all authorizations related to the Bankruptcy Matter, required by the title company as the title insurance company which is to insure the title to the Property in order to issue, without extra charge, policies of title insurance free of any exceptions for unfiled mechanics', materialmen's or similar liens and to delete all standard exceptions (excluding the survey exception) from Purchaser's title owner's insurance policy to be obtained at Closing;

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(vii) 1099-S as to the sale of the Property;

(viii) Appropriate evidence reasonably required by Purchaser and the title company to evidence Seller's good standing with the South Carolina Secretary of State, together with Seller's resolutions and entity documentation necessary to confirm Seller's authority to execute and deliver the closing documents contemplated hereby and sell the Property;

(ix) A certificate of tax compliance for Seller issued by the South Carolina Department of Revenue; and

(x) All other documents reasonably necessary to effectuate the transaction.

B. At the Closing, Purchaser shall deliver to Seller or the Closing Agent, as applicable, the following:

(i) When the items indicated in (A) above have been deposited in escrow with the Closing Agent or delivered to Purchaser, as applicable, and the conditions to Purchaser's obligations under this Contract having been satisfied, the Purchase Price by wire transfer via the Federal Reserve System (plus or minus the net adjustments computed hereunder), payable to the order of Seller and/or such other order as Seller shall have directed by written notice to Purchaser;

(ii) Bill of Sale and Assignment;

(iii) The Closing Statement executed by Purchaser; and

(iv) Appropriate evidence reasonably required by Seller and the title company to evidence Purchaser's good standing with the Virginia Secretary of State, the South Carolina Secretary of State and the South Carolina Department of Revenue, together with Purchaser's resolutions and entity documentation necessary to confirm Purchaser's authority to execute and deliver the closing documents contemplated hereby and purchase the Property.

C. Seller shall deliver exclusive possession of the Property to Purchaser at Closing, subject only to the Permitted Exceptions.

3.3 The following shall be adjusted between Seller and Purchaser and shall be prorated on a per diem basis as of the calendar day preceding the Closing Date (so that Purchaser has the burden of all expenses for the calendar day of Closing):

A. Real estate taxes shall be adjusted between the Seller and Purchaser on the basis of the calendar year to which they are applicable; provided that Seller shall pay at Closing (or prior to Closing to allow such time as is needed for the applicable tax authority to reflect payment and release any tax lien) all real estate taxes for the years prior to the year in which the Closing occurs, to the extent the same have not already been paid. If current tax bills are not immediately available, such prorations shall be made on the basis of the taxes assessed for the

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preceding year and shall be adjusted when taxes for the year of sale are assessed. Any payment due by the Seller or Purchaser to the other as a result of any such adjustment shall be paid by the party owing such amount within thirty (30) days after receipt of written notice of the amount of the adjustment.

B. Rentals and profits, if any.

3.4 Seller shall pay for its own attorneys' fees and any and all costs (including, but not limited to, any State, County or Town of Hilton Head transfer taxes and/or fees) associated with the transfer of the Property, including, but not limited to, the cost for recording the deed, deed stamps, recording or other similar taxes or fees for recording based in whole or in part upon the consideration for or value of the Property. Purchaser shall pay for its own attorney's fees, due diligence expenses, costs for the title examination, title insurance premiums, and any Survey obtained by Purchaser.

3.5 Seller shall be solely responsible for payment of any roll-back taxes or similar taxes assessed or billed after the Closing but effecting a recapture of any amount of tax that otherwise would have been payable for the period prior to the Closing Date had the Property been used or assessed for a different use during such period than its actual assessed use ("Roll-back Taxes"). During the Inspection Period, Seller shall confirm to the satisfaction of Purchaser what amount of Roll-back Taxes will be assessed as a result of the change in use of the Property, if any. Purchaser shall take reasonable steps necessary to assist Seller in making such determination. To the extent that year(s) prior to the year of Closing are subject to Roll-back Taxes, Seller will fund an escrow in an amount agreed to by Purchaser at Closing from which Purchaser may pay said Roll-back Taxes upon receipt of a bill for same. With respect to the tax year in which the Closing occurs, if any Roll-back Taxes are assessed in a subsequent tax year effecting a recapture of any amount of tax that otherwise would have been payable for the tax year in which the Closing occurs had the Property been used or assessed for a different use during such period than its actual assessed use, then the amount of any such Roll-back Taxes attributable to the year of Closing shall be prorated between Purchaser and Seller, and Seller shall pay its pro rata share of such amount based on the number of calendar days Seller owned the Property during the tax year of Closing over the total number of calendar days in such tax year.

3.6 If Seller is a "Foreign Person" (as defined in Section 1445 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder), or if Seller fails to deliver the FIRPTA affidavit hereinbefore mentioned, or if Purchaser has actual knowledge that such affidavit is false, Purchaser shall be allowed to comply with applicable federal law in deducting and withholding from the Purchase Price the amount required by the Internal Revenue Code. Purchaser shall remit such amount to the Internal Revenue Service.

3.7 If applicable state law requires that any of Seller's proceeds be withheld pursuant to applicable laws, then same shall be withheld according to law.

4. TITLE AND SURVEY

4.1 Seller shall convey to Purchaser at Closing marketable fee simple title in and to the Property free of all claims, liens and encumbrances of any kind or nature whatsoever other

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than the Permitted Exceptions (as hereinafter defined and insurable by a title insurance company reasonably acceptable to Purchaser, at then current rates under an ALTA Owner's Policy of Title Insurance with all standard printed exceptions deleted (excluding the survey exception) and without exception other than for the Permitted Exceptions). For the purposes of this Contract, the term "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) zoning and subdivision restrictions; and (iii) matters to which Purchaser does not timely object under this Section 4.1, or matters which Seller does not agree to cure, under this Section 4.1 and Purchaser has agreed to waive (or is deemed to have waived) its objection thereto. Purchaser shall have until the end of the Inspection Period to (i) examine the title to the Property, and to give written notice to Seller (the "Title Objection Notice") of any objectionable matter or defect which affects the marketability or insurability of the title to the Property as determined in Purchaser's sole, but reasonable, discretion (the "Title Objections") and (ii) deliver a copy of Purchaser's preliminary commitment for title insurance to Seller. If Purchaser fails to deliver the Title Objection Notice during the Inspection Period, Purchaser shall be deemed to have waived such right to object to the Title Objections. If Purchaser does give Seller timely notice of any such objectionable matters, Seller agrees to notify Purchaser within ten (10) days following Seller's receipt of the Title Objection Notice as to whether Seller will attempt to cure such Title Objections by the Closing Date. If Seller fails to notify Purchaser within said 10-day period or Seller notifies Purchaser within said 10-day period that Seller does not intend to attempt to cure any or all of the Title Objections by the Closing Date, then Purchaser shall have the option, upon notice to Seller within ten (10) days following expiration of the aforementioned 10-day period, either to (x) waive its Title Objections hereunder and take title to the Property pursuant to the remaining terms of this Agreement, or (y) terminate this Agreement by giving written notice to Seller prior to the expiration of the Inspection Period and all Earnest Money shall be refunded (including without limitation, any otherwise nonrefundable Earnest Money). Failure by Purchaser to respond within ten (10) days shall be deemed a waiver of the applicable Title Objection(s). Further, if Seller notifies Purchaser that Seller intends to attempt to cure the Title Objections by the Closing Date but Seller fails to cure such Title Objections by such date, then Purchaser shall be entitled to exercise its option under subsection (x) or (y) above, provided that the option under subsection (y) above shall be exercised prior to the Closing Date and, in such event, all Earnest Money shall be refundable to Purchaser (including, without limitation, any nonrefundable Earnest Money) and Seller shall pay to Purchaser the Documented Costs. In the event that any new matters of title shall arise after expiration of the Inspection Period, Purchaser may object to the same before the Closing Date, whereupon the process and time periods of this Section 4.1 shall govern such objections.

5. CONDITIONS TO PURCHASER'S OBLIGATIONS

The obligation of Purchaser hereunder to purchase the Property from Seller is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived in whole or in part by Purchaser at or prior to the Closing):

5.1 Seller shall have obtained any and all approvals necessary to consummate the transactions contemplated herein, including, but not limited to, the Approval Order (defined below) and Lender Consent (defined below).

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5.2 Purchaser shall have received approval (the "Site Plan Approval") of a final site plan (the "Site Plan") from all applicable governmental authorities and private bodies having regulatory authority over the Property for the construction of a **24-hour convenience store with retail gasoline, beer and/or wine, tobacco (including electronic nicotine delivery devices) and lottery sales, together with full service kitchen sales for sit down and take out consumption ("Purchaser's Intended Purposes").** Purchaser shall diligently endeavor to obtain Site Plan Approval. Purchaser shall provide Seller with a copy of the Site Plan for which Purchaser is seeking Site Plan Approval and Seller covenants to Purchaser that it will cooperate with Purchaser, at Purchaser's sole cost and expense, in seeking Site Plan Approval. Notwithstanding anything to the contrary above, Purchaser and Seller acknowledge that the Site Plan is subject to change, in Purchaser's sole discretion, and applicable local and state laws, regulations and agencies. Seller agrees to consent to the Site Plan, and any changes to the Site Plan, if requested to do so by Purchaser. In no event shall said Site Plan be filed of record prior to Closing, unless otherwise approved by Seller in writing, which approval shall not be unreasonably withheld, conditioned or delayed, and prior to Closing (or recording if approved by Seller prior to Closing) any such plats and plans shall be non-binding upon the Property and/or the Seller in the event the Purchaser does not purchase the Property.

5.3 At Closing, the Land shall be zoned to permit the operation of the Property for Purchaser's Intended Purposes to be developed in accordance with the Site Plan; provided, however, that if the Land needs to be rezoned to permit said operation, Purchaser shall obtain Seller's written approval to do so prior to having the Land rezoned, which approval shall not be unreasonably withheld, conditioned or delayed. Furthermore, such approval may only be withheld by Seller in the event it would cause an unreasonable burden on Seller, as determined in Seller's good faith. In the event Seller does not provide such approval within ten (10) days after written request by Purchaser, Purchaser may terminate this Contract at any time prior to Closing and receive a full refund of the Earnest Money.

5.4 Purchaser shall have obtained all permits necessary for the construction of the improvements for Purchaser's Intended Purposes. Purchaser agrees to diligently pursue such permits.

5.5 Purchaser shall have received approval from all applicable governmental authorities and private bodies having regulatory authority over the Property for the construction and operation of its pylon/monument sign in such location on the Property as shall be approved by Purchaser in its sole discretion.

5.6 The Property shall not contain petroleum contaminates which are not covered by the State Underground Petroleum Environmental Response Bank (SUPERB) program, and in the event Purchaser's environmental studies reveal that petroleum contaminates covered by the SUPERB program are located on the property, and Purchaser delivers notice to Seller prior to the expiration of the Inspection Period of its desire to participate in the SUPERB program, Purchaser shall receive a credit at Closing for the amount of the applicable SUPERB deductible.

5.7 The Property shall not be subject to any leases at Closing.

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In the event any of the above conditions are not satisfied as of the Closing Date, Purchaser shall have the right to terminate this Contract and receive a refund of the Earnest Money, in which event this Contract shall be null and void and of no further force or effect except with respect to those matters that expressly survive termination hereof.

6. REPRESENTATIONS AND WARRANTIES OF SELLER

6.1 Subject to the provisions in Section 15.12, Seller hereby represents and warrants to Purchase the following:

A. Seller has full power and authority to enter into this Contract and to assume and perform all its obligations hereunder; the execution and delivery of this Contract and the performance by Seller of its obligations hereunder have been duly authorized by such action as may be required, and no further action or approval is required in order to constitute this Contract as a binding and enforceable obligation of Seller; provided, however, that approval may be required from the U.S. Bankruptcy Court and possibly other third parties with respect to the Bankruptcy Matter, as to be definitively determined by Seller using diligent and good faith efforts during Seller's Diligence Period.

B. Seller has not granted any easements or restrictions affecting the Property that would bind Purchaser after Closing except as set forth in the applicable public records for the Property on the Effective Date. To Seller's knowledge, there are no leases, tenancies, licenses, or other rights of occupancy or use for any portion of the Property.

C. To Seller's knowledge, Seller has received no notice of pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof.

D. To Seller's knowledge, Seller has received no notice of any default or breach under any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof.

E. At Closing, the Property shall not be subject to any private use restrictions that expressly prohibit Purchaser's Intended Purposes.

6.2 The representations and warranties set forth herein shall be deemed remade by Seller as of the Closing Date, and same shall survive the Closing for a period of one (1) year. Except as expressly set forth in this Section 6, Purchaser shall accept the Property at Closing "as is, where is, with all faults," without representation or warranty of any kind whatsoever, express or implied, regarding the title or condition of the Property, or any other matter pertaining thereto.

7. COVENANTS OF SELLER

7.1 Seller hereby covenants to Purchaser as follows:

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A. Subject to the provisions in Section 15.12, between the Effective Date and Closing, Seller shall not enter into (or consent to) any contracts or agreements affecting maintenance, use or occupation of the Property individually, which will be binding upon Purchaser as the owner of the Property and which are not terminable prior to Closing, and only then if terminable without payment of a termination fee or penalty, without prior written approval from Purchaser, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Shopping Center (defined below in Section 15.12) is subject to certain recorded covenants and restrictions whereby Seller, as the developer of the Project, is required or permitted to perform certain maintenance and repair functions relating to the Project and common areas therein. Seller, in its capacity as developer of the Shopping Center, may freely enter into contracts or agreements for maintenance of the Project and common areas therein, without violation of this Section 7.1(A) and without prior approval from Purchaser.

B. Between the Effective Date and Closing, Seller agrees not to negotiate for the sale of the Property by itself or to accept any contingent or back-up purchase agreements for the sale of the Property by itself to other parties while this Contract remains in full force and effect. Notwithstanding the foregoing, Seller may negotiate for the sale of the entire Shopping Center (including the Property) at any time, pursuant to the provisions of Section 15.12 below.

C. Upon the Effective Date and up through the Closing Date, Seller will: (i) give to Purchaser, its attorneys, accountants, engineers and other representatives, during normal business hours and as often as may be reasonably requested, full access to any and all parts of the Property and to all books, records, and files in Seller's possession relating to the Property (e.g. topographical surveys, engineering studies, soil studies, boundary surveys, wetlands studies, zoning letters and information, DOT permits, environmental investigations, regulatory monitoring or reports, title work, and title policies); (ii) furnish to Purchaser or make available to Purchaser all information in Seller's possession concerning the Property that Purchaser, its attorneys, accountants, engineers or other representatives shall reasonably request; and (iii) provide Purchaser with Seller's most recent tax bill for the Property, copies of all surveys, environmental reports, structural reports and other studies in Seller's possession and control relating to the Property and with all other information that Seller believes would be of benefit to Purchaser in evaluating the Property. For avoidance of doubt, Seller shall have no obligation to obtain any documents which are not in Seller's actual possession.

D. Seller agrees to use good faith efforts to cooperate with Purchaser in all reasonable respects in obtaining site plan, and other governmental approvals required to permit the use and development of the Property for Purchaser's Intended Purposes.

E. In the event the Land needs to be rezoned to permit the use and development of the Property for Purchaser's Intended Purposes and Seller has provided written approval to do so pursuant to Section 5.6, hereinabove, Seller agrees to use good faith efforts to cooperate with Purchaser in all reasonable respects in obtaining the change in zoning and, thus, zoning approval required to permit the Property to be used for Purchaser's Intended Purposes.

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F. Seller hereby covenants to allow Purchaser to enter upon the Property and obtain, at its own cost, a current survey of the Property to be prepared by a land surveyor licensed in the State of South Carolina (the "Survey").

G. Seller hereby agrees to notify the U.S. Bankruptcy Court that this Contract exists promptly after both parties have executed it.

H. At Closing, the Property shall not be subject to any private use restrictions that expressly prohibit Purchaser's Intended Purposes and, if any exist, Seller shall petition the Court in the Bankruptcy Matter to remove any and all such restrictions.

8. DESTRUCTION OR DAMAGE PRIOR TO THE CLOSING DATE

8.1 Subject to the provisions of this Contract, Seller shall bear the risk of all loss, destruction or damage to the Property or any portion thereof from any and all causes whatsoever to and including the Closing Date. If after the date hereof, and prior to the Closing, all or any part of the Property is taken or threatened to be taken by eminent domain or condemnation such that such action materially impacts Purchaser's intended use of the Property or the value or utility of the Property to Purchaser (as determined in Purchaser's sole, but good faith, judgment), Purchaser may elect either (a) to terminate this Contract and obtain a refund of the Earnest Money, or (b) to consummate Closing as herein provided in which event all condemnation awards or payment shall be paid or assigned by Seller to Purchaser at Closing.

8.2 Purchaser shall not allow any mechanic's or materialmen's lien(s) to be filed against the Property related to any work performed on Purchaser's behalf involving the Property, and if such should be filed, covenants to bond off such mechanic's or materialmen's lien within thirty (30) days of such filing in accordance with South Carolina law (without prejudice to contest the actual amount owed, if any, as allowed by statute) so as to remove the lien on the Property.

9. INSPECTION PERIOD

9.1 During Seller's Diligence Period, Seller shall use diligent and good faith efforts to cause to be entered in the Bankruptcy Matter an order authorizing the sale of the Property pursuant to this Agreement, free and clear of all liens, with liens attaching to the proceeds of the sale (the "Approval Order"), which Approval Order shall be executed by counsel for each secured creditor, including, but not limited to, BOKF, NA, d/b/a Bank of Arkansas, which is the first in priority lienholder on the Property ("Lenders"), evidencing the consent by Lenders to the Approval Order and this Contract ("Lender Approval") and provided a copy of same to Purchaser and Purchaser's title company. Purchaser and Seller acknowledge that all obligations under this Contract are contingent upon the entry of the Approval Order.

Seller is a party to a lease agreement with PetSmart Inc. ("PetSmart") which contains a use restriction for the Shopping Center that prohibits the operation of an "automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks" (the "PetSmart Fuel Restriction"). During Seller's Diligence Period, Seller shall use diligent and good faith efforts to obtain one of the following: (i) a written consent to the use of the

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Property for Purchaser's Intended Purposes and waiver of the PetSmart Fuel Restriction with respect to the Property, executed by PetSmart, or (ii) an executed amendment to the PetSmart lease deleting the PetSmart Fuel Restriction. The satisfaction by Seller of either subsection (i) or (ii) in the foregoing sentence shall be referred to as the "PetSmart Contingency." The Lender Approval, Approval Order, and PetSmart Contingency are collectively referred to herein as the "Seller's Diligence Contingency."

If Seller is unable, after using diligent and good faith efforts, to fulfill Seller's Diligence Contingency prior to the end of Seller's Diligence Period, Purchaser shall have the option of (A) waiving Seller's delivery of Seller's Diligence Contingency and continuing under this Contract, or (B) terminating this Contract by giving written notice to Seller in accordance with the notice provisions of this Contract, by notice to Seller within thirty (30) days following expiration of the Seller's Diligence Period. In addition, if Seller is unable, after using diligent and good faith efforts, to fulfill Seller's Diligence Contingency during the Seller's Diligence Period, Seller may terminate this Contract. Upon any termination pursuant to this Section 9.1, the Escrow Agent shall return the Earnest Money to Purchaser, this Contract shall be null and void and of no further force or effect, and the parties shall have no further rights or obligations to one another, except for any rights or obligations expressly set forth herein which are to survive termination. Seller hereby acknowledges that Seller's Diligence Period is being afforded for the sole purpose of Seller pursuing Seller's Diligence Contingency in order to resolve the issue of consent as it relates to the Bankruptcy Matter. Notwithstanding the foregoing, Seller's failure to fulfill Seller's Diligence Contingency, so long as Seller has used diligent and good faith efforts, shall not under any circumstances be deemed a breach under this Contract.

9.2 During the Inspection Period, Purchaser shall be permitted to enter the Property and to inspect and evaluate the Property and to conduct studies and surveys thereon, including, but not limited to environmental investigations and soil testing without the need for any further consent by Seller, provided that Purchaser shall provide advance notice to Seller of any Phase II Environmental Site Assessment or similar study. If Purchaser determines for any reason or no reason that the Property is not suitable for Purchaser's purposes, Purchaser may terminate this Contract by delivering written notice to Seller prior to the end of the Inspection Period. If Purchaser fails to give written notice of its election to terminate this Contract as provided above the Contract shall automatically continue to Closing and the Earnest Money shall thereafter be non-refundable to Purchaser, but applied towards the Purchase Price at Closing; provided, however, such Earnest Money shall remain fully refundable in the case of Seller's default or failure of the conditions precedent under Section 5, or as otherwise expressly set forth in this Contract, at Closing provided, however, in the event of default, Seller shall be entitled to notice of the default and the cure period provided for defaults.

9.3 Purchaser shall have the right to extend the Inspection Period for up to one (1) thirty (30) day extension period (an "Extension Period") so long as Purchaser is attempting diligently and in good faith to pursue permitting and entitlements. The Extension Period right may be exercised by Purchaser by giving written notice to Seller of the exercise of the Extension Period right and depositing with the Escrow Agent, in cash or wire transfer, an additional Ten Thousand and no/100th Dollars ($10,000.00) as additional Earnest Money ("Extension Deposit") prior to the expiration of the Initial Inspection Period. The Extension Deposit, together with the Initial

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Deposit, shall be non-refundable to Purchaser, except in the event of a default by Seller, or the failure of a condition precedent in Section 5 at Closing.

9.4 For purposes of clarification, beginning on the Effective Date and continuing through Seller's Diligence Period and until the expiration of the Inspection Period or Extension Period, if applicable, Purchaser shall have the right to terminate this Contract for any and all, or no, reason whatsoever, and the provisions regarding notice of termination and refund (or non-refundability, as applicable) of Earnest Money set forth in this Section 9 shall apply.

9.5 Notwithstanding anything to the contrary contained in this Contract, any investigation or examination of the Property (or of other materials and matters with respect to the Property) performed by Purchaser or Purchaser's agents, contractors or consultants prior to the Closing shall be performed at the sole risk, cost and expense of Purchaser, and Purchaser shall be solely responsible for the acts, omissions, faults or neglects of Purchaser and Purchaser's agents, contractors and consultants with respect to any such investigations or examinations and Purchaser hereby indemnifies and holds Seller harmless for any claims by any party therefor and all associated costs resulting from said claims; provided, however, in no event shall Purchaser be liable to Seller for the mere discovery of a pre-existing condition. Purchaser shall maintain commercially general liability insurance with limits of not less than $1,000,000.00 with respect to its use and occupancy of the Property prior to Closing, the policy for which shall name Seller as an additional insured. Further, Purchaser shall restore and repair any damage caused by Purchaser or Purchaser's agents. Seller expressly agrees that Purchaser shall not be held responsible for any marketability problems that arise from any environmental surveys or audits should contamination be indicated by same. Purchaser shall provide Seller, at Seller's request, and at no cost to Seller, copies of all title reports, surveys and environmental reports in the event Purchaser does not purchase the Property.

10. **RESERVED.**

11. **EARNEST MONEY**

11.1 Within three (3) business days after the Effective Date, Purchaser shall deposit the Initial Deposit with Escrow Agent. The Earnest Money shall be deposited into an FDIC insured trust account with all interest earned thereon benefitting the Georgia IOLTA fund. The Escrow Agent shall hold the Earnest Money subject to the conditions set forth on the attached Exhibit "B." At Closing, Escrow Agent shall pay the Earnest Money to Seller to be credited against the Purchase Price. In the event Purchaser has the right to and elects to terminate this Contract or allows same to terminate as provided herein prior to any extension of the Inspection Period, Escrow Agent shall refund the Earnest Money upon receipt of notice of such termination; provided, however, if Seller disputes Purchaser's entitlement to a refund of the Earnest Money, Escrow Agent shall retain same subject to the terms and conditions on the attached Exhibit "B" until receipt of joint instructions from the parties regarding the disposition of the Earnest Money. Notwithstanding anything else in this Contract to the contrary, if Escrow Agent receives notice of termination from Purchaser, or Purchaser's attorneys, Sawyer Law Group, LLC, prior to the end of the Inspection Period, Escrow Agent shall and is hereby directed by Seller to refund the Earnest Money to Purchaser.

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12. **DEFAULT**

12.1 If the sale and purchase of the Property contemplated by this Contract is not consummated because of a default by Seller, after performance by Purchaser of all obligations under this Contract (except any that cannot be performed due to Seller's default), Purchaser as its sole remedy, may:

A. waive the default and proceed to Closing;

B. proceed to enforce this Contract by an action of specific performance in a court of competent jurisdiction; or

C. terminate this Contract and obtain a refund of the entire Earnest Money and reimbursement for, and Seller shall pay upon demand, the Documented Costs, not to exceed the sum of $50,000.

Notwithstanding the foregoing, Purchaser shall not be entitled to exercise any remedy hereunder unless it has first given Seller ten (10) days' prior written notice of default and Seller has failed to cure the default within such ten (10) day period. Moreover, notwithstanding any provisions in this Contract to the contrary, no failure of Seller to fulfill Seller's Diligence Contingency (so long as Seller has used diligent and good faith efforts), shall constitute a default under this Contract.

12.2 If the sale and purchase of the Property contemplated by this Contract is not consummated because of Purchaser's default hereunder (excluding any failure to perform resulting from Seller's failure to perform hereunder), Seller shall have the right, as Seller's exclusive remedy, to terminate this Contract and receive the Earnest Money then on deposit from Escrow Agent, such sum being agreed upon as liquidated damages for the failure of Purchaser to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Contract, and Seller agrees to accept and take said cash payment as total damages and as Seller's sole remedy in such event. It is agreed that Seller's damages would be difficult to ascertain and the Earnest Money then on deposit with Escrow Agent constitutes a reasonable forecast thereof and is intended not as a penalty but as full liquidated damages. Notwithstanding the above, Seller shall not exercise any remedy hereunder unless it has first given Purchaser ten (10) days' prior written notice of default and Purchaser has failed to cure the default within such ten (10) day period.

13. **REAL ESTATE COMMISSIONS**

13.1 Seller has been represented by Lee & Associates Charleston, LLC and Purchaser has been represented by Thomas Mathewes in connection with the transactions contemplated hereby. In the event Closing shall occur hereunder, Seller shall pay the real estate fees or commissions in connection with the transactions contemplated hereby. This provision shall survive the Closing.

14. **CONFIDENTIALITY**

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14.1 Seller and Purchaser agree that, unless and until the transaction contemplated herein is closed, all information and materials regarding the Property will be kept strictly confidential. The Purchaser will disclose the information and materials obtained about the Property during the Inspection Period to only those representatives of the Purchaser who need to know such information for the purpose of consummating the acquisition of the Property or preparing it for its intended use or governmental officials as needed. All terms of this Contract will be kept confidential by the Seller and at no time during these proceedings may any information about the terms of this Contract or of Purchaser be disclosed by the Seller, including, but not limited to: Purchaser's identity, the identify of its affiliates, price, length of the Inspection Period, plans or proposed use. Notwithstanding the foregoing, the parties acknowledge that the transactions contemplated herein may be subject to the jurisdiction of the U.S. Bankruptcy Court as a result of the Bankruptcy Matter. In pursuing such approval, the parties acknowledge, agree, and understand that details concerning this Contract must be revealed to the U.S. Bankruptcy Court, and providing such information will not constitute a violation of the provisions of this Section 14.

15. MISCELLANEOUS

15.1 This Contract may be assigned by Purchaser to an entity owned or controlled by or under common control with Purchaser provided that Purchaser's assignee shall assume all Purchaser's liabilities, obligations and duties hereunder and Purchaser shall not be relieved of liability in the event of any such assignment.

15.2 Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered by hand, (ii) mailed by United States certified mail, return receipt requested, postage prepaid, (iii) sent by a reputable, national overnight delivery service (e.g., Federal Express, Airborne, etc.), or (iv) sent by facsimile and/or email (with the original being sent by one of the other permitted means or by regular United States mail) and addressed to each party (and any person designed as a "copy to") at the applicable address set forth herein below each party's signature. Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the date of hand delivery (if delivered by hand), on the third (3rd) calendar day following deposit in the United States mail (if sent by United States registered mail), on the next business day following deposit with an overnight delivery service with instructions to deliver on the next business day or on the next business day (if sent by overnight delivery service), or on the calendar day sent by facsimile (if sent by facsimile or email, provided the original is sent by one of the other permitted means as provided in this paragraph or by regular United States mail). However, the time period within which a response to any notice or request must be given, if any, shall commence to run the date of actual receipt of such notice, request, or other communication by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. By giving at least five (5) business days' prior written notice thereof, any party hereto may, from time to time and at any time, change its mailing address hereunder. Any notice provided for hereunder may be given by a party's attorney or other representative.

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15.3 Seller and/or Purchaser may consummate this transaction as part of a so-called like kind exchange (an "Exchange") pursuant to §1031 of the Internal Revenue Code of 1986, as amended (the "Code"), and each agrees to reasonably cooperate with the other to so consummate this transaction provided that: (i) the Closing shall not be delayed or affected by an Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to the obligations under this Contract of the party conducting the Exchange; (ii) the party conducting an Exchange shall effect the Exchange through a qualified intermediary and the other party shall not be required to acquire or hold title to any real property for the purposes of consummating such Exchange; (iii) the party conducting the Exchange shall pay additional costs that would not have otherwise been incurred by the parties had such party not consummated this transaction through the Exchange. The party conducting the Exchange shall indemnify and hold harmless the other party from any and all costs, expenses, liability, etc., it may incur by reason of the Exchange. Neither party shall by this agreement of acquiescence to an Exchange (1) have its rights under this Contract affected in any manner, or (2) be responsible for compliance with or be deemed to have warranted to the party conducting the Exchange that such Exchange in fact complies with §1031 of the Code.

15.4 This Contract shall be construed under and in accordance with the laws of the State of South Carolina.

15.5 If a date provided for in this Contract falls on a Saturday, Sunday, or legal holiday it shall be extended until the end of the next following business day.

15.6 This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

15.7 This Contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understanding or written or oral agreements between the parties respecting the within subject matter.

15.8 If legal action is necessary to enforce a right or remedy of either party, the prevailing party shall also be entitled to recover from the other party reasonable attorney's fees in connection therewith.

15.9 Time is of the essence in regard to the provisions of this Contract. Unless otherwise specifically stated, any time period set forth herein of five (5) days or less shall be construed as meaning business days and any time period of more than five (5) days shall be construed as meaning calendar days.

15.10 This Contract may be executed in any number of identical counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken together as one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Contract may be detached from any counterpart of this Contract without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Contract identical in form hereto but

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having attached to it one or more additional signature pages. Any signatures of this Contract delivered via facsimile shall be deemed originals signatures.

15.11 This terms and conditions of the offer to purchase contained in this Contract shall automatically expire at 5:00 pm on August 9, 2019 unless agreed to by both Purchaser and Seller hereto, such agreement as to terms and conditions being made, acknowledged and confirmed by each party's respective signature below.

15.12 Purchaser acknowledges and agrees that Seller may sell, or enter into a contract to sell, the entire shopping center known as Sea Turtle Marketplace that is located on William Hilton Parkway on Hilton Head Island, South Carolina (the "Shopping Center"), which Shopping Center includes the Property, and assign its rights and obligations under this Contract (collectively, a "Permitted Transfer") to a prospective purchaser who is not Purchaser (a "Transferee"), at any time while this Contract is in effect, provided that (i) Seller shall provide written notice to Purchaser and the Transferee of the existence of this Contract, prior to the Permitted Transfer at least fifteen (15) days prior to the closing of the Permitted Transfer ("Transfer Notice"), (ii) the Permitted Transfer shall be subject in all respects to Purchaser's rights under this Contract, (iii) the Transferee agrees in writing to be bound by the terms of this Contract, and, as such, this Contract shall remain in full force and effect with respect to the Property, notwithstanding the Permitted Transfer or any contract(s) pertaining thereto, and (iv) at the closing of the Permitted Transfer, Seller shall assign, and the Transferee shall assume, all rights and obligations under this Contract. In the event of a Permitted Transfer in accordance with the foregoing requirements, Seller shall be released of all liability whatsoever under this Contract for matters occurring or arising after the Permitted Transfer occurs, without further action by Seller or Purchaser. Purchaser hereby permanently waives any and all rights, equitable or otherwise, to contest or hold Seller liable for the occurrence of any Permitted Transfer which fully complies with the requirements of this Section. Notwithstanding the foregoing, within fifteen (15) days following delivery of the Transfer Notice, Purchaser may elect to proceed to Closing prior to such Permitted Transfer, pursuant to the terms of this Agreement, by delivering written notice to Seller within five (5) days following delivery of the Transfer Notice. In the event Purchaser does not timely deliver notice of its desire to proceed to Closing, or in the event that Purchaser delivers notice of its desire to proceed to Closing and the Closing does not occur prior to the Permitted Transfer, Seller shall be entitled to proceed with the Permitted Transfer, and the provisions in subsections (ii), (iii) and (iv) above shall apply with respect to the Permitted Transfer.

[intentionally left blank]

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SIGNED, SEALED AND DELIVERED as of the date set forth below.

WITNESSES:

SELLER:
WD-I ASSOCIATES LLC,
a Virginia limited liability company

By: _____ (SEAL)
JON S. WHEELER
Print Name

Its: MANAGER

DATE OF ACCEPTANCE
AND EXECUTION: 8/30/19

ADDRESS FOR NOTICES TO SELLER:

1055 LASKIN ROAD, SUITE 100
VIRGINIA BEACH, VA. 23451
Telephone: (757) 621-2873
Fax: (757) 614-1962
Email: JON@WREC.NET

With a copy to:
Hartman Simons & Wood LLP
6400 Powers Ferry Road NW, Suite 400
Atlanta, GA 30339
Telephone: (770) 226-1338
Email: lana.sims@hartmansimons.com

[PURCHASER'S SIGNATURE ON FOLLOWING PAGE]

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SIGNED, SEALED AND DELIVERED as of the date first set forth below.

WITNESSES:

PURCHASER:

DRAYTON-PARKER COMPANIES, LLC,
a Georgia limited liability company

By: _____ (SEAL) Blake L. Greco

Name: Brian Prevatt

Its: CFO General Counsel

DATE OF ACCEPTANCE
AND EXECUTION: 8/30/19

ADDRESS FOR NOTICES TO SELLER:

Drayton-Parker Companies, LLC
c/o Blake L. Greco, Esq.
17 W. McDonough Street
Savannah, Georgia 31401
Phone: 912-675-2427
E-mail: bgreco@parkersav.com

With a copy to:

Sawyer Law Group, LLC
111 East 34th Street
Savannah, GA 31401
Attn: Jennifer Sawyer, Esq.
Phone: 912-662-8611
Facsimile: 912-662-8616
E-Mail: jsawyer@sawyerlg.com

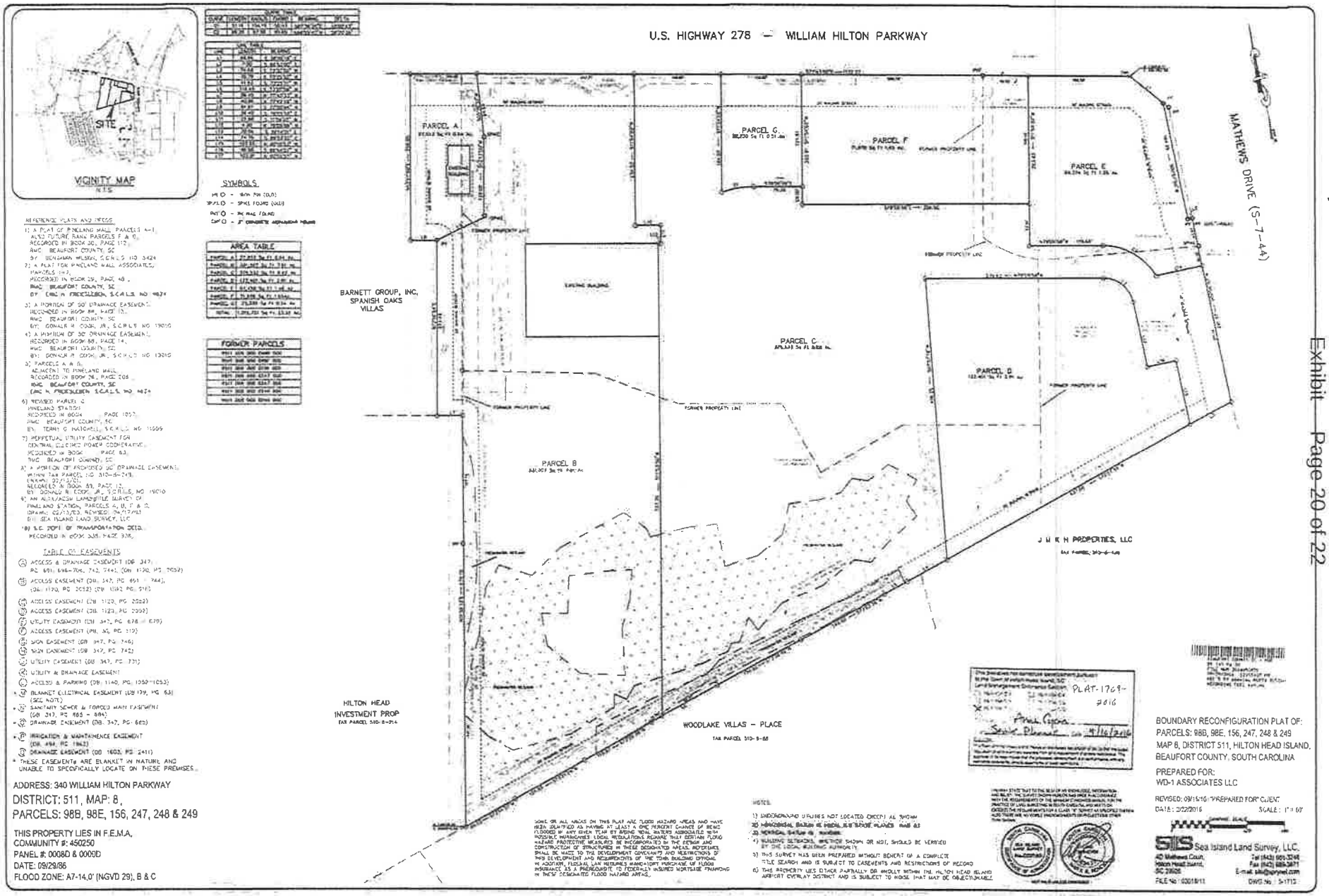
[END OF SIGNATURE PAGES]

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Exhibit "A"

PLAT

Case 19-02517-jw Doc 164 Filed 01/30/20 Entered 01/30/20 16:45:46 Desc Main
Case 19-02517-jw Doc 150-1 Filed 01/02/20 Entered 01/02/20 12:40:57 Desc Exhibit Page 20 of 22
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EXHIBIT F



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Exhibit "B"

ESCROW CONDITIONS

1. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses, or expenses, unless such action or omission is negligent, willful or inconsistent with the provisions of this Contract. Escrow Agent may rely upon any instrument as being duly executed, valid, and effective, and as containing accurate information and genuine signatures.

2. Notwithstanding anything in this agreement to the contrary, in the event of a dispute between Seller and Purchaser arising prior to or at the time of the delivery or other disposition of the Earnest Money by Escrow Agent pursuant hereto, which dispute shall be sufficient, in the sole discretion of Escrow Agent, to justify its doing so, Escrow Agent shall be entitled to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as it may deem appropriate, and thereupon Escrow Agent shall be discharged from all further duties and liabilities under this agreement. Any such legal action may be brought in such court as Escrow Agent shall determine to have jurisdiction thereof. Escrow Agent's determination of whether a dispute exists between Seller and Purchaser shall be binding and conclusive upon all parties hereto, notwithstanding any contention that no dispute exists. All costs and expenses incurred by Escrow Agent in taking any action pursuant to this paragraph shall be covered by and paid pursuant to the indemnification of Escrow Agent contained in the following paragraph. Notwithstanding the foregoing, Escrow Agent shall hold and disburse the Earnest Money in accordance with the express provisions of the Contract.

3. Purchaser and Seller shall, and do hereby, jointly and severally indemnify, defend, and hold Escrow Agent harmless from, against, and in respect of: (i) any and all demands, judgments, expenses, costs, losses, injuries, or claims of any kind whatsoever whether existing on the date hereof or hereafter arising, incurred by Escrow Agent by reason of, from, or in connection with this agreement or any action taken or not taken by Escrow Agent under or in connection with this agreement; and (ii) any and all counsel fees, expenses, disbursements of counsel, amounts of judgments, demands, assessments, costs, fines, or penalties, and amounts paid in compromise or settlement, incurred or sustained by Escrow Agent by reason of, in connection with, or as a result of any claim, demand, action, suit, investigation, or proceeding (or any appeal thereof or relating thereto or other review thereof) incident to the matters covered by the immediately preceding clause (i).

4. If Escrow Agent shall notify Seller and Purchaser of its desire to be relieved of any further duties and liabilities hereunder, then Escrow Agent shall deliver the Earnest Money to a successor escrow agent designated by Seller and Purchaser. If Seller and Purchaser shall fail to agree upon and designate a successor escrow agent within ten (10) days after having been requested by Escrow Agent to do so, then Escrow Agent shall in its discretion designate the successor escrow agent. The successor escrow agent designated by Seller and Purchaser or by Escrow Agent, as the case may be, shall be a bank or trust company having trust powers in good standing and located in Savannah, Georgia, and shall agree to be bound by all the terms and conditions of this agreement. Immediately upon agreement by the successor escrow agent to be

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bound by all the terms and conditions of this agreement, the original Escrow Agent shall be relieved of any and all duties and liabilities under or in connection with this agreement; provided, however, that no successor escrow agent shall assume any liability for the acts or omissions of its predecessor escrow agent(s) hereunder.

5. The agency created in Escrow Agent hereby is coupled with an interest of Seller and Purchaser and shall be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser. This escrow shall not be revoked or terminated by reason of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, but shall continue to be binding upon and enforceable against the respective heirs, successors, legal representatives and assigns of Seller and Purchaser in the manner provided herein. In the event of the death, incompetency, dissolution, or liquidation of Seller or Purchaser, Escrow Agent may rely and act upon any notices permitted or required to be given hereunder from any person, firm, partnership, or corporation believed by Escrow Agent in good faith to be the heir, successor, legal representative or assign of such dissolved or liquidated party.

