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May 05 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Circuit Court Judge

Circuit Court Case No. 2023-CP-10-05598
Court of Appeals Case No. 2024-001937

DSH Holdings, LLC, Respondent,

v.

318 Royal St. LLC, and William Irvin, Appellants.

MOTION TO CERTIFY CASE

Appellants respectfully move this Court pursuant to Rule 204(b), of the South Carolina Appellate Court Rules to certify this appeal and transfer it from the Court of Appeals to this Court. This appeal raises a novel question about the scope of what constitutes practicing law in commercial real estate transactions between corporate entities. Specifically, this appeal hinges on whether a lawyer in Georgia engaged in the unauthorized practice of law by purporting to represent Respondent in negotiating, and attempting to terminate, a contract for the purchase and sale of a housing complex located in South Carolina.¹

BACKGROUND

Appellant, 318 Royal St, LLC, owned Carrington Townhomes which is an affordable housing complex in Orangeburg, South Carolina. Respondent, DSH Holdings, LLC, entered into

¹ Appellants have filed this motion simultaneously with their initial brief of appellant in the Court of Appeals.

a contract (the PSA) with 318 Royal to purchase the Carrington Townhomes. Exhibit 1. The PSA provided that it was to be governed by the laws of South Carolina. The PSA required Respondent to transfer \$125,000 in earnest money and that the PSA could be terminated by either party so long as the notice of termination was signed by the party giving the notice or by that *party's attorney*.

Respondent ultimately attempted to cancel the PSA by emailing Appellants a letter from Todd Robinson, a lawyer in Georgia. Exhibit 2. Mr. Robinson was supposedly serving as Respondent's closing attorney even though he was not licensed to practice law in South Carolina. Despite not being licensed here, Mr. Robinson sent a letter to Appellants indicating that he was representing Respondent in the purchase of the Carrington Townhomes and that Respondent wished to terminate the contract and be refunded the earnest money. Mr. Robinson sent a second letter to Appellants in which he stated that Respondent would be seeking attorney's fees. Mr. Robinson attached a summary of the legal fees he charged Respondent for his purported representation in conjunction with this real estate transaction. Exhibit 3.

Appellants argued that the notice of termination was not properly given because it was not signed by the party or the party's attorney. Respondent sued Appellants for breach of contract and conversion. As a defense, Appellants asserted that Mr. Robinson's purported representation of Respondent constituted the unauthorized practice of law and that he could not terminate the PSA because he was not the "party's attorney." The circuit court ultimately granted summary judgment in favor of Respondent finding that the PSA did not require the "party's attorney" to be licensed in South Carolina and that Mr. Robinson did not engage in the unauthorized practice of law because no closing took place. That order is the subject of this appeal. Exhibit 4.

ARGUMENT

Rule 204(b) of the South Carolina Appellate Court Rules provides that “[i]n any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals.” *See also* S.C. Code § 14-8-210(b). “Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b), SCACR.

This Court has the authority and the duty to regulate the practice of law in South Carolina and to determine what constitutes the unauthorized practice of law. *See* S.C. Const. Art. V, § 4; S.C. Code § 40-5-10; *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992). This Court has determined that what constitutes the unauthorized practice of law must be decided “in the context of an actual case or controversy.” *In re Unauthorized Practice*, 309 S.C. at 305, 422 S.E.2d at 124. This Court further “urge[d] any interested individual who becomes aware of such conduct to bring a declaratory judgment action in this Court’s original jurisdiction to determine the validity of the conduct. *Id.* at 307, 422 S.E.2d at 125.

More recently in *U.S. Bank Nat’l Ass’n v. Mack-Marion*, ___ S.C. ___, ___, 912 S.E.2d 236, 238 (2025), this Court clarified that its invitation in *In re Unauthorized Practice* did not grant this Court *exclusive jurisdiction* over any cause of action that included allegations of the unauthorized practice of law, but that a declaratory judgment action was one mechanism that could be used to resolve such a question. Thus, the *Mack-Marion* Court held that circuit courts still have subject matter jurisdiction to hear cases that include allegations of the unauthorized practice of law. *Id.* ___ S.C. at ___, 912 S.E.2d at 239.

The Court went on to clarify that “when there is a novel question regarding whether an unlicensed individual has engaged in activities that should only be conducted by a member of the South Carolina Bar, the parties should file a declaratory judgment action in the Court’s original jurisdiction.” *Id.* If the question arises after litigation has already begun, the trial court should stay the action until this Court decides the declaratory judgment action. *Id.* Importantly, the dispute in *Mack-Marion* arrived at this Court in the same way Appellants are bringing the dispute in this case to this Court’s attention—via a motion to certify the appeal pursuant to Rule 204(b) of the South Carolina Appellate Court Rules. *Id.* at ___, 912 S.E.2d at 237.