6. The address for the receipt of notices and other communications by Escrow Agent hereunder is as follows:

Sawyer Law Group, LLC
Attn: Jennifer Sawyer
111 East 34th Street
Savannah, GA 31401
Tel 912-662-8611
Fax 912-662-8616

The terms and conditions of this Contract, and specifically this Exhibit "B", being acknowledged and agreed to by:

SAWYER LAW GROUP, LLC

By: _____

Print Name: Jennifer D. Sawyer

Title: Owner/Manager

EXHIBIT F

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From: BigBoysBlast info@bigboysblast.com
Subject: Sea Turtle Marketplace I Notice of SALE - Bid Deadline January 22nd - SC
Date: December 27, 2019 at 12:43 PM
To: Jorr@lee-associates.com

Having trouble reading this email? View it in your browser here

Delivered to you by:

BigBoysBlast .com REPLY TO SENDER UNSUBSCRIBE

Commercial real estate marketing



SEA TURTLE MARKETPLACE

430 WILLIAM HILTON PARKWAY
HILTON HEAD ISLAND, SC 29926

- **TYPE OF SALE**
  Private sale subject to higher and better offers in accordance with approved bid procedures
- **PROPERTY TO BE SOLD**
  Real property and leases for seven parcels with the legal description on Exhibit A (the Property").
- **STALKING HORSE PRICE**
  Mid-Atlantic Commercial Properties, LLC ("Stalking Horse Purchaser") has made an offer to purchase, as reflected in a Purchase Agreement (the "Purchase Agreement"), the Shopping Center for a purchase price of $18,750,000.00.
- **FOR MORE INFORMATION, CONTACT**
  John Orr, Lee & Associates of Charleston, LLC,
  960 Morrison Drive, Suite 400, Charleston, SC 29403
  (843) 906-0043, john@johnorr.com
- **BID PROCEDURES FOR PERSONS DESIRING TO SUBMIT HIGHER AND BETTER OFFERS**
  visit http://bit.ly/seaturtlenoticeofsale

FOR SALE

CLICK HERE FOR THE COMPLETE NOTICE OF SALE INFORMATION

99,155 SQUARE FEET ON
15.14 ACRES,
74.42% OCCUPIED,
REDEVELOPED IN
2016-2017

MAJOR TENANTS

Stein Mart · West Marine · PETSMART · Broken Egg Cafe · Starbucks · Jersey Mike's · Orangetheory

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REAL ESTATE/ASSET PURCHASE AGREEMENT

THIS REAL ESTATE/ASSET PURCHASE AGREEMENT ("Agreement") is made as of ~~January 14~~ 1/27/2020, 2020 (the "Effective Date"), by and between **WD-I ASSOCIATES, LLC, Debtor in Possession** in the Chapter 11 bankruptcy case filed in the US Bankruptcy Court for the District of South Carolina ("Bankruptcy Court"), Case #19-02517-jw (hereinafter the "Seller"), and BOKF, N.A. or its designee (hereinafter, "Purchaser" or "Credit Bid Buyer").

Whereas, the Purchaser is the first lien holder on the below described Property, with a balance on its indebtedness of approximately $22,540,000.00. The Purchaser is allowed to credit bid on the purchase of the Property pursuant to Order of this Court establishing Bidding Procedures, et al., entered in the Bankruptcy Court on December 23, 2019 (generally, "the Bidding Procedures Order") and also pursuant to 11 U.S.C. Section 363. The Purchaser now desires to exercise its right to credit bid as stated herein.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Property. Seller agrees to sell and convey to the Purchaser and the Purchaser agrees to purchase (a) all that certain tract, piece or parcel of land and all improvements situated in Hilton Head Island, South Carolina commonly known as Sea Turtle Marketplace, and more particularly described on Exhibit "A" attached hereto, together with all easements and appurtenances thereto, all leases and all personal property associated therewith (hereinafter collectively the "Real Property"); and (b) all site plans, engineering plans, architects plans and drawings, permits, zoning applications and approvals, subdivision plats (preliminary and final), surveys, development plans, governmental permits, approvals, entitlements and consents, warranties and guaranties, and the right to the use thereof (collectively, the "Intangible Property" and together with the Real Property, the "Property").

2. Purchase Price.

(a) The purchase price for the Property shall be $18,750,000.00 (the "Total Purchase Price"), the consideration for the Total Purchase price shall be (A) the total of the Required Cash Payments set forth below, and (B) a credit bid ("Credit Bid") in an amount that together with the total amount of the Required Cash Payments equal $18,750,000.00, subject to adjustments for appropriate and customary prorations as provided for in this Agreement. For an example only, if the Required Cash Payments total $400,000, then the Credit Bid would be $18,350,00.00 (subject to adjustments and prorations). Since no cash is being remitted for the Credit Bid, the administrative claim for the US Trustee fees shall be calculated and paid solely upon the basis of actual distributions from the bankruptcy estate, and the non-cash

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portion of the Credit Bid shall not be deemed as such distribution.

(b) Required Cash Payments. As part of the overall Purchase Price, the Purchaser shall pay as Required Cash Payments (a) to the extent due and payable, unpaid real estate taxes, plus the pro-rated amount of any real estate taxes accruing in the period prior to closing; (b) any closing costs required to be paid to third parties (including recordation costs and similar closing costs); (c) the sum of up to $100,000.00 in the event cash on hand in the estate is insufficient to pay allowed administrative expense claims, including US Trustee fees, and (d)$200,000.00 for Unsecured Creditors, subject to and as more fully described in Paragraphs H(4) and (5) of the Bidding Procedures Order.

3. Earnest Money Deposit. Since this is a lender Credit Bid, no Earnest Money Deposit is required and is therefore waived.

4. Documents from Seller. Seller has delivered to Purchaser, through the data room with Seller's Broker (defined below) all documents in its possession relating to the Property or the development of the Real Property (to the extent not already delivered to Purchaser), including but not limited to leases, most recent survey, most recent title policy and title exception documents, environmental site assessments, geotechnical reports, building inspection reports, warranties for all improvements and real estate tax records (collectively, the "Property Documents").

5. Due Diligence Period. [Intentionally deleted]

6. Title. At Settlement, Seller shall deliver to Purchaser (a) a limited warranty deed conveying title to the Real Property to the Purchaser free and clear of all liens and encumbrances except applicable zoning ordinances, real estate taxes not yet due and payable and the Permitted Exceptions, as defined below; and (b) a Bill of Sale and Blanket Assignment conveying and assigning to Purchaser the Development Documents and Intangible Property, all free and clear of any liens or encumbrances (the "Bill of Sale"). Notwithstanding anything contained herein to the contrary, Purchaser's acceptance of such conveyance and the assumption of the Development Documents and Intangible Personal Property shall not constitute an assumption of any liabilities or obligations with respect thereto and arising or accruing prior to the date of such assumption.

a. "Permitted Exceptions" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) zoning and subdivision restrictions of record; and (iii) matters to which Purchaser does not timely object hereunder, or matters which Seller does not agree to cure, under this section and Purchaser has agreed to waive (or is deemed to have waived) its objection thereto.

b. Seller shall convey title to the Property free and clear of any Monetary Liens. The term "Monetary Liens" shall mean (x) any mortgage, deed to secure debt or deed of

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trust lien in record title against the Property, (y) any other monetary liens or judgments against the Property existing before or after the Effective Date (specifically excluding any resulting from the acts or omissions of Purchaser, its officers, employees, members, managers, agents and contractors or any predecessors in title), and (z) any mechanics' liens for unpaid work at the Property performed prior to Settlement. Liens for ad valorem taxes not yet due and payable are not included in the definition of Monetary Liens. In addition to the foregoing, if new matters of title are recorded against the Property subsequent to the date of the Title Report (collectively, "New Title Matters"), such New Title Matters shall immediately be deemed Title Objections which Seller shall be obligated to cure prior to Settlement, Seller's failure to so cure such New Title Matter or Title Matters being deemed a default hereunder.

c. At Settlement, Seller shall assign all its rights and interest as "Developer" under that certain Declaration of Covenants and Reciprocal Easement Agreement dated September 8, 2017 and recorded in Book 3606, Page 1626 of the Beaufort County ROD Office (as amended, the "Declaration") to Purchaser in a written instrument to be recorded in the Beaufort County ROD Office at Settlement (the "Assignment of Declarant Rights"). Purchaser and Seller shall agree upon the form of the Assignment of Declarant Rights prior to the expiration of the Due Diligence Period, which Assignment of Declarant Rights shall provide that Purchaser shall not be obligated for any obligations or liabilities of "Developer" under the Declaration arising or accruing prior to Settlement.

7. Delivery and possession. Except as otherwise expressly set forth in this Agreement or in the documents to be delivered by Seller at Settlement, Seller shall deliver possession of the Property to Purchaser at Settlement subject only to the Leases and the Permitted Exceptions, AS-IS, WHERE-IS.

8. Settlement.

a. Settlement ("Settlement") shall be held on the date which is not later than (i) February 20, 2020 or of: (ii) ten (10) days after an order, in form and substance reasonably satisfactory to Purchaser, approving this Agreement (the "Approval Order") is entered by the United States Bankruptcy Court for the District of South Carolina (the "Bankruptcy Court") and becomes final and non-appealable (the "Settlement Date"), provided that at the time of the Settlement the Order shall be final and not be subject to a stay. The Order shall provide, among other things, that (i) the sale of the Property is free and clear of all Liens and other interests pursuant to Bankruptcy Code § 363(f); (ii) Purchaser is a "good faith purchaser" and is afforded all protections granted to such persons under the Bankruptcy Code; (iii) Purchaser shall not be deemed a successor to Seller for any purpose, including but not limited to any and all liabilities or claims of any kind whatsoever that may exist against Seller or any of its Affiliates; and (v) no appeal, stay or other injunction shall apply to the transfer of the Property.

b. Settlement shall be held through the offices of Purchaser's counsel and shall

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be performed via "mail-away" delivery and receipt of documents.

c. The following are to be apportioned between Purchaser and Seller as of 12:01 a.m. on the Closing Date (provided, however, that in the event that any of the Leases or subleases, if any, covering all or part of any Property provide that the tenants or subtenants thereunder are responsible for direct payment of any of the expenses, such expenses will not be apportioned as between Seller and Purchaser):

i. Property taxes including (i) monthly payments made by tenants under the Leases to Seller, as landlord, toward reimbursement of real estate taxes that are paid on a current basis and applied to real estate taxes payable in the current calendar year, and (ii) annual payments made, or required to be made, by tenants under the Leases for the Property to the Seller, as landlord, toward reimbursement of real estate taxes that are paid on a current or forward basis and applied to real estate taxes payable in the current or next proceeding calendar year.

ii. Rents if, as and when collected including base rents, escalations, additional rents and percentage rents ("Rents") as further described below;

iii. Water, sewer, gas, electric, vault and fuel charges, if any;

iv. Operating expenses for the Property;

v. Amounts paid pursuant to all transferable licenses and permits, on the basis of the fiscal year for which levied; and

vi. Assessments but only for the annual installment for the fiscal year in which the Closing occurs.

d. Rents. Purchaser will receive a credit for all prepaid Rents, if any, paid by any tenants. Rents under the Leases will be adjusted and pro-rated on an "if as and when collected" basis. After the Closing Date, Purchaser will use commercially reasonable efforts to collect any and all past due Rents under the Leases. If, on the Closing Date, there are any unpaid rents for the month of Closing or past due Rents owing by any tenant for any prior period, Rents collected by Purchaser after the Closing Date from such tenants will be applied: first, to the actual costs incurred by Purchaser in collecting such past due Rents; second to amounts due Purchaser for periods following the month in which the Closing occurred; third, to the prorated amounts due to Seller and Purchaser for the Rent for the month of Closing; and fourth, to amounts due Seller for the month prior to the month in which the Closing occurred. The party receiving such amount will pay to the other party the portion to which it is entitled, within thirty (30) days of its receipt of same. Advance rents shall be paid to the Purchaser at Settlement.

e. Seller shall pay for the preparation of the deed and for any applicable grantor's tax imposed in connection with the recordation of the deed and any other closing costs

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for which the Seller in Beaufort County, South Carolina usually and customarily pays the closing costs. Purchaser shall be responsible for the payment of all other recording fees and taxes. Each party shall pay its own attorney's fees.

f. Seller shall assign to Purchaser all leases and executory contracts relating to the lease of Real Property to the Tenants, as hereinafter defined (each a "Lease" and collectively, the "Leases"), the form of such assignment to be agreed upon between Seller and Purchaser prior to the expiration of the Due Diligence Period (the "Assignment of Leases"). From and after Settlement, Purchaser shall carry out the Landlord's obligations under the Leases. Purchaser shall be credited at Settlement for all security deposits actually paid by tenants under the Leases (each a "Tenant" and collectively, the "Tenants").

g. All risks of loss of or damage to the Property or any portion thereof by any casualty, or the taking of the Real Property, or any portion thereof by eminent domain, or for personal liability as to the Property, shall remain with the Seller until Settlement. In the event of any casualty or condemnation (threatened, proposed or otherwise) at the Property prior to Settlement, Seller shall send notice thereof to Purchaser, which notice shall include all pertinent information relating thereto. Purchaser shall have the right to terminate this Agreement and receive a refund of the Deposit by notifying the Seller in writing within thirty (30) days following the date the Purchaser receives notice of such occurrence. Should such a casualty and/or condemnation occur following the expiration of the Due Diligence Period, the Settlement Date shall be extended accordingly to permit for the aforementioned 30-day period. If Purchaser elects not to terminate this Agreement, Seller shall, at Settlement, assign to Purchaser the proceeds of the condemnation or insurance proceeds, as the case may be.

9. Representations and Warranties of Seller. Seller represents to the best of Seller's knowledge, and warrants and covenants to Purchaser as follows, which shall terminate at Settlement:

a. Liens and Encumbrances. Seller has, or as of Settlement shall have, good and marketable and insurable fee simple title to the Real Property free and clear of all liens and encumbrances (except for such liens and encumbrances to be fully released upon Settlement), and all restrictions, leases, rights of others, defects, conditions or easements, of any kind whatsoever except for the Permitted Exceptions and the Leases. Seller shall not permit any New Title Matters to be recorded against the Property without Purchaser's prior written consent.

b. Transfers. Seller shall not transfer any interest in, or grant any easements or enter into any contractual agreement or understanding, written or oral, with respect to the Property or any portion thereof without the prior written consent of Purchaser.

c. Condemnation. No condemnation or eminent domain proceedings are pending or, to the best of Seller's knowledge, threatened against the Real Property or any portion thereof, and there is no change or proposed change in the route, grade, or width of, or otherwise

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affecting, any street or road that is contiguous to the Real Property or any portion thereof.

d. Contracts. From and after the Effective Date, Seller will not negotiate or execute any lease agreements or other contracts for all or any part of the Real Property without prior consultation with and written approval by Purchaser.

e. Access. To the best of Seller's knowledge, the Real Property (and each of the separate tracts making up the Real Property) has full and free access to and from public highways, streets and roads and there are no threatened proceedings of any type which would impair or result in the termination of such access.

f. Assessments. To the best of Seller's knowledge, no assessments for public improvements have been made against the Real Property or any portion thereof which remain unpaid, including, without limitation, those for construction or sewer or water lines or mains, streets, sidewalks and/or curbs.

g. Leases. There are no Leases of the Real Property other than as set forth on Schedule B. Except as set forth on Schedule B, all the tenants under the Leases (the "Tenants") have paid all rent due and owing pursuant to the Leases and prior to the Effective Date, no Tenant is in default of the Leases as of the Effective Date and no Tenant shall be in default of any of the Leases as of the Settlement.

h. OFAC. Neither Seller nor any of Seller's partners, members, shareholders or other equity owners, and none of its officers or directors is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

i. Maintenance of Property. Seller shall maintain the Property in good repair and condition prior to Settlement and continue to operate the Property in conformity consistent with its maintenance during the Chapter 11 case.

j. Hazardous Materials. Except as disclosed in the data room, Seller has not violated, has not received any notices of violation, and has no knowledge of any existing facts or conditions which have resulted in or which may result in any violations of any zoning, safety, environmental, health or other codes, laws, ordinances or regulations with respect to the Property, and Seller is not aware of any spills, releases or discharges of Hazardous Materials (as hereinafter defined) which have occurred on the Property or have impacted the Property. For the purposes of this Agreement, "Hazardous Materials" shall mean any (i) petroleum products or used or waste petroleum products, flammables, explosives, radioactive materials, asbestos in any form, urea formaldehyde insulation, lead or lead-based paint, polychlorinated biphenyls, radon gas, discarded

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tires, discarded batteries or parts thereof, or construction or demolition debris; (ii) any chemicals, emissions, materials, substances, pollutants, discharges, or wastes which are defined or characterized as "solid" "hazardous," "toxic," "special," "medical," "biohazard," or other words of similar import, pursuant to any applicable environmental laws; and (iii) any other chemical, material, substance, waste, emission, discharge, or pollutant, exposure to which is prohibited, limited, or regulated by any governmental authority, or shown to be a carcinogen, mutagen, or otherwise is adverse to human health or the environment.

k. Declarant Status and Declaration. Seller is the only "Developer" under the Declaration. No portion of the Real Property, nor any occupant thereof, is in violation of the terms of the Declaration and all expenses charged to the occupants and owners thereof have been paid in full.

10. Conditions Precedent to Settlement.

a. Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment (or waiver in writing by Purchaser at its sole discretion), on or prior to the Settlement Date, of each of the following conditions:

i. Representations and Warranties. The representations and warranties made by Seller contained herein shall be true and correct at and as of the date hereof or thereof and at the time of Settlement. At Settlement, Seller shall deliver to Purchaser a certificate stating that such representations and warranties are true and correct at and as of Settlement ("Seller's Certificate").

ii. Performance and Compliance. Seller, on or before the Settlement Date, shall have performed and complied with all agreements, obligations, and conditions required by this Agreement to be so performed or complied with by Seller at or before the Settlement.

iii. Settlement Deliveries. Seller shall have delivered to Purchaser all items required to be delivered by it pursuant to this Agreement.

iv. Governmental Action. No order, ruling or regulation (general or specific) of any governmental authority shall have been issued or promulgated which has the purpose or would have the effect of prohibiting the transactions herein contemplated.

v. Approval Order and Procedure Order. The Approval Order, in form and substance reasonably satisfactory to Purchaser, shall have been entered by the Bankruptcy Court, shall not have been stayed as of the Settlement Date, shall be final and not appealable, and there shall have been no change to this Agreement other than changes which Purchaser shall, in its discretion, have approved. The Approval Order shall set forth, as to each Tenant subject to a Lease, that: (i) the Lease is in full force and effect and has not been amended or modified (or, if

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amended or modified, setting forth such amendments or modifications); (ii) said Tenant is not owed any credit or offset in rent due under its Lease; (iii) there are no defaults by such Tenant or Seller, as landlord under the Lease; (iv) that no rent has been paid more than thirty (30) days in advance, except for any security deposit under the Lease, if any; and (v) the effective date of the Lease, the expiration date of the Lease and any renewal or extension options granted under the Lease (the "Lease Certifications").

vi. Material Adverse Change. Seller shall not have suffered any material adverse change in its financial condition, business, operations, Assets or prospects with respect to the Property since the date of this Agreement.

b. The obligations of Seller to consummate the transaction contemplated by this Agreement shall be subject to the fulfillment (or waiver in writing by Seller at its sole discretion) on or prior to the Settlement Date of each of the following conditions:

i. Representations and Warranties. The representations and warranties made by Purchaser contained herein shall be true and correct at and as of the date hereof and at and as of the time of the Settlement.

ii. Performance and Compliance. Purchaser, on or before the Settlement Date, shall have performed and complied with all agreements, obligations, covenants and conditions required by this Agreement to be so performed or complied with by Purchaser at or before the Settlement.

iii. Settlement Deliveries. Purchaser shall have delivered to Seller all items required to be delivered by Purchaser pursuant to this Agreement.

iv. Governmental Action. No order, ruling or regulation (general or specific) of any governmental authority shall have been issued or promulgated which has the purpose or would have the effect of prohibiting the transactions herein contemplated.

v. Approval Order. The Approval Order, in form and substance reasonably satisfactory to the Purchaser, shall have been entered by the Bankruptcy Court, shall not have been stayed as of the Settlement Date, and shall not have been amended or modified in any manner which Purchaser has determined, in its reasonable judgment, to be materially adverse to the interests of Purchaser.

11. At or prior to Settlement, Seller shall deliver to the Purchaser the following:

a. A limited warranty deed conveying title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments and restrictions

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except the Permitted Exceptions;

b. The Assignment of Declarant Rights;

c. The Bill of Sale;

d. The Assignment of Leases;

e. The Parker Contract Assignment (as defined in Section 26 and if applicable);

f. The Seller's Certificate;

g. A certificate and affidavit of non-foreign status ("FIRPTA Affidavit"), executed by Seller as of the Settlement Date, in a form reasonably acceptable to Purchaser;

h. A completed and executed South Carolina Form I-295 Nonresident Seller Withholding Affidavit, and, if Seller is not a resident or deemed resident thereunder, an Affidavit of Gain and South Carolina Form I-290 Nonresident Real Estate Withholding Form;

i. A settlement statement, in a form reasonably acceptable to Purchaser and Seller ("Closing Statement"), executed by Seller;

j. 1099-S as to the sale of the Property;

k. Appropriate evidence reasonably required by Purchaser and the title company to evidence Seller's good standing, together with Seller's resolutions and entity documentation necessary to confirm Seller's authority to execute and deliver the closing documents contemplated hereby and sell the Property;

l. A certificate of tax compliance for Seller issued by the South Carolina Department of Revenue;

m. A title affidavit and indemnity agreement in a form reasonably satisfactory to Purchaser's title insurer and sufficient to delete the standard printed exceptions and to satisfy any requirements of the issuance of a title policy to Purchaser (and Purchaser's lender, if applicable) for the Property;

n. A broker's lien waiver from Seller's Broker (as hereinafter defined); and

o. All other documents reasonably necessary to effectuate the transaction.

12. At the Settlement, Purchaser shall deliver to Seller the following:

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a. The Additional Cash Payments, payable as set forth in section 2 above, to the order of Seller and/or such other order as Seller shall have directed by written notice to Purchaser and as may be required pursuant to the Approval Order;

b. The Assignment of Declarant Rights;

c. The Bill of Sale;

d. The Assignment of Leases;

e. The Parker Contract Assignment;

f. The Closing Statement executed by Purchaser; and

g. Appropriate evidence reasonably required by Purchaser and the title company to evidence Purchaser good standing, together with Purchaser resolutions and entity documentation necessary to confirm Seller's authority to execute and deliver the closing documents contemplated hereby and sell the Property.

13. Real Estate Commission. Seller has been represented by Lee & Associates Charleston, LLC ("Seller's Broker"), which is the only broker authorized to be employed by the Bankruptcy Court. In the event Settlement shall occur hereunder, Seller shall pay the real estate fees or commissions due to Seller's Broker pursuant to a separate agreement between Seller and Seller's Broker. Notwithstanding anything to the contrary contained herein, for purposes of this Agreement, Seller's Broker's commission on this Sale as an administrative expense shall be limited to 2% of the Total Purchase Price. As stated below, the Purchaser shall assume the contract to sell Parcel E to Parker. In the event that the sale to Parker is consummated, then the Seller's Broker shall receive an additional fee equal to 1% of the final sale price paid by Parker, such fee to be paid upon closing of the Parker contract from the proceeds of that separate sale. The Seller and Purchaser warrant that there are no other real estate brokers involved in this transaction.

14. Expenses. , Purchaser and Seller shall each pay their respective counsel, accountants and other expenses incurred in connection with the negotiation and consummation of the transactions contemplated hereby.

15. Default. Neither Purchaser nor Seller shall declare a default hereunder unless it has first given ten (10) days' written notice of default.

a. Default by Purchaser. In the event Purchaser is not entitled to terminate this Agreement under any of the provisions hereof, and provided Seller is not in default in the performance of or compliance with any of the terms hereof, then, in the event of default by Purchaser in the consummation of its purchase of the Property, Seller shall be entitled to retain the Deposit as complete and agreed upon liquidated damages; whereupon, Seller shall have no further

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remedies against Purchaser for such default, it being understood and agreed that the amount of damages Seller might incur are difficult or impossible to ascertain and that the parties agree that the Deposit is a fair estimate of such damages.

b. Default by Seller. If the sale of the Property contemplated by this Agreement is not consummated because of a default by Seller, after performance by Purchaser of all obligations under this Agreement, Purchaser may (a) waive the default and proceed to Settlement; (b) proceed to enforce this Agreement by an action of specific performance in a court of competent jurisdiction; or (c) terminate this Agreement.

16. Assignment. Purchaser reserves the right to assign its rights under this Agreement to a special purpose entity owned, controlled or operated by Purchaser or members of Purchaser; provided Purchaser remains liable for any breach by the assignee through the completion of Settlement. Seller shall not be entitled to assign this Agreement.

17. Parties in Interest. All terms and provisions of this Agreement shall be binding and inure to the benefit of and be enforceable by and against the respective successors and assigns of the parties hereto.

18. Notices. All notices, requests, demands and other communications required or desired to be given hereunder shall be in writing and shall be deemed to have been properly given when sent by e-mail on the date of delivery or on the next business day, if sent via overnight courier (such as Federal Express) for "overnight" delivery, as follows:

If to Purchaser:
BOKF, N.A.
Attn: Eric R. Ernst
SVP/Director, Special Assets
One Williams Center, 12SW
Tulsa, OK 74172
Email: eernst@bokf.com

Copy to:
Samuel S. Ory, Member
Frederic Dorwart, Lawyers PLLC
124 East Fourth Street
Tulsa, OK 74103-5010
Email: SOry@fdlaw.com

If to Seller:
WD-I ASSOCIATES, LLC
Jon Wheeler, Manager
1055 Laskin Road, Suite 100

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Virginia Beach, VA 23501
Email: jon@wrei.net

Copy to: Karen Crowley, Esq.
Crowley Liberatore P.C.
150 Boush Street, Suite 300
Norfolk, VA 23510
Email: kcrowley@clrbfirm.com

Any notice required or permitted under this Agreement may be given by counsel for the party giving such notice.

19. Further Transfers. The Seller and the Purchaser, at any time and from time to time after Settlement, will execute and delivery such further instruments of conveyance and transfer and will take such additional action as may reasonably be requested to affect, consummate, confirm or evidence the transactions contemplated by this Agreement. The Seller and the Purchaser will execute such documents as may be necessary to assist the Purchaser in preserving or perfecting its rights in the Property.

20. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the applicable provisions and laws of the State of South Carolina

21. Interpretation. When the context in which the words are used in this Agreement indicates that such is the intent, words of the singular number shall include the plural and the vice-versa, and words of the masculine gender shall include the feminine and neuter genders and vice-versa.

22. Validity. If any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement, which remainder shall remain in full force and effect.

23. Captions. All section or paragraph titles or captions contained in this Agreement are for convenience and/or reference purposes only, and shall not be deemed a part of or construed to affect the context of this Agreement.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but a single instrument. Any signatures delivered via e-mail or facsimile shall be deemed originals signatures.

25. Time is of the essence in regard to the provisions of this Agreement.

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26. Parker Contract. Seller has entered into that certain Contract of Sale with Drayton-Parker Companies, LLC ("Parker") dated August 30, 2019 (as may be amended, the "Parker Contract") for the sale of a portion of the Real Property and as more particularly set forth in the Parker Contract (the "Parker Parcel"). The Seller shall assume and assign the Parker Contract to Purchaser so that it may go forward to closing in accordance with its terms.

27. Entire Agreement. This Agreement constitutes the entire Agreement between the parties, and there are no other promises or obligations except as contained in this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

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Witness the following signatures and seals:

SELLER:

WD-I ASSOCIATES, LLC
a Virginia limited liability company,
Debtor in Possession

By: _____(SEAL)

Name: Jon S. Wheeler

Title: Manager

PURCHASER:

BOKF, N.A.

By: _____(SEAL)

Name: MICHAEL LEATHERLAND

Title: SENIOR VICE PRESIDENT

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EXHIBIT A

Legal Description

All of Parcels A, B, C, D, E, F and G as shown on plat of Boundary Reconfiguration of Parcels 98B, 98E, 156, 247, 248 and 249, Map 8, District 511, Hilton Head Island, Beaufort County, South Carolina and prepared by Mark R. Renew PLS SC No. 25437, Sea Island Land Survey, LLC and dated 22nd February, 2016, and record in Plat Book 145, Page 30 in the Beaufort County ROD Office.

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ASSIGNMENT AND ASSUMPTION OF LEASES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES (this "**Assignment**") is made this 28th day of February, 2020 (the "**Effective Date**") by and between **WD-I ASSOCIATES, LLC**, a Virginia limited liability company (and debtor-in-possession in Chapter 11 bankruptcy case filed in the US Bankruptcy Court for the District of South Carolina, Case #19-02517-jw) ("**Assignor**") and **BOKF REAL ESTATE HOLDING, LLC**, an Oklahoma limited liability company ("**Assignee**"), who agree as follows:

RECITALS

A. As of the Effective Date, Assignee has purchased from Assignor all those certain lots or parcels of land and improvements thereon being located at 416 through 430 William Hilton Parkway in Hilton Head Island, Beaufort County, South Carolina and as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**"); and

B. Assignor is the landlord/lessor under those certain lease agreements listed on **Exhibit B** attached hereto and incorporated herein by reference (as amended, modified and/or supplemented to date, each, a "**Lease**" and collectively, the "**Leases**"), pursuant to which those certain tenants/lessees listed on **Exhibit B** attached hereto and incorporated herein by reference (each a "**Tenant**" and collectively, the "**Tenants**") lease various premises within the Property from Assignor; and

C. In accordance with the Order (1) Authorizing Assumption and Assignment of Leases; and (2) Approving Sale of Substantially All of the Assets, Free and Clear of Liens (the "Sale Order") issued in Case#19-02517-jw in the US Bankruptcy Court for the District of South Carolina,, and that Real Estate/Asset Purchase Agreement by and between Assignor and Assignee dated January 14, 2020 (the "Purchase Agreement"), which is attached as Exhibit 3 to the above said Order Assignor desires to assign all of its rights, title and interest in and to the Leases to Assignee, and Assignee desires to accept the assignment of all of Assignor's rights, title and interest in the Leases, all expressly subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of Assignee's purchase of the Property and the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each of the parties hereto, the parties hereto hereby agree as follows:

AGREEMENT

1. Recitals. The foregoing recitals and representations form a material part of this Assignment and are incorporated herein by this reference.

2. Assignment and Assumption. As of the Effective Date, Assignor hereby assigns and transfers to Assignee all of its right, title and interest in and to the Leases (together with any security deposits, prepaid rent and/or other personal or intangible property of Assignor [but not of the Tenants] with regards to the Leases) and any rental payments or other consideration hereafter due thereunder, and Assignee hereby accepts the assignment of the Leases and all of the terms,

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covenants and conditions of the Leases and shall hereafter be deemed "Landlord" or "Lessor," as applicable and as defined in the Leases.

3. Representations and Warranties of Assignor. Assignor hereby represents and warrants to Assignee the following, with each of such representations and warranties expressly terminating at Closing:

(a) Since entry of the Sale Order, the Leases have not been amended, modified or supplemented, except as otherwise set forth on **Exhibit B** attached hereto and incorporated herein by reference;

(b) Assignor has, prior to the Effective Date, delivered to Assignee a full and complete copy of each Lease, together with all amendments, modifications or supplements thereto, if any;

(c) Since entry of the Sale Order, Assignor has received no notice from any Tenant that Assignor is in default of any Lease; and

(d) Since entry of the Sale Order, Assignor is aware of no new event of default under any Lease, except as otherwise set forth on **Schedule – 1** attached hereto and incorporated herein by reference, if any

4. Successors. This Assignment shall be binding on and inure to the benefit of the parties hereto and their successors and assigns.

5. Obligations of Assignor Following Effective Date. Notwithstanding anything contained herein or Purchase Agreement, (a) Assignor shall be obligated to pay to Assignee any rents, operating expenses or other amounts paid to Assignor by the Tenants and which are attributable to the period on or following the Effective Date; and (b) in accordance with and subject to the provision of Section 8(d) of the Purchase Agreement, Assignee shall be obligated to pay to Assignor any rents, operating expenses or other amounts paid to Assignee by the Tenants and which are attributable to the period prior to the Effective Date. The foregoing obligations shall expressly survive the assignment of the Leases and the closing of the conveyance of the Property from Assignor to Assignee.

6. Cooperation. Each of Assignor and Assignee hereby covenants it will, at any time and from time to time upon request by the other, and without the assumption of any additional liability thereby, execute and deliver such further documents and do such further acts as such party may reasonably request in order to fully effect the purpose of this Assignment.

7. Counterparts; Authority; Binding Agreement. This Assignment may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same agreement. Signatures transmitted electronically or by facsimile and pictorial appearances of a signature to this Assignment shall be deemed original signatures for all intents and purposes hereof. Each party executing this Assignment warrants to the other party that he has the full authority to do so and that this Assignment shall be binding upon the parties hereto and their successors and/or assigns.

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8. Governing Law; Severability. This Assignment shall be interpreted and enforced under the laws of the State of South Carolina and, where applicable, the United States of America. Should any provision of this Assignment be deemed unenforceable by a court of law with proper jurisdiction, such provision shall be stricken, and the remainder of this Assignment shall remain in full force and effect as if such provision were never contained herein.

9. Attorney's Fees. In the event either party institutes legal proceedings to enforce the obligations contained in this Assignment, the non-prevailing party shall be required to pay the prevailing party's costs and expenses of litigation including, without limitation, all attorney's fees and other costs incurred.

[SIGNATURES AND EXHIBITS ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Assignment and Assumption of Lease as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness #1

Witness #2

WD-I ASSOCIATES, LLC,
a Virginia limited liability company

By: WD-I Management, LLC,
A Virginia limited liability company
Its: Manager

By: _____
Name: Jon S. Wheeler
Title: Manager

STATE OF Virginia
~~COUNTY~~ OF Virginia Beach

I hereby certify that this instrument was acknowledged before me in the forgoing State and County on this 28th day of February, 2020 by Jon S. Wheeler, as Manager of WD-I Management, LLC, a Virginia limited liability company, as Manager of WD-I Associates, LLC, a Virginia limited liability company, personally known to me or has produced _____ as identification.

Date: 2-28-2020

LAURA ANN NGUYEN
COMMONWEALTH OF VIRGINIA
REG. NO. 7240682
EXPIRES 8/2022
NOTARY PUBLIC

_____ (SEAL)
Notary Public for Virginia
Print Name: Laura Nguyen
My Commission Expires: 8/2022

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Assignment and Assumption of Lease as of the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness #1

Witness #2

BOKF REAL ESTATE HOLDING, LLC,
an Oklahoma limited liability company

By: _____
Name: Eric R. Ernst
Title: Manager

STATE OF OKLAHOMA

COUNTY OF Tulsa

I hereby certify that this instrument was acknowledged before me in the forgoing State and County on this 28 day of February, 2020 by Eric R. Ernst, as Manager of BOKF Real Estate Holding, LLC, an Oklahoma limited liability company, personally known to me or has produced _____ as identification.

Date: 2-28-2020

_____ (SEAL)
Notary Public for State of OK - BOKF
Print Name: Kathy Norrid
My Commission Expires: 4-20-2021

Notary Public
State of Oklahoma
KATHY NORRID
PAWNEE COUNTY
COMMISSION #17003838
Comm. Exp. 04-20-2021

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EXHIBIT A

Property

All of Parcels A, B, C, D, E, F and G as shown on plat of Boundary Reconfiguration of Parcels 98B, 98E, 156, 247, 248 and 249, Map 8, District 511, Hilton Head Island, Beaufort County, South Carolina and prepared by Mark R. Renew PLS SC No. 25437, Sea Island Land Survey, LLC and dated 22nd February, 2016, and record in Plat Book 145, Page 30 in the Beaufort County ROD Office.

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SCHEDULE – 1

DEFAULT DISCLOSURES

Tenant	Nature of Default	Notice Delivered? / Cure Period Remaining
Another Broken Egg Café	Nonpayment of Rent	
Dream Boutique	Abandonment of Space	

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EXHIBIT B

LEASES/TENANTS

Tenant/Lessee	Lease Effective Date	Amendments	Premises

BEAUFORT COUNTY SC - ROD
BK 3841 Pgs 1330-1353
FILE NUM 2020011318
03/02/2020 03:43:45 PM
REC'D BY rbins RCPT# 966163
RECORDING FEES $15.00

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Return to:
Daniel A. Saxon, Esquire
Novit & Scarminach, P.A.
Post Office Drawer 14
Hilton Head Island, SC 29938
N&S/DAS//#27208-1

WHEREAS, pursuant to that Order (1) Authorizing Assumption and Assignment of Leases; and (2) Approving Sale of Substantially All of the Assets, Free and Clear of Liens (the "Sale Order") issued in Case# 19-02517-jw in the US Bankruptcy Court for the District of South Carolina, a copy of which is attached hereto as Exhibit "B", the US Bankruptcy Court for the District of South Carolina approved the sale of the within property, free and clear of liens, from Grantor to BOKF, N.A. d/b/a Bank of Arkansas, or its designee, in accordance with the terms of that Real Estate/Asset Purchase Agreement between Grantor and BOKF, N.A., as described in the Sale Order and approved thereunder (the "Purchase Agreement"); and

WHEREAS, the Grantee is a wholly owned affiliate and the designee of the BOKF, N.A., d/b/a Bank or Arkansas under the above said and has taken assignment of the mortgage from Grantor to BOKF, N.A., d/b/a Bank of Arkansas recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3519 at Page 1496, as thereafter modified.

STATE OF SOUTH CAROLINA)
) **LIMITED WARRANTY DEED**
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, THAT, **WD-I ASSOCIATES LLC,** a Virginia limited liability company, and debtor-in-possession in Chapter 11 bankruptcy case filed in the US Bankruptcy Court for the District of South Carolina, Case #19-02517-jw (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of the sum of **Ten and 00/100 Dollars ($10.00)** and in accordance with the Sales Order, unto it in hand paid at and before the sealing of these presents by **BOKF REAL ESTATE HOLDING, LLC,** an Oklahoma limited liability company (hereinafter the "Grantee"), of **One Williams Center, 12SW, Tulsa, OK 74172**, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions set forth in the legal description below, unto the said **BOKF REAL ESTATE HOLDING, LLC,** its successors and assigns forever, the following described property:

SEE EXHIBIT "A" ATTACHED HERETO AND BEING INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION.

TMS# R511-008-000-0247-0000, R511-008-000-0248-0000,
R511-008-000-098B-0000, R511-008-000-098E-0000,
R511-008-000-0156-0000, R511-008-000-0675-0000, R511-008-000-0676-0000

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THIS conveyance is made subject to all easements and restrictions of record and otherwise affecting the property as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

This Deed was prepared in the Law Offices of Novit & Scarminach, P.A., Post Office Drawer 14, Hilton Head Island, South Carolina 29938, by Daniel A. Saxon, Esquire.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said **BOKF REAL ESTATE HOLDING, LLC,** its successors and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantor does hereby bind Grantor, its successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against Grantor and its successors and assigns, lawfully claiming or to claim the same, or any part thereof.

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IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this 28th day of February, 2020.

WITNESSES:

Witness #1

Notary Public

WD-I ASSOCIATES LLC, A VIRGINIA LIMITED LIABILITY COMPANY

By: WD-1 Management, LLC, a Virginia limited liability company
Its: Manager

By: _____ {L.S.}
Jon S. Wheeler
Its: Manager

STATE OF Virginia)
)
COUNTY OF Virginia Beach)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 28th day of February, 2020, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared **WD-I ASSOCIATES LLC,** a Virginia limited liability company, by WD-1 Management, LLC, a Virginia limited liability company as its Manager by Jon S. Wheeler its Manager known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Deed, who acknowledged the due execution of the foregoing Deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

LAURA ANN NGUYEN
COMMONWEALTH OF VIRGINIA
REG. NO. 7240682
EXPIRES 8/31/20
NOTARY PUBLIC

_____ SEAL
Notary Public for Virginia
Print Name: Laura Nguyen
My Commission Expires: 8/31/2020

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EXHIBIT "A"

Parcel "A"

All that tract or parcel of land lying and being on Hilton Head Island, Beaufort County, South Carolina and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a concrete monument set on the southerly right-of-way line of U.S. Highway 278 at the intersection of said southerly right-of-way line of U.S. Highway 278 and the westerly right-of-way line of Mathews Drive, also known as S-7-44; run thence along said southerly right-of-way line of U.S. Highway 278 North 75 degrees 26 minutes 46 seconds West a distance of 231.28 feet to a pkf and THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING THUS ESTABLISHED, thence leaving said southerly right-of-way line of U.S. Highway 278 thence South 14 degrees 33 minutes 14 seconds West a distance of 251.54 feet to a pkf; thence southeasterly along the arc of curve with a radius of 148.29 feet (said curve being subtended by a chord having a bearing of South 44 degrees 40 minutes 34 seconds East and a chord distance of 40.15 feet), an arc distance of 40.27 feet to a pkf; thence southeasterly along the arc of a curve with a radius of 164.37 feet (said curve being subtended by a chord having a bearing of South 62 degrees 18 minutes 42 seconds East and a chord distance of 52.45 feet), an arc distance of 52.68 feet to a point being a pkf; thence South 14 degrees 33 minutes 14 seconds West a distance of 257.93 feet to a point; thence North 75 degrees 26 minutes 46 seconds West a distance of 216.22 feet to a point; thence South 74 degrees 43 minutes 11 seconds West a distance of 148.84 feet to a point; thence North 15 degrees 16 minutes 49 seconds West a distance of 123.81 feet to a point; thence North 75 degrees 26 minutes 46 seconds West a distance of 162.43 feet to a point; thence North 55 degrees 08 minutes 58 seconds West a distance of 140.00 feet to a point; thence North 75 degrees 26 minutes 46 seconds East a distance of 205.55 feet to a point; thence North 14 degrees 33 minutes 14 seconds East a distance of 220.62 feet to a point; thence North 79 degrees 16 minutes 58 seconds East a distance of 38.35 feet to a point; thence North 14 degrees 33 minutes 14 seconds East a distance of 129.00 feet to a point; thence North 07 degrees 52 minutes 46 seconds East a distance of 94.64 feet to a point; thence, turning and running along said southerly right-of-way line of U.S. Highway 278 South 75 degrees 26 minutes 46 seconds East a distance of 796.96 feet to a pkf and THE POINT OF BEGINNING, said parcel containing 10.02 acres and being designated as Parcel A (Shopping Center Parcel) per plat of survey for First Capital Income Properties, Ltd. - Series VII, prepared by Benjamin Wilson, R.L.S., S.C. No. 5424, Sea Island Engineering, Inc., and dated July 8, 1981 as last revised January 4, 1982, and per plat dated March 29, 1982, last revised May 11, 1982, recorded in Plat Book 30, Page 112, in the Beaufort County Records. In the event of a discrepancy between the above description and the above-described plat, the recorded plat shall control.

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This being the same property conveyed to the within Grantor by Deed of Pineland Associates, LLC and Cahoon Hilton Head, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1473.

Parcels "E" and "G"

All that tract or parcel of land lying and being on Hilton Head Island, Beaufort County, South Carolina and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a concrete monument set on the southerly right- of-way line of U.S. Highway 278 (200-foot right-of-way) at the intersection of said southerly right-of- way line of U.S. Highway 278 and the westerly right-of-way line of Mathews Drive, also known as S-7-44 (66 foot right-of-way); run thence along said southerly right-of-way line of U.S. Highway 278 North 75 degrees 26 minutes 46 seconds West a distance of 1028.24 feet to point, being and THE POINT OF BEGINNING, FROM THE POINT OF BEGINNING THUS ESTABLISHED; thence leaving said southerly right-of-way line, run South 07 degrees 52 minutes 46 seconds West a distance of 94.64 feet to a point; thence South 14 degrees 33 minutes 14 seconds West a distance of 129.00 feet to a point; thence South 79 degrees 16 minutes 58 seconds West a distance of 81.97 feet to a point; thence North 75 degrees 26 minutes 46 seconds West a distance of 40.86 feet to a point; thence North 14 degrees 33 minutes 14 seconds East a distance of 258.00 feet to a point being on the southerly right-of way line of U.S. Highway 278; thence continuing along said right-of-way South 75 degrees 26 minutes 46 seconds East a distance of 104.00 feet to said POINT OF BEGINNING, said parcel containing 0.64 acres and being designated as parcel 6 (G) and parcel 5 (E) per plat prepared for PINELAND MALL ASSOCIATES (LIMITED PARTNERSHIP) dated November 1, 1980, prepared by Benjamin Wilson, R.L.S., S.C. No. 5424, Sea Island Engineering, Inc., recorded in Plat Book 29, Page 48, in the Beaufort County Records.

This being the same property conveyed to the within Grantor by Deed of Pineland Associates, LLC and Cahoon Hilton Head, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1473.

Parcel "F"

All that tract or parcel of land lying and being on Hilton Head Island, Beaufort County, South Carolina and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a concrete monument set on the southerly right- of-way line of U.S. Highway 278 (200-foot right-of-

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way) at the intersection of said southerly right-of- way line of U.S. Highway 278 and the westerly right-of-way line of Mathews Drive, also known as S-7-44 (66 foot right-of-way); run thence along said southerly right-of-way line of U.S. Highway 278 North 75 degrees 26 minutes 46 seconds West a distance of 1028.24 feet to a point; thence leaving said southerly right-of-way line, run South 07 degrees 52 minutes 46 seconds West a distance of 94.64 feet to a point; thence South 14 degrees 33 minutes 14 seconds West a distance of 129.00 feet to a point; thence South 79 degrees 16 minutes 58 seconds West a distance of 38.35 feet to a point being; THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING THUS ESTABLISHED, thence South 14 degrees 33 minutes 14 seconds West a distance of 220.62 feet; thence continuing South 14 degrees 33 minutes 14 seconds West a distance of 71.49 feet; thence turning North 75 degrees 26 minutes 46 seconds West a distance of 39.45 feet to a point; thence turning North 14 degrees 33 minutes 14 seconds East a distance of 273.50 feet; thence turning North 79 degrees 16 minutes 58 seconds East a distance of 43.63 feet to said POINT OF BEGINNING; said parcel containing 0.26 acres and being designated as Parcel 7 (F) per plat prepared for PINELAND MALL ASSOCIATES (LIMITED PARTNERSHIP) dated November 1, 1980, prepared by Benjamin Wilson, R.L.S., S.C. No. 5424, Sea Island Engineering, Inc., recorded in Plat Book 29, Page 48, Beaufort County Records.

This being the same property conveyed to the within Grantor by Deed of Pineland Associates, LLC and Cahoon Hilton Head, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1473.

Parcel "B"

All that tract or parcel of land lying and being on Hilton Head Island, Beaufort County, South Carolina and being more particularly described as follows:

BEGINNING at a concrete monument on the southerly right-of-way line of U.S. Highway 278 at the intersection of said southerly right-of-way line of U.S. Highway 278 and the westerly right-of-way line of Mathews Drive being THE POINT OF BEGINNING, thence along said westerly right-of-way line of Mathews Drive South 36 degrees 31 minutes 46 seconds East a distance of 66.68 feet to a point being a ½" iron pin; thence turning South 02 degrees 23 minutes 14 seconds West a distance of 184.33 feet to a ½" iron pin; thence South 87 degrees 36 minutes 46 seconds East a distance of 7.00 feet to a ½" iron pin; thence, turning along said westerly right-of-way line of Mathews Drive South 02 degrees 23 minutes 14 seconds West a distance 44.15 feet to a spike set on said westerly right-of-way line of Mathews Drive; thence turning North 80 degrees 29 minutes 04 seconds West a distance of 227.68 feet to a pkf; thence northwesterly along the arc of a curve with a radius of 164.37 feet (said curve being subtended by a chord having a bearing of North 75 degrees 59 minutes 18 seconds West and a chord distance of

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25.77 feet), an arc distance of 25.80 feet to a pkf; thence northwesterly along the arc of a curve with a radius of 164.37 feet (said curve being subtended by a chord having a bearing of North 62 degrees 18 minutes 42 seconds West and a chord distance of 52.45 feet), an arc distance of 52.68 feet to a pkf; thence northwesterly along the arc of a curve with a radius of 148.29 feet (said curve being subtended by a chord having a bearing of North 44 degrees 40 minutes 34 seconds West and a chord distance of 40.15 feet), an arc distance of 40.27 feet to a pkf; thence North 14 degrees 33 minutes 14 seconds East a distance of 251.54 feet to a pkf on said southerly right-of-way line of U.S. Highway 278; thence running along said southerly right-of-way line of U.S. Highway 278 South 75 degrees 26 minutes 46 seconds East a distance of 231.28 feet to an concrete monument found, being the POINT OF BEGINNING, said parcel containing 1.90 acres and being designated Parcel B (Office Center Parcel) per plat of survey for First Capital Income Properties, Ltd. - Series VII, prepared by Benjamin Wilson, R.L.S., S.C. No. 5424, Sea Island Engineering, Inc., and dated July 8, 1981, as last revised May 11, 1982 and per plat dated March 29, 1982, last revised May 11, 1982 and recorded in Plat Book 30, Page 112, Beaufort County Records. In the event of a discrepancy between the above description and the above described recorded plat, the recorded plat shall control.

LESS AND EXCEPT all that certain piece, parcel or lot land, conveyed to The Town of Hilton Head Island by deed recorded in Book 2860, Page 296.

This being the same property conveyed to the within Grantor by Deed of Pineland Associates, LLC and Cahoon Hilton Head, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1473.

Parcel "C"

All that certain tract or parcel of land lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a concrete monument set on the southerly right of way line of U. S. Highway 278 (200 foot right of way) at the intersection of said southerly right of way line of U.S. Highway 278 and the westerly right of way of Mathews Drive, also known as S-7-44 (66 foot right of way); run thence south 36 degrees, 31 minutes, 46 seconds East a distance of 77.81 feet to a concrete monument set on the said westerly right of way line of Mathews Drive; thence along said westerly right of way line of Mathews Drive South 02 degrees, 23 minutes, 14 seconds West a distance of 219.18 feet to a spike set and THE POINT OF BEGINNING: FROM THE POINT OF BEGINNING THUS ESTABLISHED, run thence along said westerly right of way line of Mathews Drive South 02 degrees, 23 minutes, 14 seconds West a distance of 243.55 feet to a

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concrete monument found; thence leaving said westerly right of way line, thence South 75 degrees, 53 minutes, 49 seconds West a distance of 244.78 feet to a concrete monument found; thence South 75 degrees, 46 minutes, 29 seconds West a distance of 92.90 feet to a concrete monument found; thence South 75 degrees, 47 minutes, 41 seconds West a distance of 8.76 feet to a concrete monument found; thence North 14 degrees, 33 minutes, 14 Seconds East a distance of 384.16 feet to a spike set; thence southeasterly along the arc of a curve with a radius of 164.37 feet (said curve being subtended by a chord having a bearing of South 75 degrees, 59 minutes, 19 seconds East and a chord distance of 25.77 feet, an arc distance of 25.79 feet to a spike set; thence South 80 degrees, 29 minutes, 04 seconds East a distance of 227.68 feet to a spike set on said westerly right of way line of Mathews Drive and the POINT OF BEGINNING, said parcel containing 2.04 acres, and being designated as Parcel C (Mathews Drive Parcel) per plat of survey for First Capital Income Properties, LTD. - Series VIT, prepared by Benjamin Wilson, S.C.R.L.S. Number 5424, Sea Island Engineering, Inc., and dated July 8, 1981, as last revised May 11, 1982, and per plat dated March 29, 1982, last revised May 11, 1982, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 30 at Page 112. In the event of a discrepancy between the above description and the above described recorded plat, the recorded plat shall control.

This being the same property conveyed to the within Grantor by Deed of Pineland Associates II, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1483, and by Quit Claim Deed conveyed to the within Grantor from Pineland Associates II, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1489.

Parcel "D"

All that certain tract or parcel of land lying and being on Hilton Head Island, Beaufort County, South Carolina, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at a concrete monument set on the southerly right of way line of U.S. Highway 278 (200 foot right of way) at the intersection of said southerly right of way line of U.S. Highway 278 and the southwesterly right of way of Mathews Drive, also known as S-7-44 (66 foot right of way); run thence south 36 degrees, 31 minutes, 46 seconds East a distance of 77.81 feet to a concrete monument set on the said southwesterly right of way line of Mathews Drive; thence along said westerly right of way line of Mathews Drive South 02 degrees, 23 minutes, 14 seconds West a distance of 463.36 feet to a concrete monument found; thence leaving said southwesterly right of way line and running South 75 Degrees, 53 minutes, 49 seconds West a distance of 244.78 feet to a concrete monument found; thence South 75 degrees, 46 minutes, 29

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seconds West a distance of 92.90 feet to a concrete monument found; thence South 75 degrees, 47 minutes, 41 seconds West a distance of 8.76 feet to a concrete monument found and THE POINT OF BEGINNING: FROM THE POINT OF BEGINNING THUS ESTABLISHED, run thence South 75 degrees, 47 minutes, 1 seconds West a distance of 238.51 feet to a concrete monument found; thence South 75 Degrees, 47 minutes, 00 seconds West a distance of 41.63 feet to a concrete monument found; thence South 75 degrees, 45 minutes, 27 seconds West a distance of 149.82 feet to a concrete monument found; thence South 76 degrees, 01 minutes, 34 seconds West a distance of 150.82 feet to a concrete monument found; thence South 75 degrees, 29 minutes, 47 seconds West a distance of 119.45 feet to a concrete monument found; thence South 75 degrees, 47 minutes, 27 seconds West a distance of 119.87 feet to a concrete monument found; thence South 75 degrees, 42 minutes, 53 seconds West a distance of 124.83 feet to a concrete monument found; thence South 75 degrees, 36 minutes, 46 seconds West a distance of 89.13 feet to a concrete monument found; thence North 14 degrees, 33 minutes, 14 seconds East a distance of 634.69 feet to a concrete monument found; thence North 14 degrees, 33 minutes, 14 seconds East a distance of 71.49 feet to a concrete monument found; thence South 75 degrees, 26 minutes, 46 seconds East a distance of 205.55 feet to a concrete monument set; thence South 55 degrees, 08 minutes, 58 seconds East a distance of 140.00 feet to a concrete monument set; thence South 75 degrees, 26 minutes, 46 seconds East a distance of 162.43 feet to a concrete monument set; thence South 15 degrees, 16 minutes, 49 seconds East a distance of 123.81 feet to a concrete monument set; thence North 74 degrees, 43 minutes, 11 seconds East a distance of 148.84 feet to a concrete monument set; thence South 75 degrees, 26 minutes, 46 seconds East a distance of 216.22 feet to a concrete monument set; thence South 14 degrees, 33 minutes, 14 seconds West a distance of 126.23 feet to a concrete monument found and THE POINT OF BEGINNING; said parcel containing 8.35 acres and being designated as Parcel D per plat of survey for First Capital Income Properties, LTD.- Series VII, prepared by Benjamin Wilson, S. C. R. L. S. Number 5424, Sea Island Engineering, Inc., and dated July 8, 1981, as last revised May 11, 1982, and per plat dated March 29, 1982, last revised May 11, 1982, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 30 at Page 112. In the event of a discrepancy between the above description and the above described recorded plat, the recorded plat shall control.

This being the same property conveyed to the within Grantor by Deed of Pineland Associates II, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1483, and by Quit Claim Deed conveyed to the within Grantor from Pineland Associates II, LLC, dated September 23, 2016 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on September 29, 2016, in Book 3519 at Page 1489.

The aforesaid Parcels are additionally shown as Parcels A, B, C, D, E, F and G on a Boundary Reconfiguration Plat prepared by Sea Island Land Survey, LLC dated February 22, 2016, revised September 15, 2016 and recorded in Plat Book 145 at Page 30.

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EXHIBIT "B"

SALES ORDER

EXHIBIT F

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **19-02517-jw**

ORDER (1) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF LEASES; AND (2) APPROVING SALE OF SUBSTANTIALLY ALL OF THE ASSETS, FREE AND CLEAR OF LIENS

The relief set forth on the following pages, for a total of 54 pages including this page, is hereby ORDERED.

FILED BY THE COURT
01/30/2020

UNITED STATES BANKRUPTCY COURT DISTRICT OF SOUTH CAROLINA

Entered: 01/30/2020

John E. Waites

US Bankruptcy Judge
District of South Carolina

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

WD-I ASSOCIATES, LLC

CASE NO.: 19-02517-jw
CHAPTER 11

DEBTOR

ORDER (1) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF LEASES; AND (2) APPROVING SALE OF SUBSTANTIALLY ALL OF THE ASSETS, FREE AND CLEAR OF LIENS

THIS MATTER came before the Court on January 28, 2020, upon the Motion of WD-I Associates, LLC (the "Debtor") for an Order (1) Authorizing Assumption and Assignment of Lease; and (2) Approving Sale of Substantially All of the Assets, Free and Clear of Liens (the "Sale Motion"). A hearing on the Sale Motion was scheduled for November 19, 2019 (the "Original Sale Hearing"), with proper notice of the Hearing served on all creditors and parties in interest. At the Original Sale Hearing, the Court approved the Debtor's Motion of Debtor in Possession for Order (A) Establishing Bidding Procedures for the Sale of Substantially All of the Property of the Debtor, (B) Approving the Form and Manner of Notice of Sale, and (C) Approving a Break-Up Fee to the Prospective Purchaser (the "Bid Procedure Motion"). An order on the Bid Procedure Motion was entered on December 23, 2019 (the Bid Procedure Order") and the Court scheduled a final hearing on the Sale Motion for January 28, 2020. Based upon the proffers and evidence presented, the Court hereby makes the following **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**:

1. On May 7, 2019 (the "Petition Date"), WD-I filed a Voluntary Petition for relief under Chapter 11 of Title 11 of the United States Code.

2. The Debtor continues to operate its business as a Debtor in Possession pursuant to 11 U.S.C. §§ 1101(1), 1107 and 1108.

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3. Jurisdiction to consider this matter is vested in this Court pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

4. The relief sought by the Debtor is in accordance with the provisions of sections 363 and 365 of the Bankruptcy Code.

Real Property

5. The Debtor is a single asset real estate entity that owns seven parcels of real property in Hilton Head Island, South Carolina (the "Real Property") with the legal description set forth on Exhibit 1. The Real Property, the Leases (defined below) and the business operated thereon shall be referred to as the "Shopping Center."

Leases

6. Attached as Exhibit 2 is the rent roll reflecting the following information, as of January 2020, for each of the leases (the "Leases"):

a. Corporate name of tenant (TENANT);

b. Square footage (SF);

c. Gross leasable area (GLA);

d. Lease commencement date (L.C.D.);

e. Rent commencement date (R.C.D.); and

f. Expiration date (EXPIRATION), which date is subject to various extensions exercisable in accordance with the applicable lease agreement.

7. As to each of the foregoing Leases (excluding the lease with Foam Mitchell, LLC) (the "Leases"), (a) each Lease is in full force and effect and has not been amended or modified (or, if amended or modified, sets forth such amendments or modifications); (b) except for amounts that might be due arising from CAM reconciliations, each tenant is not owed any credit or offset in rent due under its Lease; (c) there are no defaults by the Debtor, as landlord under the Lease; (d) no rent has been paid more than thirty (30) days in advance, except for any security deposit under the applicable Lease, if any; and (e) the effective date of the Lease, the

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expiration date of the Lease and any renewal or extension options granted under the Lease are accurately reflected on Exhibit 2.

8. Except as set forth on Exhibit 2, the Debtor is not aware of any Landlord defaults or actual pecuniary loss due to any defaults under the Leases. To the extent that there are any Landlord defaults under the Leases, the Debtor and/or Bank of Arkansas has provided adequate assurance of a prompt cure of such defaults under the Leases.

9. Based upon the assignment of the Leases to Bank of Arkansas (defined below), the Debtor is able to provide adequate assurance of future performance under the Leases.

10. Upon conveyance of the Shopping Center to the Bank, Bank of Arkansas will perform the continuing obligations of the Debtor and provide adequate assurance of future performance to the tenants under the Leases.

11. The assumption and assignment of the Leases is in the best interest of the Estate and will not prejudice any creditor or party in interest.

Parker Contract for Parcel E

12. The Debtor has negotiated a Contract of Sale (the "Parcel E Sale Agreement") with Drayton-Parker Companies, LLC ("Parker") Parker for the Parcel E. The Parcel E Sale Agreement is attached as Exhibit 5.

13. Bank of Arkansas, as the entity tendering the highest and best offer for the Shopping Center, desires to receive an assignment of the Parcel E Sale Agreement pursuant to the terms of the Lender Purchase Agreement (defined below).

Secured Claims

14. By a Construction Loan Agreement dated September 28, 2016, BOKF dba Bank of Arkansas ("Bank of Arkansas" or "Lender") provided a loan to the Debtor as evidenced by a promissory note dated September 28, 2016 from Borrower in favor of Bank of Arkansas in the face amount of $16,000,000.00 (the "Senior Note").

15. The Senior Note is secured by, among other things, a first lien against the Real Property pursuant to a Mortgage of Real Estate and Security Agreement dated September 28,

EXHIBIT F

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2016 (the "Mortgage"). The Mortgage was recorded in the Beaufort County Office of the Register of Deeds (the "Real Estate Records") on September 29, 2016.

16. The Senior Note is also secured by (a) an Assignment of Rents and Leases from the Debtor to Bank of Arkansas (the "Assignment of Rents"), which Assignment of Rents was recorded in the Real Estate Records on September 29, 2016; (b) a financing statement filed in the Real Estate Records; and (c) a financing statement filed with the Virginia State Corporation Commission.

17. The Senior Note, in November of 2017, was increased from $16.0 million to $20.0 million. The Mortgage and Assignment of Rents were modified to account for the increase in the amount of the Senior Note. The modified Senior Note, Mortgage and Assignment of Rents shall be referred to as the "Senior Loan Documents."

18. On or about September 28, 2016, the Debtor executed and delivered certain promissory notes in favor of Pineland Associates II, LLC and Wheeler REIT, L.P. (the "Subordinated Lenders") which total $12.0 million (collectively the "Subordinated Notes"). The note payable to Wheeler REIT, L.P. is in the face amount of $11.0 million and the note payable to Pineland Associates II, LLC is in the face amount of $1.0 million. Wheeler REIT, L.P. is the sole member of Pineland Associates II, LLC.

19. The Subordinated Notes are secured by a subordinated lien against the Real Property by virtue of a South Carolina Mortgage dated September 28, 2016, for the benefit of the Subordinated Lenders (the "Second Mortgage"). The Second Mortgage was recorded in the Real Estate Records on September 29, 2016. There is no assignment of rents in favor of the Subordinated Lenders. The Subordinated Notes and Second Mortgage are subject to a subordination agreement in favor of Bank of Arkansas.

20. Bank of Arkansas filed a proof of claim reflecting that its Secured claim as of the Petition Date was $21,845,076.85.

21. The Subordinated Lenders filed proofs of claim reflecting that their Secured claims, as of the Petition Date, were in the amount of at least $15,262,552.00.

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Marketing of Shopping Center and Notice of Sale

22. The Debtor retained Lee & Associates of Charleston, LLC ("Lee & Associates"), by Order entered on July 3, 2019, to market and sell the Shopping Center. Through the marketing efforts of Lee & Associates, the Debtor on August 30, 2019, received numerous letters of intent for the purchase of the Shopping Center. The Debtor, with its lenders, identified the highest and best offer, negotiated and then entered into a Real Estate/Asset Purchase Agreement, which was subject to two amendments (as amended the "Morgan Purchase Agreement") with Mid-Atlantic Commercial Properties, LLC (the "Morgan Group"). As part of the Bid Procedure Motion, the Court approved the form of the Morgan Purchase Agreement.

23. Pursuant to the terms of the Second Amendment to the Morgan Purchase Agreement, the Morgan Group was permitted, on or before January 10, 2020, to terminate the Morgan Purchase Agreement upon certain grounds. The Morgan Group takes the position that it properly terminated the Purchase Agreement prior to January 10, 2020 and the Debtor disagrees. Morgan Group is unwilling to purchase the Shopping Center in accordance with the Morgan Purchase Agreement.

24. In order to maintain the sale process and timing approved in the Bid Procedure Order, Bank of Arkansas executed and submitted the Real Estate/Asset Purchase Agreement attached as Exhibit 3 (the "Lender Purchase Agreement").

25. On or about January 27, 2020, Lee & Associates provided an updated notice to the interested purchasers engaged in the sale process that stated, among other things:

> The Stalking Horse Purchaser has terminated its purchase agreement, and as such the Break-up Fee is no longer applicable. The BOKF, N.A. has exercised its right to Credit Bid as the new Buyer at $18,750,000. In light of this Credit Bid and the absence of the Break-up Fee, the bidding will begin in $100,000 Increments over the Credit Bid amount of $18,750,000.

26. The Debtor timely complied with the bidding procedures set forth in the Bid Procedure Order:

a. Lee & Associates and/or Crowley Liberatore P.C. mailed the Notice of Sale in the form attached hereto as Exhibit 4 by first class mail to (i) the leading

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commercial real estate brokers in the Hilton Head Island real estate market, (ii) all creditors and parties in interest in the case; (iii) all parties who previously expressed an interest in the Shopping Center or signed a non-disclosure agreement; and (iv) all other persons identified by counsel for the Debtor, counsel for Lender and counsel for the Subordinated Lenders as potentially interested in the Property.

b. Lee & Associates circulated the Notice of Sale in the form attached hereto as Exhibit 6 through an email blast service targeting commercial real estate buyers and investors which email blast service had been identified by the Debtor and the Lender and Subordinated Lenders.

27. The Notice of Sale complied with the requirements of the Bid Procedure Order.

28. A credit bid by Bank of Arkansas was approved as part of the Bid Procedure Order.

29. Due and proper notice of the sale and the Motion was provided to all creditors and parties in interest.

30. The proposed sale of the Shopping Center to Bank of Arkansas will constitute a sale of substantially all of the assets of the Debtor.

31. The sale of the Shopping Center is justified by a sound business reason

32. The sale price for the Shopping Center is fair and reasonable.

33. The Debtor and Bank of Arkansas propose this sale in good faith. Bank of Arkansas is proceeding in good faith.

34. The Subordinated Lenders consent to the sale of the Property free and clear of its liens encumbering the Property subject to the terms set forth in this Order.

35. Lee & Associates agreed to the modification of its commission and has agreed that its administrative expense claim shall be limited to 2% of the purchase price under the Lender Purchase Agreement. In addition, in the event that the sale to Parker pursuant to the Parcel E Sale Agreement is consummated, then Lee & Associates shall receive an additional fee equal to 1% of the final sale price paid by Parker, such fee to be paid upon closing of the Parker contract from the proceeds of that separate sale.

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36. The affirmative relief granted by this Order, and the findings relative to that relief, arise from a core proceeding, over which the court has original referred jurisdiction, pursuant to 28 U.S.C. § 157(b)(2)(N). This Order is a judgment, as described in Bankruptcy Rule 9021, and contains findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052. This Order is an order authorizing the use, sale and lease of property, as contemplated by Bankruptcy Rule 7062.

Based upon the foregoing, it is hereby ADJUDGED, ORDERED and DECREED as follows:

A. The Sale Motion of the Debtor shall be, and hereby is, granted, the Lender Purchase Agreement between the Debtor and Bank of Arkansas is approved.

B. Simultaneously with the closing, the Debtor is authorized to assume the Leases and assign them to Bank of Arkansas, in accordance with 11 U.S.C. § 365.

C. Simultaneously with the closing, the Debtor is authorized to assign the Parcel E Sale Agreement to Bank of Arkansas.

D. Upon closing, the Shopping Center shall be transferred to Bank of Arkansas, outside of the ordinary course of business, free and clear of all liens, claims and encumbrances, including, without limitation, the liens of Bank of Arkansas and the liens of the Subordinated Lenders, pursuant to 11 U.S.C. Sections 363(b) and (f). The cash proceeds from the sale shall be distributed in accordance with paragraph (F) below;

E. The Debtor and Bank of Arkansas shall be bound by all of the provisions of the Lender Purchase Agreement;

F. Upon closing, the cash proceeds from the sale shall be distributed as follows:

(1) To taxing authorities with statutory liens against the Property, in the amount of the statutory lien;

(2) Commission to Brokers – 2% of the sale price totaling $375,000.00;

(3) U.S. Quarterly Fees ("Trustee's Fees") - The administrative claim for the US Trustee fees shall be calculated and paid solely upon the basis of

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actual distributions payable from the bankruptcy estate, and the non-cash portion of the Credit Bid shall not be deemed as such distribution.

(4) Set aside for Administrative Claimants and Trustee's Fees - $100,000 of the sale proceeds shall be set aside, in the Debtor's operating debtor-in-possession account, to fund any potential administrative claims and Trustee's Fees , which amount shall be available to pay allowed administrative claims asserted through the date of the Closing on the sale in addition to Trustee's Fees and allowed professional fees associated with the sale, closing and closure of the Chapter 11. The funds remaining in the debtor's operating debtor in possession account, after payment of allowed administrative expense claims and the payment of the $200,000 carve out for non-priority, general unsecured claims as set forth in below paragraph, shall continue to be subject to the lien of Bank of Arkansas and shall be remitted to Bank of Arkansas until its claim is paid in full.

(5) Unsecured Creditors – $200,000 of the sale proceeds shall be paid into a segregated account established by the Debtor and shall be used solely to pay allowed non-priority, general unsecured claims, including but not limited to any unsecured portion of the secured claims filed by the Subordinated Lenders, and shall be used to satisfy allowed non-priority, general unsecured claims regardless of how the Debtor's bankruptcy case is ultimately resolved whether pursuant to a confirmed chapter 11 plan, dismissal or otherwise. Notwithstanding the foregoing, no deficiency claim of Bank of Arkansas shall be paid from this $200,000.00. This provision shall be binding on any trustee appointed in this Bankruptcy Case.

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G. Bank of Arkansas shall be entitled to the protections afforded by 11 U.S.C. § 363(m) in the event that this Order, or any part of it, is reversed or modified on appeal and entry of this order shall bar all parties with notice of the Motion from bringing any actions, proceedings or claims arising under 11 U.S.C. § 363(n);

H. The 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is waived.

AND IT IS SO ORDERED.

SEEN AND AGREED:

/s/ Michael H. Conrady
Michael H. Conrady, ID
Campbell Law Firm, PA
P.O. Box 684
Mt. Pleasant, SC 29464
(843) 8834-6874 and

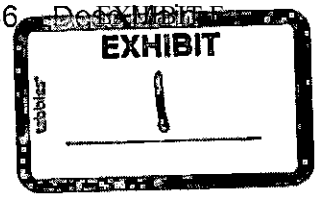
Karen M. Crowley, VSB #35881
Crowley Liberatore P.C.
150 Boush Street, Suite 300
Norfolk, VA 23510
757-333-4500

Counsel to the Debtor

SEEN AND AGREED:

/s/ Ivan N. Nossokoff
Ivan N. Nossokoff
D.Ct. # 2556
IVAN N. NOSSOKOFF, LLC
Attorney for BOKF, NA dba Bank of Arkansas
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
inoss@nosslaw.net
(843) 571-5442

/s/ Samuel S. Ory
Samuel S. Ory, OBA #30340
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Attorneys for BOKF, NA dba Bank of Arkansas



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EXHIBIT A

Legal Description

All of Parcels A, B, C, D, E, F and G as shown on plat of Boundary Reconfiguration of Parcels 98B, 98E, 156, 247, 248 and 249, Map 8, District 511, Hilton Head Island, Beaufort County, South Carolina and prepared by Mark R. Renew PLS SC No. 25437, Sea Island Land Survey, LLC and dated 22nd February, 2016, and record in Plat Book 145, Page 30 in the Beaufort County ROD Office.

EXHIBIT F

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STATE OF SOUTH CAROLINA }
COUNTY OF BEAUFORT } AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred bears Beaufort County Tax Map Numbers: R511-008-0247-0000, R511-008-000-0248-0000, R511-008-000-098B-0000, R511-008-000-098E-0000, R511-008-000-0156-0000, R511-008-000-0675-0000, R511-008-000-0676-0000, was transferred by WD-I Associates LLC, a Virginia limited liability company to BOKF Real Estate Holding, LLC, an Oklahoma limited liability company on 2/28/2020.

3. Check one of the following: The deed is
   (A) [ ] subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (B) [ ] subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (C) [X] exempt from the deed recording fee because (See Information section of affidavit): 12-24-40 (13) (Explanation required) (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

   If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes [ ] or No [ ]

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):
   (A) [ ] The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
   (B) [ ] The fee is computed on the fair market value of the realty which is _____.
   (C) [ ] The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check YES [ ] or NO [ ] to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is _____.

6. The deed recording fee is computed as follows:
   (A) Place the amount listed in item 4 above here: _____
   (B) Place the amount listed in item 5 above here: _____
   (If no amount is listed, place zero here.)
   (C) Subtract Line 6(b) from Line 6(a) and place the result here: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is:
   $ _____.

8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as:
   Closing Attorney.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Daniel A. Saxon
Responsible Person Connected with the Transaction

Daniel A. Saxon
Print or Type Name Here

Sworn this 2nd day of March, 2020

Notary Public for South Carolina
My Commission Expires: 1/8, 2025

LAUREN TIVOLIO NOTARY PUBLIC SOUTH CAROLINA COMMISSION EXPIRES JANUARY 08, 2025

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INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership, interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

(1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less then one hundred dollars;

(2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;

(3) that are otherwise exempted under the laws and Constitution of this State or of the United States;

(4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);

(5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other then the interests in the realty that are being exchanged in order to partition the realty;

(6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held be the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust my also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under section 170 of the Internal revenue Code as defined in Section 12-6-40(A);

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;

(13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;

(14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;

(15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

EXHIBIT G

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BOKF REAL ESTATE HOLDING, LLC		
DAMAGE CALCULATION		
SUMMARY		
	Accrued Damages	Deficiency
	(10/1/19 through	*(7/1/21 through*
	6/31/21)	*10/11/22)*
Minimum Rent	$162,750.00	$53,155.51
Additonal Rent	$23,625.00	$0.00
Late Fees	$9,318.75	$0.00
Interest	$51,540.60	$4,203.73
Broker Commissions	$16,707.13	$0.00
	$263,941.48	$57,359.24
Total Amount	$321,300.73	

EXHIBIT G

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BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	10/11/2022								
Interest Rate	12%								
Due Date	Minimum Rent	New Tenant (Gusto) Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Days Past Due	Interest	Total Due (Current)
10/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1106	$3,388.45	$12,707.20
11/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1075	$3,293.48	$12,612.23
12/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1045	$3,201.57	$12,520.32
1/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1014	$3,106.59	$12,425.34
2/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	983	$3,011.62	$12,330.37
3/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	954	$2,922.77	$12,241.52
4/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	923	$2,827.79	$12,146.54
5/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	893	$2,735.88	$12,054.63
6/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	862	$2,640.91	$11,959.66
7/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	832	$2,549.00	$11,867.75
8/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	801	$2,454.02	$11,772.77
9/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	770	$2,359.05	$11,677.80
10/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	740	$2,267.14	$11,585.89
11/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	709	$2,172.16	$11,490.91
12/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	679	$2,080.25	$11,399.00
1/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	648	$1,985.28	$11,304.03
2/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	617	$1,890.30	$11,209.05
3/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	589	$1,804.52	$11,123.27
4/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	558	$1,709.54	$11,028.29
5/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	528	$1,617.63	$10,936.38
6/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	497	$1,522.66	$10,841.41
7/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		467	$518.88	$3,898.46
8/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		436	$484.44	$3,864.02
9/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		405	$449.99	$3,829.57
10/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		375	$416.66	$3,796.24
11/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		344	$382.22	$3,761.80
12/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		314	$348.88	$3,728.46
1/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		283	$314.44	$3,694.02
2/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		252	$280.00	$3,659.58
3/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		224	$248.89	$3,628.47
4/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		193	$206.12	$3,454.59

EXHIBIT G

BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	10/11/2022								
Interest Rate	12%								
Due Date	Minimum Rent	New Tenant (Gusto) Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Days Past Due	Interest	Total Due (Current)
5/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		163	$174.08	$3,422.55
6/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		132	$140.97	$3,389.44
7/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		102	$108.93	$3,357.40
8/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		71	$75.83	$3,324.30
9/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		40	$42.72	$3,291.19
10/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		10	$10.68	$3,259.15

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Gusto Ristorante				
Due Date	Minimum Rent	Additional Rent	Total Rent	Notes
3/1/2021	$0.00	$1,413.96	$0.00	Abated
4/1/2021	$0.00	$1,413.96	$0.00	Abated
5/1/2021	$0.00	$1,413.96	$0.00	Abated
6/1/2021	$0.00	$1,413.96	$0.00	Abated
7/1/2021	$4,370.42	$1,413.96	$5,784.38	
8/1/2021	$4,370.42	$1,413.96	$5,784.38	
9/1/2021	$4,370.42	$1,413.96	$5,784.38	
10/1/2021	$4,370.42	$1,413.96	$5,784.38	
11/1/2021	$4,370.42	$1,413.96	$5,784.38	
12/1/2021	$4,370.42	$1,413.96	$5,784.38	
1/1/2022	$4,370.42	$1,413.96	$5,784.38	
2/1/2022	$4,370.42	$1,413.96	$5,784.38	
3/1/2022	$4,370.42	$1,413.96	$5,784.38	
4/1/2022	$4,501.53	$1,413.96	$5,915.49	
5/1/2022	$4,501.53	$1,413.96	$5,915.49	
6/1/2022	$4,501.53	$1,413.96	$5,915.49	
7/1/2022	$4,501.53	$1,413.96	$5,915.49	
8/1/2022	$4,501.53	$1,413.96	$5,915.49	
9/1/2022	$4,501.53	$1,413.96	$5,915.49	
10/1/2022	$4,501.53	$1,413.96	$5,915.49	
11/1/2022	$4,501.53	$1,413.96	$5,915.49	

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **BOKF REAL ESTATE HOLDING, LLC,** **Plaintiff,** **vs.** **T & S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT** **CASE NO.: 2020-CP-07-00977** **MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENET**

Defendants T & S Management, Inc. and Turan Strange, through their undersigned counsel, submit this memorandum in opposition to Plaintiff's Motion for Summary Judgment. As is set forth below, Defendants argue that there are numerous material issues of fact in dispute which preclude the Court from entering summary judgment upon the pending motion. This memorandum refers to the affidavit of Turan Strange, attached, and excerpts from the deposition transcript of Warren Hill, representative of the Plaintiff who is referred to by the court reporter as William Hill, also attached.

This dispute arises from a restaurant lease between T & S Management, Inc. as tenant, and WD-1 Associates, LLC("WD-1"), as landlord for restaurant space at the Sea Turtle Center on Hilton Head Island, South Carolina. Mr. Strange is the principal of T & S Management and is alleged to be a guarantor of the lease contract between WD-1 and T & S. For historical reference, the center was formerly known as Pineland Station, and the restaurant was known as Another Broken Egg. T & S Management, Inc. purchased the franchise rights to Another Broken Egg

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locations on Hilton Head Island, and also in Pooler, Georgia. The Hilton Head Island location closed in January, 2020. The Pooler location remains open.

BOKF does not presently own the subject premises or shopping center, having sold the property in or around October, 2022. (Deposition of Hill). BOKF acquired the subject premises and center, allegedly, through a bankruptcy sale process in the WD-1 2019 bankruptcy, in or around March, 2020, according to Mr. Hill, who does not know if the Plaintiff actually acquired the landlord rights to collect. BOKF was not the landlord for T & S at any time during its operation. It is unclear if and how BOKF acquired title to the center or if BOKF acquired the landlord interest in the lease with T & S. Mr. Hill had no direct knowledge of those events. (Deposition of Hill).

T & S lawsuit and motion claim damages due to alleged breach of lease. Yet Mr. Hill admitted in deposition that the had no direct knowledge of the damages, rents owed, efforts to mitigate, interest and late fee calculation or any aspect of the submitted damages. He apparently relied on information supplied by counsel, or another person, and signed his affidavit in support of this motion in any case. All of the figures set forth in his affidavit are beyond his personal knowledge and thus do not support summary judgment.

Mr. Strange testifies that he is unaware of any landlord efforts to mitigate damages, and that he saw a liquor license posting for a new tenant in March 2021 (Strange Affidavit). This posting was and is months before the new tenant start date set forth in Mr. Hill's affidavit and the affidavit of Plaintiff's counsel. Mr. Kubec. Mr. Hill admits he has no direct knowledge of any landlord efforts to obtain a new tenant—stating those efforts were in the hands of Bosley Management and Sperry Van Ness, neither of whom have filed evidence in support of the efforts to mitigate as of today, now twenty four hours before hearing. Plaintiff cannot be given credit for

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mitigation efforts to re-let the premises without any evidence of such effort. Mr. Strange believes Plaintiff, and his predecessor, made insufficient effort.

Most significantly, T & S Management had no communications with this Plaintiff. As set forth in Mr. Strange's affidavit, he was induced to enter into the lease by promises of timely shopping center development and foot traffic made by WD-1. As set forth in its Answer and defenses, "Defendant T & S Management, Inc.'s performance under the commercial lease was defeated by the performance of Plaintiff and its predecessor in interest. From the outset of the lease relationship, the shopping center failed to produce foot traffic, failed to implement anticipated marketing and merchant promotions, and failed to create a commercially acceptable appearance."

As a result of WD-1's delays, the restaurant opened more than a year behind schedule in November, 2018 and was unable to become profitable. (Affidavit of Strange). This caused the restaurant to close and lose both anticipated revenues and the value of fixture and equipment improvements which cost hundreds of thousands of dollars to construct, paid for by Defendants' funds and SBA loan monies (Affidavit of Strange). Defendants contend that WD-1's breach of its obligations under the lease caused its default. SBA has a security interest in the remaining fixtures and equipment at the Hilton Head location, which has been occupied and used by Gusto restaurant since on or about March of 2021(Affidavit of Strange).

For the reasons set forth above, Defendants argue that this case is not ripe for summary judgment. There are material issues of fact regarding (1) whether Plaintiff or its predecessor in interest WD-1 breached the lease before Defendants' defaulted, (2) whether Plaintiff owns the landlord rights under the lease and whether Plaintiff owns the right to collect from Defendants, (3) whether Plaintiff or its predecessor employed reasonable efforts to mitigate and re let the premises,

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(4) whether the damages calculations are accurate and credible and (5) whether the damages calculations give credit for the fixtures and equipment left by Defendants which Plaintiff and its new tenant benefitted from.

WHEREFORE, Defendants respectfully request that the Honorable Court deny Plaintiff's motion for summary judgment, and for such other relief as the Honorable Court deems just and proper.

March 27, 2023

Hilton Head Island, SC

Respectfully Submitted,

Mogil Law Firm

/s/ Michael W. Mogil

Michael W. Mogil, SC Bar No. 11933
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
(843) 785-8110
Attorney for Defendant(s)

In the Matter of:

BOKF REAL ESTATE HOLDING

vs.

T&S MANAGEMENT, INC., AND TURAN STRANGE

William Hill

March 16, 2023

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

DEPOSITION OF WILLIAM HILL

BOKF REAL ESTATE HOLDING, LLC,

Plaintiff,

vs. CASE NO. 2020-CP-07-00977

T&S MANAGEMENT, INC., and TURAN STRANGE,

Defendants.

DEPONENT: WILLIAM HILL

DATE: March 16, 2023

TIME: 3:30 P.M.

LOCATION: VIA ZOOM

REPORTED BY: TRISHA RARICK

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A P P E A R A N C E S

(All Via Zoom)

ON BEHALF OF THE PLAINTIFF:

COFFEY KUBEC, LLP
BY: EDWARD M. KUBEC
18 Executive Park Road
Suite 3
Hilton Head, SC 29928
843.422.4488
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ON BEHALF OF THE DEFENDANTS:

LAW OFFICES OF MICHAEL W. MOGIL, P.A.
BY: MICHAEL W. MOGIL
2 Corpus Christie Place
Suite 103
Hilton Head Island, SC 29928
843.785.8110
mmogil@mogillaw.com

ALSO PRESENT:

ROBERT CHERNETT

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I N D E X

EXAMINATION Page

By MR. MOGIL 4

Certificate of Reporter 38

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WILLIAM HILL,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MOGIL:

Q Okay. Good morning, Mr. Hill. I'm Michael Mogil. I'm an attorney for the defendant parties in a case brought by your company entitled Bank of Oklahoma versus T&S Management and Turan Strange. I'm an attorney for both the corporate and the individual defendants.

You're here today pursuant to a notice of deposition that I issued in connection with this case. Although we're appearing by Zoom, you have been sworn in. Your testimony is under oath. So my instruction is to please tell the truth.

If Mr. Kubec objects to any question I ask you, give us a chance to work it out before you respond. The general rule will be unless he asserts attorney-client privilege, you, ultimately, will be instructed to answer, but he can state his objection for the record.

And I don't expect that we're going to go too long today, but if you do need a break,

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just, you know, interrupt or raise your hand or something so we know you need to stop. Okay?

Have you ever been deposed before?

A Yes. I have.

Q Okay. And have you ever been a witness in a jury trial before?

A No. I have not.

Q Have you ever been a witness in a non-jury trial?

A No. I have not.

Q So you just -- when you were deposed, was it in connection with your employment with Bank of Oklahoma or some other capacity?

A With Bank of Oklahoma.

Q Okay. And so let's start there, Mr. Hill. What is your current position with Bank of Oklahoma?

A I'm senior vice president and manage REO assets.

Q You manage your REO assets. Is that what you said?

A Yes, sir.

Q And REO means real estate owned?

A Yes, sir.

Q Okay. So you're, essentially, a property manager?

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A I manage, market and sell the properties for BOK financial.

Q Okay. And how long have you been in that position with BOK?

A I have been in this department since -- well, I first started managing, marketing REOs in 2004.

Q With BOK?

A With BOK. Yes, sir.

Q Okay. And where did you work before BOK?

A I've worked for consumer commercial -- it's a company that wasn't also for a while, ITT Finance, and, then, with a family business, a real state company that my father had before he passed.

Q Okay. And what's your academic background?

A 1986, I earned a BDA in finance and banking from Oklahoma Baptist University.

Q Okay. Do you have any graduate degrees?

A No, sir.

Q And military service?

A No, sir.

Q Okay. And do you live in Oklahoma now?

A Yes. I do.

Q Have you ever been to Hilton Head Island,

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South Carolina?

A Yes. I have. One time.

Q And when was that?

A March, I think 2rd, 3rd and 4th or maybe 3rd, 4th and 5th of 2020.

Q 2020?

A Yes, sir.

Q Okay. Going back in time -- and Mr. Kubec just sent me a slew of documents. So I'm not looking at them at this moment, but going back in time, under what circumstances did BOK acquire title to the property that we call Sea Turtle center on Hilton Head? When and under what circumstances?

A Well, the closing or the documents were signed, I think, on the 28th of February. Filed the next working day. Probably the following Monday. The circumstances were, of course, a default from a customer who then filed bankruptcy, and it was sold out of the bankruptcy court -- auctioned out of the bankruptcy court.

Q What year was this?

A 2020.

Q Okay. So BOK acquired title to Sea Turtle in 2020? In the end of February, 2020?

A End of February, beginning of March. Yes,

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sir.

Q Okay. And by that time, the defendant parties in this case, being T&S Management, operating Another Broken Egg, and the individual defendants, had already vacated the property; is that correct?

A Yes, sir.

Q Okay. Prior to BOK acquiring title, did BOK have any role in the management of this property?

A No.

Q Okay. So who owned the property before BOK? Was it the Wheeler Group?

A Yes, sir. WD1.

Q Is that the entity that filed bankruptcy?

A Yes, sir.

Q Where did they file bankruptcy?

A I don't know.

Q Were you involved with the group that analyzed the asset prior to purchasing it out of the bankruptcy?

MR. KUBEC: Objection to form.

A No, sir.

MR. MOGIL: And what was the objection, Ed?

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MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q Okay. Were you involved with the group that -- did you have any role in the acquisition of the title of the property on behalf of BOK?

A No. I did not.

Q And who would have -- who with BOK was involved with the acquisition of the property? Name?

A Well, Eric Ernst would be -- he's the -- in charge of special assets. He's the director of special assets for the bank.

Q Is he still with the bank?

A Yes. He is.

Q Do you know who had your role in terms of asset manager prior to BOK acquiring the asset? Do you know the name of the person?

A No. I do not.

Q Okay. Have you ever met Mr. Strange, Turan Strange, who's one of the defendants in this case?

A No. I have not.

Q Have you ever -- well, you said you hadn't been to Hilton Head before March of 2020. Did anybody acting under your direction visit that

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property prior to March of 2020?

A No one under my direction, no.

Q Do you have knowledge of anybody from BOK visited the property prior to March of 2020?

A I believe Eric did.

Q Okay. Some of these answers may seem obvious based on what you've just said, but did you have any role in negotiating the lease and the amended lease that's been introduced by your counsel as exhibits to a summary judgment motion? So they're in the record of this case. Did you have any role in negotiating those on behalf of Wheeler and -- through Mr. Strange?

MR. KUBEC: Objection to form.

A No.

BY MR. MOGIL:

Q You can answer.

A No. I did not.

Q Okay. To your knowledge, did anybody at BOK have any role in negotiating those leases?

A No. I don't believe they did.

Q Did you have any role in issuing any notice of default to the defendant parties in this case?

A I did not, no.

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Q Do you know if anybody at BOK had that role -- issued a notice of default?

A No. I don't believe they did.

Q Before I get through the substance of your affidavit, why are you -- why is BOK seeking to recover money from Mr. Strange and his entity when BOK had no relationship with the entity? In your words, why are you going after him now?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q You can answer.

A We acquired the rights to the lease and including the right to be paid from the date of the default.

Q Okay. Did you pay separately -- did BOK -- excuse me when I keep on saying you. Did BOKF pay consideration for the rights to the lease?

A Well, I mean, we were assigned the rights at the purchase of the property Sea Turtle.

Q Okay. And the purchase of the property Sea Turtle was through the bankruptcy court sale?

A Yes.

Q Do you have those documents in -- in office in files in BOK's office?

A Yes.

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Q And do you recall what the purchase price for the asset Sea Turtle was?

A Actually, I don't. Not off the top of my head.

Q To your recollection, was there a separate assignment of leasehold rights, or was the assignment of rights under the lease in connection with the transfer of title?

A I don't know.

Q So BOK took title after this restaurant closed based on your testimony. Again, why are you -- why is BOK pursuing parties that it had no contractual relationship with?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q You may answer if you understood the question.

MR. KUBEC: Object to the form.

MR. MOGIL: Ed, if you want to state the objection. I'm asking him based on the -- being -- him being tendered as the witness who's signed the affidavit, why are they doing this?

MR. KUBEC: Well, I object to form. I'm not allowed a speaking objection, but you

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already asked him that.

BY MR. MOGIL:

Q Mr. Hill, you testified a couple of minutes ago that you were pursuing these parties on a collection action because BOK had acquired the rights under the lease from the bankruptcy court; is that correct?

A That is correct.

Q In your review of your records, did these parties ever miss a payment to BOK, or are you collecting for money that they failed to pay your predecessor in interest?

MR. KUBEC: Object to form.

BY MR. MOGIL:

Q You can answer if you understand the question.

A Well, they never paid us. That's the answer to your question.

Q Did BOK at any point prior to this lawsuit request that they pay you, meaning BOK?

MR. KUBEC: Object to form.

BY MR. MOGIL:

Q Say, within your knowledge, did you issue a demand for payment to T&S Management, Inc., or Mr. Strange?

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A Our manager Bill Bosley sent a letter -- a loan letter to them giving them as -- our information as the new owner and where they should send their payments to.

Q Now, was that before or after your visit to Hilton Head?

A Almost simultaneously.

Q And your visit was in late -- in early March, within a week or so in either direction, of the bankruptcy sale, correct?

A Yes.

Q Okay. So what would -- the restaurant was closed when you visited. What would -- what was he seeking payment for, if you know?

A Well, I -- they were one of the leases that we had, and so we were anticipating that we should be paid. Explained to us.

Q Has BOK instituted any other collection actions in court relating to Sea Turtle center, the Sea Turtle property?

A No. No. I take that back. One other property.

Q Which property was that?

A I'm forgetting the name. I can't come up with it.

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Q Was the tenant a restaurant or a store or some other professional --

A A dress shop.

Q A dress shop.

A Uh-huh.

Q Was that entity -- oh, when you visited in March of 2020?

A I don't recall. I think they were, but I don't really recall.

Q And so --

A Actually, no. No, they weren't. They had left.

Q Has any other party at Sea Turtle defaulted since BOK took over the property in March of 2020?

A No. Well, yes. Stein Mart filed bankruptcy and closed all their stores in the nation. I guess you could call that a default.

Q Okay. Taking a step back. So BOK was a lender providing loan monies to the Wheeler entities when they purchased this property or refinanced it; is that correct?

A I don't have knowledge of the origination.

Q Were you involved on the lender's side in their management of this property before BOK

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actually took title to it?

A No. I was not.

Q So Mr. Kubec has provided me with an affidavit and now an amended affidavit and a damages calculation sheet that you -- that form the basis for your affidavit. Where did the numbers on that spreadsheet that was used to calculate damages -- where did they come from?

A The lease.

Q Okay. Did you review any payment ledgers that -- to remember what money came in?

A We received an invoice informing us of a default or -- when that took place -- from WD1.

Q You received an invoice of when they default? Was it an invoice that was requesting some kind of payment from BOK?

A No. It was an invoice that they sent us to show them requesting payment and not receiving it.

Q Have you personally reviewed the payment receipt records that W1 kept relating to this property?

A No. I have not.

Q When you reviewed the lease and the amended lease as set forth in the affidavit, who --

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which person or what source provided the interpretation of the lease document for you, or did you interpret it on your own as an asset manager?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q I could be more specific. Your damages calculation included an interest calculation, default calculation. It included late fees. It included missed payments after September 2019. It included additional rent and included some attorney's fees. Did you determine through your own review of that lease which categories were applicable or did somebody guide or instruct you in this process?

MR. KUBEC: Objection to form.

MR. MOGIL: I don't understand the objection. I'm asking did somebody -- did he look at the lease and determine what was owed under the lease, or did somebody else instruct him on what was owed under the lease? Because he submitted an affidavit that says what's owed under the lease. He said that he didn't have any role in the formation, drafting or execution of that lease. So I'm trying to find out who interpreted this lease for him, or if

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he did it on his own.

MR. KUBEC: Same objection. I'm not telling him not to answer.

A In my capacity in this line of work, I can read a lease and understand the lease fully, but with that being said, I have also conferred with my counsel in regards to that process.

BY MR. MOGIL:

Q Counsel being Mr. Kubec? I don't want you to tell me what Mr. Kubec told you. Just counsel being Mr. Kubec or somebody else?

A Yes.

Q Mr. Hill, did you have any role in the effort to relet or release the premises to a third party that -- who's in there now?

A Yes.

Q And starting with the time that you were involved in March of 2020, tell me what BOK did through your supervision to relet the premises.

A We signed an agreement with Tom DeMint with SVN to market not only this property but all units that were vacant at the time.

Q You said SDN. Does that stand --

A SV, as in Victor. V, as in Victor. SVN.

Q And who is SVN?

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A Tom DeMint. SVN is one of the names --

Q So Sperry Van Ness?

A Right. It's one of the largest real estate companies in the nation. Probably one of the top ten.

Q Okay. And who was the agent that you interacted with at Sperry Van Ness?

A Tom DeMint.

Q Jim DeMint is his name or Tom DeMint?

A Tom, T-o-m.

Q Did BOK separately advertise the availability of the property in any publication?

A No, sir.

Q I didn't hear you. Say that again.

A No.

Q No? Okay. Did BOK put any listing in the internet relating to the availability of the property?

A All marketing went through Tom DeMint. That's why we hired him. He's local. He's on the island. I'm in Tulsa, Oklahoma. No. We did not market the property.

Q Do you have any materials in your files for -- that reflect DeMint and Sperry Van Ness's marketing of the property?

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A I don't believe I have any materials. May have had a picture of the sign he had posted at the property, and I believe he had signs on each window on the property. What he did through the internet, I'm not aware of. I probably wouldn't have access to it because I'm not a Realtor in South Carolina.

Q Okay. Based on the materials that Mr. Kubec produced in response to my request, the current tenant is a name Gusto Ristorante; is that correct?

A Yes, sir.

Q And it appears to me, based on the summary, that the rent that they're paying is $8,353.57 per month base rent; is that correct?

A I don't have their lease in front of me. So I'm not able to ascertain that exactly.

Q Did you negotiate the lease with Gusto Ristorante?

A Tom DeMint did the lion's share of the negotiations on our behalf. Yes. I was involved.

Q And the question I'm trying to figure out is on the sheet that Mr. Kubec provided, which is dated February 22, 2021, from Sperry -- SVN, it's Exhibit C to the motion for summary judgment, it says, rent commencement date July 1, 2021. It says

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payable as follows. In March, there was a lease execution payment of 8,353, and, then, July 1 rent commencement date, it was -- it says 8,353, but on the spreadsheet that was provided that supported your numbers, it shows a Gusto minimal rent of $4,370 per month, and, then, something called an adjusted rent of $3,379. And these were the documents that were submitted in support.

So I'm trying to figure what is the rent there? Did it go down at some point? Do you have them in front of you? I don't know how to screen share, but do you have that sheet that Mr. Kubec attached to the motion and to your affidavit? Do you have that in front of you?

A The February 2021 SVN?

Q Yeah. That's the summary sheet from SVN, and, then, there was -- there's another document that's -- it's called BOKF Real Estate Holding, LLC, Damage Calculation Summary. Did you produce that document that's called the damage calculation summary, or did somebody else produce that?

A I did not.

Q Do you know who at BOK would have produced it?

MR. KUBEC: Objection to form.

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BY MR. MOGIL:

Q Do you know who would have produced it at BOKF if it wasn't you?

MR. KUBEC: Same objection.

BY MR. MOGIL:

Q I'm just asking you -- your counsel has objected, but you can answer. Do you know who produced that?

A No. I did not produce it, and no one from BOK produced it. But the spreadsheet -- I'm assuming the Excel spreadsheet you're referring to?

Q Yes. It's an exhibit. Have you taken -- gotten to see the summary judgment motion that was filed in this case?

A I'm not sure that I have seen it.

Q Okay. There was a spreadsheet that was filed, and, then, it's been revised or amended. It looks like Mr. Kubec sent me another one, and it's a document entitled BOKF Real Estate Holding, LLC, Damages Calculations Summary. And it's in table -- the one that I received today says current date, October 11, 2022, and it, basically, outlines in rough form the history of the property. And, then, starting with the new tenant in July 2021, and it shows a much lower rent than what is on SVN's

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spreadsheet.

So I'm asking with your -- do you know what the rent is at this property? What it's supposed to be? When I say this property, I mean the space that Gusto occupies, which was formally the Another Broken Egg space. Do you know what the base rent is supposed to be?

A Base rent should be $4,370.42.

Q Do you think that that likely matches what the base rent is under the lease?

A That -- I'm looking at the lease.

Q Okay. On that document that you were looking at a second ago, which was the February 22, '21, memo, Exhibit C from SVN, when they -- he's referring to -- or they're referring to $8,353. Do you know what that -- is that just the commission? That's not relating to the rent?

A That may be with the CAM added.

Q Okay. I think I understand --

MR. MOGIL: I'm going to object to form. Mike, can you show him a copy of that because I'm looking at it -- and I'm not allowed to opine on this, but if you showed him a document, it would kind of clarify where you're going on this.

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(Off-the-record discussion.)

A Again, the SVN, February 22nd, 2021, and where it says payable as follows, March 1st, 2021, 8,353.57 at lease execution, and, then, the one, July 1st, 2021, 8,353.57 -- is that what you're referring to?

BY MR. MOGIL:

Q Yes.

A That's what we paid SVN.

Q Okay.

A That's the commission that he earned for leasing that out. That's not the lease payments that Gusto Ristorante is paying us.

Q Okay. And SVN negotiated the lease. Do you have any knowledge as to why the lease base payment is approximately 3,000 a month less than the Broken Egg Lease was?

A The main reason, COVID, in a nutshell. You know, it shut down all activity nationwide, and we had a very difficult time, of course, filling that spot or any spot for that matter. And at that point in time, that was the going rate on the island, from what I was told by SVN for other properties leasing space.

Q Yet, the lease started in July of 2021,

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which, from a layman's perspective, COVID was -- there was no longer a COVID shutdown at that period of time; is that correct?

MR. KUBEC: Objection to form.

A Yes.

BY MR. MOGIL:

Q Let me walk you back through it, Mr. Hill. Did you have any knowledge -- was there ever a government-imposed restaurant shutdown in South Carolina, to your knowledge?

A I have no idea.

Q At the time that this lease was entered into in July 1 of 2021, do you know if there was any government restriction on restaurant operations in South Carolina?

A I don't know. I don't believe there were but --

Q So when you say that COVID caused the reduction in rent, that's based on what you were told by SVN, or is that your own opinion?

A A little bit of both. Just from the experience of trying to lease properties, sell properties during that time. Of course, on a residential level, there was a moratorium where you couldn't sell or foreclose for a long period of

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time. Just that when the -- I'm assuming when the property was brand new, just completed, they were getting premium rates. It's a good location. But after COVID, we were just happy to have anybody lease space.

Q Is the shopping center full -- fully occupied right now?

A I have no idea.

Q And you have no idea because the center was sold?

A Yes.

Q When was it sold?

A October of 2022.

Q And who is the new owner?

A Greenberg Gibbons.

Q Are they affiliated with BOK in any way?

A No.

Q Are they a Florida company, or where are they out of?

A I think Maryland. I'm not really sure. It's Greenberg Gibbons Corporation, GGC.

Q Are they a lending client of Bank of Oklahoma?

A No.

Q Was this sold on an arm's-length basis, or

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was it a structured sale through a bankruptcy procedure?

A It was arm's length we listed it for sale. We had four or five offers, and they were the best.

Q And at any point, did you have a paper or digital file regarding the communications between your predecessor and Mr. Strange?

A No. I don't have anything.

Q Did you transfer any file to Greenberg Gibbons?

A Did we transfer a file to Greenberg Gibbons?

Q Right. A file containing any communications or documents between your predecessor Wheeler and their entities and Another Broken Egg and Mr. Strange.

A No.

Q So you didn't receive a file when you acquired the property?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q Did you receive a file when you --

A We received very little.

Q Okay. And did you transfer a file when you sold the property?

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MR. KUBEC: Same objection. Objection to form.

BY MR. MOGIL:

Q He's objecting because I'm presupposing that there was a file, but I'm asking did you transfer any information about Another Broken Egg, its lease or Mr. Strange's guarantee to the new owners of the property?

A No.

Q Okay. Do you personally have any knowledge regarding why the restaurant that was Another Broken Egg did not open for more than two years after its lease was entered into? Do you have any knowledge on that subject?

A No.

Q Does anybody at Bank of Oklahoma that you could designate would have knowledge on that subject?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q Is there somebody at Bank of Oklahoma that you are aware would have knowledge about that subject?

A No.

Q When Bank of Oklahoma conveyed the asset

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Sea Turtle to Greenberg Gibbons, did it retain ownership of this collection action?

A Yes.

Q So the accrued liability claimed against Another Broken -- T&S Management and Mr. Strange was retained and was not part of the sale?

A It's not part of the sale.

Q Do you have any personal knowledge as to why that this claim was not part of the sale?

Now, I'll preface this by saying when you acquired the property, you acquired a defaulted lease, that you enforced the collection action when you sold the property. Do you know why that same claim didn't transfer to the new owner?

MR. KUBEC: Object to form. I'm also going to instruct the witness not to divulge content of any discussions you may have had with legal counsel on this particular issue.

BY MR. MOGIL:

Q Yeah. I'm not asking you what your lawyer told you. I'm asking you do you have any knowledge as to why -- personal knowledge as to why this -- this claim or asset was not included with the sale?

A No. Not really.

MR. MOGIL: Okay. And I want to take a

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break and talk to Mr. Chernette separately for a couple of minutes. So I'm going to put this on mute and let you know if I have anything further after I come back.

MR. KUBEC: Sure.

(Off-the-record discussion.)

BY MR. MOGIL:

Q Back on the record. Before we move forward with another line of questioning, a couple of follow-ups, Mr. Hill. I understood your testimony earlier that Gusto is the new tenant because SVN's marketing effort resulted in them being the chosen new tenant; is that correct?

A Yes.

Q Were there other tenants that were presented to you?

A No.

Q Other than Gusto?

A No. I don't believe so. We had some interest but very little. Very little.

Q They were the first?

A And Gusto seemed to be the best solution to fill that space.

Q Okay. When Gusto took this space, was any of the former Another Broken Egg equipment or

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property transferred over to Gusto, or is that still owned by the landlord?

A I have no idea.

Q Who would know that?

A Possibly Bill Bosley, the manager of the property, or Tom DeMint.

Q Did --

A I never entered that property. I have never seen what was left or not left by Another Broken Egg.

Q Would that be in the lease -- in Gusto's lease?

A I don't believe there's a section referring to that in the lease.

Q And I'm talking about things like tables and chairs, refrigerators, fixtures and movable property. Any of that?

A To my knowledge, there was no tables and chairs, no refrigerators. Nothing left behind. It was all taken.

Q Only fixtures?

A What's the fixture in your definition? I don't know. That's pretty broad.

Q Hood ventilation system.

A That may have been left behind because

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they couldn't take it out on the day that they pulled up and --

Q Okay. We'll get to that in a second. Did BOK do any evaluation of the equipment that was remaining in the premises when it took title to the center in March of 2020?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q Did Bank of Oklahoma value the equipment in any form, whether it was a memorandum or an appraisal or a personal observation to fixtures and equipment that remained in the premises when you took it over in March of 2020?

A No.

Q In your affidavit -- I believe it's your affidavit. It states that persons came to the property and removed -- it says on March 17, 2020, furniture, fixtures and equipment were removed from the premises by third parties who were provided access to the premises by defendants T&S and Strange. Plaintiff did not authorize removal of that, if any. What do you know about this event?

A Well, March 17 of 2020, I was in Tulsa, Oklahoma. So I have no direct knowledge. We received an e-mail from our manager saying that two

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large moving trucks pulled up to the restaurant this morning, and they are moving everything out, tables, chairs, cutlery. As far as I can determine, everything not nailed down, quote/unquote.

Q And who would that memo have come from? SVN?

A Bill Bosley.

Q Okay.

A The Bosley Group. Our manager.

Q Is Bosley separate than SVN, right?

A Yes.

Q Bosley, is -- that's Atlantic's management, or is that something different?

A Bill Bosley Group. He owns his own management company.

Q Okay. And was he the property manager on site for you through the sale of the property in October of 2022?

A Yes. He was.

Q Has Bill ever presented you with a valuation of any of the equipment that was in the property before it was removed?

A No.

Q Has he presented you with a valuation of any of the remaining property that still -- that was

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there at the time that Gusto took over?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q Did Bosley provide you with a valuation of the equipment remaining in the premises as of the day that Gusto started its lease?

A No. Not to my knowledge.

MR. KUBEC: Same objection.

BY MR. MOGIL:

Q Going back to the bankruptcy proceeding through which BOK purchased title to this Sea Turtle property. Are you aware if there was a court-supervised process called assumption of -- or rejection of leases? Assumption or rejection of leases in that bankruptcy?

A No.

Q Meaning you're not aware, or there was none?

A I'm not aware of any bankruptcy documentation of proceedings.

Q Were you -- was the sale done in an actual live auction?

A I believe there was a -- I don't know.

Q Well, who supervised the acquisition process for BOK?

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A Eric Ernst.

Q And Eric Ernst is still with BOK, right?

A Yes.

Q Earlier in the deposition, I wrote down Bill Mosley sent a letter on behalf of BOK to another T&S Management of Mr. Strange. Is that Bill Bosley? Did I write it wrong?

A Bill Bosley.

Q Not Mosley?

A Right.

Q Do you have a personal opinion as to whether the lease between your predecessor, meaning the Wheeler entities and T&S Management and Mr. Strange, provides for damages where the new tenant pays a lower rent, or is that component of your affidavit based on legal advice?

A I don't have an opinion on that. The Gusto Ristorante -- that was the going rate at that time.

Q Okay. But your damages affidavit and the spreadsheet, a component of that damages is the differential between what Gusto is allegedly paying and what T&S would have been paying; is that correct?

A Yes.

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Q Okay. That is on that sheet and affidavit because you decided to put it there, or was that based on legal advice?

A It's there because I think it makes sense. We are giving Another Broken Egg credit for the rent that was replacing their spot.

Q Did you give Another Broken Egg credit for any of the property that was left in the premises that Gusto is using now?

MR. KUBEC: Objection to form.

BY MR. MOGIL:

Q It's a yes or a no. Was there any credit given in this damages evaluation for any property that --

A No.

Q Okay.

A I did not.

Q With respect to the default interest calculation that's a component of the damages, how was that derived, if you know?

A Part of the lease.

Q It's interest upon interest based on what principal?

MR. KUBEC: Objection to form.

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BY MR. MOGIL:

Q How do you calculate default interest under a lease -- under this lease?

A The amount of the total annual minimum rent is found in the lease.

Q Based on the amended affidavit that Mr. Kubec presented to me this afternoon, is it your testimony as of today that these damages accruing in favor of BOK and against T&S and Strange terminated when you sold the asset in October of 2022?

A Yes. We're no longer charging damages -- or seeking after damages after the sale.

MR. MOGIL: Okay. And I don't have any further questions at this time.

(Deposition was concluded at 4:35 p.m.)

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

I, Trisha G. Rarick, a Court Reporter and Notary Public of the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on _____, 2023, at Charleston, Charleston County, South Carolina.

_____
Trisha G. Rarick
Court Reporter

My commission expires:

January 9, 2029

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E R R A T A S H E E T

IN RE: BOKF REAL ESTATE HOLDING V. T&S MANAGEMENT, ET AL.

DEPOSITION OF: WILLIAM HILL

DATE TAKEN: 3-16-2023

Please read this original deposition with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE DEPOSITION ITSELF. Return the deposition to this office after it is signed. We would appreciate your prompt attention to this matter.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

page _____ line____ correction_____

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SIGNATURE PAGE:

SIGNED:_____
Signature of deponent

SUBSCRIBED and SWORN TO before me this

_____ day of _____, 20__

_____
NOTARY PUBLIC

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STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT**
BOKF REAL ESTATE HOLDING, LLC, **Plaintiff,** **vs.** **T & S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**CASE NO.: 2020-CP-07-00977** **AFFIDAVIT OF TURAN STRANGE FILED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENET**

Personally appeared before the undersigned notary public, came Turan Strange, who gave the within affidavit in opposition to Plaintiff's motion for summary judgment.

1. I am the principal owner of T & S Management, Inc. and stated as a guarantor under the lease document introduced by Plaintiff and asserted to be a contract between WD-1 Associates, LLC and T & S Management, Inc. dated on or about April 1, 2016, as amended.
2. I am personally familiar with the facts stated herein.
3. T & S Management, Inc. intended to operate a restaurant with the franchise trade name "Another Broken Egg" in the premises subject to the lease. When I entered into the lease construction for the shopping center at Sea Turtle Plaza on Hilton Head was not yet complete and the premises were not complete.
4. I entered into the lease based on the promotional literature presented by the owner, WD-1, LLC and based on representations by its management team regarding the timely development of the shopping center, the owner's planned efforts to bring foot traffic to the center, and the owner's promises regarding assistance with tenant improvements.
5. Approximately six months after we entered into the lease, Hurricane Matthew caused significant damage to Hilton Head Island, the center, and the tourism economy.
6. At some point thereafter, the owner's financial predicament caused a cessation of the construction activities at Sea Turtle, including, but not limited to a delay in the construction

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of the subject premises, and the appearance of a large mountain of dirt at the entrance to the center.

7. Due to delays on the owner side, and a second hurricane event in 2017, our opening was delayed until November, 2018, more one year behind schedule. Each amendment the landlord requested us to sign was due to the landlord's delay. Due to the delays we experienced in construction due to the landlord we encountered significantly higher expenses in the construction and opening phases, and also delayed receiving income. The delay caused the Hilton Head restaurant opening to conflict with our second location franchise commitment in Pooler, Georgia which opened in August, 2018.
8. A third hurricane evacuation event in 2018 further impacted the new business. In addition, the ongoing delays in construction and leasing at the shopping center impacted on anticipated foot traffic.
9. I would not have entered into the lease with WD-1 had I been informed of their financial difficulties and inability to timely develop and market the center. I have since learned, after the fact, that WD-1 filed for bankruptcy protection in late 2019 or early 2020 and that the center was sold through the bankruptcy process to the current Plaintiff. I have since learned through my counsel's discovery that the current Plaintiff sold the center to a third party in October 2022. I have had no direct dealings with the current Plaintiff either before, during or after the lease and occupancy.
10. I assert that WD-1's failure to timely development and fund the center and marketing plan was the significant factor in causing the business to falter.
11. By January, 2020, our cash flow and revenue at the Hilton Head location were insufficient to pay ongoing rent or meet debt service obligations incurred in connection with the construction and opening and franchise acquisition. I have been in the restaurant business for over 35 years, and this was and is my only recollection of having to close a restaurant this early in the business plan and lease.
12. In March of 2020, my counsel negotiated a sale of certain equipment in the business to an unrelated third party, the proceeds of which were paid to United Community Bank to pay down the SBA loan securing the two Another Broken Egg locations we operated.

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13. I/we left at the location the following material fixtures and equipment:

    $22648.00 walk in cooler

    $40500 for hood and installation

    $3450 for two compartment sinks

    $31650 for bar and cabinetry

    Upon my information and belief, all of these items, and other smaller items belonging to T & S Management were given to the new tenant in connection with the lease.

14. After leaving the location, I returned to check on matters from time to time in 2020 and 2021. Until I saw the liquor license application posted on the door in March, 2021, I did not see any signage or advertisement announcing that the Another Broken Egg space was available for lease.

15. As of the date hereof, United Community Bank is asserting that T & S Management, Inc. and I remain liable for in excess of $2 million in SBA loan obligations incurred in the acquisition and construction of the two Another Broken Egg locations.

Turan Strange

Turan Strange

Personally appeared and sworn to before me came Turan Strange who made this affidavit this 24 day of March, 2023.

Notary Public for Georgia

My commission expires: Sept. 27, 2026

ALEXIS MILLER
NOTARY PUBLIC
Chatham County
State of Georgia
My Comm. Expires Sept. 27, 2026

EXHIBIT G

ELECTRONICALLY FILED - 2023 Mar 27 10:01 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

BOKF REAL ESTATE HOLDING, LLC		
DAMAGE CALCULATION		
SUMMARY		
	Accrued Damages	Deficiency
	(10/1/19 through	*(7/1/21 through*
	6/31/21)	*10/11/22)*
Minimum Rent	$162,750.00	$53,155.51
Additonal Rent	$23,625.00	$0.00
Late Fees	$9,318.75	$0.00
Interest	$51,540.60	$4,203.73
Broker Commissions	$16,707.13	$0.00
	$263,941.48	$57,359.24
Total Amount	$321,300.73	

EXHIBIT G

ELECTRONICALLY FILED - 2023 Mar 27 10:01 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	10/11/2022								
Interest Rate	12%								
Due Date	Minimum Rent	New Tenant (Gusto) Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Days Past Due	Interest	Total Due (Current)
10/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1106	$3,388.45	$12,707.20
11/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1075	$3,293.48	$12,612.23
12/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1045	$3,201.57	$12,520.32
1/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1014	$3,106.59	$12,425.34
2/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	983	$3,011.62	$12,330.37
3/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	954	$2,922.77	$12,241.52
4/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	923	$2,827.79	$12,146.54
5/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	893	$2,735.88	$12,054.63
6/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	862	$2,640.91	$11,959.66
7/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	832	$2,549.00	$11,867.75
8/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	801	$2,454.02	$11,772.77
9/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	770	$2,359.05	$11,677.80
10/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	740	$2,267.14	$11,585.89
11/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	709	$2,172.16	$11,490.91
12/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	679	$2,080.25	$11,399.00
1/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	648	$1,985.28	$11,304.03
2/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	617	$1,890.30	$11,209.05
3/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	589	$1,804.52	$11,123.27
4/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	558	$1,709.54	$11,028.29
5/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	528	$1,617.63	$10,936.38
6/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	497	$1,522.66	$10,841.41
7/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		467	$518.88	$3,898.46
8/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		436	$484.44	$3,864.02
9/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		405	$449.99	$3,829.57
10/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		375	$416.66	$3,796.24
11/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		344	$382.22	$3,761.80
12/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		314	$348.88	$3,728.46
1/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		283	$314.44	$3,694.02
2/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		252	$280.00	$3,659.58
3/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		224	$248.89	$3,628.47
4/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		193	$206.12	$3,454.59

EXHIBIT G

BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	10/11/2022								
Interest Rate	12%								
Due Date	Minimum Rent	New Tenant (Gusto) Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Days Past Due	Interest	Total Due (Current)
5/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		163	$174.08	$3,422.55
6/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		132	$140.97	$3,389.44
7/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		102	$108.93	$3,357.40
8/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		71	$75.83	$3,324.30
9/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		40	$42.72	$3,291.19
10/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		10	$10.68	$3,259.15

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Gusto Ristorante				
Due Date	Minimum Rent	Additional Rent	Total Rent	Notes
3/1/2021	$0.00	$1,413.96	$0.00	Abated
4/1/2021	$0.00	$1,413.96	$0.00	Abated
5/1/2021	$0.00	$1,413.96	$0.00	Abated
6/1/2021	$0.00	$1,413.96	$0.00	Abated
7/1/2021	$4,370.42	$1,413.96	$5,784.38	
8/1/2021	$4,370.42	$1,413.96	$5,784.38	
9/1/2021	$4,370.42	$1,413.96	$5,784.38	
10/1/2021	$4,370.42	$1,413.96	$5,784.38	
11/1/2021	$4,370.42	$1,413.96	$5,784.38	
12/1/2021	$4,370.42	$1,413.96	$5,784.38	
1/1/2022	$4,370.42	$1,413.96	$5,784.38	
2/1/2022	$4,370.42	$1,413.96	$5,784.38	
3/1/2022	$4,370.42	$1,413.96	$5,784.38	
4/1/2022	$4,501.53	$1,413.96	$5,915.49	
5/1/2022	$4,501.53	$1,413.96	$5,915.49	
6/1/2022	$4,501.53	$1,413.96	$5,915.49	
7/1/2022	$4,501.53	$1,413.96	$5,915.49	
8/1/2022	$4,501.53	$1,413.96	$5,915.49	
9/1/2022	$4,501.53	$1,413.96	$5,915.49	
10/1/2022	$4,501.53	$1,413.96	$5,915.49	
11/1/2022	$4,501.53	$1,413.96	$5,915.49	

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BOKF REAL ESTATE HOLDING, LLC, Plaintiff, vs. T&S MANAGEMENT, INC. and TURAN STRANGE, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO.: 2020-CP-07-00977 **AFFIDAVIT OF EDWARD M. KUBEC**

I, Edward M. Kubec, having been being duly sworn, depose and state:

1. My name is Edward M. Kubec, I am more than twenty-one years of age and I am competent to make this affidavit and to testify to the matters stated herein. The statements contained herein are within my personal knowledge.

2. I am counsel of record in the above-referenced action for Plaintiff BOKF Real Estate Holding, LLC.

3. True and correct copies of excerpted pages from the transcript of testimony by Turan Strange taken by deposition in this matter on May 11, 2022 are attached hereto as Exhibit "H". These transcript pages supplement other deposition testimony of Turan Strange submitted to the Court in my prior Affidavit in connection with Plaintiff's Motion for Partial Summary Judgment.

FURTHER AFFIANT SAYEHT NAUGHT.

Edward M. Kubec

Sworn to and subscribed before me
this 27 day of March 2023

Maureen T. Coffey

Notary Public, State of South Carolina

My Commission Expires: 2-20-30

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ELECTRONICALLY FILED - 2023 Mar 27 10:01 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BOKF REAL ESTATE HOLDING, LLC, Plaintiff, vs. T&S MANAGEMENT, INC. and TURAN STRANGE, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO.: 2020-CP-07-00977 **SUPPLEMENTAL AFFIDAVIT OF WARREN E. HILL**

I, Warren E. Hill, having been being duly sworn, depose and state:

1. My name is Warren E. Hill, I am more than twenty-one years of age and I am competent to make this affidavit and to testify to the matters stated herein. The statements contained herein are within my personal knowledge.

2. I am a Senior Vice President and Manager of REO Special Assets/Facilities for BOKF Real Estate Holding, LLC (the "Plaintiff"). My duties and responsibilities for Plaintiff include oversight of company-owned commercial real estate and activities relating to the collection of delinquent tenant accounts. As such, I am very familiar with the circumstances surrounding this litigation and the Plaintiff's business relationship with Defendants T&S Management, Inc. and Turan Strange (collectively the "Defendants").

3. This case involves a lease ("Lease") between Defendant T&S Management, LLC ("T&S"), as tenant, and WD-I Associates, LLC ("WD-I"), as landlord, ("Lease") for commercial property located at Suite 301 of the Sea Turtle Marketplace Shopping Center ("Shopping Center") at 430 Fording Island Rd., Hilton Head Island, South Carolina ("Premises") pursuant to which T&S was to operate a restaurant known as *Another Broken Egg Cafe*. A true and correct copy of the Lease is attached to my prior Affidavit as **Exhibit "A"**.

4. Plaintiff acquired the Shopping Center and the Lease rights to the Premises from WD-I pursuant to the following documents and instruments:

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a. January 30, 2020 Bankruptcy Court (District of South Carolina (Case #19-02517-jw)) Order (i) Authorizing Assumption and Assignment of Leases and (ii) Approving Sale of Substantially all of the Assets, Free and Clear of Liens.
b. Real Estate Purchase Agreement by and between WD-1 and Plaintiff's assignee, BOKF, N.A., of January 27, 2020.
c. Limited Warranty Deed from WD-I to Plaintiff dated February 28, 2020 and recorded in the Beaufort County Register of Deeds at Book 3841 at Page 1330.
d. Assignment and Assumption of Leases between WD-I and Plaintiff dated February 28, 2020.

True and correct copies of these documents and instruments are attached hereto as Exhibit "**F**".

5. The subject Shopping Center, including the Premises, was sold by Plaintiff on October 11, 2022 (the "Sale Date").

6. This Supplemental Affidavit is made and submitted in connection with Plaintiff's Motion for Partial Summary Judgment to correct the damage calculation of Plaintiff's damages presented in my prior Affidavit, which inadvertently included damages for the period after the subject Shopping Center was sold.

7. The Accrued Damages owed to Plaintiff by the Defendants for payments due through July 1, 2021, the date the Premises was relet to a new tenant, are as follows:

a.	Minimum Rent through July 1, 2021:	$162,750.00
b.	Additional Rent through July 1, 2021:	$23,625.00
c.	Late Fees through July 1, 2021:	$9,318.75
d.	Interest on unpaid Minimum, Additional Rent and Late Fees through the Sale :	$51,540.60
e.	Broker Commissions	$16,707.13
f.	Total	$263,941.48

A true and correct copy of a summary detailing the Plaintiff's damages is attached hereto as **Exhibit "G"**.

8. The current Deficiency damages owed to Plaintiff by the Defendants for the amount of the Minimum Rent payments due from Plaintiff less the Minimum Rent payments received from the new tenant from July 1, 2021 through the Sale Date are as follows:

a.	Minimum Rent through the Sale Date	$53,155.51

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b. Interest on unpaid Minimum Rent through the Sale Date: $4,203.73

c. Total $57,359.24

9. The total amount of damages incurred by Plaintiff, exclusive of collection costs and attorneys' fees, is $321,300.73. Except for a security deposit of $8,875, there are no other credits or offsets due and owing, although I am informed that Defendants claim an offset for certain abandoned personal property and/or fixtures that remained on Premises after it was vacated by the Defendants.

10. Pursuant to Section 25(c) of the Lease, Defendants agreed to pay all collection costs incurred by the Plaintiff on account of the Defendants' default, including collections costs, court costs and reasonable attorneys' fees.

FURTHER AFFIANT SAYEHT NAUGHT.

Warren E. Hill

Sworn to and subscribed before me
this 16th day of March 2023

Notary Public, State of Oklahoma

My Commission Expires: 02-24-2026

Notary Public
State of Oklahoma
CYNTHIA S KERN
TULSA COUNTY
COMMISSION #10001519
Comm. Exp. 02-24-2026

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **BOKF REAL ESTATE HOLDING, LLC,** **Plaintiff,** **vs.** **T & S MANAGEMENT, INC. and TURAN STRANGE,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL DISTRICT** **CASE NO.: 2020-CP-07-00977** **AMENDED** **AFFIDAVIT OF TURAN STRANGE FILED IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENET**

Personally appeared before the undersigned notary public, came Turan Strange, who gave the within affidavit in opposition to Plaintiff's motion for summary judgment.

1. I am the principal owner of T & S Management, Inc. and stated as a guarantor under the lease document introduced by Plaintiff and asserted to be a contract between WD-1 Associates, LLC and T & S Management, Inc. dated on or about April 1, 2016, as amended.
2. I am personally familiar with the facts stated herein.
3. T & S Management, Inc. intended to operate a restaurant with the franchise trade name "Another Broken Egg" in the premises subject to the lease. When I entered into the lease construction for the shopping center at Sea Turtle Plaza on Hilton Head was not yet complete and the premises were not complete.
4. I entered into the lease based on the promotional literature presented by the owner, WD-1, LLC and based on representations by its management team regarding the timely development of the shopping center, the owner's planned efforts to bring foot traffic to the center, and the owner's promises regarding assistance with tenant improvements.
5. Approximately six months after we entered into the lease, Hurricane Matthew caused significant damage to Hilton Head Island, the center, and the tourism economy.
6. At some point thereafter, the owner's financial predicament caused a cessation of the construction activities at Sea Turtle, including, but not limited to a delay in the construction

of the subject premises, and the appearance of a large mountain of dirt at the entrance to the center.

7. Due to delays on the owner side, and a second hurricane event in 2017, our opening was delayed until November, 2018, more one year behind schedule. Each amendment the landlord requested us to sign was due to the landlord's delay. Due to the delays we experienced in construction due to the landlord we encountered significantly higher expenses in the construction and opening phases, and also delayed receiving income. The delay caused the Hilton Head restaurant opening to conflict with our second location franchise commitment in Pooler, Georgia which opened in August, 2018.
8. A third hurricane evacuation event in 2018 further impacted the new business. In addition, the ongoing delays in construction and leasing at the shopping center impacted on anticipated foot traffic.
9. I would not have entered into the lease with WD-1 had I been informed of their financial difficulties and inability to timely develop and market the center. I have since learned, after the fact, that WD-1 filed for bankruptcy protection in late 2019 or early 2020 and that the center was sold through the bankruptcy process to the current Plaintiff. I have since learned through my counsel's discovery that the current Plaintiff sold the center to a third party in October 2022. I have had no direct dealings with the current Plaintiff either before, during or after the lease and occupancy.
10. I assert that WD-1's failure to timely development and fund the center and marketing plan was the significant factor in causing the business to falter.
11. By January, 2020, our cash flow and revenue at the Hilton Head location were insufficient to pay ongoing rent or meet debt service obligations incurred in connection with the construction and opening and franchise acquisition. I have been in the restaurant business for over 35 years, and this was and is my only recollection of having to close a restaurant this early in the business plan and lease.
12. In March of 2020, my counsel negotiated a sale of certain equipment in the business to an unrelated third party, the proceeds of which were paid to United Community Bank to pay down the SBA loan securing the two Another Broken Egg locations we operated.

13. I/we left at the location the following material fixtures and equipment:

    $16.849 for cost of walk in cooler.

    $5800 labor cost to install/move walk in cooler.

    $31665 for kitchen hood and installation.

    $3450 for two compartment sinks.

    $4131 for stainless steel duct system.

    $28,095.00 cost for duct work.

    $12000 for installation of duct work.

    $23,974 to refabricate duct work for double wall

    $31650 for bar and cabinetry materials and installation.

    Upon my information and belief, all of these items, and other smaller items belonging to T & S Management were given to the new tenant in connection with the lease.

14. After leaving the location, I returned to check on matters from time to time in 2020 and 2021. Until I saw the liquor license application posted on the door in March, 2021, I did not see any signage or advertisement announcing that the Another Broken Egg space was available for lease.

15. As of the date hereof, United Community Bank is asserting that T & S Management, Inc. and I remain liable for in excess of $2 million in SBA loan obligations incurred in the acquisition and construction of the two Another Broken Egg locations.

Turan Strange
Turan Strange

Personally appeared and sworn to before me came Turan Strange who made this affidavit this 2 day of June 2023.

DANIELLE M. KONCAN
MY COMMISSION # HH 161917
EXPIRES: August 5, 2025
Bonded Thru Notary Public Underwriters

Danielle M. Koncan
Notary Public for Florida

My commission expires: August 5, 2025

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BOKF REAL ESTATE HOLDING, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2020-CP-07-00977

T & S MANAGEMENT, INC., and TURAN STRANGE,

Defendants.

----------/

The deposition of TURAN STRANGE, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Cathy M. Knoettner, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting, Inc., 1 Corpus Christi Place, Suite 107, Hilton Head Island, South Carolina, on the 11th day of May, 2022, commencing at or about the hour of 10:08 a.m.

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plan?
A Uh-huh (affirmative).
Q And it appears to be a two-page document?
A Yes.
Q Is that correct?
A Yes.
Q And then there are separate pages, one, two, three, behind that; what are those three separate pages?
A This is just kind of cost in terms of what our cost was running us as far as the operation of the total organization, both Pooler and Hilton Head combined.
MR. KUBEC: Let's identify this as Exhibit Number 10.
(Whereupon, Plaintiff's Exhibit Number 10 was marked for identification.)
BY MR. KUBEC:
Q I'm just going to go through some of your notes here and we should be done after that.
A Okay.
Q So what does the document reference?

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The Plan, what is this?
A Again, it's what I was referencing and talked to you about earlier in terms of, you know, we had a five-year plan in terms of our development agreement that we had. We were going to open the one restaurant, two years later the second restaurant, and then three years later the third restaurant, okay? And, of course, this talks about the purpose of doing that because we wanted to stabilize the staff, management training, create a positive cash flow, work out all the nuances of the business before opening the next one, okay? And that's where that timeline got messed up in terms of Hilton Head. If we had that, I would have had a chance to figure things out as far as the business, the operations of the business. We didn't have it so, all of a sudden, you're trying to learn everything running two businesses at one time as opposed to what we were trying to accomplish, okay? That's what this is, okay?
Q And this is something you prepared?
A Yes, this is something I prepared. I started looking at my notes in terms of dates

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and times and that kind of stuff. And then, again, it talks about the lease, the original lease agreement that I had. So now you asked me about the first one and the third one. So the original lease was April 11th that we had at Pooler, okay, and it was supposed to be ready come September 1st of 2016; that was the timeline that I was looking for. It wasn't there, okay? Of course, the landlord had financial issues which resulted in construction delays so this resulted in that first lease amendment that we ended signing off on, on January 6th of 2017 --
Q I'll stop you there. What did the first lease amendment say?
A It moved the timeline in terms of when they were going to have the space ready.
Q Okay. And you agreed to that?
A I agreed, okay, and I will unequivocally tell you I was -- I think I said i was -- what was the word I used, arrogant in thinking that I could pull this off, okay? But at that point I shortened my timeline, okay, and that's the thing I want to make sure you understand. When you shorten a timeline like

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that, you don't have that -- now, along with this, there's training that was required of employee, myself, my management staff, my general managers and my kitchen managers, so I had to send people off to Florida for training. Now, of course, they had six, seven weeks of training, okay, and then all of us was supposed to return; and what corporate would do, they would send a group of corporate employees who would work with you and train your staff. This is what we did for the first two weeks and, of course, you'd have a day where you did -- we did Boys & Girls Club and then we did the Animal Protection League where we donated the funds that they were able to gather. Guests came in and they ate for free. We asked them to give a donation to those two organizations, okay, so that's how we would open it.
Then after that first delay, okay, from the January time period, okay, we're sitting here thinking, you know, this thing got delayed here so maybe we need to start looking because we need to start looking for a second location because we didn't know when it was going to open, especially hearing that the landlord --

BOKF REAL ESTATE vs T & S MANAGEMENT
2020-CP-07-00977 - TURAN STRANGE

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and this isn't the group that has it now but this was the Wheeler group. The Wheeler group was suffering financially trying to get themselves together so we didn't know when it was going to open, okay? So what we did, we decided, okay, let's start looking for another location. We happened up on the Pooler location and, of course, when we happened up on that Pooler location, we were immediately able to kind of get in there. Well, of course, shortly thereafter, that's when we had the hurricanes; then we had to enter into that second lease amendment which was October 17th; we had that second one, okay? So that really forced us, okay, we really need to work on trying to get another location because we don't know when this place is going to open, okay?

And, of course, that's when we entered into another agreement on March 18th with Pooler, okay, and then they started their construction stuff. Well, of course, once the hurricane hit, or whatever, during that time period, then that's when, all of a sudden, we ended up with that third lease amendment which was January 29th of '18, okay, and they were

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saying then that they could give us the shell of the building in July. Well, by then, all of a sudden, I got Pooler that, all of a sudden, in April they started construction here and then they're saying, okay, you can have it in July. Well, if you do it in July and they start construction, you're going end up with a conflict with these two restaurants, trying to open literally at the same time. And, you know, you got all the costs that are mounting up, mounting up, mounting up, but in the meantime, what you're trying to also do, you got to have income coming in from these restaurants that will offset that. Well, of course, we're spending all the cash; and, of course, when it came to my reserves as far as what I had, my reserves are dwindling. So, of course, that third lease amendment, when we signed that one in January -- it was January of 2018 when we signed that one, okay? So, of course, they promised the shell then in July and then, of course, we ended up opening the restaurant in November. And I'll be candid; I was very frustrated at that particular point trying to open Pooler, and everything is going 100 percent

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over there as far as getting it open. I had three delays over here dealing with financial things with the landlord, as well as the fact I'm dealing with Wheeler. And he can't control that and we talked about that earlier. You know, God controlled that; it wasn't him that controlled that. So it just -- again, it just created that type of scenario where, all of a sudden, I'm pushed back into the corner where he's pushing me to accept it. So I accepted it, okay, thinking I could do it. I couldn't pull it off, okay? And, again, I had three personal friends that I borrowed money from. Is there a record of it, no. The only record that you have you'll see money that will show up into the account, and I had to borrow money just to try to stay afloat, okay? And that was right when we first opened up and I'm trying to figure out how to pay bills. So when you asked me, you know, why didn't you try to pay, I'm running around borrowing money from any and everybody. And I have personal friends, did they ask me for a note, no. They didn't even ask me for a note. Pay me when you can get it and that's what I did, so. So this is what happened and, listen,

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I did the best I could.

Q Understand. Other than what you've testified to today, is there any other reason why you believe the landlord is at fault?

A Again, I think a lot of that was -- a lot of those delays and things, no, I don't have anything other than the fact that all of the delays that took place and it just forced me to try to open two restaurants.

Q But then you signed three amendments, right?

A Yes, I did.

Q And that was of your own volition?

A Yes.

MR. KUBEC: No further questions.

MR. MOGIL: I have a couple questions.

CROSS-EXAMINATION

BY MR. MOGIL:

Q Following what Mr. Kubec just asked you, was there anything else the landlord did that you were blaming for the default? Going back to when you were negotiating the lease, did you negotiate the lease or did someone else do it for you?

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A Bob Chernett basically the lease for me.
Q Did you have any face-to-face meetings with any representatives from Wheeler before you signed the lease?
A No.
Q Did Bob?
A Over the telephone.
Q Did you have any telephone meetings with anybody from Wheeler before you signed the lease?
A No, not me personally; Bob.
Q Did Sheryll?
A No.
Q Were you presented any materials, documents or other information about what the center was going to be?
A Yes, I mean, they gave us documents as to what that -- because there was Steinmart that was down there, which was a draw, that was a traffic-generator; and there was supposed to be a shopping -- some type of grocery store-type place that was going to be down from -- a little bit down from where the PetSmart place was.
Q What is the source of this information

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when you said there was supposed to be?
A They gave us drawings of what it was supposed to be. So the traffic generators that were supposed to be in there, all of it kind of fell apart.
Q So the information about what was going on in the center came through Bob or --
A No, this came from the landlord. I mean, they would give you drawings.
Q Did you look at these drawings before you entered into the lease?
A Yes, we did.
Q And who's "we"?
A My wife and I and Bob; Bob looked at them as well.
Q Did the landlord, to your recollection, provide you with any studies or market data or foot traffic data or anything about the location?
A No, not at all.
Q After you entered the lease, before these amendments that Mr. Kubec has examined you on, were there any further discussions with the landlord, directly between you and somebody from the landlord, as to what was going on at the

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center and why the delays were happening?
A No.
Q Who communicated with you for your entity with the landlord from 2015 until the restaurant opened?
A My attorney.
Q So it was Mr. --
A Yes, Bob Chernett was communicating with me.
Q So you weren't talking directly, to your remembrance, from anybody, a property manager?
A No.
Q Was Sheryll?
A No.
MR. MOGIL: I don't have anything further.
MR. KUBEC: Just a follow-up on that.
REDIRECT EXAMINATION
BY MR. KUBEC:
Q Let's just look at the lease which is Exhibit Number 1, I believe. Before you signed this lease, did you review it?
A Yes.

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Q Was there anything you didn't understand in there?
A I understood.
Q So let's just look at paragraph 34 on page 12.
A Okay.
Q 4-A. The heading says Entire Agreement Modification; correct?
A Yes.
Q The first sentence says, This lease represents the final understanding and agreement between landlord and tenant and incorporates all negotiations between the parties. Do you understand that now?
A Yes.
Q Did you understand that at the time you signed this lease?
A Yes.
Q The second sentence says, Tenant hereby acknowledges and agrees that tenant has not relied on any representations, warranties, agreements and/or understandings, oral or written, except those that are set forth in this lease in entering into this lease. And tenant agrees that any and all negotiations, statements

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and representations made by landlord, agent or other party on behalf of the landlord have been merged into and are superceded by this lease; is that correct?

A Yes.

Q Did you understand that at the time -- do you understand that now?

A I understand that now.

Q Did you understand it at the time you read this lease?

A Probably not like I should have.

Q But you had an opportunity to discuss this with your attorney?

A Yes.

MR. KUBEC: I have no further questions.

(Whereupon, the witness expressly reserved the right to read and sign the deposition transcript.)

(Whereupon, the deposition of Turan Strange was concluded at approximately 12:55 p.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:
BEAUFORT COUNTY:

I, Cathy M. Knoettner, Certified Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that there upon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Cathy M. Knoettner

Cathy M. Knoettner, CCR
Notary Public
Beaufort, South Carolina

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ERRATA SHEET

CAPTION: BOKF REAL ESTATE HOLDING, LLC
-VS-
T & S MANAGEMENT, INC., and
TURAN STRANGE

CIVIL ACTION NUMBER
2020-CP-07-00977

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the above-captioned matter or the same has been read to me and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the COASTAL COURT REPORTING DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath. Signed on the _____ day of _____, 2021.

_____
TURAN STRANGE (Deponent)

SWORN TO and subscribed before me
THIS _____ day of _____, 2021

NOTARY PUBLIC: _____
My commission Expires: _____

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DEPOSITION ERRATA SHEET

Reason for change:_____
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SIGNATURE:_____DATE:_____
TURAN STRANGE

ELECTRONICALLY FILED - 2020 Apr 30 12:42 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BOKF REAL ESTATE HOLDING, LLC, Plaintiff, vs. T&S MANAGEMENT, INC. and TURAN STRANGE, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO.: 2020-CP-07_____ **SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint to Plaintiff's attorney, CoffeyKubec, LLP, at 1 Corpus Christi Place, Ste. 105, Hilton Head Island, South Carolina, 29928, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

COFFEYKUBEC, LLP

By: /s/ Edward M. Kubec
Edward M. Kubec, Esq. (S.C. Bar #76576)
1 Corpus Christi Place, Suite 105
Hilton Head Island, SC 29928
(843) 422-4488
ekubec@coffeykubec.com

Attorneys for Plaintiff

Hilton Head Island, South Carolina
April 30, 2020

ELECTRONICALLY FILED - 2020 Apr 30 12:42 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700977

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT BOKF REAL ESTATE HOLDING, LLC Plaintiff, vs. T&S MANAGEMENT, INC. and TURAN STRANGE Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO.: 2020-CP-07_____ **COMPLAINT**

The Plaintiff, BOKF Real Estate Holding, LLC, complaining of the Defendants above-named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff BOKF Real Estate Holding, LLC ("Plaintiff") is a limited liability company organized and existing pursuant to the laws of the State of Oklahoma.

2. Defendant T&S Management, Inc. ("T&S") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and it conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

3. Defendant Turan Strange ("Strange") is, upon information and belief, a citizen and resident of the State of Ohio.

4. This action involves the breach of a lease agreement for commercial property located in Beaufort County, South Carolina.

5. This Court has jurisdiction over the subject matter and the parties to this action and venue is proper in Beaufort County, South Carolina.

FACTUAL ALLEGATIONS

6. On or about April 11, 2016, Defendant T&S, as tenant, and WD-I Associates, LLC ("WD-I"), as landlord, entered into a Lease Agreement ("Initial Lease") for commercial property

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located at Suite 301 of the Sea Turtle Marketplace Shopping Center ("Shopping Center") at 430 Fording Island Rd., Hilton Head Island, South Carolina ("Premises") pursuant to which T&S was to operate a restaurant known as Another Broken Egg Café on the Premises. A true and correct copy of the Initial Lease is attached hereto as Exhibit "A".

7. The Initial Lease was amended by Defendant T&S and WD-I on January 6, 2017 ("First Lease Amendment Agreement"), on October 11, 2017 ("Second Lease Amendment Agreement") and on January 29, 2018 ("Third Lease Amendment Agreement"). The Initial Lease, First Lease Amendment Agreement, Second Lease Amendment Agreement and Third Lease Amendment Agreement are collectively referred to herein as the "Lease".

8. In order to further secure payment under the Lease, on April 11, 2016, Defendant Strange, for valuable consideration, made, executed and delivered to WD-I a written unconditional Guaranty ("Guaranty"), whereby the payment of all rents and other sums and the performance of the terms, covenants and conditions by the tenant under the Lease, and all renewals and modifications thereof, were guaranteed by Defendant Strange. A true and correct copy of the Guaranty is attached hereto as Exhibit "B".

9. Pursuant to the terms of the Lease, Defendant T&S agreed to lease the Premises for a period of ten (10) years, with an option to renew for three terms of five years each, and to pay the landlord or its assigns the Minimum Rent at the monthly and yearly rates set forth in Lease. Defendant T&S further agreed under the terms of the Lease to pay the landlord or its assigns Additional Rent which included a share of the real property taxes, insurance and other operating expenses incurred by the landlord to operate, maintain and manage the Shopping Center. The Minimum Rent and the Additional Rent are collectively referred to herein as the "Rent".

10. Pursuant to the terms of the Lease, Defendant T&S further agreed that any additions or improvements installed in the Premises were property of the landlord or its assigns and shall not be removed without landlord approval and that Defendant T&S would repair or reimburse the landlord or its assigns for any damage to the Premises caused by the removal of trade fixtures, additions or other improvements installed in the Premises. Defendant T&S further agreed Plaintiff would have a security interest in any property within the Premises upon an uncured default of the Lease and court order.

11. Pursuant to the terms of the Lease, the WD-I made the Premises available to the Defendant T&S and Defendant T&S took possession of the Premises.

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12. On May 7, 2019, WD-I filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the District of South Carolina (Case #19-02517-jw).

13. On or about November 5, 2018, the Another Broken Egg Café operating from the Premises was opened for business to the general public by Defendant T&S.

14. In accordance with an Order entered by the Bankruptcy Court on January 30, 2020 that authorized WD-I to assume and assign leases, on or about February 28, 2020, Plaintiff and WD-I entered into an Assignment and Assumption of Leases pursuant to which WD-I assigned and transferred all of its right, title and interest in and to the Lease, including any Rent payment and other consideration due under the Lease, to Plaintiff. A true and correct copy of the Assignment and Assumption of Leases in attached hereto as "Exhibit C".

15. Defendant T&S has failed to pay Rent and other charges under the terms of the Lease since September 1, 2019. Despite demands made by the WD-I and Plaintiff, Defendant T&S continues to fail and refuses to pay the amounts due under the Lease.

16. Upon information and belief, Defendant T&S shut down operations of Another Broken Egg Café and abandoned possession of the Premises on or about January 14, 2020.

17. On March 17, 2020, furniture, fixtures and equipment ("FF&E") were removed from the Premises by unknown persons, who, upon information and belief, were provided access to the Premises by Defendants T&S and Strange. Plaintiff did not authorize removal of the FF&E. Upon information and belief, removal of the FF&E by said persons was made under the direction, control and auspices of Defendants T&S and Strange.

18. The removal of FF&E from the Premises caused substantial physical damage to the Premises.

FIRST CAUSE OF ACTION

(Breach of Contract)

19. The Plaintiff realleges and reiterates each and every allegation set forth above as if set forth fully herein verbatim.

20. The Lease is a binding agreement between Plaintiff and Defendant T&S.

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21. Defendant T&S has breached the Lease by failing and refusing to pay Rent and other sums as they become due, by its abandonment of the Premises and by its unauthorized and improper removal of FF&E.

22. As a direct and proximate result of the Defendant T&S' breach of the Lease, the Plaintiff has suffered damages and is entitled to recover from the Defendant T&S all amounts due to the Plaintiff, along with the Plaintiff's costs of collection, attorneys' fees and costs of suit.

23. As a result of the breach of the Lease, Plaintiff is entitled to a judgment against Defendant T&S for all amounts owed and payable under the Lease, including without limitation:

a. An amount not less than $67,660.76, as of April 23, 2020, which includes $62,125.00 for past due Rent, $2,429.51 in accrued but unpaid interest and $3,106.25 in late fees.
b. An amount for future Rent due under the Lease accruing hereinafter.
c. An amount to repair physical damages to the Premises resulting from the unauthorized and improper removal of FF&E
d. Accruing interest and late fees on unpaid Rent.
e. Costs of collection, attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION

(Breach of Guaranty)

24. The Plaintiff realleges and reiterates each and every allegation set forth above as if set forth fully herein verbatim.

25. The Guaranty is a binding agreement between Plaintiff and Defendant Strange.

26. Defendant T&S is in default of the Lease and, pursuant to the terms of the Guaranty, the Plaintiff is entitled to collect payment of the sums due under the Lease from Defendant Strange.

27. Demand has been made on Defendant Strange to pay the sums due Plaintiff under the Lease and he has failed and refused to pay the same pursuant to the terms of the Guaranty.

28. Pursuant to the terms of the Guaranty, Defendant Strange consented to being joined in any action against Defendant T&S in connection with the Lease and he further agreed that any recovery and judgment may be had against him without first or simultaneously proceeding against Defendant T&S.

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29. As a direct and proximate result of the Defendant T&S' breach of the Lease and Defendant Strange's breach of the Guaranty, the Plaintiff has suffered damages and is entitled to recover against Defendant Strange all amounts due to the Plaintiff, along with the Plaintiff's costs of collection, attorneys' fees and costs of suit.

30. As a result of its breach of the Lease, Plaintiff is entitled to a judgment against Defendant Strange for all amounts owed and payable under the Guaranty, including without limitation:

a. An amount not less than $67,660.76, as of April 23, 2020, which includes $62,125.00 for past due Rent, $2,429.51 in accrued but unpaid interest and $3,106.25 in late fees.

b. An amount for future Rent due under the Lease accruing hereinafter.

c. An amount to repair physical damages to the Premises resulting from the unauthorized and improper removal of FF&E

d. Accruing interest and late fees on unpaid Rent.

e. Costs of collection, attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

(Conversion)

31. Each and every allegation set forth above is incorporated here.

32. As alleged herein, Defendants wrongfully misappropriated and gained control of the FF&E and converted it to their own use to the exclusion of Plaintiff and in contravention of Plaintiff's rights therein.

33. As a direct and proximate result of the Defendants' actions, the Plaintiff has been and continues to be damaged.

34. Plaintiff is informed and believes that it is entitled to judgment against the Defendants for actual, consequential and punitive damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Declaratory Relief)

35. Each and every allegation set forth above is incorporated here.

36. Based on the allegations herein, a justiciable controversy exists between the Plaintiff and Defendants concerning possessory and ownership rights in and to the FF&E.

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37. Pursuant to the South Carolina Uniform Declaratory Judgments Act, codified in S.C. Code Ann. Section 15-53-10, et seq., and Rule 57 of the South Carolina Rules of Civil Procedure, the Plaintiff seeks, and the Court should issue, a declaratory judgment holding that Plaintiff is entitled to possession of, and legal and beneficial ownership of, the FF&E to the extent and nature proven in this matter.

FIFTH CAUSE OF ACTION

(Injunctive Relief)

38. Each and every allegation set forth above is incorporated here.

39. Upon information and belief, Defendants or persons under their direction and control are in possession of the FF&E improperly and wrongfully removed from the Premises and Defendants or those third-parties may immediately sell the FF&E or remove it from the jurisdiction of this Court.

40. The Plaintiff is informed and believes that, unless the Court issues a temporary injunction and/or permanent injunction which enjoins the Defendants from taking any act to sell or otherwise transfer any possessory or ownership rights in the FF&E, the Defendants or those persons acting in concert with them will immediately seek to sell or transfer ownership of the FF&E or remove it from the jurisdiction of this Court, in whole or part.

41. The Plaintiff is informed and believes that it is without legal remedy to correct the wrongs herein described and that it will be irreparably and immediately harmed if the Defendants and those persons acting in concert with them are not immediately enjoined from selling or otherwise transferring ownership rights, in whole or part, of the FF&E to third-parties.

42. The Plaintiff is informed and believes that until such time as the Court permanently decides the issues set forth herein, no material harm will result to the Defendants if they are temporarily enjoined from taking any act to transfer possession and/or sell or otherwise transfer any ownership rights in the FF&E or from removing the FF&E from the jurisdiction of this Court.

43. As a direct result of the foregoing, Plaintiff is entitled to receive a temporary and permanent injunction for the relief sought herein.

WHEREFORE, Plaintiff prays for judgment in its favor and against the Defendants as follows:

1. An award of actual damages and consequential damages;
2. An award of punitive damages;

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3. An order of restitution by Defendants to Plaintiff of all converted property;
4. For the imposition of a constructive trust on the FF&E for the benefit of Plaintiff;
5. A declaration that Plaintiff is entitled to possession of and/or is the legal and equitable owner of the FF&E to the extent and nature according to proof in this matter;
6. An order enjoining Defendants, and any persons acting in concert with then or under their direction and control, from:
    a. Encumbering title to the FF&E;
    b. Selling, assigning, transferring or otherwise hypothecating any ownership rights to the FF&E;
    c. Making any attempt to sell, assign, transfer or otherwise hypothecate any ownership rights to the FF&E; and
    d. Removing the FF&E from the jurisdiction of this Court
7. An award of costs, attorneys' fees, prejudgment interest and post-judgment interest; and
8. For such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

COFFEYKUBEC, LLP

By: /s/ Edward M. Kubec
Edward M. Kubec, Esq. (S.C. Bar #76576)
1 Corpus Christi Place, Suite 105
Hilton Head Island, SC 29928
(843) 422-4488
ekubec@coffeykubec.com

Attorneys for Plaintiff

Hilton Head Island, South Carolina
April 30, 2020

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SHOPPING CENTER LEASE

THIS DEED OF LEASE (the "Lease"), made this 11 day of April, 2016 (the "Effective Date") by and between **WD-I Associates, LLC** (hereinafter called "Landlord"); and **T&S Management, Inc, or its successors and assigns, d/b/a Another Broken Egg Cafe** (hereinafter called "Tenant"); and **Wheeler Real Estate, LLC** (hereinafter called "Agent").

WITNESSETH:

1. **Basic Lease Provisions and Definitions**. The following capitalized terms whenever used in this Lease shall have the meanings set forth in this Section 1:

(a) Landlord's Mailing Address: **WD-I Associates, LLC**
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

(b) Tenant's Mailing Address: **T & S Management Inc.**
812 Huron Rd
Cleveland, Ohio 44115

(c) Agent's Mailing Address: **Wheeler Real Estate, LLC**
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

(d) Rental Payment Address: **WD-I Associates, LLC**
2529 Virginia Beach Boulevard
Virginia Beach, VA 23452

(e) Shopping Center: **Sea Turtle Marketplace**, located in the Town of **Hilton Head Island, South Carolina**, as generally shown on the site plan attached as Exhibit "A" to this Lease.

(f) Premises: Store Number _____ in the Shopping Center, such Premises consisting of approximately **3,000** leasable square feet. The Premises is outlined in red or otherwise designated on Exhibit "A". The exact square footage of the building shall be determined by Boma standards and documented with an architect's certificate provided at Landlord expense. Boma is hereby defined as measurement to the outside finished surface of exterior walls, to the center of all partition walls, from the outside of the rear or back wall to the storefront glass or entrance way. The common areas and any storage rooms, electrical rooms, meter rooms etc. shall not be included in the said measurement. If either party disputes the determination of the architect, either party may, at its sole expense, retain a new licensed architect to measure the Premises. In the event there is a discrepancy in the two measurements, the two architects will meet to resolve the discrepancy. If the two architects cannot agree on the measurement, then Landlord and Tenant shall select a third architect to measure the space and the decision of this third architect shall be final and binding upon the parties and Landlord and Tenant shall execute an amendment to the Lease reflecting the actual gross leasable area of the Premises, adjusting the Minimum Rent and Tenant's Fractional Share. Landlord and Tenant shall pay one-half (1/2) of the cost of the third architect.

(g) Term; Renewals: **Ten (10) years**, (as defined in Section 3) subject to renewal for **three (3) terms of five (5) years each** subject to the terms of Section 3(e).

(h) Permitted Use: **The Premises shall be used primarily for the operation of a restaurant offering breakfast and lunch services. Tenant may sell alcoholic beverages for on-site consumption. No other use shall be permitted without Landlord's prior written consent.**

(i) Trade Name: **Another Broken Egg Café**

(j) Minimum Rent: Minimum Rent shall be payable on the basis of the annual Minimum Rent set forth below for the Lease Year in question, with the monthly payments of Minimum Rent also to be as set forth below:

LEASE YEAR	ANNUAL MINIMUM RENT - TOTAL	MINIMUM RENT - PER SQUARE FOOT	MONTHLY MINIMUM RENT
Year 1	$93,000.00	$31.00	$7,750.00

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LEASE YEAR	ANNUAL MINIMUM RENT - TOTAL	MINIMUM RENT - PER SQUARE FOOT	MONTHLY MINIMUM RENT
Year 2	$93,000.00	$31.00	$7,750.00
Year 3	$93,000.00	$31.00	$7,750.00
Year 4	$93,000.00	$31.00	$7,750.00
Year 5	$93,000.00	$31.00	$7,750.00
Year 6	$102,300.00	$34.10	$8,525.00
Year 7	$102,300.00	$34.10	$8,525.00
Year 8	$102,300.00	$34.10	$8,525.00
Year 9	$102,300.00	$34.10	$8,525.00
Year 10	$102,300.00	$34.10	$8,525.00

OPTION PERIOD ONE:	ANNUAL MINIMUM RENT - TOTAL	MINIMUM RENT - PER SQUARE FOOT	MONTHLY MINIMUM RENT
Year 11	$112,530.00	$37.51	$9,377.50
Year 12	$112,530.00	$37.51	$9,377.50
Year 13	$112,530.00	$37.51	$9,377.50
Year 14	$112,530.00	$37.51	$9,377.50
Year 15	$112,530.00	$37.51	$9,377.50

OPTION PERIOD TWO:	ANNUAL MINIMUM RENT - TOTAL	MINIMUM RENT - PER SQUARE FOOT	MONTHLY MINIMUM RENT
Year 16	$123,780.00	$41.26	$10,315.00
Year 17	$123,780.00	$41.26	$10,315.00
Year 18	$123,780.00	$41.26	$10,315.00
Year 19	$123,780.00	$41.26	$10,315.00
Year 20	$123,780.00	$41.26	$10,315.00

OPTION PERIOD THREE:	ANNUAL MINIMUM RENT - TOTAL	MINIMUM RENT - PER SQUARE FOOT	MONTHLY MINIMUM RENT
Year 21	$136,170.00	$45.39	$11,347.50
Year 22	$136,170.00	$45.39	$11,347.50
Year 23	$136,170.00	$45.39	$11,347.50
Year 24	$136,170.00	$45.39	$11,347.50
Year 25	$136,170.00	$45.39	$11,347.50

(k) Percentage Rent: **INTENTIONALLY DELETED.**

(l) Estimated Initial Tenant Charges: **$13,500.00 per year, $1,125.00 per month for the first full Lease year,** subject to reconciliation and adjustment in accordance with Section 1(f) and 10. **Tenant acknowledges that the Estimated Initial Tenant Charges are an estimate and Landlord shall have the right to adjust the Estimated Initial Tenant Charges as provided in Section 10.**

(m) Security Deposit: **$8,875.00**

(n) Guarantor: **Turan Strange.**

(o) Guarantor's Mailing Address: **Turan Strange**
812 Huron Rd
Suite 250
Cleveland, Ohio 44115

(p) Confidentiality Clause: It is understood and agreed that the term and conditions of this Lease between the Landlord and the Tenant shall remain confidential. Tenant, its principals, employees and representatives shall not discuss the terms, rates, or conditions with any third party unless authorized by or requested to do so

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by the Landlord. Notwithstanding the Tenant may disclose the terms to his professionals working for it including but not limited to his attorney, accountant and business consultants. Any breach of confidentiality by the Tenant shall not be deemed a default, notwithstanding any damages incurred by the Landlord as a result of such breach, if any, will be limited to actual damages incurred by Landlord. As a result of such breach.

2. Premises. Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, subject to the terms and conditions of this Lease.

3. Term.

(a) **The Term shall commence on the date (the "Commencement Date") that Landlord delivers possession of the Premises to Tenant with Landlord's Work (as defined on Exhibit "G-2") substantially complete, on or around September 1, 2016. The "Rent Commencement Date" shall be one hundred twenty (120) days after the later of: (i) the Commencement Date, (ii) the date Landlord approves Tenants construction plans provided Tenant diligently pursues to complete such plans or (iii) the date Tenant receives all necessary permits and approvals for the construction of Tenant improvements to the Premises (collectively "Approvals"). The Term shall end on the last day of the one hundred twentieth (120th) full calendar months after the Rent Commencement Date (if the Rent Commencement Date is the first day of a calendar month then such month shall be counted as a full calendar month for the purposes of determining the Term).**

Tenant shall, at Tenant's own expense and as soon as possible, apply for all Approvals within thirty (30) days after the Tenant's interior architectural plans are completed and approved by the Landlord, and thereafter Tenant shall diligently pursue obtaining the Approvals. If Tenant otherwise fails to diligently pursue the Approvals, the definition of Rent Commencement Date hereinabove shall be modified so that the same shall be determined without regard to clause (ii) and (iii) above. The term "diligently pursue" shall include payment of all fees and charges, providing all requested information and data to governmental agencies in timely manner and otherwise cooperating with the governmental agencies in an expeditious manner.

(b) If Tenant is unable to obtain possession of the Premises at the beginning of the Term hereof due to any act or condition such as Landlord construction delays , Landlord shall not be liable to Tenant or any other person, firm or corporation for any loss or damage resulting therefrom, and this Lease shall not be affected thereby in any way, but the Rent payable hereunder shall be proportionately abated until the Premises are available for occupancy by Tenant. **If the Commencement Date does not occur on or before March 31, 2017, Landlord shall not be in default but Tenant and Landlord shall each have the option to terminate this Lease by giving the other party thirty (30) days written notice at any time prior to the occurrence of the Commencement Date. Landlord shall return all prepaid rents and security deposits to Tenant within thirty (30) days of either party submitting a termination notice under this Section 3(b). Alternatively, Tenant may elect at its option not to Terminate the Lease and for each day past March 31, 2017 accrue one (1) days of Minimum Rent free as liquidated damages will be accrued by the Tenant, by delaying the Rent Commencement Date by the number of days accrued, calculated in accordance with this paragraph.**

(c) Tenant agrees, not later than ten (10) business days following the request of Landlord, to execute and deliver to Landlord, without charge, a written declaration, in a form similar to Exhibit "B": (i) ratifying this Lease; (ii) confirming the commencement and expiration dates of this Lease; (iii) certifying that Tenant is in occupancy of the Premises and the date Tenant commenced operating Tenant's business therein; and (iv) that all conditions under this Lease to be performed by Landlord have been satisfied, except such as shall be stated.

(d) Except in calculating Landlord's damages for any Tenant default or where the context clearly requires otherwise, the words "Term" or "term", whenever used in this Lease with reference to the term hereof, shall be construed to include any renewal term, as well as the original term. The words "Lease Year" as used in this Lease shall be construed to mean each twelve (12) month period commencing on (i) the Commencement Date if such date is the first day of a month, or (ii) the first day of the month following the Commencement Date if such date is not the first day of a month; provided, however, that the first Lease Year shall start on the Commencement Date and include the Partial First Month.

(e) Provided that Tenant is in occupancy of the Premises and open for business and is not then in default under this Lease, Tenant shall have the option to renew this Lease for the additional term or terms specified in Section 1(g) by giving written notice to Landlord of the exercise of each such renewal option **no later than 180 days** immediately preceding the renewal term for which the option is to be exercised. All the terms and conditions of this Lease shall remain in effect during any renewal term, except that Base Rent and the Annual Sales Base, if any, shall be increased to the amounts set forth in this Lease.

4. Condition of the Demised Premises. It is understood and agreed to by Landlord, Tenant and Agent that Tenant is accepting the Premises **in the condition outlined on the attached Exhibit "G-2"**. If Tenant desires to make any improvements to the Premises, the improvements shall be done at Tenant's sole cost and expense, subject to the provisions of Section 16. Tenant shall not undertake any improvements to the Premises without prior written permission from the Landlord and all approved improvements shall be completed by a licensed, insured and pre-approved contractor with all necessary permits and inspections performed. Subject to other provisions contained herein.

5. Use. Tenant agrees that the Premises shall be used solely for the Permitted Use and for no other purpose. Tenant covenants that at all times during the term hereof Tenant will actively conduct such a business in the Premises, keep the Premises amply stocked and keep the Premises open for business during customary business hours (not less than seven (7) hours per day, Monday through Saturday, and not less than five (5) hours per day on Sunday) of the Shopping Center as established or as may be amended by Landlord. Tenant agrees to operate its business under the Trade Name and no other name without the prior written consent of Landlord. Tenant shall not use the Premises for any illegal, immoral or unethical uses and shall comply with all applicable local, state and

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federal ordinances and regulations governing such use. Notwithstanding the Tenant may close at its option on certain national holidays including Christmas and Thanksgiving.

6. **Rent.**

(a) From and after the Rent Commencement Date, Tenant covenants to pay Minimum Rent (as defined in Section 1 J) to Landlord, without notice or demand, and without deduction or offset. Additional Rent (as defined below) shall commence on the Rent Commencement Date. Rent (Minimum Rent & Additional Rent) shall be payable on the first day of each month, in advance, in equal monthly installments. Rent for any partial months of the Term shall be prorated on a daily basis. The term "Rent" shall include Minimum Rent, Percentage-Rent, Tenant Charges (as defined in Section 10) and any and all other charges and amounts (collectively "Additional Rent") due to Landlord under this Lease. All payments of Minimum Rent and all other Rent owed to Landlord under this Lease shall be paid to Landlord at the Rental Payment Address, or to such other party and/or at such other address as Landlord may from time to time designate in writing. Landlord reserves the right to report all delinquent accounts to any major credit report agency.

(b) Tenant shall deposit the Security Deposit with Landlord upon signing this Lease as security for Tenant's full and faithful performance of all of Tenant's obligations under this Lease. Landlord shall not owe any interest on the Security Deposit to Tenant, and Landlord may commingle the Security Deposit with Landlord's other funds, unless otherwise required by law in each instance. The Security Deposit will be returned to Tenant after the expiration of this Lease, provided that Tenant has fulfilled all of its obligations under this Lease. Landlord shall be entitled to use the Security Deposit for curing any defaults under this Lease by Tenant. Tenant agrees to maintain the Security Deposit at all times at the full amount set forth in Section 1(m). Furthermore, upon Landlord's sale of the Shopping Center and the assignment or delivery of the Security Deposit to the purchaser, Landlord shall not have any further liability to Tenant for the return of the Security Deposit. Tenant shall deposit the first months' Rent with Landlord upon construction being commenced upon the Premises. The first month's Rent will be applied to the Minimum Rent due on the Rent Commencement Date.

(c) Tenant shall deliver to Landlord, within ten (10) days of Landlord's written request, a statement, signed and certified by Tenant (if Tenant is a corporation or partnership, signed and certified by one of Tenant's officers or general partners, as appropriate) to be true and correct, showing the Gross Sales made during the preceding Lease Year, and if reasonably requested by Landlord, a confirmatory (or amended, if necessary) statement certified by a Certified Public Accountant. In no event shall Landlord be construed or held to be a partner or an associate of Tenant in the conduct of its business, nor shall Landlord be liable for any debts incurred by Tenant in the conduct of its business. In addition to any and all other remedies provided in this Lease and/or by law and/or by equity, Tenant agrees to pay Landlord a flat sum of One Hundred Dollars ($100.00) each and every time Tenant does not furnish Landlord with Tenant's monthly or annual statement of Gross Sales as required and within the time specified in this Section 6 (c). Landlord has the right, at its expense, to independently audit Tenant's Gross Sales. Should Landlord find it necessary to do so, Tenant will fully cooperate with Landlord and its agents in connection with its audit, including, but not limited to providing Landlord with access to Tenant's files and records.

(d) The term "Gross Sales" means the selling price of all merchandise sold or delivered at, in, on or from the Premises (including without limitation sales by means of any mechanical or vending device) and the charges for all services of any sort performed in, at or from any part of the Premises or arising out of the use of the Premises. Gross Sales shall include all sales and charges for cash, credit or otherwise, regardless of collection of payment. A sale shall be deemed to be made in the Premises if an order is secured or received in the Premises, whether or not such order is filled in the Premises or elsewhere, or if orders are received or filled at or from the Premises. All monies or other things of value not specifically excluded from Gross Sales under this Lease shall be deemed included therein. However, Gross Sales shall specifically exclude (i) returns and refunds made by Tenant relating to transactions previously included within Gross Sales; and (ii) amounts collected and paid by Tenant to any governmental authority for any sales or excise tax. The full amount of all "layaway", C.O.D. sales and the like shall be taken into Gross Sales when originally made.

(e) Tenant recognizes and acknowledges that if Rent payments are not received when due, Landlord will suffer damages and additional expenses thereby, and Tenant therefore agrees that a late charge equal to five percent (5%) of the late Rent (including Minimum Rent, Percentage-Rent and Additional Rent) may be assessed by Landlord as additional rent if Landlord has not received any monthly installment of Rent due pursuant to this Lease within five (5) days after its due date. In addition, Tenant agrees to pay interest at the rate (the "Default Rate") of twelve percent (12%) per annum, payable monthly or One Hundred and 00/100 Dollars ($100.00), whichever is greater, on all Rent (including Minimum Rent, Percentage-Rent and Additional Rent) from the time said Rent accrues if not paid promptly when due, Landlord expressly reserving all other rights and remedies provided herein or by law with respect thereto. Further, on any checks returned to Landlord for any reason whatsoever, Tenant shall be charged a return fee equal to $50 for each occurrence.

7. **Shopping Center Operating Costs**. Tenant shall pay to Landlord as Additional Rent, in accordance with Section 10 below, a share of the Shopping Center "Operating Costs." "Operating Costs" shall mean the total costs and expenses incurred by Landlord in operating, maintaining, repairing, insuring and managing the Shopping Center and Common Areas, including without limitation the cost and expense of landscaping, gardening and planting; decorations; paving, patching, painting and line painting of all parking areas, drives and roadways; Common Area maintenance and cleaning, sanitary control, snow removal and trash, garbage and other refuse removal, including costs related to common trash dumpsters and compactors; repair, maintenance, and painting of sidewalks, pavements, light fixtures, signs, roofs, roof skins and downspouts; repair, maintenance and painting of buildings; pest control; general repairs; fire protection (including sprinkler system repairs and maintenance for non-exclusive tenant use) and security services (if provided by Landlord, it being agreed that Landlord has no duty to provide such services); maintenance, repair of utility systems serving the Shopping Center (whether or not owned by Landlord); costs of lighting and other utilities serving the Common Areas; storm water fees; maintenance and repair of the Common Areas, or the rental charges for such machinery and equipment; the cost of personnel (including customary employee benefits) to implement all of the foregoing, including maintenance, security and traffic personnel; and administrative and overhead costs equal to fifteen percent (15%) of the foregoing Operating Costs as described in this provision (except appropriate reserves). Landlord may cause any and all of the aforesaid services relating to Operating Costs to be provided by an independent contractor or contractors. Notwithstanding, Tenant shall not pay for any capital improvements or any costs associated therewith for the shopping center.

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Notwithstanding anything to the contrary contained in the Lease, operating expenses shall not include:

(i) The cost of any work or services provided to any tenant which is paid for by said tenant and the cost of renovating space for any tenants;

(ii) Expenses for repairs or other work occasioned by any casualty from which Landlord receives funds from insurance (except that a commercially reasonable deductible may be included in operating expenses);

(iii) Depreciation of the Building any real and or personal property of Landlord;

(iv) Interest on debt or amortization payments on any mortgage or mortgages;

(v) Leasing commissions and other expenses paid to secure new tenants or retain existing tenants;

(vi) Intentionally deleted;

(vii) Expenses incurred by Landlord to resolve disputes, enforce or negotiate lease terms with prospective or existing tenants or in connection with any financing, sale or syndication of the Shopping Center;

(viii) Interest, principal, points and fees, amortization or other costs associated with any debt and rent payable under any lease to which this Lease is subject and all costs and expenses associated with any such debt or lease and any ground lease rent, irrespective of whether this Lease is subject or subordinate thereto;

(ix) Intentionally deleted;

(x) Costs of alterations, capital improvements, equipment replacement and other items which under GAAP, are properly classified as capital expenditures unless such costs reduce operating expenses and are amortized over the useful life (determined in accordance with applicable Internal Revenue Service regulations) of the alteration, capital improvement, equipment replacement of other item and provided that the annual amortization amount does not exceed the reduction in operating expenses;

(xi) Expenses for the replacement of any item covered under warranty;

(xii) Costs to correct any penalty or fine incurred by Landlord due to Landlord's violation of any federal, state or local law or regulation and any interest or penalties due for late payment by Landlord or any of the operating expenses;

(xiii) Expenses for any item or service which Tenant pays directly to a third party or separately reimburses Landlord and expenses incurred by Landlord to the extent the same are reimbursable or reimbursed from any other tenants, occupants of the property, or third parties;

(xiv) Expenses for any item or service not provided to Tenant but exclusively to certain other tenants in the Shopping Center

(xv) A property management fee for the Shopping Center in excess of five percent (5%) of the gross rental income of the Shopping Center (exclusive of capital expenditures, mark-ups, separate reimbursements by tenants and ancillary income from other services [e.g., income from antennae or satellite dishes, paid parking, security deposits and interest thereon, etc.]), but including electricity reimbursement and reimbursement for increases in operating expenses and real estate taxes and applicable to the Building for the relevant calendar year;

(xvi) (salaries of (A) employees above the grade of building superintendent or building manager, and (B) employees whose time is not spent directly and solely in the operation of the Shopping Center;

(xvii) Landlord's general corporate overhead and administrative expenses in excess of the 15% administrative and overhead costs set forth in this Section 7;

(xviii) Intentionally deleted;

(xix) Reserves;

(xx) Fees paid to affiliate of Landlord to the extent that such fees exceed the customary amount charges for the service provided;

(xxi) the operating expenses incurred by Landlord relative to retail stores, hotels or any specialty service in the Shopping Center

(xxii) HVAC modification and replacement obligations necessary to comply with any Environmental Protection Agency requirements including ASHRAW Standards for the following: maintenance, fresh air and HCFC/CFC, which are in effect as of the date of this Lease;

(xxiii) Intentionally deleted;

(xxiv) Costs associated with the investigation, testing, remediation or removal of substances considered to be detrimental to the environment or the health of occupants of the Building; and

(xxv) costs or expenses incurred by the Landlord in connection with its plans or efforts to obtain or renew any form of certification for energy efficiency or environmental responsibility from organizations or governmental agencies such as the United States Green Building Council's Leadership in Energy

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and Environmental Design (LEED) certification, Energy Star, Green Globes, etc., including, without limitation, consulting fees, legal fees, architectural, design and/or engineering fees and submission fees.

Tenant's share of Operating Costs shall be computed by multiplying the total amount of the Operating Costs by a fraction ("Tenant's Fractional Share"), the numerator of which shall be the total number of square feet of leasable area in the Premises, and the denominator of which shall be the total leasable square footage of all leasable buildings in the Shopping Center~~, excluding any space leased to tenants occupying more than 10,000 square feet (the "Major Tenants"); provided that before calculation of Tenant's share of Operating Costs, Landlord shall deduct any contributions by Major Tenants for the expense in question.~~ Tenant's share of Operating Costs shall be paid in accordance with Section 10 below. ~~The average total square footage of all leased and occupied buildings in the Shopping Center shall be based upon the average square footage of all leased and occupied buildings in the Shopping Center as of the first day of each calendar month over the course of the prior twelve (12) months, excluding any space leased to Major Tenants.~~ **Commencing with the second full calendar year of the Term, Tenant's share of "Controllable Operating Costs" shall not increase by more than four percent (4%) of the Controllable Operating Costs for the preceding calendar year on a non-cumulative basis. In another words, Controllable Operating costs for the second year of the Term and shall not exceed 104% of the controllable expenses for the first comparison year. For the purposes of this Section, "Controllable Operating Costs" means all Operating Costs other than utility costs, refuse disposal costs, and cleanup costs incurred as the result of weather events such as snow, wind, hurricane, tropical storms, tropical depressions, Nor'easters, hail, ice lightning, tornado, earthquake, or floods, included but not limited to snow removal, ice or snow treatment, or debris clean-up, providing it is not an insurable event for which Landlord has filed or a claim and received funds from insurance. Tenant acknowledges that the 4% cap set forth hereunder shall not include Real Estate Taxes or Insurance.**

8. **Taxes**. Tenant shall pay to Landlord as Additional Rent, in accordance with Section 10 below, a share of Real Estate Taxes for the parcel upon which the Premises is situated, which shall be computed by multiplying the total amount of Real Estate Taxes by Tenant's Fractional Share. The term "Real Estate Taxes" shall mean all taxes and assessments (special or otherwise) levied or assessed directly or indirectly against the Shopping Center (other than Excluded Parcels that are separately assessed for real estate tax purposes) and other taxes arising out of the use and/or occupancy of the Shopping Center imposed by any taxing authority having jurisdiction over the Shopping Center, and shall include expenses and reasonable attorney's fees incurred by Landlord in contesting the validity or amount of any such taxes or assessments or in seeking a rebate of taxes or assessments. Tenant shall also pay promptly when due or make reimbursement to Landlord for all taxes imposed upon Tenant's rent, lease and business operation, including without limitation, all sales taxes, value added taxes, documentary taxes, stamp taxes and other taxes assessed upon the consideration to be received by Landlord for this Lease, or upon the personal property of Tenant. **Tenant acknowledges that Tenant's pro rata share of Real Estate Taxes, as defined in this Section 8, shall not be included in the four percent (4%) cap outlined in Section 7.**

9. **Landlord's Insurance**. Landlord agrees to maintain fire and extended coverage insurance on the Premises and Shopping Center in accordance with the requirements of Section 19 below. Tenant shall pay to Landlord as Additional Rent, in accordance with Section 10 below, a share of the Insurance Cost, which shall be computed by multiplying the total amount of Insurance Cost by Tenant's Fractional Share plus an administrative and overhead cost equal to ten percent (10%) of the foregoing Insurance Cost as described in this provision. The term "Insurance Cost" shall mean all insurance expenses paid by Landlord to include insurance deductibles. **Tenant acknowledges that Tenant's pro rata share of Insurance, as defined in this Section 9, shall not be included in the four percent (4%) cap outlined in Section 7.**

10. **Payment of Tenant Charges**. Landlord shall estimate the amounts that Tenant will owe for Operating Costs, Insurance Costs, and Real Estate Taxes (collectively the "Tenant Charges") on the basis of periods of twelve (12) consecutive months as designated by Landlord, and Tenant shall pay one-twelfth of such estimate of Tenant Charges on a monthly basis in advance together with payment of Minimum Rent. As of the Commencement Date, the estimated Tenant Charges shall be equal to the Estimated "Initial Tenant Charges" amount set forth in Section 1(l) above. Landlord may revise the estimate of Tenant Charges from time to time and change Tenant's monthly estimated payment of Tenant Charges accordingly. Landlord shall furnish Tenant annually (within one hundred twenty (120) days after the end of the applicable twelve (12) month period) with a statement of the actual Tenant Charges for the period in question, and there shall be an adjustment between Landlord and Tenant of Tenant Charges owed by Tenant for such period. Any amount owed to Landlord for an underpayment of the actual Tenant Charges shall be made within thirty (30) days after receipt by Tenant of the billing therefor. Any overpayment shall be credited against Tenant's next payment of Tenant Charges. If Landlord shall not furnish Tenant with a statement of the actual Operating Costs and Real Estate Taxes for a twelve (12) month period in question within two (2) years after the end of the applicable twelve (12) month period, the actual Tenant's Fractional Share of Operating Costs and Real Estate Taxes actually paid, if any, by Tenant shall be binding and conclusive on the Landlord and Landlord shall have no right to make further claims with respect to Operating Costs and Real Estate Taxes for such twelve (12) month period whatsoever.

11. **Trade Fixtures**. Tenant agrees, at its own cost and expense, to fixture the Premises with new trade fixtures. All trade fixtures installed in the Premises by Tenant shall remain Tenant's property; provided, Tenant agrees to repair (or to reimburse Landlord for the cost of repairing) any damage to the Premises occasioned by the installation or removal of said trade fixtures, except for damages occasioned by normal wear and tear. Equipment and fixtures that are an integral part of the operation of the Premises as a real estate unit generally, such as HVAC, plumbing, electrical and illumination equipment, or that are permanently installed in the Premises (such as built-in cabinets and/or wall-to-wall carpeting and/or window coverings) shall not be considered trade fixtures.

12. **Common Areas**. Tenant, and its customers, employees and invitees shall have the right to use and enjoy, in common with Landlord and other tenants and their customers, employees, and invitees, the parking areas, approaches, entrances, exits and roadways and all other areas of the Shopping Center, as they exist from time to time, intended for use by Landlord, tenants and their customers, employees and invitees (hereinafter collectively called the "Common Areas") which Landlord agrees to provide for the reasonable operation of the Shopping Center. It is expressly understood that the parking areas which are a part of the Common Areas are intended primarily for the use by customers of the stores in the Shopping Center, and Tenant accordingly agrees that its employees will only park in the portions of the Common Areas designated by Landlord for employee parking.

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In order to assist Landlord in the enforcement of the provisions of this paragraph, Tenant agrees that within ten (10) days after being requested so to do, Tenant will furnish Landlord a written statement containing the names of all employees, agents and representatives employed by Tenant in or about the Premises, and the license numbers of all vehicles owned or used by Tenant or said employees, agents or representatives. Landlord shall be entitled, after providing one written warning to the employee and tenant to tow away vehicles owned by Tenant or its employees which are parked in the Common Areas outside of the areas designated for employee parking and Tenant shall promptly pay the cost thereof. Landlord will maintain the Common Areas in a good condition of repair and adequately lighted and paved and agrees that there will be at least the minimum number of parking spaces sufficient to satisfy governmental requirements at the time of the date of this Lease. Anything in this paragraph to the contrary notwithstanding, Landlord expressly reserves the right, from time to time, to construct buildings and/or enlarge existing buildings on or over the Common Areas so long as such governmentally required number of parking spaces shall be available and such construction does not block ingress and egress and the sight lines from the street to Tenant's Premises. .

13. **Landlord's Repairs and Right of Entry**. Landlord covenants that it will, with reasonable dispatch after being notified in writing by Tenant of the need thereof, make such repairs to the Common Areas and outside utility lines and to the exterior of the Premises inclusive of structural repairs (including the roof, gutters, downspouts and outside walls, but excepting all glass and doors), as may be necessary to keep the same in a good condition of repair; provided, however, that if the need for such repair is occasioned by a casualty resulting from negligence or willful act of Tenant, or any of its agents, employees, or contractors, such repairs shall be made by Landlord, but the cost of such repairs shall be charged to and be promptly paid for by Tenant except to the extent that Landlord has waived claims with respect to such casualty pursuant to Section 20. Tenant acknowledges that all ceiling tile replacements are Tenant's responsibility as they are a part of the interior of the Premises regardless of the source of damage. Anything in the foregoing to the contrary notwithstanding, Landlord shall have no liability whatsoever for damage or injury to person or property occasioned by its failure to make any such repair (e. g., injury damage to property resulting from leaks caused by a defect in the roof, outside walls, gutters and/or downspouts) unless, within a reasonable time after being notified in writing by Tenant of the need therefor, Landlord shall have failed to make such repair and such failure shall not have been due to any cause beyond Landlord's control, including, without limitation, strikes and/or inability to obtain materials and/or equipment. Landlord, its agents (including Agent), employees and contractors, shall have the right, from time to time, upon advance notice and at a time mutually acceptable to Tenant and Landlord, enter and use insofar as may be necessary the Premises for the purpose of making any of the aforesaid repairs. Tenant shall not be entitled to any reduction in rent or to any claim for damages by reason of any inconvenience, annoyance, and/or injury to business arising out of any repairs made by Landlord pursuant to this Section.

14. **Tenant's Repairs**.

(a) Tenant covenants that Tenant will, at all times during the Term and at its own cost and expense, keep all portions, components or parts of the Premises that Landlord has not expressly agreed to maintain or repair (including, without limitation, the interior of the Premises, the heating system, air conditioning system, toilets, pipes, plumbing, wires and conduits, electric lines, ceiling tiles, windows, doors, glass, fixtures and equipment) in a good and safe condition of repair and in good working order (making such renewals and replacements as may be necessary). Tenant understands and agrees that Tenant (not Landlord) shall be responsible for any damage caused by condensation in or around the duct work used for heating and/or air conditioning. Tenant shall be responsible for any plumbing and other utility lines which serve the Premises exclusively (including, but not limited to plumbing and utility lines located beneath the floor slab) and for repairing any damage to space occupied by other tenants or the Common Areas caused by occurrences in the Premises, including, but not limited to, clogged plumbing lines. Tenant agrees to obtain and maintain during the Term a heating and/or air conditioning maintenance contract, subject to Landlord's approval, which shall provide for a minimum of semi-annual unit inspection and preventative maintenance, and to provide Landlord with a copy thereof on commencement and renewal thereof. Tenant agrees that it will, at all times during the term hereof, keep the Premises and all Common Areas (including sidewalks) adjoining the Premises clean and free from obstruction, rubbish, dirt, snow and ice. Tenant shall place all trash, rubbish and garbage in a proper closed receptacle and shall pay all costs incident to the removal thereof if trash removal is not provided by Landlord. Tenant agrees that if Tenant fails to perform any of its obligations under this Section, Landlord, in addition to other remedies provided by law and/or this Lease, may correct (or have corrected) the default at the cost and expense of Tenant.

(b) If the doors, roof, window frames, glass or any part of the exterior of the Premises are damaged by persons breaking, or attempting to break, into the Premises, or by vandals, Tenant covenants to repair immediately at its own expense, any and all such damage. Tenant agrees that Tenant will (i) not (directly or by sufferance) place any debris on the roof of the building of which the Premises constitute a part or cut, drive nails into or otherwise mutilate the roof or penetrate roof in any way without prior consent of Landlord, and (ii) not place anything on the roof of the Premises or the building of which it is a part without the written consent of Landlord.

15. **Miscellaneous Covenants of Tenant**.

(a) Tenant covenants that Tenant will: (i) comply with all federal, state and/or municipal laws, ordinances and regulations relating to the Premises and the business conducted therein; (ii) be responsible for changing the locks of the Premises upon delivery of possession and provide Landlord with at least one duplicate key; (iii) upon delivery of possession and thereafter, put all utilities in Tenant's name and promptly pay for all electricity, gas, water and any other utilities consumed on the Premises thereafter and pay any fees required by the utility company to transfer the service from Landlord's name into Tenant's name, and pay all sewage disposal charges assessed against the Premises thereafter; (vi) conduct its business in such manner as will be in keeping with the character and reputation of the Shopping Center; (vii) make every effort to work harmoniously with other tenants in the Shopping Center; (viii) comply with all reasonable rules and reasonable regulations promulgated from time to time by Landlord for the operation and advertising of the Shopping Center including but not limited to those set forth on Exhibit C to this Lease; (ix) not open or operate directly or indirectly a similar business within three (3) miles of the Premises; (x) not use the sidewalks of the Shopping Center for business purposes; (xi) not use or permit to be used any advertising medium or device such as a phonograph, radio or public address system that can be heard outside the Premises; or (xii) not hold a fire, bankruptcy, going-out of business or auction sale (xiii) will comply with any written requirements per the Landlord's insurance company whether asked directly or indirectly through Landlord. Tenant will permit Landlord or its representatives to enter the Premises during the last six (6) months of the Term for the purpose of exhibiting the Premises to prospective Tenants at a time mutually acceptable to Landlord and Tenant.

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(b) Tenant shall keep the Premises free from insects, pests and vermin of all kinds and for that purpose Tenant shall use, at Tenant's cost, such pest extermination contractor as Landlord may reasonably direct and at such intervals as Landlord may reasonably require.

16. **Alterations.** Tenant shall have the right, at its sole expense, from time to time, to redecorate the Premises and to make such other interior, non-structural alterations and improvements, not to exceed the sum of $25,000. All other alterations or improvements shall require Landlord's prior written approval, in its reasonable discretion, of the plans and specifications of the work to be performed and has satisfied Landlord's requirements for bonding (provided the alteration costs in excess of $100,000.00), insurance and other contractor requirements. All alterations and improvements shall be performed in a first-class manner. In no event shall Tenant make any change to the Premises that alters the character of the Premises from a single retail entity, lessens the value of the Premises or violates any laws or other legal requirements or the provisions of any mortgage on the Shopping Center. Work done by Tenant under the provisions of this paragraph shall not interfere with the use by other tenants of their premises in the Shopping Center. Tenant agrees that it will, at all times during the term of this Lease, take any and all steps necessary to prevent the filing of mechanic's liens against the Premises in connection with work performed on behalf of Tenant, and if any such liens are filed, Tenant agrees to have same discharged by payment or bond within ninety (90) days after it was filed and if Tenant fails to do so, Tenant shall, without any requirement for prior notice by Landlord, be in default and, in addition to any other remedies that Landlord may have, Landlord may discharge the lien without inquiring as to the validity thereof and Tenant shall immediately reimburse Landlord for any amount so expended.

17. **Termination; Surrender.**

(a) Tenant covenants that it will, upon the expiration or earlier termination of this Lease, (i) deliver up to Landlord, peaceably and quietly, the Premises in the same good condition they are now in or shall hereafter be placed, ordinary wear and tear excepted (damage or deterioration to the Premises caused by Tenant's failure to perform its maintenance, repair and replacement obligations shall not be deemed to be ordinary wear and tear), and (ii) remove its trade fixtures and/or signage from the Premises) and to repair promptly any damage caused by such removal. Final inspection by Landlord will be conducted prior to Tenant's move out and no utilities will be disconnected until final inspection has been performed and documented. Tenant agrees to arrange such inspection with Landlord prior to Tenant's move out.

(b) Should the Tenant or any party claiming under Tenant hold over in possession at the expiration of the Term or an exercised option, such holding over shall not be deemed to extend the Term or renew this Lease, and such holding over shall be for an indefinite period of time on a month to month basis and maybe terminated by either party with 30 days written notice to the other. Tenant shall pay upon demand to Landlord during any period while Tenant shall hold the Premises after expiration of the Term, as liquidated damages, a sum equal to one 150% of the Minimum Rent that was due hereunder in effect for the last month of the Term. In the event Landlord tenders notice to terminate the month to month tenancy described under this Subsection 17(b) and Tenant continues to hold over in possession, such holding over shall be deemed an unlawful detainer and Tenant shall be subject to immediate eviction and removal.

(c) Tenant agrees that all additions and other improvements installed in the Premises, including without limitation all electric wiring, electric fixtures, air conditioning systems, show window reflectors, screens, screen doors, awnings, awning frames, floor coverings and window treatments (including carpeting but excepting rugs) shall immediately become the property of Landlord, and shall not be removed by Tenant at the expiration or earlier termination of this Lease, unless Tenant is requested to do so by Landlord, in which event Tenant agrees to do so and to repair promptly any damage caused by any such removal and restore the Premises to its prior condition. Notwithstanding the foregoing, Tenant shall not be obligated to remove any floor coverings installed in the Premises.

18. **Tenant's Indemnification, Liability and Casualty Insurance.** Tenant agrees that it will indemnify, defend and hold Landlord, Agent and their respective agents, employees, members, partners and officers harmless from any and all liability for injury or damage to person or property in, on or about the Premises or the Common Areas immediately adjoining the Premises without regard to cause or fault, and all injury or damage occurring elsewhere in the Shopping Center as a result of the negligence or willful misconduct of Tenant, its agents, employees or contractors, and all costs, expenses, claims or suits arising in connection therewith. The foregoing indemnity obligations shall survive the expiration or termination of this Lease. Tenant covenants that it will, at all times during the term hereof, at its own cost and expense, carry commercial liability insurance on the Premises with an insurance carrier rated A or better by Best's Insurance Reports and licensed to conduct business in the state in which the Shopping Center is located (including Common Areas immediately adjoining the Premises) with combined single limit liability coverage of at least $1,000,000.00 per occurrence and $2,000,000 aggregate and including at least a $50,000.00 for fire legal or tenant's legal liability insurance, which insurance shall name Landlord, Agent and any designee of Landlord as additional insureds and shall provide that such policy will not be canceled or coverage changed without at least thirty (30) days' prior written notice to the foregoing additional insureds. Tenant's liability insurance policy shall include coverage for dram shop or host liquor liability if Tenant's business involves the serving of alcoholic beverages. Tenant further covenants that it will, at all times during the Term, at its own cost and expense, carry plate glass insurance and insurance against damage by fire and other perils insured under a so-called "special" or "all-risk" policy, in an amount equal to the replacement value thereof with replacement cost coverage, on: (1) all parts of the Premises for which Tenant is responsible under the terms of this Lease; and (2) Tenant's inventory, furniture, fixtures and equipment in the Premises. Binding certificates (ACORD 27 or similar form) evidencing all of the insurance coverages required under this Section shall be delivered to Landlord prior to the commencement of the Term and at least thirty (30) days prior to the expiration of any such policy. If Tenant fails to provide such insurance, Landlord may (but shall not be obligated to) obtain the same and collect the cost thereof as Rent.

The Tenant agrees that the above stated limits and coverages are minimum limits and coverages, and that Tenant shall provide such additional insurance as set forth above, in such amounts and against such risk as may be required in the Landlord's reasonable judgment, to equal the amounts and types of coverages carried by prudent owners and operators of properties similar to the Shopping Center. Tenant shall increase such limits at its discretion or upon reasonable request of Landlord and such increases shall not be in excess of generally accepted standards in the industry.

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19. **Fire Insurance**. Landlord covenants that it will keep the Premises insured against damage covered under a standard fire insurance (or better) policy written with coverage in an amount not less than eighty percent (80%) of the replacement cost thereof. Tenant covenants that, without the prior written consent of Landlord, Tenant will not do anything which will increase the rate of fire insurance on the building of which the Premises constitute a part, and that if such consent is given, Tenant will pay Landlord the full amount of the increase in the cost of such insurance, as and when the premiums become due. Tenant agrees that it will, at Tenant's expense, comply with any mandatory preventive maintenance items required by insurance carriers, rating authorities, or public officials to minimize loss frequency and/or severity within the Premises.

20. **Release and Waiver of Subrogation**. Landlord and Tenant each release and discharge each other (as well as the officers, directors, members, partners, agents and employees of each other) from responsibility and liability (by way of subrogation or otherwise) for loss or damage to any building, structure or other property (real or personal) owned by the releasing party, or any resulting loss of income, that is an insured loss under the terms of the insurance policy(ies) of the releasing party or that involves a fire, casualty or other risk or loss required to be insured against under this Lease. This release and discharge shall be applicable even though such loss or damage may have been caused by the negligence of the party hereby released. Landlord and Tenant agree to include a waiver of subrogation endorsement or a provision permitting the insured to waive claims prospectively in each of their respective casualty insurance policies, subject to the insurance company's approval of this provision. .

21. **Damage by Fire or Other Casualty**. In the event the Premises, or any part thereof, shall be damaged by fire or other casualty during the Term, Landlord agrees that it will restore the Premises, with reasonable dispatch, to substantially the same condition they were in prior to such damage, insofar as the proceeds from Landlord's insurance permit and provided that Landlord's mortgagee does not require insurance proceeds to be paid to it. If the Premises are rendered wholly or partially untenantable as a result of such damage, the Rent payable hereunder shall be equitably abated (according to the loss of use) during the period intervening between the date of such damage and the date Landlord completes its required restoration of the Premises. Anything in the foregoing to the contrary notwithstanding, if such damage occurs during the last two (2) years of the Term, and if such damage exceeds fifty percent (50%) of the then insurable value of the Premises, as determined by Landlord, either Landlord or Tenant may terminate this Lease as of the date of such damage, by giving to the other written notice of its intention to do so within forty-five (45) days after the date such damage occurs; provided, however, that if this Lease gives Tenant an option to extend the Term and Tenant extends the Term of this Lease for at least five (5) years by exercising such option within forty-five (45) days after the time such fire or other casualty occurs, neither Landlord nor Tenant shall have the right to cancel this Lease. If this Lease is so terminated, the Rent payable hereunder shall be abated as of the date of such damage, and Tenant shall remove all of Tenant's property from the Premises within thirty (30) days after the notice of termination is given. Anything in this Lease to the contrary notwithstanding, Landlord shall have the right to cancel this Lease as of the time of occurrence of any fire or other casualty if such damage exceeds eighty percent (80%) of the then insurable value of the Premises, within sixty (60) days of such occurrence. In the event that Landlord is obligated to restore the Premises after a casualty make such repairs to the Premises, or portion thereof which is damaged, necessary to put the Premises or the portion thereof which is damaged in the condition prior to such casualty. Landlord, after paying for the work described in the preceding sentence, shall make the balance of any insurance proceeds received with respect to the Premises available to Tenant and Tenant shall be obligated to complete the restoration of the Premises. Notwithstanding the foregoing, Tenant shall only be required to use its own funds to the extent that the insurance proceeds are sufficient provided Tenant maintains the full coverages required under this Lease. If Tenant fails to maintain the full coverages required under this Lease, Tenant shall use its own funds to the extent that the insurance proceeds are insufficient. Tenant shall have a period of up to ninety (90) days to complete Tenant's work described under this Section 21 prior to the cessation of any rent abatement after completion by Landlord of its work.

22. **Condemnation**. In the event that the whole of the Premises are taken by the exercise of the power of eminent domain (including any voluntary sale or transfer in lieu of condemnation) this Lease shall terminate as of the date of such taking. In the event any portion of the Premises are taken by the exercise of the power of eminent domain (or sold to the holder of such power, pursuant to a threatened taking), this Lease may, at the option of Landlord or Tenant, be terminated by written notice given to the other within sixty (60) days after such taking or sale occurs. If this Lease is not so terminated, Landlord covenants that it will, at its own expense, promptly after the lapse of said sixty (60) days, repair such damage and do such work as may be required to repair and rebuild the Premises and/or the Common Areas, with the view to restoring the Premises and/or the Common Areas as nearly as may be to the condition they were in immediately prior to such taking; provided, however, that whether or not this Lease is so terminated, the Minimum Rent payable hereunder shall be equitably abated (according to the loss of use) from the date of such taking. All compensation awarded for any taking of the Premises or the Shopping Center shall belong solely to and be the property of Landlord, and Tenant assigns to Landlord all of Tenant's rights with respect thereto and waives any claim Tenant may have with respect thereto, including any claim for Tenant's leasehold estate. However, Tenant may apply for reimbursement from the condemning authority (if permitted by law) Tenant's leasehold improvements that were funded by Tenant (and not Landlord), Tenant's property, relocation expenses, and goodwill, diminished value of Tenant's rights, under the Lease for the value of the unexpired Term of the Lease, provided that any such reimbursement shall not reduce the amount of the award otherwise recoverable from the condemning authority by Landlord.

23. **Assignment and Subletting**. Tenant shall not assign this Lease or sublet the Premises, in whole or part, without the prior written consent of Landlord. Prior to granting an assignment, an application must be completed by the intended Assignee and returned to Landlord with a non-refundable processing fee of $100.00. Upon approval of the applicant, an Assignment document will be created. Once the Assignment document is executed by the Assignor and Assignee it is to be returned to the Landlord along with any required payments including, but not limited to, the Assignment Fee of $500.00. Assignments requested within two years of execution of original Lease, other than Assignments, and/or Amendments extending term or a transfer from T & S Management Inc. , "Franchisor" to any franchisee will be subject to an additional fee of $250.00 per occurrence, if such consent is granted by Landlord, Tenant will remain primarily liable for the performance of the covenants and obligations under this Lease (subject to the exceptions as noted below) binding upon Tenant (regardless of any subsequent amendment or modification of this Lease and regardless of any further assignment or subletting, all of which are hereby deemed to be consented to by Tenant and any Guarantor). Each assignee must agree in writing to assume the obligations of Tenant under this Lease by an agreement satisfactory to Landlord and delivered to Landlord within ten (10) days after the date the lease assignment is executed. Each subtenant must agree in writing (delivered to Landlord within ten (10) days after the sublease is executed) that Landlord may collect rent under the sublease directly from the subtenant if there is a default under this Lease and, at Landlord's option, agree to attorn to Landlord should this Lease be terminated. The

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transfer of fifty percent (50%) or more of Tenant's stock, if Tenant is a corporation, or the transfer of a twenty-five percent (25%) partnership or other ownership interest in Tenant, if Tenant is a partnership or limited liability company (in either event whether in one transaction or as the result of more than one transaction), shall constitute an assignment under the terms of this Lease. Landlord's consent to one assignment or subletting shall not waive the requirement that Landlord's consent be obtained for further assignments or subleases. The acceptance by Landlord of the payment of any Rent following any assignment or sublease shall not be deemed to be consent by Landlord to such transaction nor shall the same be deemed to waive any rights or remedies of Landlord under this Lease. The restrictions of this Section shall be deemed to apply as well to any assignments of subleases and to any sub-subletting under any subleases. If, at any time during the term, Landlord has knowledge that a person, firm or corporation other than Tenant is in possession of the Premises without the written consent of Landlord, Landlord may, at its option, at any time thereafter, by written notice to Tenant, accept and treat such person, firm or corporation in possession as the assignee of Tenant, in which event both Tenant and such assignee shall be obligated to observe and perform all the covenants, conditions and provisions herein contained binding upon Tenant provided; however, that nothing herein shall affect Landlord's other remedies for Tenant's default by wrongful assignment or subletting. Tenant agrees to pay Landlord's reasonable attorney's fees and related expenses, if any, incurred in connection with any proposed assignment or subletting, whether or not such proposed assignment or sublease is actually approved by Landlord (providing Tenant receives a $500.00 credit toward Landlord's attorney fees for the funds it previously paid as an Assignment fee to Landlord). Notwithstanding the foregoing, any and all amounts paid by any assignee or sublessee of Tenant in excess of amounts due to landlord hereunder as Monthly Minimum Rent and all other Rent whether paid to Tenant or to Landlord, shall be split equally by Landlord and Tenant and deemed additional rent hereunder and Landlord's share shall be remitted promptly to Landlord. Landlord shall have the right to assign this Lease without Tenant's consent and Landlord shall notify Tenant in writing of such transfer.

Notwithstanding anything contained in this Section 23 to the contrary, without obtaining the prior written consent of Landlord, Tenant may assign this Lease or sublet the Premises for the Permitted Use (a "Permitted Transfer") to either (i) the Franchisor or to any bona fide franchisee of Franchisor that has a net worth of One Million Dollars ($1,000,000) and liquid assets (stocks, bonds, securities and/or cash) of Two Hundred Fifty Thousand Dollars ($250,000) or more; (ii) any affiliate of Tenant or a family member of Tenant provided that such affiliate or family member has a net worth at the time of the assignment or subletting of One Million Dollars ($1,000,000) and liquid assets (stocks, bonds securities and/or cash) of Two Hundred Fifty Thousand Dollars ($250,000) or more; or (iii) to a third party non-franchisee who will conduct business at the Premises in accordance with the Permitted Use of this Lease and has a net worth of One Million Dollars ($1,000,000) and liquid assets (stocks, bonds, securities and/or cash) of Three Hundred Thousand Dollars ($300,000) or more. In the event of a Permitted Transfer and provided Tenant is not in default of the Lease beyond any applicable cure period, Tenant and Guarantor shall be released and have no further liability under this Lease including but not limited to Minimum Rent, Additional Rent or any and all other damages of all kinds and nature that Landlord may incur with respect to this Lease from the date such Permitted Transfer becomes effective.. Tenant shall provide Landlord with thirty (30) days advance written notice of its intent to assign the lease pursuant to the preceding sentence. Tenant's notice shall include the name, address, and contact information for the prospective assignee and all other terms and conditions set forth above with respect to assignment shall apply.

24. **Relocation**. Intentionally deleted.

25. **Default and Remedies**.

(a) Defaults. The occurrence of any one or more of the following events ("Defaults") shall constitute a default and breach of this Lease by Tenant: (i) Tenant fails to pay any Minimum Rent when same is due under this Lease or fails to pay any other Rent payments, Tenant charges, or expenditures incurred by Landlord on behalf of Tenant and owed under this Lease within five (5) days of Landlord's demand therefor; (ii) Tenant fails to observe and perform any of the other terms, covenants and/or conditions of this Lease, and, unless the failure is of a type to which, pursuant to the provisions of the Lease, no cure period is applicable or no notice by Landlord is required, such failure shall continue for more than thirty (30) days after written notice from Landlord to Tenant (however, if a default under this item (ii) cannot reasonably be cured within thirty (30) days, and Tenant has promptly commenced the cure within such time and is diligently proceeding to complete the cure, then Tenant shall have such reasonable extra time (not to exceed ninety (90) days) to complete the cure); (iii) Tenant fails to pay when due Minimum Rent or any other Rent owed under this Lease three (3) or more times in any period of twelve (12) consecutive months; (iv) the Premises is abandoned, vacated or closed for business to the public (other than for fire, casualty or condemnation or legal holidays), or Tenant fails to open for business to the public in the Premises within sixty (60) days after the date on which Tenant is obligated to make its first payment of Minimum Rent; or (v) a case is commenced or a petition is filed by or against Tenant or any Guarantor under any chapter of the federal Bankruptcy Code, or there is filed by or against Tenant, or any successor tenant then in possession, or any Guarantor of this Lease, in any court pursuant to any statute or law, a petition for appointment of a trustee or receiver, an assignment for the benefit of creditors, or reorganization.

(b) Remedies. Upon the occurrence of a Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below) may do any one or more of the following: (i) apply the Security Deposit (if any) toward the satisfaction and cure of such Default; (ii) reenter the Premises, without terminating this Lease, and remove all persons and property from the Premises, by any suitable action or proceeding at law; (iii) elect to terminate this Lease upon not less than fifteen (15) days written notice to Tenant, at which time the term of this Lease shall expire, but with Tenant's liability under all of the provisions of this Lease that have accrued as of the date of termination or expiration of the Lease to continue; or (iv) exercise any other legal or equitable rights or remedies available to Landlord, including those additional rights set forth in this Lease. In exercising any of the above remedies, Landlord may remove Tenant's property from the Premises after obtaining a court order or Tenant's consent and store the same at Tenant's expense and without Landlord being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby, and Landlord may also sell such property at public or private sale, with the proceeds first being applied to costs of sale and storage (including reasonable attorney's fees) and then to amounts owed to Landlord under this Lease. Tenant does not waive any rights to re-enter the Premises and any rights of redemption. For each Default that occurs under subsection (a)(iv), Landlord shall be entitled to collect actual damages Landlord has incurred as a result of such default. Further, Tenant does hereby acknowledge that upon an uncured Default and court order, the Landlord will have security interest in any property within the Premises. Tenant understands that Landlord may re-let, in one or more leases, all or part of the Premises (or a premises including space in addition to the Premises), either in Landlord's own right or as agent for Tenant, accepting any rents then obtainable, for a term or terms that may be greater or less than the balance of the Term of this Lease, and Landlord may grant concessions or

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free rent without in any way affecting Tenant's liability for the Rent payable under this Lease. Landlord shall undertake commercially reasonable efforts to re-let the Premises and mitigate any damages suffered by Landlord as a result of a Tenant Default, however Tenant's liability under this Lease shall not be affected or diminished in any way whatsoever, for Landlord's failure to re-let the Premises, or if the Premises are re-let, for Landlord's failure to collect the rentals under such re-letting. In connection with any re-letting, Landlord may make or do any alterations, repairs, painting and decorations ("Re-letting Preparations") to the Premises which Landlord considers advisable and necessary in its sole judgment and such Re-letting Preparations shall not release Tenant from any liability under this Lease. Tenant understands that in the event of a Default, the Landlord may have cause to locate Tenant and does hereby authorize Landlord to utilize any information provided to the Landlord to do so.

(c) Damages. Tenant understands that in the event of a default, Landlord shall make Tenant liable for (i) all Rent and damages that may be due or sustained by Landlord up to the time this Lease terminates, the Premises are relet, or Landlord takes possession of the Premises, whichever occurs later, and the performance of all other obligations of Tenant accruing under this Lease through such date, (collectively "Accrued Damages")which accrued damages shall bear interest at the Default Rate until paid; (ii) all reasonable costs, fees and expenses (including without limitation attorney's fees and expenses, brokerage commissions and fees) incurred by Landlord in pursuit of its remedies under this Lease and in renting the Premises to others including, but not limited to Re-letting Preparations (all such Accrued Damages, costs, fees and expenses being referred to collectively as the "Default Damages"); and (iii) Future Damages, which, at the election of Landlord, shall be either: (i) the amount (the "Deficiency") by which (A) the Rent reserved under this Lease until the expiration date of the Term exceeds (B) the amount of rent, if any, that Landlord shall receive during the same period from others to whom the Premises may be rented, from which Landlord may deduct all Default Damages owing to Landlord; such Deficiency to be paid in one lump sum payment upon demand by Landlord and shall bear interest at the Default Rate until paid.

(d) Remedies Cumulative. All remedies of Landlord shall be cumulative. Acceptance by Landlord of delinquent rent after Default shall not cure such Default nor entitle Tenant to possession of the Premises.

(e) Attorney's Fees. Tenant agrees to pay all costs incurred by Landlord on account of Tenant's default hereunder including, but not limited to, collection costs, court costs, and reasonable attorney's fees.

26. **Subordination**. This Lease shall be subject and subordinate to all ground or underlying leases and to any and all first mortgages and deeds of trust that may now or hereafter affect this Lease or the real property of which the Premises forms a part, and to all terms, provisions, renewals, modifications, consolidations, replacements and extensions thereof. Tenant further agrees to attorn to any successor to Landlord's interest in the Premises, including any ground lessor or holder of a mortgage or deed of trust (the "Mortgagee"), or to any purchaser at foreclosure (or by deed in lieu of foreclosure) upon all of the terms and conditions of this Lease. The foregoing subordination and attornment provisions shall be self-operative, but within ten (10) days after receipt of a written request therefor, Tenant agrees to execute promptly such agreements confirming the above subordination and attornment as requested from time to time by Landlord or the Mortgagee, and also agrees to enter into a subordination agreement with such other Mortgagees as Landlord may request, it being understood that the standard form subordination agreement then used by any Mortgagee shall be acceptable and executed without change. Tenant further agrees to execute an agreement subordinating this Lease to junior mortgages and deeds of trust and providing for Tenant's attornment to the holder(s) thereof, upon the request of Landlord and upon the written consent of the beneficiaries of all mortgages or deeds of trust senior thereto.

Anything in the foregoing to the contrary notwithstanding, in the event of a foreclosure under any such mortgage or deed of trust, or the termination of any such ground lease, the holder of the note secured by such mortgage or deed of trust, the purchaser at such foreclosure sale or the Landlord under such ground lease shall recognize this Lease provided Tenant executes the standard SNDA of any Mortgagee without change, in which event this Lease shall continue in full force and effect and Tenant shall attorn to such holder or purchaser. Any such mortgage or deed of trust may at any time, at the request of the holder of the note secured thereby, be subordinated to this Lease. In no event shall any Mortgagee be (i) liable for any act or omission of Landlord or any subsequent landlord, (ii) subject to any offsets or defenses which Tenant might have against Landlord or any subsequent landlord, (iii) bound by any Rent which Tenant may have paid for more than the current month to Landlord or any subsequent landlord, (iv) bound by any amendment or modification of this Lease made without the Mortgagee's prior written consent, (v) bound by any obligations of Landlord to construct any improvements, or (vi) bound by any representations or warranties made by any prior landlord.

27. **Estoppel Certificate**. Within ten 10) business days after receipt of a request therefor, Tenant agrees to deliver to Landlord and/or to any actual or prospective purchaser, mortgagee or other third party designated by Landlord a duly executed and acknowledged instrument certifying to Tenant's best knowledge (i) whether this Lease is in full force and effect (and if not, why), (ii) as to the existence of any default, (iii) whether there are any defenses, counterclaims or offsets to such default, (iv) whether there has been any modification or amendment to this Lease, and (v) as to such other matters relating to this Lease or the Premises as may be reasonably requested. Any such certificate may be relied upon by Landlord and by any other person to whom it has been exhibited or delivered, and the contents of the certificate shall be binding upon Tenant. Tenant's failure or refusal to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance or obligations hereunder, and (iii) that not more than one month's installment of Minimum Rent or other Rent has been paid in advance of the due date.

28. **Notices**. Any notice, request, demand, approval or consent given or required to be given under this Lease shall be in writing and shall be deemed to have been given if and when posted in the United States registered or certified mail, return receipt requested or delivered by a reputable national overnight courier, postage or fees prepaid or charged to the sender's account, and addressed to Landlord at Landlord's Mailing Address or addressed to Tenant at Tenant's Mailing Address. Either party may at any time change its address for notice purposes by sending a notice to the other party advising of the new address. Tenant also agrees to give the Mortgagee a copy of any notice of default sent to Landlord, provided that prior to such default Tenant has been notified in writing of the address of the Mortgagee. Tenant shall not exercise any remedies available against Landlord unless Landlord's default is not cured within sixty (60) days after Mortgagee has received the foregoing notice (if the default cannot be reasonably cured within the 60 day period, then the Mortgagee shall have such reasonable additional time to cause the Landlord's default to be cured so long as the Landlord or the Mortgagee is diligently pursuing the remedies necessary to cure such default).

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29. **Quiet Enjoyment**. Provided that Tenant has performed all of its obligations under this Lease, Landlord covenants that Tenant shall have and enjoy quiet and peaceable possession of the Premises during the Term free of molestation by Landlord, subject to the provisions of this Lease and of all mortgages, ground leases, encumbrances and other matters of record affecting title to the Shopping Center.

30. **Limitation of Landlord's Liability**. Landlord shall be liable for performance of its obligations hereunder only to the extent of Landlord's equity in the Shopping Center. The respective partners, members, shareholders, officers, directors and managers of Landlord, their heirs, personal representatives, successors and assigns shall not be personally liable. The liability of Landlord shall not extend beyond the period of Landlord's ownership of the Shopping Center. Furthermore, it is understood and agreed that in each and every instance in which Landlord's approval or consent is required under this Lease, Landlord shall have sole discretion to withhold such consent unless the specific provisions of this Lease with respect to such consent or approval provide otherwise. Landlord shall not be liable for damages (whether direct, consequential or otherwise) by reason of its failure to grant such approval or consent.

31. **Signs**. Tenant shall install at its expense one exterior identification sign in conformity with the sign criteria of Landlord attached as Exhibit "D", **the Town of Hilton Head Island**, or such other sign criteria as Landlord may hereafter promulgate in its reasonable business discretion **subject to applicable laws**. Except for this one exterior sign, Tenant agrees not to place any other sign, advertising matter or the like on the exterior of the Premises without Landlord's prior written consent. Under no circumstances shall Tenant place any banners or any hand-lettered advertising on any window or door of the Premises or anywhere on the exterior of the Premises or on or above the canopy or walls of the building of which the Premises is a part. All signs of Tenant shall be subject to and shall comply at all times with applicable governmental requirements. No awnings or canopies shall be erected without Landlord's prior written consent. Tenant agrees to maintain all signs in good condition and repair at its sole expense. Installing any exterior sign without Landlord's written approval constitutes a performance default, subject to remedies contained herein. Upon the expiration or earlier termination of this Lease, Tenant shall remove its signage from the Premises and promptly repair any damage caused by such removal.

32. **No Waivers**. The failure of Landlord or Tenant to insist, in any one or more instances, upon strict performance by the other party of any covenant of this Lease shall not be construed as a waiver or relinquishment for the future of such covenant, but the same shall continue and remain in full force and effect. The receipt by Landlord or its agent of Rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord or Tenant of any provision hereof shall be deemed to have been agreed upon unless expressed in writing signed by the parties hereto.

33. **Successors and Assigns**. This Lease and all the terms, covenants, conditions and provisions herein contained shall be binding upon and shall inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and (if and when assigned in accordance with the provisions hereof) assigns.

34. **Other Provisions**.

(a) Entire Agreement; Modification. This Lease represents the final understanding and agreement between Landlord and Tenant and incorporates all negotiations between the parties. Tenant hereby acknowledges and agrees that Tenant has not relied on any representations, warranties, agreements and/or understandings, oral or written, except those that are set forth in this Lease, in entering into this Lease, and Tenant agrees that any and all negotiations, statements and representations made by Landlord, Agent or any other party on behalf of Landlord have been merged into and are superseded by this Lease. This Lease cannot be modified except by a writing signed by all parties.

(b) Interpretation. The captions in this Lease are for the purposes of reference only and shall not limit or define the meaning of the provisions of this Lease. References to any specific gender shall be deemed to include the other gender or neuter, as applicable; references to "expiration" shall include "termination" and vice-versa; and references to the singular shall include the plural, and vice-versa, all as the context may require. If Tenant consists of multiple parties, the liability of such parties shall be joint and several, and the release of any one or more of such parties shall not affect the liability of any other party not expressly released in writing. This Lease shall be governed by the laws of the state in which the Premises are located.

(c) Waiver of Jury Trial and Homestead Exemption. Landlord and Tenant hereby mutually waive any and all rights which either party may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction. Tenant hereby waives the benefit of any homestead exemption available to Tenant with respect to this Lease.

(d) Broker. Tenant and Landlord warrants and represents to the other that it has not dealt with any broker in connection with this Lease or the Premises (other than the Agent, as Landlord's broker, and Collet, as Tenant's broker, whose address is 220 N. Main Street, Suite 315, Greenville, SC 29601) and agrees to indemnify and hold harmless the other from all loss, claim, damage, cost or expense (including reasonable attorneys' fees of counsel of the other's choice against whom the indemnifying party makes no reasonable objection) arising from its breach of this representation and warranty. This warranty and representation shall survive the term or any early termination of this Lease. Landlord shall (i) pay Collet a brokerage fee per the terms of a separate agreement and (ii) pay Agent pursuant to the terms of Section 35 of this Lease.

(e) Short Form Lease. Tenant agrees not to record this Lease. However, upon the request of either party, the other party shall join in the execution of a "short form lease" for the purposes of recordation, including such terms of this Lease (other than economic terms) as are typically included in such document. Either party may record such "short form lease" at its own expense.

(f) Submission of Lease. This Lease does not constitute an offer to lease, and Landlord and Tenant shall not be bound by this Lease until it is executed and unconditionally delivered by both parties. This Lease may be executed in counterparts.

(g) Tenant Authority. (i) If Tenant is a partnership, each person executing this Lease on behalf of Tenant warrants that Tenant is a validly existing partnership qualified to do business under the laws of the state in

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which the Shopping Center is located, that such partnership has the full right and authority to enter into this Lease and that no other partners other than those signing this Lease on behalf of Tenant must join in this execution; and (ii) if Tenant is a corporation, each person executing this Lease on behalf of Tenant hereby warrants that (1) Tenant is a duly constituted corporation qualified to do business and in good standing in the state in which the Shopping Center is located; (2) such corporation has the full right and authority to enter into this Lease, and (3) each person signing this Lease on behalf of the Tenant has been duly authorized by the board of directors of Tenant to execute and deliver this Lease on behalf of the corporation and that no other signatures are necessary.

(h) No Representations by Landlord or Agent. Tenant agrees that neither Landlord nor Agent has made any representation, express or implied, with respect to Federal, State or municipal laws or ordinances applicable to the Premises or the property of which the Premises constitute a part (including, without limitation, laws or ordinances relating to zoning or fire walls), and Tenant shall not have the right to terminate this Lease, nor shall he be entitled to any abatement of Rent payable hereunder or any claim for damages, in the event the Premises cannot be used by Tenant, in whole or in part, for the purpose for which Tenant intends to use the same.

(i) Multiple Parties. If Tenant is comprised of more than one person or entity, the liability of each such person and entity comprising Tenant shall be joint and several.

35. **Contract of Landlord With Agent**. For services rendered by Agent in procuring this Lease, including any renewals, options and/or extensions, Landlord agrees that it will pay agent commissions pursuant to the terms of a separate agreement between Landlord and Agent.

36. **Hazardous Materials**.

(a) As used herein, the term "Hazardous Material" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by the city or county and state in which the Premises are located, the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the Food and Drug Administration, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment.

(b) Tenant agrees not to introduce any Hazardous Material in, on or adjacent to the Premises. Tenant shall immediately notify Landlord of any inquiry, test, investigation, or enforcement proceeding by or against Landlord, Tenant or the Premises concerning a Hazardous Material. Tenant acknowledges that Landlord, as the owner of the Premises, shall have the right, at its election, in its own name or as Tenant's agent, to negotiate, defend, approve and appeal, at Tenant's expense, any action taken or order issued with regard to a Hazardous Material by an applicable governmental authority.

(c) If Tenant's stores, uses or disposes of any Hazardous Material in, on or adjacent to the Premises in violation of Paragraph B of this section of this Lease, such action shall constitute an event of default under this Lease. If Tenant's stores, uses or disposes of any Hazardous Material in, on or adjacent to the Premises and such action results in any contamination of the Premises, the soil or surface or groundwater requiring remediation under federal, state or local statutes, ordinances, regulations or policies, Tenant agrees to clean-up the contamination. Tenant further agrees to indemnify, defend and hold Landlord harmless from and against any claims, suits, causes of action, costs, fees, including attorneys' fees and costs, arising out of or in connection with any clean-up work, inquiry or enforcement proceeding in connection therewith, and any Hazardous Materials currently or hereafter used, stored or disposed of by Tenant or its agents, employees, contractors or invitees on or about the Premises.

(d) Notwithstanding any other right of entry granted to Landlord under this Lease, Landlord shall have the right to enter the Premises, upon reasonable notice at a time mutually acceptable to Landlord and Tenant, to have consultants enter the Premises through the term of this Lease for the purpose of determining: (1) whether the Premises are in conformity with federal, state and local statutes, regulations, ordinances and policies, including those pertaining to the environmental condition of the Premises, (2) whether Tenant has complied with this Section, and (3) the corrective measures, if any, required of Tenant to remove Hazardous Materials. Tenant agrees to provide access and reasonable assistance for such inspection. Such inspections may include, but are not limited to, entering the Premises or adjacent property with drill rigs or other machinery for the purpose of obtaining laboratory samples. Landlord shall not be limited in the number of such inspections during the term of this Lease.

Tenant shall reimburse Landlord for the cost of such inspections if hazardous waste is found as a result of Tenant's actions within thirty (30) days of receipt of a written statement therefor. If such consultants determine that the Premises are contaminated with Hazardous Materials, Tenant shall, in a timely manner, at its expense, remove such Hazardous Materials or otherwise comply with the recommendations of such consultants to the reasonable satisfaction of Landlord and any applicable governmental agencies. The right granted to Landlord herein to inspect the Premises shall not create a duty on Landlord's part to inspect the Premises, or liability of Landlord for Tenant's use, storage or disposal of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

(e) Tenant shall surrender the Premises to Landlord upon the expiration or earlier termination of this Lease free of Hazardous Materials and in a condition which complies with all governmental statutes, ordinances, regulations and policies, recommendations of consultants hired by Landlord, and such other reasonable requirements as may be imposed by Landlord. Tenant's obligations under this Section shall survive termination of this Lease.

37. **Compliance with Americans with Disabilities Act of 1990**. Tenant shall comply with all laws, rules and regulations in connection with the Americans with Disabilities Act of 1990, as amended (the "ADA"). Tenant acknowledges that it is a "public accommodation" as defined by the ADA. If the ADA requires that action be taken with respect to the Premises, including without limitation removing barriers and altering the Premises in accordance with the ADA Accessibility Guidelines, such action shall be taken by Tenant. Tenant shall notify Landlord immediately upon receipt of an oral or written complaint or notice by an employee, customer, client, invitee, licensee or governmental authority regarding a potential violation of the ADA. Tenant shall indemnify and hold Landlord harmless from and against any expense or liability (including reasonable attorney's fees) arising from Tenant's failure to fully comply with this Section.

38. **Agency and Ownership Disclosure**.

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(a) Landlord and Tenant each acknowledge that, in connection with this Lease:

Initial One

__X__ the Agent is representing the Landlord exclusively

Or

_____ the Agent is representing the Landlord and Tenant, and Landlord and Tenant expressly consent to the Agent acting as a dual representative by their execution of this Lease and their review and execution of the attached Disclosure of Dual Representation.

(b) **Initial one or both, if applicable:**

__X__ One or more principals of Landlord are licensed **VA** real estate brokers or salespersons.

and/or

__X__ Agent and/or one or more brokers or salespersons of Agent has an ownership interest in Landlord.

39. **Lease Addendum and Exhibits**. Tenant agrees to comply with all Addenda and Exhibits to this Lease. **A Lease Addendum consisting of Sections 50 - 57 of this Lease is attached to this Lease and the provisions thereof are fully incorporated into this Lease.** The following Exhibits are attached to this Lease and are fully incorporated into this Lease:

Exhibit "A"	-	Site Plan
Exhibit "B"	-	Notice of Lease Term Dates
Exhibit "C"	-	Rules and Regulations
Exhibit "D"	-	Sign Criteria
Exhibit "E"	-	Guaranty
Exhibit "F"	-	**INTENTIONALLY DELETED**
Exhibit "G"	-	Construction Addendum
Exhibit "G-1"	-	Tenant's Work
Exhibit "G-2"	-	Landlord's Work
Exhibit "H"	-	SNDA

40. **Lease Guaranty.** Landlord's obligations under this Lease are conditioned upon receipt of a Guaranty of Lease in the form attached as Exhibit "E" executed by the Guarantor and receipt of satisfactory evidence of the authority of the Guarantor to execute the Guaranty of Lease.

41. **Rules and Regulations**. The rules and regulations attached to this Lease as Exhibit "C" shall be and are hereby made a part of this Lease. Tenant, its employees, customers and guests shall perform and abide by such rules and regulations, and any amendments or additions to such rules and regulations as may be made from time to time by Landlord.

42. **Anti-Terrorism**. Tenant represents and warrants that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity, or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism; and that it is not engaged in this Lease directly or indirectly on behalf of, or facilitating this Lease directly or indirectly on behalf of, any such person, group, entity, or nation. Tenant agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representation and warranty."

43. **Lender Approval Contingency.** Should Landlord be required, per Shopping Center loan documents, to submit this Lease to the Lender for approval, Landlord will submit a copy of this Lease with supporting Tenant financials for the Lender to review and approve. If the Lender does not approve Tenant, or the terms of this Lease, then Landlord shall have the right to terminate this Lease by written notice to Tenant in which event this Lease will become null and void and Landlord shall return the Security Deposit and prepaid Rent to Tenant within thirty (30) days of Lender's written disapproval notice. Landlord will give Tenant written notice of approval, or disapproval, promptly upon receipt from Lender.

44. **Lease Contingency.** Intentionally deleted.

In the event any such condition is not met or satisfied, on or before February 1, 2016, Landlord shall not be in default but Landlord or Tenant shall have the right to terminate this Lease with thirty (30) days written notice to the other party. If the Lease is terminated by the Tenant, then the Landlord shall refund to Tenant any advanced rents or security deposit.

45. **Outdoor Seating.** Tenant shall be permitted, with Landlord's prior written approval of the location and all construction plans, to install an outdoor seating area immediately adjacent to the Premises. Tenant shall not be charged rent for the use of such patio however Tenant shall, at its sole cost and expense, maintain all portions of the patio in good condition. Additionally, Tenant shall, at its sole cost and expense, make all improvements necessary to ensure the patio complies with all applicable laws and Tenant shall carry commercial liability insurance on the patio with an insurance carrier rated A or better by Best's Insurance Reports and licensed to conduct business in the state in which the Shopping Center is located (including Common Areas immediately adjoining the Premises) with combined single limit liability coverage of at least $1,000,000.00 per occurrence and $2,000,000 aggregate.

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46. **Tenant Improvement Allowance.** Landlord shall contribute an amount not to exceed **One Hundred Thirty Seven Thousand Seven Hundred Fifty and No/100 dollars ($137,750.00)** (the **"Improvement Allowance"**) to be applied by Tenant toward the costs of designing, planning and constructing Tenant's Work. The agreements of Landlord and Tenant regarding the Improvement Allowance are as follows:

In the event the cost of designing, planning and constructing Tenant's Work exceeds the Improvement Allowance, any such costs in excess of the Improvement Allowance shall be borne solely by Tenant and shall be paid in full by Tenant prior to delinquency.

The Improvement Allowance will be released to Tenant by Landlord in three (3) separate draws, (the amounts of which are specified below) within thirty (30) days after the later of, (i) receipt of each written request by Tenant, or (ii) satisfaction of the following conditions:

a) First draw of thirty three and one third percent (33 and 1/3%) of the Improvement Allowance shall be conditioned upon the following:

i. Delivery of the Premises to Tenant;

ii. Tenant providing to Landlord, total and complete copies of all contracts for which the Improvement Allowance will be used to satisfy;

iii. Tenant obtaining the applicable building permits (a true and complete copy of which Tenant shall deliver to Landlord) and all other applicable governmental approvals required for the construction and installation of the improvements by Tenant; and

iv. Tenant has commenced construction.

b) Second draw of thirty three and one third percent (33 and 1/3%) of the Improvement Allowance shall be conditioned upon the following:

i. Tenant's contractors have completed sixty percent (60%) of Tenant's Work;

ii. Landlord's receipt of written certification which is reasonably satisfactory to Landlord (AIA Schedule or similar), signed by a responsible officer of Tenant or Tenant's in-house architect (if applicable), certifying an itemized statement of the actual costs and expenses incurred by Tenant with respect to the work performed and the materials provided in connection with the design, planning and construction of Tenant's Work, together with a true and complete copy of all relevant invoices from subcontractor's to Tenant's general contractor;

iii. Conditional lien waivers from all contractors, sub-contractors and any other person or companies that have performed work within the Premises as part of Tenant's Work; and

iv. Verification by Landlord or Landlord's representative that Tenant's Work performed/installed to date has been substantially completed (*i.e.*, subject only to the completion of "punch list" items) in accordance with the previously approved plans and specifications and in compliance with any applicable legal requirements.

c) Third draw of thirty three and one third percent (33 and 1/3%) of the Improvement Allowance shall be conditioned upon the following:

i. Receipt of a final lien waiver with respect to the Premises and the Shopping Center executed by Tenant's general contractor and no lien or claim for lien has been filed by any such subcontractor, laborer, artisan, mechanic or material supplier;

ii. Receipt of a copy of the final and unconditional certificate of occupancy for the Premises issued by the appropriate governmental authority which shall be adequate to support occupancy of the Premises; and

iii. Tenant is open and operating under the terms of the Lease.

47. **Exclusive.** So long as the Premises is being used primarily as a restaurant serving breakfast and lunch only (the "Exclusive Use"), and provided Tenant is in occupancy of the Premises and open for business and is not in default of the Lease beyond any applicable cure period, Landlord shall not lease to another business in the Shopping

Center that operates its business primarily for the Exclusive Use, or permit a tenant whose lease is in existence as of the Effective Date to operate for such purpose in circumstances in which such use is subject to Landlord's approval. The restriction in this paragraph shall not apply to any of the following ("Excluded Tenants"): (a) the use by any other tenant of the Shopping Center whose lease was executed prior to the execution of this Lease and whose permitted use or change thereof is not subject to Landlord's written consent; or (b) any other restaurant tenant operating at the Shopping Center whose menu contains less than thirty percent (30%) of breakfast items. In the event any other tenant at the Shopping Center operates its business in violation of the provisions contained in this Section 47, Landlord shall not be obligated to take any action until receipt of written notice of the purported violation from Tenant. In the event the tenant of any premises in the Shopping Center other than the Premises and an Excluded Tenant violates the Exclusive Use (a "violation"), Tenant's sole remedy (except as otherwise set forth in this Section 47) shall be a partial abatement of Minimum Rent payable hereunder from the thirtieth (30^{th}) day after Landlord receipt of Tenant's notice of such violation and continuing for so long as such violation continues, during which period Tenant shall pay rent in the amount of fifty percent (50%) of Minimum Rent ("Remedy Rent"), and Tenant shall pay all other charges payable hereunder. In the event Tenant has been paying Remedy Rent for a period of three hundred sixty-five (365) days ("Remedy Rent Period"), Tenant, upon ten (10) days' notice from Landlord, must elect to: (a) pay full Minimum Rent and all other charges due under this Lease, or (b) terminate this Lease upon ninety (90) days written notice to Landlord. In the event Tenant elects not to terminate this Lease and to resume paying full Minimum Rent, Percentage Rent and other charges due under this Lease, Tenant's right to terminate under this Section 47shall become null and void. Notwithstanding the foregoing, the exclusive in this Section 47 is for the benefit of and is personal to the Tenant executing this Lease and shall automatically be void following any assignment, subletting, or deemed assignment or subletting by Tenant, unless such assignment or subletting is a Permitted Transfer as set forth in Section 23 of this Lease.

Notwithstanding the foregoing, in the event Tenant's Exclusive Use is violated due to a tenant of the Center operating outside its permitted use (a "Rogue Tenant"), Tenant shall provide Landlord with a written notice of such violation. In the event that the violation of the Exclusive Use by a Rogue Tenant continues for a period of one hundred eighty (180) days beyond Tenant's written notice to Landlord of same, Tenant shall have the right to pay Remedy Rent in lieu of Minimum Rent only until the condition resulting in the violation ceases to exist. In the event that Tenant has been paying Remedy Rent due to the violation of the Exclusive Use by a Rogue Tenant for a period of three hundred sixty-five (365) days ("Rogue Remedy Rent Period"), Tenant, upon ten (10) days' notice from Landlord, must elect to: (a) pay full Minimum Rent and all other charges due under this Lease or (b) terminate this Lease upon ninety (90) days written notice to Landlord. In the event Tenant elects not to terminate this Lease and to resume paying full Minimum Rent and all other charges due under this Lease, Tenant's right to terminate under this Paragraph 47 shall become null and void.

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48. **Contingencies.** This Lease shall be contingent upon satisfaction of the following by Landlord:

i. Landlord shall review and approve Tenant's financial information;

ii. Landlord shall obtain a development loan upon terms and conditions which are satisfactory to Landlord, in its sole discretion; and

iii. Landlord shall obtain all permits and licenses from all governmental authorities necessary to construct the Shopping Center which shall include the Premises.

In the event Landlord fails to satisfy one or more of the following items on or before May 30th, 2016, Landlord shall have the right to terminate this Lease with thirty (30) days written notice, effective upon receipt by Tenant, at which time; neither party shall have any further liability or obligation to the other.
This Lease shall also be contingent upon satisfaction of the following by Tenant:

i. Tenant shall sell three (3) McDonald's Restaurants currently owned or controlled by Turan Strange;

ii. Tenant shall enter into a Franchise and Development Agreement with Another Broken Egg Café Inc.; and

iii. Tenant shall obtain all permits and licenses from all governmental authorities necessary to perform Tenant's Work and conduct business in the Shopping Center.

In the event Tenant fails to satisfy one or more of the following items on or before April 15, 2016, Tenant shall have the right to terminate this Lease with thirty (30) days written notice, effective upon receipt by Landlord, at which time; neither party shall have any further liability or obligation to the other. Notwithstanding the foregoing, the parties agree, in the event Tenant terminates this Lease under the terms set forth herein, Landlord shall reimburse Tenant its security deposit and any pre-paid rents.

49. **Tenant's Right of Early Termination.** So long as Tenant is in possession of the Premises and open for business and has not defaulted under Lease at any time during the Term, Tenant shall have the one-time right to terminate this Lease as of the Early Termination Date. The "Early Termination Date" shall be the last day of the sixtieth (60th) month following the Rent Commencement Date. In order to exercise this early termination right, Tenant must give Landlord written notice no less than one hundred twenty (120) days prior to the Early Termination Date (the "Early Termination Notice Date"). Along with such written notice, Tenant shall forfeit its Security Deposit and repay Landlord (i) all unamortized brokerage commissions and fees paid to Agent and Tenant's agent for securing this Lease, and (ii) unamortized Tenant Improvement Allowance monies paid to Tenant. Subject to Landlord's receipt of Tenant's notice of early termination and payment all unamortized all unamortized brokerage commissions and unamortized fees paid to Agent and Tenant's agent for securing this Lease, and unamortized Tenant Improvement Allowance monies paid to Tenant, this Lease shall terminate on the Early Termination Date and Tenant shall be released from any and all obligations, covenants or liabilities under this Lease except for any obligation or liability accrued before the Early Termination Date. Tenant's right to early termination under this Section 49 shall expire if Tenant's written notice and payment of the Termination Fee and unamortized brokerage commissions and fees are not delivered to Landlord by the Early Termination Notice Date. Notwithstanding the foregoing, Tenant's right to early termination in this Section 49 is for the benefit of and is personal to the Tenant executing this Lease and shall automatically be void following any assignment, subletting, or deemed assignment or subletting by Tenant, unless such assignment or subletting is a Permitted Transfer as set forth in Section 23 of this Lease.

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WITNESS the following signatures and seals:

TENANT:

T & S Management Inc.
d/b/a Another Broken Egg Cafe

By: Turan Strange

Name: Turan Strange

Title: President

Dated: April 11, 2016

STATE OF Ohio,
CITY/COUNTY OF Cuyahoga, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Turan Strange, whose name is signed to the foregoing writing bearing date of April 11, **2016** has acknowledged the same before me in my jurisdiction aforesaid. This person is ___ personally known to me, or ___ I examined the following type of identification: _____.

Robert I. Chernett
Notary Public

My Commission Expires:

_____

ROBERT I. CHERNETT - ATTY
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION
R.C. SECTION 147.03

LANDLORD:

WD-I Associates, LLC

By: _____(SEAL)

Name: **Jon S. Wheeler**

Title: **Manager**

Dated: 4/12/16

COMMONWEALTH OF VIRGINIA,
CITY/~~COUNTY~~ OF VA. Beach, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that **Jon S. Wheeler**, whose name is signed to the foregoing writing bearing date of 12 April, **2016** has acknowledged the same before me in my jurisdiction aforesaid. This person is ✓ personally known to me, or ___ I examined the following type of identification: _____.

Gayle Elaine Feineis
Notary Public

My Commission Expires:

31 Dec 2017

GAYLE ELAINE FEINEIS
Notary Public
Commonwealth of Virginia
7116744
My Commission Expires Dec 31, 2017

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ADDENDUM TO LEASE
SHOPPING CENTER LEASE
FOR FOOD SERVICE TENANTS

Landlord and Tenant agree that for so long as the Premises is used for the purpose of operating a restaurant or other food service business, the following provisions shall apply:

50. Tenant shall, at its own cost and expense, maintain at all times during the term (a) a **yearly** maintenance and service contract with a qualified and, if required by law, licensed, service company for the hood vent and fire suppression system in the Premises, such service to include cleaning the interior hood vent as well as the hood vent on the roof and the grease guards attached to any roof vents, and (b) a service contract with a qualified, and, if required by law, licensed, pest control company to periodically inspect (no less frequently than once per quarter) the Premises and to treat, in a manner which conforms to all legal requirements, for any infestation discovered. Tenant shall provide to Landlord a copy of each such contract at the beginning of the Term and evidence of each renewal thereof. **Tenant shall supply Landlord with copy of yearly maintenance reports upon request.**

51. Tenant shall maintain any grease supply in a clean and sanitary manner and shall service any grease traps **semi-annually** as necessary to prevent blockage. Tenant is responsible for maintaining a service contract on their grease trap with a licensed contractor. A copy of this contract is to be provided to the Landlord prior to the Tenant opening for business. Subsequent documentation of cleanings performed under this contract may be requested from the Landlord at any time. Failure to provide this documentation in a timely manner constitutes a default.

Should it be determined that an external plumbing problem affecting the tenant or any tenant in the center is due to the mishandling of the tenant's grease or insufficient cleaning of the trap, the tenant will be responsible for all costs associated with the removal and clean up, billed per the terms of their lease. Any damage resulting from the tenant's negligence regarding the proper disposal of the byproducts of their business will be the responsibility of the tenant.

The Landlord reserves the right to insist on an increased frequency of grease removal, if they feel it to be necessary to ensure the proper continued maintenance at the center. Failure to comply with this request constitutes a default.

52. Tenant shall place all garbage and trash generated by its business operations in closed receptacles which comply with all local codes and ordinances. All food waste and garbage shall be placed in sealed plastic bags or other sealed containers prior to placement in garbage receptacles.

53. Tenant shall strip and wax all waxed floors at least once each calendar year.

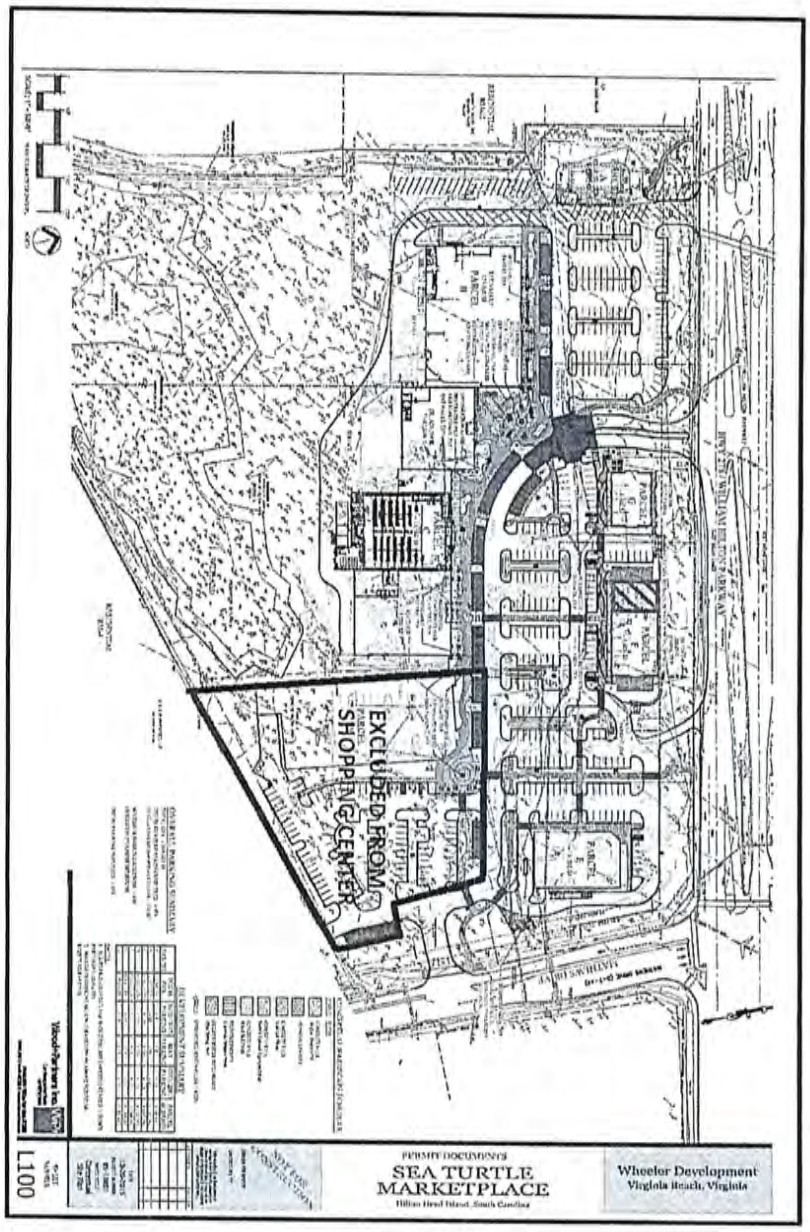
54. Tenant shall generally maintain the Premises in a neat and clean condition, including, without limitation, cleaning and sanitizing the restrooms on a daily or more frequent basis and maintaining the restroom fixtures in a clean and sanitary condition.

55. Tenant shall provide sufficient venting of any food preparation areas so as to prevent strong or offensive odors from being detected by persons in other tenant spaces in the Shopping Center.

56 All cooking equipment installed or used in the Premises shall be in compliance with all laws and codes and Tenant shall provide the specifications and ratings of such equipment to Landlord upon request.

57. Tenant shall supply Landlord with copies of the Health Inspection reports received. Two (2) consecutive grades of 90 or below shall constitute a default.

EXHIBIT "A"
SITE PLAN



Site Plan subject to change.

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EXHIBIT "B"
SAMPLE FORM OF NOTICE OF LEASE TERM DATES

To: _____ Date: _____
_____

RE: Shopping Center Lease dated _____, 20__, between _____, Landlord, and _____, Tenant, concerning Store Number _____ (the "Premises"), located at _____.

Dear _____:

In accordance with the above referenced Lease, we wish to advise and/or confirm as follows:

1. That the Premises have been accepted by Tenant as being substantially complete in accordance with the Lease and that there is no deficiency in construction.

2. That Tenant has accepted and is in possession of the Premises, and acknowledges that under the provisions of the Lease, the Term of the Lease is for _____, with _____ to renew for _____ each, and commenced upon the Commencement Date of _____, 20____ is currently scheduled to expire on _____ sooner terminated pursuant to any provision of the Lease.

3. That in accordance with the Lease, rental payment has commenced (or shall commence) on _____.

4. If the Commencement Date of the Lease is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.

5. Rent is due and payable in advance on the first day of each and every month during the Term of the Lease. Your rent checks should be made payable to _____ at _____.

6. The exact number of square feet within the Premises is _____ feet.

AGREED AND ACCEPTED

TENANT: _____

By: _____

Print Name: _____

Its: _____

By: _____

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EXHIBIT "C"
RULES AND REGULATIONS

1. All loading and unloading of merchandise, supplies and all other materials shall be done at such times and such areas and through such entrances as may from time to time be designated by Landlord. However, Landlord will make every effort not to interfere with Tenant's loading and unloading, and Landlord will exercise its rights hereunder solely for the purpose of establishing and maintaining efficiency and smoothness of operation of the Shopping Center as a whole.

2. No radio or television aerial shall be erected on the roof or exterior walls of the Premises or on the grounds without the written consent of Landlord in each instance. Any aerial so installed without such written consent shall be subject to removal without notice at any time, and Tenant shall pay Landlord, on demand, the cost of such removal.

3. Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

4. The plumbing facilities shall not be used for any other purpose than for which they are constructed, and no foreign substance of any kind shall be thrown therein.

5. The following specifications shall be controlling for all signs:

   a. Design of the sign shall be approved by the owners of the Shopping Center prior to installation. Sign installation is required within sixty (60) days after Tenant's possession of the Premises.

   b. No sign shall be permanently affixed to the plate glass of the store front window without prior written consent of Landlord.

   c. Except during Shopping Center promotions, no sign shall be placed in any show window advising the public that merchandise is for sale at a reduced price without the prior written approval of Landlord. Landlord reserves the right to approve design and materials used.

6. The Shopping Center shall be heated by electric or gas furnaces, and no other gas, propane, kerosene, gasoline or other fuels shall be used for any purpose whatsoever in the Shopping Center. Notwithstanding Tenant may use outdoor propane gas heaters on the patio of the Leasehold provided that Tenant shall indemnify and hold Landlord harmless against any and all claims and liabilities arising out of the use of such propane gas heaters and further provided Tenant maintains such gas heaters in good condition and repair and operates them in a safe manner.

7. Tenant shall install, maintain and keep in first-class order such fire extinguishers, placed in such locations in the Premises, as may be required by any city/county ordinance, state or federal statute or by any insurance company rating bureau which insures, or sets rates for insurance of, the Premises.

8. All trash must be kept in a covered metal container, or if requested by Landlord, in a Dumpsters or similar container furnished and serviced at Tenant's expense.

9. Tenant shall keep lights on in show windows and lights on under marquee, if any, from 10:00 a.m. until 9:00 P. M.

10. Tenant shall keep store lobbies, windows, and window frames clean (inside and out) at all times and wash them weekly.

11. Tenant shall keep store floors free of trash, chewing gum and other debris, and shall scrub and wax all tile or plastic flooring at least weekly.

12. Tenant shall operate its business in the Premises and take such preventive measure as shall be necessary to prevent any odors generated in the Premises from being detectable by persons in any other store space in the Shopping Center.

13. No banners

14. No tent signage

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EXHIBIT "D"
SIGN CRITERIA

Signage on the exterior of the Premises shall be provided as herein specified and Tenant shall not erect or maintain, nor suffer to remain, any sign on the exterior of the Premises except as permitted herein:

(a) **Tenant's signage shall be subject to Landlord's review and approval and shall comply with the Town of Hilton Head Island sign code.**

(b) No exposed neon or incandescent bulbs or flashing, blinking, rotating or moving signs, lights or markers shall be permitted in or on the Premises.

(c) No Store Front Sign or other sign on the Premises shall be of type wherein the sign is housed or contained within an illuminated or non-illuminated sign can or box mounted on the exterior of the sign area. All Signs shall receive Landlord's sole prior written approval before they are installed and shall be of the specific style and nature as approved by Landlord.

(d) No signs will be permitted at or on the rear of the Premises except that a small identification sign showing only the name of the Tenant shall be lettered on the exterior of the delivery door by Tenant to Landlord's specifications.

(e) No sign shall be painted on the exterior of the masonry, doors, windows or any other surface of the Premises, nor erected, maintained or suffered to remain on the roof or parapet of the Premises or under the awning canopy.

(f) No sign shall be erected until written specifications (including but not limited to size, color, materials, etc.) and drawings of such sign have received the sole prior written approval of Landlord. Such specifications and drawings shall be submitted to Landlord in quadruplicate and shall show the size, construction, materials, colors, script, name of sign manufacturer and proposed location of such sign in conformity with this Exhibit.

(g) All signs erected by Tenant pursuant to the provisions hereto shall be erected at Tenant's own risk and expense (including final electrical connections, glass panels, glazing of such and internal lighting of such, any damage created and time clock) and/or reimbursement to Landlord for any and all work already completed by Landlord that is part of Tenant's sign panel i.e. glass panels, glazing of such and internal lighting of such. However, Landlord is not obligated to perform any such stated signage work (glass panels, glazing and internal lighting). Such reimbursement shall be paid immediately upon Landlord's execution of said Lease. All signs shall be in accordance with applicable law and shall concern only the business of Tenant. Tenant shall maintain said signs in a good state of repair and save the Landlord harmless from any loss, cost or damage as a result of the erection, maintenance, existence or removal of the same and Tenant shall repair any damage which may have been caused by the erection, existence, maintenance or removal of such signs. Upon vacating the Premises, Tenant shall remove all such signs and repair all damage caused by such removal within five (5) days of said vacating or such work may be performed by Landlord at Tenant's sole expense. Said expenses shall be due and payable by Tenant on demand including interest at the highest rate permitted by law.

(h) Installing any exterior sign without Landlord's written approval constitutes a performance default, subject to remedies contained herein. Upon the expiration or earlier termination of this Lease, Tenant shall remove its signage from the Premises and promptly repair any damage caused by such removal.

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EXHIBIT "E"
GUARANTY OF LEASE

THIS GUARANTY OF LEASE made as of the 11th of April, 2016, by **Turan Strange** (the "Guarantor"), to **WD-I Associates, LLC** (the "Landlord").

In consideration of and to induce the execution and delivery of that certain lease dated April 11, 2016 **2016** (the "Lease") between Landlord and **T&S Management Inc. , or assigns, d/b/a Another Broken Egg Café** (the "Tenant"), for a certain premises (the "Premises") as more particularly described in the Lease, Guarantors hereby agree as follows:

1. Guarantor unconditionally guaranties to Landlord the full and punctual payment of all rents and other sums payable by Tenant under the Lease, and the full and punctual performance and observance of all terms, covenants and conditions on the part of Tenant to be performed and observed under the Lease (collectively the "Tenant Obligations"), including renewal options, holdover periods and periods prior to the commencement date under the Lease **provided, however, in the event Tenant is not in default of the Lease after the sixtieth (60th) month following the Rent Commencement Date, Guarantor's obligations under this Guaranty of Lease shall expire.** Guarantor further agrees to indemnify and hold Landlord harmless for any loss, liability, damage or expense (including reasonable attorney's fees) arising from the failure of Tenant to timely perform any of the Tenant Obligations and/or the enforcement of this Guaranty. Upon Tenant's default under the Lease and upon demand by Landlord, Guarantor shall pay or perform the Tenant Obligations so in default, as applicable, without offset, deduction or counterclaim.

2. This is a guaranty of payment and not of collection. Landlord shall not be required to pursue any remedies that it may have against Tenant or pursue any security deposit or other security or other parties as a condition to the enforcement of this Guaranty, it being intended that Guarantor's obligations under this Guaranty shall be independent of, and in addition to, the Tenant Obligations. It is understood and agreed that Guarantor may be joined in any action against Tenant and that recovery may be had against Guarantor in such action, or in any independent action against Guarantor. This Guaranty shall not in any way be affected or impaired by reason of Landlord asserting against Tenant any rights or remedies reserved to the Landlord pursuant to the Lease, or available at law or in equity, including any termination of the Lease or re-entry into the Premises.

3. Guarantor does not waive notice of any breach or default by Tenant under the Lease, but does waive notice of acceptance of this Guaranty, and all suretyship defenses generally. The foregoing provisions shall apply without limitation to Landlord's waiver of or failure to enforce any Tenant Obligations and/or Landlord's granting extensions of time of performance to Tenant.

4. This Guaranty shall be absolute and continuing. The obligations and liability of Guarantor shall not be discharged, released, affected or impaired by:

(a) Any change in the corporate existence, structure or ownership of Tenant, or any bankruptcy, insolvency, reorganization, liquidation dissolution, winding up or other proceedings affecting Tenant, or the disaffirmance or rejection of the Lease in such proceedings, regardless of whether any or all of the foregoing is or are done or made with or without the consent of Guarantor or Landlord;

Or

(b) Any modification, amendment or other alteration of the Lease; any renewal or extension of the Lease; any assignment of the Lease or any sublease; any release of any other party liable for the Tenant Obligations or any release of security held by Landlord for the performance of the Tenant Obligations; or any sublease of all or a portion of the Premises; and Guarantor consents to any and all of the foregoing;

Or

(c) Any disability or other defense of Tenant, or the cessation from any other cause whatsoever of the liability of Tenant under the Lease.

The obligations and liability of Guarantor under this Guaranty shall **apply to** all Tenant Obligations **through the end of the sixtieth (60th) month following the Rent Commencement Date as described in Paragraph 1 herein, and until such** have been fully paid and satisfied. If at any time payment of any of the Tenant Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Tenant, the obligations of the Guarantor with respect to such payment shall be reinstated at such time as though such payment had not been made.

5. Until all Tenant Obligations are fully paid and satisfied, Guarantor (a) shall have no right of subrogation against Tenant by reason of Guarantor's performance under this Guaranty or monies or obligations owed by Tenant to Guarantor, (b) waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant by reason of Guarantor's performance under this Guaranty, and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by or owed to Guarantor to the Tenant Obligations.

6. In the event that this Guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction, Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint tenant with Tenant, **provided, however, in the event Tenant is not in default of the Lease after the sixtieth (60th) month following the Rent Commencement Date, Guarantor's obligations under this Guaranty of Lease shall expire.**

7. This Guaranty and the obligations of the Guarantor under this Guaranty shall not be modified, discharged, waived or terminated except by an agreement in writing signed by Guarantor and Landlord and approved by the beneficiary of the first deed of trust on the Premises, except as provided for in Section 6 above and 23 of the Lease.

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8. This Guaranty shall bind Guarantor and the heirs, personal representatives, successors and assigns of Guarantor. This Guaranty may be freely assigned, transferred or hypothecated by Landlord and shall run in favor and inure to the benefit of Landlord, its successors and assigns, and each subsequent holder of Landlord's interest under the Lease. References to the term "Tenant" shall be deemed to include Tenant's heirs, personal representatives, successors and assigns.

9. This Guaranty shall be governed by and construed in accordance with the law of the state in which the Premises are located. Guarantor agrees to be subject to the jurisdiction of the courts of such state, to accept service of process in any action brought in such state, and Guarantor waives any objection to personal jurisdiction in such action. To the fullest extent permitted by law, Guarantor also waives all rights to a trial by jury in any action related to this Guaranty. If this Guaranty is enforced by suit or otherwise or if Landlord exercises any of its remedies under the Lease, Guarantor shall reimburse Landlord, upon demand, for all reasonable expenses incurred in connection therewith, including reasonable attorney's fees.

10. Notices to the Guarantor shall be sent by certified or registered mail to the address of **3680 Stoneleigh Rd., Cleveland Heights, OH 44121** and shall be effective upon being deposited in the United States mail, postage prepaid. Alternatively, notices may be sent by Federal Express or other recognized delivery service and shall be effective upon delivery to the above address. Guarantor may change its address by giving written notice to Landlord in accordance with this provision.

11. Each Guarantor represents and warrants that he or she has the legal right and capacity to execute this Guaranty. Each Guarantor waives the benefit of his or her homestead exemption.

12. The obligations of each Guarantor shall be joint and several. The release of any one or more Guarantors shall not affect the liability of any remaining Guarantor not expressly released. Landlord may proceed against one or more Guarantors without releasing the remaining Guarantors.

WITNESS the following signature(s) and seal(s) as of the day and year first above written.

GUARANTOR:

Turan Strange (SSN [redacted])

By: Turan Strange

Name: Turan Strange

Dated: April 11, 2016

STATE OF Ohio,
CITY/COUNTY OF Cuyahoga, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, whose name is signed to the foregoing writing bearing date of _____, **2016** has acknowledged the same before me in my jurisdiction aforesaid. This person is ✓ personally known to me, or ___ I examined the following type of identification: _____.

Robert P Chernett
Notary Public

My Commission Expires:

_____

ROBERT P. CHERNETT
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION
R.C. 147.03

EXHIBIT "F"
PERCENTAGE RENT ADDENDUM

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EXHIBIT "G"
CONSTRUCTION ADDENDUM

1. Except for the work for which Landlord shall be responsible (Landlord's Work), all work required to finish the Premises and to put the Premises in condition to open for business with the public shall be the obligation of Tenant (Tenant's Work). Tenant's Work shall include, but shall not be limited to, the items set forth on Exhibit G-1 to the Lease.

2. Tenant shall, at its expense, have plans and specifications for, and a description of Tenant's Work (Tenant's Plans) prepared by Tenant and shall submit them to Landlord for its review. Tenant's Plans shall conform in all respects with the plans for Landlord's Work, shall be in compliance with all applicable building codes and other laws and shall be otherwise satisfactory to Landlord. Landlord shall notify Tenant, in writing, of its approval or disapproval of Tenant's Plans within ten (10) business days of receipt by Landlord, and if Landlord disapproves Tenant's Plans, the reasons for the disapproval. The failure of Landlord to respond within such ten (10) business day's period shall be deemed to be an approval of Tenant's Plans by Landlord. In the event that Landlord disapproves Tenant's Plans, Tenant shall promptly cause them to be revised and resubmitted to Landlord for its approval and Landlord shall promptly respond to Tenant once Tenant's Plans, as revised, have been submitted to Landlord for review. Once Tenant's Plans have been approved by Landlord, Tenant shall not revise or amend Tenant's Plans without Landlord's prior written consent.

3. Tenant may commence Tenant's Work upon fulfillment of all of the following conditions:

a. Tenant's Plans have been approved by Landlord;

b. A building permit and all other permits or approvals required by any governmental authority to be issued prior to the commencement of Tenant's Work shall have been issued by the appropriate authority and copies of same forwarded to Landlord;

c. Tenant shall have provided, if necessary, satisfactory evidence that fire and casualty (including builder's risk), general liability and workmen's compensation insurance policies in amounts and in form and content satisfactory to Landlord have been issued and will be maintained throughout the course of the performance of Tenant's Work and that such certificates name Landlord and any other requested entities as additional insured;

d. Landlord shall have approved the contractor Tenant intends to use, the contract between Tenant and such contractor, and the source, method, and amount of the financing for Tenant's Work; and

e. Landlord has delivered possession of the Premises to Tenant (or has agreed to permit entry by Tenant and its contractors for the purpose of performing Tenant's Work).

4. Tenant shall cause Tenant's Work to be diligently prosecuted and to be performed in a good and workmanlike manner in conformance with Tenant's Plans and all applicable building codes and other laws. If Landlord permits Tenant to commence Tenant's Work prior to the completion of Landlord's Work, Landlord and Tenant shall work concurrently to have their respective work completed, it being understood, however, that Tenant's contractors shall not interfere with the work being performed by Landlord's contractors and that Landlord shall control access to the Premises. With regard to Tenant's construction, during the period of construction, Tenant shall keep the Premises and the area surrounding it in a clean and orderly condition free from construction debris. Landlord shall be responsible for cleaning with regard to its construction.

5. Tenant agrees to indemnify and hold Landlord harmless from and against any and all liability, costs and expenses (including attorney's fees) due to personal injury, death, or property damage arising out of or resulting from any act or omission on the part of Tenant, Tenant's contractor, or his or its subcontractors or employees in the prosecution of Tenant's Work.

6. During the course of the performance of Tenant's Work, Tenant shall keep the Premises and the property of which it is a part free of any mechanic's or materialmen's liens and if any such lien is filed and not removed within twenty (20) days of its filing, Landlord may bond or pay the lien or claim for the account of Tenant without inquiring into the validity thereof. Tenant shall promptly upon demand reimburse Landlord for any amounts so expended for its account and its failure to do so shall be, at Landlord's option, a breach of the Lease. Within ten (10) business days of Landlord's request, Tenant shall submit to Landlord all final lien waivers from general contractors and subcontractors as well as a copy of the Certificate of Occupancy.

7. All terms used in this addendum shall have the same meanings ascribed to them in the Lease. Tenant's possession of the Premises during the prosecution of Tenant's Work shall be subject to all of the terms and conditions of the Lease except for the payment of rent prior to the Rent Commencement Date. Any conflict between the terms of the Lease and the terms of this addendum shall be governed by the terms of this addendum.

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EXHIBIT "G-1"
TENANT'S WORK

Tenant will have the right to construct its business interior per Tenant's specification at its own cost and expense with Landlord's prior written approval; approval not to be unreasonably withheld. Prior to beginning work, Tenant shall submit to Landlord all plans, permits, certificates of insurance from contractors and general contractors naming Landlord and Wheeler Real Estate, LLC as additional insured. Tenant shall submit to Landlord all final lien waivers and certificate of occupancy (CO) upon completion of Tenant's Work.

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EXHIBIT "G-2"
LANDLORD'S WORK

GUIDE BUILDINGS CRITERIA

1. Partitions dividing stores shall be stud, sheetrock & taped. Walls to be hour rated per code.

2. A 10' 0" high store front of aluminum and plate glass with no bulkhead will be provided with materials and colors per the shopping center design. No show window platforms will be provided and all store fronts will be straight. Recessed entrance doors with tunnel type show windows will not be provided. **Two (2) clear, double pane safety glazed glass 3' x 7' front double doors will be provided. One rear 4' x 7' hollow metal door with panic hardware to be provided.**

3. The interior of each store shall be finished as follows:

(a) Floor - smooth troweled concrete (no carpet or floor tile). **Minimum of 4" thick with the back 1/3 left unpoured.**

(b) Walls - sheetrock (except as in Paragraph 1 above) unpainted.

(c) Intentionally Deleted.

4. Intentionally Deleted..

5. Intentionally Deleted.

6. Sales areas will be heated and cooled by using roof top air conditioning units and duct supply and return diffusers.

7. Intentionally Deleted.

8. Intentionally Deleted.

9. **Landlord shall provide an empty 2" conduit for telephone services**

10. **Patio: Landlord shall pour concrete for Tenant's patio area. Tenant shall be responsible for fencing property, covering and other improvements.**

GUIDE MECHANICAL CRITERIA

1. Based on the lighting criteria before mentioned and normal occupancy loads, the air conditioning systems for the tenant-designed areas will be at a minimum of one (1) ton per each **150** square feet **(Landlord to provide roof mounted units only. Tenant shall be responsible for all duct work per Tenant's plans).**

2. The heating and air conditioning of the tenant sales area will be accomplished by using gas and/or electric packaged units and thermostat controls; Landlord reserves the right to substitute with electric packaged units. See plans for specific requirements and layout.

3. No tenant shall restrict the installation of piping below the floor or above the ceiling of tenant's space. Piping shall be installed as designated by the Owner.

4. Each tenant will have an individual sub-meter for domestic water supply and common sanitary and waste system. No Natural Gas is available on the island; propane only..

5. An automatic fire sprinkler system will be provided if required by city code.

6. Refer to shopping center plans for details of each shop.

7. **Water and sewer: Minimum of 1 1/2" water line stubbed to Tenant's space in location per Tenant's plans. Minimum 4" sewer line stubbed into Tenant's space in sufficient size and depth for Tenant's use in location per Tenant's plans. 4" vent located above proposed ceiling brought within the demised premises to Tenant's specified location from properly flashed vent through roof. 1 1/2" water line feed and recessed hose bib to demised premises.**

8. **Grease Trap: Landlord to provide a grease trap sized at 2,000 gallons or what is required by local codes and ordinance, and all of Tenant's underground plumbing (drains, floor sinks, etc.) provided Tenant provides plans to Landlord within 30 days of lease execution.**

9. See shopping center sign criteria Exhibit "D" for all information regarding size, spacing, type, availability, switching, etc. for this project.

GUIDE ELECTRICAL CRITERIA

1. Electrical Characteristics:

Service: 120/208 volts, 3 phase (where available), **600** AMP panel. Metering and main distribution location in store shall be at a point near the rear of each store.

Development Fees: Landlord, at Landlord's sole expense, shall be responsible to pay all initial utility connection charges, development fees, hook-up fees, tap fees, traffic impact fees, and special use fees or permits in connection with the initial construction of the Building and Landlord's work.

Any work items under this LL's Work shall comply with applicable code.

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EXHIBIT "H"
SNDA

Attached

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("**Agreement**") is entered into as of this ____ day of _____, 2015 by and between **BOKF, NA dba Bank of Oklahoma**, whose address is 9520 North May Ave., Oklahoma City, Oklahoma 73120, Attention:_____ _____ Vice President ("**Lender**"), _____ , a _____ limited liability company, whose address is _____, Attention: _____, Manager ("**Landlord**"), and _____, a _____ limited liability company, whose address is _____, Attention: _____ ("**Tenant**").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have entered into/are parties to a Lease dated _____, 201_ (the "**Lease**") pertaining to certain premises ("**Premises**") at _____ in _____ ("**Shopping Center**"); and

WHEREAS, Lender has made or agreed to make a loan secured by, among other things, a lien ("Mortgage") upon the real property described in **Exhibit A** attached hereto (which includes the Premises); and

WHEREAS, Tenant wishes to be assured of the continued use and occupancy of the Premises and related Common Area (as such terms are defined in the Lease) and pylon or other signage of the Shopping Center under the terms of the Lease, notwithstanding any breach or default by Landlord or the exercise of any remedies under the Mortgage; and

WHEREAS, Lender wishes for Tenant to recognize and attorn to Lender in the event that Lender succeeds to the rights of Landlord under the Lease as a result of foreclosure or otherwise.

NOW, THEREFORE, in consideration of the foregoing, and for valuable consideration, the receipt and sufficiency of which upon full execution hereof are hereby acknowledged, and the mutual undertakings hereinafter set forth, the parties hereby covenant and agree as follows:

1. SUBORDINATION. As set forth in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of amounts secured thereby and interest thereon. The foregoing notwithstanding, in no event shall any of Tenant's trade fixtures, inventory, equipment, furniture and furnishings, accounts, books or records or other assets be or become subject or subordinate to the lien in favor of Lender.

2. NON-DISTURBANCE. So long as the Lease has not been terminated as a result of a default by Tenant beyond any applicable grace, notice and cure period, Tenant's possession, use and enjoyment of the Premises and the related Common Area, including but not limited to related signage, shall not be interfered with, disturbed or diminished, or otherwise affected in any manner as a result of any act or omission of Landlord, and all rights and privileges of Tenant under the Lease, and any renewals, modifications, or extensions thereof, shall be recognized by Lender and any Successor Landlord (as defined in paragraph 3 below). If any action or

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proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Premises, Tenant shall not be named as a party therein unless such joinder shall be required by law and Tenant shall not thereby be subjected or exposed to any liability, expense, and such joinder shall not result in the termination of the Lease or disturb Tenant's possession, use or enjoyment of the Premises, and the foreclosure or sale in any such action or proceeding shall be made subject to all rights of Tenant under the Lease.

3. ATTORNMENT. In the event that title to, possession of or control of the Premises or any other interest therein, which includes the right to receive payment of rent or to enforce the performance of other obligations under the Lease, is transferred as a result of any trustee's sale, judicial foreclosure, deed in lieu of foreclosure or other proceedings pursuant to the Mortgage, Tenant will attorn to the purchaser or transferee who acquires such title or other interest ("**Successor Landlord**") and will recognize such Successor Landlord as landlord under and subject to the terms and conditions of the Lease. Tenant hereby waives the provisions of any statute or rule of law now or hereafter in effect which might give it any right or election to terminate the Lease by reason of any such foreclosure proceeding.

4. PERFORMANCE BY TENANT. In the event that Tenant receives any notice from Lender or any Successor Landlord to pay rent or other sums or render any other performance under the Lease to such Lender or Successor Landlord, Tenant may render performance in accordance with such notice without any duty of inquiry and despite any knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord, and Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment of such rent to Lender or any Successor Landlord in accordance with this Agreement or Lender's or any Successor Landlord's notice or instructions from Lender or any Successor Landlord.

5. SUCCESSOR LANDLORD LIABILITY. Upon transfer of the Premises to the Successor Landlord, including Lender, the Successor Landlord shall have the same rights and obligations under the Lease as the Landlord and Tenant shall have the same rights and remedies under the Lease against the Successor Landlord as existed against Landlord, including for a breach of the Lease; provided, however, that Lender or any Successor Landlord shall not: (a) be subject to any offsets which Tenant might have against any prior landlord (including Landlord), except for offsets arising under the Lease with respect to costs and expenses (but not damages) incurred by Tenant after Tenant has notified Lender and given Lender an opportunity to cure as provided in this Agreement, and/or offsets arising from (i) a reconciliation or year-end adjustment of an estimated rental or other charge under the Lease or (ii) an audit of Landlord's business records, as provided in the Lease; or (b) be bound by any Base Rent which Tenant might have paid for more than one (1) month in advance; or (c) be obligated to reimburse Tenant for any security deposit, unless said security deposit is received by Lender; or (d) be bound by any amendment or modification of the Lease made after the date hereof without Lender's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and it being agreed by Lender that consent shall be deemed given unless Lender makes objection in writing and properly noticed to Tenant within thirty (30) days from the date of Tenant's notice to Lender. Provided however, that nothing herein shall excuse Lender or any Successor Landlord from liability or responsibility for, or limit any right or remedy of Tenant with respect to, any

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breach or default which continues from and after the date when Lender or such Successor Landlord obtains title to or takes possession or control of the Premises.

6. NOTICE OF LANDLORD DEFAULT. Tenant shall give to Lender, by certified or registered mail, a copy of any notice of default served upon Landlord under the Lease, at the address set forth above, and Lender shall have the same right, but shall have no obligation, to cure any such default on behalf of Landlord as is provided in the Lease.

7. LEASE TERMINATION. In the event Tenant notifies Lender that Tenant elects to terminate the Lease as a result of Landlord's default, the Lease shall not terminate until Lender has had a reasonable period of time after such notice in which to cure said default, not to exceed thirty(30) days ("**Initial Cure Period**"), which period may run concurrently with any notice or cure period given to Landlord; provided, however, that if due to the nature of the default Lender is unable to complete such cure within the Initial Cure Period, Lender shall be entitled to such additional time as may be necessary to cure such default, not to exceed thirty (30) days following the expiration of the Initial Cure Period, only if and so long as the following conditions are satisfied: (i) Lender has notified Tenant in writing of its intent to cure Landlord's default; (ii) Lender has commenced such cure within the Initial Cure Period; and (iii) Lender diligently pursues such cure to completion.

8. OTHER DOCUMENTS. Each of Lender, Landlord and Tenant agrees to reasonably execute and deliver to the others such further documents and assurances confirming the foregoing as any of such parties may reasonably request.

9. SUCCESSORS AND ASSIGNS. The terms "Lender", "Successor Landlord" and "Landlord" shall include such parties and any successors or assigns, including any successors in title to the Premises. The term "Tenant" shall include any assignee or sublessee.

10. CONDITION. The parties agree that this Agreement shall be valid only once fully executed, acknowledged and delivered by all of the parties hereto.

IN WITNESS WHEREOF, Lender, Landlord and Tenant have caused this Subordination, Non-Disturbance and Attornment Agreement to be executed as of the Effective Date.

LENDER:

BOKF, NA dba Bank of Oklahoma

By: _____

_____

_____ Vice President

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LANDLORD:

_____, a(n) _____ limited liability company

By: _____
_____
_____

TENANT:

_____, a(n) _____

By: _____
_____
_____

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ACKNOWLEDGMENTS

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ Vice President of **BOKF, NA dba Bank of Oklahoma** on behalf of Lender.

_____
Notary Public

My Commission expires:
_____

My Commission No.:
_____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ of _____, a(n) _____ on behalf of Landlord.

_____
Notary Public

My Commission expires:
_____

My Commission No.:
_____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ of _____, a(n) _____, on behalf of Tenant.

_____
Notary Public

My Commission expires:

_____

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EXHIBIT A

Legal Description

EXHIBIT "E"
GUARANTY OF LEASE

THIS GUARANTY OF LEASE made as of the 11th of April, 2016, by Turan Strange (the "Guarantor"), to **WD-I Associates, LLC** (the "Landlord").

In consideration of and to induce the execution and delivery of that certain lease dated April 11, 2016 2016 (the "Lease") between Landlord and **T&S Management Inc. , or assigns, d/b/a Another Broken Egg Café** (the "Tenant"), for a certain premises (the "Premises") as more particularly described in the Lease, Guarantors hereby agree as follows:

1. Guarantor unconditionally guaranties to Landlord the full and punctual payment of all rents and other sums payable by Tenant under the Lease, and the full and punctual performance and observance of all terms, covenants and conditions on the part of Tenant to be performed and observed under the Lease (collectively the "Tenant Obligations"), including renewal options, holdover periods and periods prior to the commencement date under the Lease **provided, however, in the event Tenant is not in default of the Lease after the sixtieth (60th) month following the Rent Commencement Date, Guarantor's obligations under this Guaranty of Lease shall expire.** Guarantor further agrees to indemnify and hold Landlord harmless for any loss, liability, damage or expense (including reasonable attorney's fees) arising from the failure of Tenant to timely perform any of the Tenant Obligations and/or the enforcement of this Guaranty. Upon Tenant's default under the Lease and upon demand by Landlord, Guarantor shall pay or perform the Tenant Obligations so in default, as applicable, without offset, deduction or counterclaim.

2. This is a guaranty of payment and not of collection. Landlord shall not be required to pursue any remedies that it may have against Tenant or pursue any security deposit or other security or other parties as a condition to the enforcement of this Guaranty, it being intended that Guarantor's obligations under this Guaranty shall be independent of, and in addition to, the Tenant Obligations. It is understood and agreed that Guarantor may be joined in any action against Tenant and that recovery may be had against Guarantor in such action, or in any independent action against Guarantor. This Guaranty shall not in any way be affected or impaired by reason of Landlord asserting against Tenant any rights or remedies reserved to the Landlord pursuant to the Lease, or available at law or in equity, including any termination of the Lease or re-entry into the Premises.

3. Guarantor does not waive notice of any breach or default by Tenant under the Lease, but does waive notice of acceptance of this Guaranty, and all suretyship defenses generally. The foregoing provisions shall apply without limitation to Landlord's waiver of or failure to enforce any Tenant Obligations and/or Landlord's granting extensions of time of performance to Tenant.

4. This Guaranty shall be absolute and continuing. The obligations and liability of Guarantor shall not be discharged, released, affected or impaired by:

(a) Any change in the corporate existence, structure or ownership of Tenant, or any bankruptcy, insolvency, reorganization, liquidation dissolution, winding up or other proceedings affecting Tenant, or the disaffirmance or rejection of the Lease in such proceedings, regardless of whether any or all of the foregoing is or are done or made with or without the consent of Guarantor or Landlord;

Or

(b) Any modification, amendment or other alteration of the Lease; any renewal or extension of the Lease; any assignment of the Lease or any sublease; any release of any other party liable for the Tenant Obligations or any release of security held by Landlord for the performance of the Tenant Obligations; or any sublease of all or a portion of the Premises; and Guarantor consents to any and all of the foregoing;

Or

(c) Any disability or other defense of Tenant, or the cessation from any other cause whatsoever of the liability of Tenant under the Lease.

The obligations and liability of Guarantor under this Guaranty shall **apply to** all Tenant Obligations **through the end of the sixtieth (60th) month following the Rent Commencement Date as described in Paragraph 1 herein, and until such** have been fully paid and satisfied. If at any time payment of any of the Tenant Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Tenant, the obligations of the Guarantor with respect to such payment shall be reinstated at such time as though such payment had not been made.

5. Until all Tenant Obligations are fully paid and satisfied, Guarantor (a) shall have no right of subrogation against Tenant by reason of Guarantor's performance under this Guaranty or monies or obligations owed by Tenant to Guarantor, (b) waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant by reason of Guarantor's performance under this Guaranty, and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by or owed to Guarantor to the Tenant Obligations.

6. In the event that this Guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction, Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint tenant with Tenant, **provided, however, in the event Tenant is not in default of the Lease after the sixtieth (60th) month following the Rent Commencement Date, Guarantor's obligations under this Guaranty of Lease shall expire.**

7. This Guaranty and the obligations of the Guarantor under this Guaranty shall not be modified, discharged, waived or terminated except by an agreement in writing signed by Guarantor and Landlord and approved by the beneficiary of the first deed of trust on the Premises, except as provided for in Section 6 above and 23 of the Lease..

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8. This Guaranty shall bind Guarantor and the heirs, personal representatives, successors and assigns of Guarantor. This Guaranty may be freely assigned, transferred or hypothecated by Landlord and shall run in favor and inure to the benefit of Landlord, its successors and assigns, and each subsequent holder of Landlord's interest under the Lease. References to the term "Tenant" shall be deemed to include Tenant's heirs, personal representatives, successors and assigns.

9. This Guaranty shall be governed by and construed in accordance with the law of the state in which the Premises are located. Guarantor agrees to be subject to the jurisdiction of the courts of such state, to accept service of process in any action brought in such state, and Guarantor waives any objection to personal jurisdiction in such action. To the fullest extent permitted by law, Guarantor also waives all rights to a trial by jury in any action related to this Guaranty. If this Guaranty is enforced by suit or otherwise or if Landlord exercises any of its remedies under the Lease, Guarantor shall reimburse Landlord, upon demand, for all reasonable expenses incurred in connection therewith, including reasonable attorney's fees.

10. Notices to the Guarantor shall be sent by certified or registered mail to the address of **3680 Stoneleigh Rd., Cleveland Heights, OH 44121** and shall be effective upon being deposited in the United States mail, postage prepaid. Alternatively, notices may be sent by Federal Express or other recognized delivery service and shall be effective upon delivery to the above address. Guarantor may change its address by giving written notice to Landlord in accordance with this provision.

11. Each Guarantor represents and warrants that he or she has the legal right and capacity to execute this Guaranty. Each Guarantor waives the benefit of his or her homestead exemption.

12. The obligations of each Guarantor shall be joint and several. The release of any one or more Guarantors shall not affect the liability of any remaining Guarantor not expressly released. Landlord may proceed against one or more Guarantors without releasing the remaining Guarantors.

WITNESS the following signature(s) and seal(s) as of the day and year first above written.

GUARANTOR:

Turan Strange (SSN [redacted])

By: Turan Strange

Name: Turan Strange

Dated: April 11, 2016

STATE OF Ohio,
CITY/COUNTY OF Cuyahoga, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that _____, whose name is signed to the foregoing writing bearing date of _____, **2016** has acknowledged the same before me in my jurisdiction aforesaid. This person is ✓ personally known to me, or ___ I examined the following type of identification: _____.

Robert P. Chernett
Notary Public

My Commission Expires:

_____

ROBERT P. CHERNETT
NOTARY PUBLIC
MY COMMISSION HAS NO EXPIRATION
R.C. 147.03

EXHIBIT C

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www.svn.com

February 22, 2021

Invoice: Leasing Services

To: BOKF Real Estate Holdings, LLC
Attn: Warren E. Hill
One Williams Center, Suite 1800
Tulsa, Oklahoma 74172

From: Tom DeMint CCIM
SVN Commercial Real Estate

Tenant: Gusto Ristorante
Location: 430 William Hilton Pkwy, Suite 301, Hilton Head Island, SC 29926
Size: 3,085 sq. ft.
Total Base Rent: $278,452.10 (Does not include additional rent)
Lease Commencement Date: February 12, 2021
Rent Commencement Date: July 1, 2021
Lease Term: February 12, 2021 – June 30, 2026
Lease Commission Rate: 6% of Total Rent Over the Term
Total Commission Due: $16,707.13
Payable as Follows:

- March 1, 2021 - $8,353.57 (Lease Execution)
- July 1, 2021 - $8,353.57 (Rent Commencement Date)

Please remit:
SVN Real Estate
Attention: Tom DeMint CCIM
1538 Fording Island Rd, Suite 107
Hilton Head Island, SC 29926

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EXHIBIT D

BOKF REAL ESTATE HOLDING, LLC			
DAMAGE CALCULATION			
SUMMARY			
	Accrued Damages	Deficiency	Deficiency
	(10/1/19 through	*(7/1/21 though*	*(Current Date through*
	6/31/21)	*Current Date)*	*remainder of 10 Year Term -*
			Discounted to PV)
Minimum Rent	$162,750.00	$66,149.39	$191,136.81
Additonal Rent	$23,625.00	$0.00	$0.00
Late Fees	$9,318.75	$0.00	$0.00
Interest	$59,647.15	$6,658.80	$0.00
Broker Commissions	$16,707.13	$0.00	$0.00
	$272,048.03	$72,808.19	$191,136.81
Daily Interest	$64.34	$21.75	

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EXHIBIT D

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BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	2/14/2023								
Interest Rate	12%								
Discount Rate	8%								
Due Date	Minimum Rent	Gusto Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Day Past Due (Current)	Interest (Current)	Total Due (Current)
10/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1232	$3,774.48	$13,093.23
11/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1201	$3,679.50	$12,998.25
12/1/2019	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1171	$3,587.59	$12,906.34
1/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1140	$3,492.62	$12,811.37
2/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1109	$3,397.64	$12,716.39
3/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1080	$3,308.79	$12,627.54
4/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1049	$3,213.82	$12,532.57
5/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	1019	$3,121.91	$12,440.66
6/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	988	$3,026.93	$12,345.68
7/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	958	$2,935.02	$12,253.77
8/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	927	$2,840.05	$12,158.80
9/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	896	$2,745.07	$12,063.82
10/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	866	$2,653.16	$11,971.91
11/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	835	$2,558.19	$11,876.94
12/1/2020	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	805	$2,466.28	$11,785.03
1/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	774	$2,371.30	$11,690.05
2/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	743	$2,276.33	$11,595.08
3/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	715	$2,190.54	$11,509.29
4/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	684	$2,095.57	$11,414.32
5/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	654	$2,003.66	$11,322.41
6/1/2021	$7,750.00		$7,750.00	$1,125.00	$8,875.00	$443.75	623	$1,908.68	$11,227.43
7/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		593	$658.88	$4,038.46
8/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		562	$624.44	$4,004.02
9/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		531	$589.99	$3,969.57
10/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		501	$556.66	$3,936.24
11/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		470	$522.21	$3,901.79
12/1/2021	$7,750.00	$4,370.42	$3,379.58		$3,379.58		440	$488.88	$3,868.46
1/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		409	$454.44	$3,834.02
2/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		378	$419.99	$3,799.57
3/1/2022	$7,750.00	$4,370.42	$3,379.58		$3,379.58		350	$388.88	$3,768.46
4/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		319	$340.69	$3,589.16

EXHIBIT D

BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	2/14/2023								
Interest Rate	12%								
Discount Rate	8%								
Due Date	Minimum Rent	Gusto Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Day Past Due (Current)	Interest (Current)	Total Due (Current)
5/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		289	$308.65	$3,557.12
6/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		258	$275.54	$3,524.01
7/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		228	$243.50	$3,491.97
8/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		197	$210.39	$3,458.86
9/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		166	$177.29	$3,425.76
10/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		136	$145.25	$3,393.72
11/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		105	$112.14	$3,360.61
12/1/2022	$7,750.00	$4,501.53	$3,248.47		$3,248.47		75	$80.10	$3,328.57
1/1/2023	$7,750.00	$4,501.53	$3,248.47		$3,248.47		44	$46.99	$3,295.46
2/1/2023	$7,750.00	$4,501.53	$3,248.47		$3,248.47		13	$13.88	$3,262.35
3/1/2023	$7,750.00	$4,501.53	$3,248.47		$3,248.47				
4/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
5/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
6/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
7/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
8/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
9/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
10/1/2023	$7,750.00	$4,637.78	$3,112.22		$3,112.22				
11/1/2023	$8,525.00	$4,637.78	$3,887.22		$3,887.22				
12/1/2023	$8,525.00	$4,637.78	$3,887.22		$3,887.22				
1/1/2024	$8,525.00	$4,637.78	$3,887.22		$3,887.22				
2/1/2024	$8,525.00	$4,637.78	$3,887.22		$3,887.22				
3/1/2024	$8,525.00	$4,637.78	$3,887.22		$3,887.22				
4/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
5/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
6/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
7/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
8/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
9/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
10/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
11/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				

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EXHIBIT D

BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	2/14/2023								
Interest Rate	12%								
Discount Rate	8%								
Due Date	Minimum Rent	Gusto Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Day Past Due (Current)	Interest (Current)	Total Due (Current)
12/1/2024	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
1/1/2025	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
2/1/2025	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
3/1/2025	$8,525.00	$4,776.61	$3,748.39		$3,748.39				
4/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
5/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
6/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
7/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
8/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
9/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
10/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
11/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
12/1/2025	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
1/1/2026	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
2/1/2026	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
3/1/2026	$8,525.00	$4,918.00	$3,607.00		$3,607.00				
4/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
5/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
6/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
7/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
8/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
9/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
10/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
11/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
12/1/2026	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
1/1/2027	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
2/1/2027	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
3/1/2027	$8,525.00	$5,066.51	$3,458.49		$3,458.49				
4/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
5/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
6/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				

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EXHIBIT D

BOKF REAL ESTATE HOLDINGS, LLC/T&S MANAGEMENT, INC - ACCRUED DAMAGES									
Current Date	2/14/2023								
Interest Rate	12%								
Discount Rate	8%								
Due Date	Minimum Rent	Gusto Minimum Rent	Adjusted Rent	Additional Rent	Total Rent	Late Fee	Day Past Due (Current)	Interest (Current)	Total Due (Current)
7/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
8/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
9/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
10/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
11/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
12/1/2027	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
1/1/2028	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
2/1/2028	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
3/1/2028	$8,525.00	$5,218.51	$3,306.49		$3,306.49				
4/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				
5/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				
6/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				
7/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				
8/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				
9/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				
10/1/2028	$8,525.00	$5,375.06	$3,149.94		$3,149.94				

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BOKF REAL ESTATE vs T & S MANAGEMENT
2020-CP-07-00977 - TURAN STRANGE

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BOKF REAL ESTATE HOLDING, LLC,

Plaintiff,

vs. CIVIL ACTION NUMBER
2020-CP-07-00977

T & S MANAGEMENT, INC., and TURAN STRANGE,

Defendants.

----------/

The deposition of TURAN STRANGE, a witness in the above-entitled cause, taken pursuant to Notice and agreement, before Cathy M. Knoettner, Certified Court Reporter and Notary Public, at the Offices of Coastal Court Reporting, Inc., 1 Corpus Christi Place, Suite 107, Hilton Head Island, South Carolina, on the 11th day of May, 2022, commencing at or about the hour of 10:08 a.m.

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TURAN BROWN STRANGE,

having been produced and first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. KUBEC:

Q Good morning. Please state and spell your full name for the record, please, sir.

A Turan Brown Strange, T-U-R-A-N, Brown; last name is Strange, S-T-R-A-N-G-E.

Q Mr. Strange, have you ever had your deposition taken before?

A No.

Q I will explain some of the ground rules to you about the deposition. Everything that you say today will be transcribed by the court reporter. Everything I say today and everything Mr. Mogil says today will be transcribed by the court reporter. At the end of the deposition you will have the option to review your testimony in a booklet form that will be made available to you if you so choose. It's important for you to let me finish my question before you answer. What happens often is we're talking at the same time and the court reporter may not be able to take down everyone's words.

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Q In what capacity?
A Secretary-treasurer.
Q Is that for T & S Management, Inc. ?
A Yes.
Q And how long has she functioned in the capacity of secretary-treasurer for that business?
A For T & S since its inception.
Q And when was T & S created?
A October of 1988.
Q Is it a South Carolina incorporated company or is it --
A Ohio.
Q Is it licensed to do business in South Carolina?
A Yes, as a foreign corporation.
Q Is it authorized to do business in any other states other than --
A Georgia.
Q Okay. Any other states?
A No, at least not at this time.
Q Okay. And who are the owners of T & S Management?
A I'm 100 percent owner.
Q Have you always been 100 percent owner?

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A Yes.
Q And it's a corporation; correct?
A Yes.
A Yes, S corp.
Q What is the business purpose for T & S Management; what does it do?
A We operate a franchise that's affiliated with Another Broken Egg.
Q What is Another Broken Egg?
A It's a breakfast, brunch and lunch business.
Q To your knowledge, how many franchises are there for Another Broken Egg in the country?
A Approximately 80 and building.
Q And how many does T & S Management -- what's the word, is franchisee; correct?
A Yes.
Q So T & S Management, Inc. is the franchisee for how many of these Another Broken Egg restaurants?
A One.
Q And where is that?
A It's in Pooler, Georgia.
Q Let's back up a little bit. Before your involvement with Another Broken Egg, please

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A I think so.
Q Do you have a specific recollection of reviewing any draft lease agreements?
A Yes.
Q But this whole time Mr. Chernett was the one negotiating on your behalf?
A Yes.
Q Do you recall how long the negotiation period took place for this particular premises?
A I would say approximately four, five months.
Q Do you recall who was negotiating on behalf of the landlord?
A I don't recall.
Q You also have Another Broken Egg franchise in Pooler, Georgia; correct?
A Yes.
Q When did that franchise -- when did the doors open to that location?
A We opened that location in April 27th of 2018.
Q Do you own that location or lease that location?
A Lease.
Q And did Mr. Chernett negotiate the

terms of that lease on your behalf or did you do that yourself?

A He did the finalization of it. On that particular one, I had a real estate broker involved. So she did all the initial work and then he finalized everything on it, on the lease agreement.

Q Was a real estate broker involved in the Hilton Head transaction?

A No.

Q Who was the Georgia real estate broker?

A Well, first of all, she wasn't from Georgia; I think lived in South Carolina. But I can't recall the name. I'd have to get back to you on that one.

Q Okay. At this time do you have any other Another Broken Egg franchisees opened?

A No, no.

Q Just Pooler?

A Just Pooler.

Q How's the business doing?

A The business is doing good.

Q Pooler is a growing area, is it not?

A Yes, it is.

Q So it's a good location?

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(Whereupon, Plaintiff's Exhibit Number 1 was marked for identification.)

BY MR. KUBEC:

Q Mr. Strange, I have handed you a document; what is this?

A It's the lease agreement that I had with Sea Turtle Marketplace, Wheeler Real Estate, L.L.C.

Q If you look at page 18, is that your signature?

A Yes, it is.

Q And if you look at page 24, Exhibit E, tell me what that is.

A Okay, this is a Guaranty of Lease.

Q And it says, "This guaranty of lease made as of the 11th of April 2016 by Turan Strange, the guarantor, to WD-1 Associates, L.L.C., the landlord." And if you refer to the next page, page 25, is that your signature?

A Yes, it is.

Q Do you have any reason to doubt that these are a true and accurate copy of the lease that you signed?

A No.

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for breaching this lease; correct?
A Yes.
Q And you disagree with that; correct?
A There are circumstances involved.
Q There are circumstances involved.
We'll explore those a little bit in detail, okay?
Is it true that this was an original ten-year period for this lease?
A Yes.
Q Even though you entered into this lease on April 11, 2016, when did T & S Management, Inc. make its first rent payment under this lease, do you recall?
A Well, we opened the restaurant November the 5th, 2018.
Q Do you recall if you paid rent before you opened?
A Well, we had to pay a deposit so we did pay a deposit to Wheeler. And I can't recall if we paid before we opened but I'm sure we paid rent when we opened, when we basically the started the business.
Q And you were required to pay your rent on a monthly basis?

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A Yes.
Q And do you recall how many monthly rent payments you have made for this location?
A I made payments all the way up to August of 2019.
Q So the doors opened November 2018?
A Uh-huh (affirmative).
Q And you paid rent through August of 2019?
A Yes.
Q Approximately nine payments?
A Yes.
Q Maybe ten?
A Yes.
Q All right. And let's look at some of the terms of this agreement.
A Okay.
Q Well, basically before we get into the details, rent consisted of a base payment; correct?
A Yes.
Q Were you also responsible for paying a portion of operating costs?
A CAM charges, yes.
Q You were also responsible for paying a

portion of insurance?
A Yes.
Q You were also responsible for paying a portion of real estate?
A Yes.
Q I'm sorry, property taxes.
A Yes.
Q Any other charges that you were responsible for paying that you recall?
A No.
Q Those monthly payments that you made from November 2018 to August 2019, did they include payments for minimum rent and those other charges?
A Yes.
Q Do your business records reflect the fact that you made those payments?
A Yes.
Q So in August of 2019, you stopped making payments; correct?
A I think September was the first month I didn't make my payment.
Q Why?
A I didn't have the funds to do it.
Q Why not?

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A We were losing money and we were in negative cash flow. I literally had borrowed money from three of my different friends to try to tie me over and it wasn't working.

Q As of September 2019, the Pooler store was opened though, right?

A Yes.

Q And you continued to keep that store opened?

A Yes.

Q And you paid your lease on that property?

A By the time we closed for the pandemic, I was behind four months in rental arrears as well.

Q When did you close for the pandemic?

A We closed in March of -- I think it was like the 29th, March 29th of 2020.

Q So at that point you were four months behind in rent?

A Yes.

Q How long was the store closed for?

A Approximately eight weeks.

Q So referring back to the Hilton Head location, you stopped paying rent because you

who called you?
A It was a young lady that was working in his office. I don't remember her name.
Q Lauren Qwinn?
A I think it might have been her.
Q Did you receive any letters or e-mail correspondence concerning the nonpayment?
A I don't believe so.
Q But the doors remained opened to the Hilton Head location even though rent was not paid; correct?
A Yes.
Q But eventually you did close down the location?
A In January.
Q 2020?
A Yes.
Q Why did you --
A January 13.
Q Why did you do that?
A It had gotten to a point wherein I was barely making payroll at Pooler and at Hilton Head, and I knew I would not be able to continue to make it. I was in a negative cash flow at the same point so there was no funds available

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to make any payments. So when I looked at the losses that were taking place over at Hilton Head, they were pretty significant and sales had basically dropped down to -- it was under $100,000 a month so I knew I would not be able to make it at that location any longer. So I made a decision, either I try to keep both of them open and go belly-up on both locations or close one and try to focus on the other one and try to make it work, which is what I did.

Q Before closing the door, did you inform the landlord that you were going to shut down the Hilton Head location?

A No.

Q Why not?

A Probably too embarrassing. I had never failed in business before and it wasn't very pleasant.

Q Did you inform the franchisor that you were going to shut down the location prior to you're doing so?

A I called him after I had made the decision to close it and told him that I was closing the location, yes.

Q Who is "him"?

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the struggle was and they made a decision to null and void my development agreement and the $17,500 that I had already prepaid for that next location, which would have been a third location, they took those funds. And that was their settlement for me closing that particular location.

Q So you no longer have the ability to open a third franchise?

A Not at this time. Under that development agreement, not at all.

Q Well, at the time you entered into this lease agreement, it called for a monthly minimum rent; do you believe that monthly minimum rent was fair?

A At the time I signed it, yes.

Q So the only reason you didn't pay rent is because you couldn't afford to?

A Didn't have the funds.

Q After you closed the doors, did you advise the landlord that you had closed the doors to the Hilton Head location?

A I don't believe so.

Q Why not?

A I don't have an answer for you on that

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MR. MOGIL: You can answer it. I've put my objection for the record.

THE WITNESS: Repeat the question again?

BY MR. KUBEC:

Q Sure. I said you kept it a secret from the landlord?

A Secret, okay, if you want to say it was a secret.

Q Let's look at the lease again, which is Exhibit Number 1, and on page eight, paragraph 17, subparagraph A, I want to refer you to the next to the last sentence. It says, "Final inspection by landlord will be conducted prior to tenant's move out and no utilities will be disconnected until final inspection has been performed and documented. Tenant agrees to arrange such inspection with landlord prior to tenant's move out." Did you do anything to arrange an inspection with the landlord prior to moving out?

A No, I did not.

Q Well, that would be a breach of this agreement; correct?

MR. MOGIL: Objection to the form.

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THE WITNESS: Yes.
BY MR. KUBEC:
Q Did you offer to -- you didn't offer to sell the FF&E to the landlord, did you?
A No.
Q You had no communications whatsoever with the landlord about FF&E; correct?
A No.
Q At the time you met with Mr. -- or spoke with Mr. Wheeler -- I believe you met with him -- after you stopped paying rent, were there any discussions about abating rent?
A No.
Q Reducing rent?
A No.
Q Why not? Did you ask him, hey, can you give me a break?
A I did not ask.
Q At that point in time was your mindset just I got to get out of here?
A During that time when him and I met was I thinking about that along those lines, probably not at that point, but I knew that something was going to have to give at some point because I knew I wouldn't be able to pay,

back, okay, and we had that first lease -- you say you didn't have the first lease amendment, okay? Well, on January 6th, I signed the first one, and on January 6th we were actually supposed to have been opened already, but then, all of a sudden, I'm having to sign an amendment in January when, in essence, I was supposed to be opened in September, and that was January 17th I signed that one. So you say you'll provide that, but that created -- that window that I had, it was gone.

Q That was your choice to sign; correct?

A It was my choice, yes, it was okay?

Q All right. And you didn't pay your rent at any time prior to your opening the store?

A That is correct.

Q Is it your contention that your inability -- that your failure to pay rent is in any way caused by the landlord?

A No.

Q It was just simply you did not have enough money?

A Didn't have enough money.

Q At some point, though, you did get some

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money from the Government; correct?
A Yes.
Q Two PPP loans?
A Yes.
Q And the first one was issued, I believe, in April of 2020?
A Yes.
Q And that was for $265,000?
A Uh-huh (affirmative).
Q Is that correct?
A Yes.
Q You received a second PPP loan; correct?
A Yes.
Q And that was for, roughly, $240,000?
A Yes.
Q And that was in February of 2021?
A Yes.
Q And when I say "you", that was T & S Management; correct?
A Yes.
Q Okay. And what were those funds used for?
A Those funds was to help me get my restaurant back open. It was also for employee

wages, and you could use it for -- I believe you could use it for rent as well.

Q The first PPP loan, did you receive the monies in April of 2020?

A Yes, I believe so.

Q At that point in time you had already closed down Hilton Head; correct?

A Yes.

Q You had sold off the FF&E; correct?

A Yes.

Q So it was nothing but a shell store at that point in time, right?

A Yes.

Q So there was no sense in using those monies to reopen the Hilton location; correct?

A That is correct.

Q So all those monies went to the Pooler location?

A Yes.

Q Same for the second loan; correct?

A Yes.

MR. KUBEC: Why don't take a 15-minute break, if that's okay with you, at this point in time?

MR. MOGIL: Let's go off the

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