In this case, the question of whether Mr. Robinson engaged in the unauthorized practice of law was raised to the circuit court as a defense to Respondent’s causes of action. The circuit court found, in part, that Mr. Robinson had not engaged in the unauthorized practice of law because no closing ever took place. The circuit court thus concluded that the purported notice of termination letter from Mr. Robinson was sufficient because he was the “party’s attorney.” As argued fully in Appellants’ Initial Brief to the Court of Appeals, this was reversible error.

This Court has considered the scope of what constitutes practicing law in the scope of real estate transactions on several occasions, expanding the scope each time. *See Doe Law Firm v. Richardson*, 371 S.C. 14, 636 S.E.2d 866 (2006); *Ex parte Watson*, 356 S.C. 432, 589 S.E.2d 760 (2003); *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *State v. Buyers Service Co.* 292 S.C. 426, 357 S.E.2d 15 (1987). Certification of this appeal is warranted because it is necessary for this Court to determine whether the actions taken by Mr. Robinson in connection with a commercial real estate transaction between two corporate entities constituted the unauthorized practice of law.

(signature page follows)

Respectfully submitted,



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Attorney for 318 Royal St., LLC and
William Irvin

This 5th day of May 2025.

EXHIBIT 1

Exhibit A

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is hereby entered and made effective as of the date of full execution of this Agreement by both Seller and Purchaser (the "Effective Date") by and between 318 Royal St, LLC, a South Carolina limited liability company ("Seller") and DSH HOLDINGS, LLC, a Delaware limited liability company (or its assignee pursuant to Section 15.11 of this Agreement, the "Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner of certain real property 901 Corona Drive, Orangeburg SC 29115, Parcel No. (APN) 0182-10-02-013, commonly known as the Carrington Townhomes, which is located on the land described on Exhibit A (the "Land"); and

WHEREAS, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller, upon and subject to the terms and conditions set forth in this Agreement, the Property (as defined in Section 1.1 hereof).

NOW, THEREFORE, in consideration of the premises and other mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Agreement, Seller and Purchaser hereby covenant and agree as follows:

I. INCLUSIONS IN SALE

1.1 There shall be included in the sale all of the following (collectively, the "Property"):

1.1.1 The Land, together with all rights and appurtenances pertaining thereto, including, without limitation, any and all rights of Seller in and to all: oil, gas and other minerals, air and development rights, roads, alleys, easements, streets and ways adjacent to the Land, rights of ingress and egress thereto, any strips and gores within or bounding the Land, profits or rights or appurtenances pertaining to the Land, and all goodwill, intellectual property, licenses, and permits owned by Seller and used in connection with the Project.

1.1.2 All buildings, and all other improvements, structures and fixtures placed, constructed or installed on the Land (collectively, the "Improvements").

1.1.3 All right, title and interest of Seller, as the landlord, in and to all leases, licenses and other occupancy agreements (individually, a "Lease", collectively, the "Leases") covering space situated at or within the Land or Improvements and any claim or right to claim against a tenant or occupant (individually, a "Tenant", collectively, the "Tenants") under any Lease, and all Security Deposits (as hereinafter defined).

1.1.4 All of Seller's contractual rights and intangibles with respect to the ownership, operation, maintenance, repair and improvement of the Land and Improvements, including service and maintenance agreements, construction, material and labor contracts, utility agreements and other contractual arrangements, all to the extent determined by the provisions of

this Agreement to be acceptable to Purchaser and warranties of any contractor, manufacturer or materialman with respect to the Property.

1.1.5 Excluding personal property owned by Tenants, but including all equipment, furnishings, fixtures, supplies, and other tangible personal property owned by Seller (collectively, the "Personal Property") placed or installed on or about the Land or Improvements now or prior to "Closing" (as such term is defined below in this Agreement) and used as part of or in connection with the Land or Improvements.

1.1.6 All of Seller's rights in and to any website, domain names, URL, Facebook pages, Twitter accounts or other social media or internet presence related to the Property or used by Seller in connection with the leasing and/or operation of the Property (the "Domains").

1.1.7 All rights to any award made or to be made, or settlement in lieu thereof, or any other payment made or to be made for damage or loss to the Land or Improvements by reason of any insured property loss, condemnation, eminent domain, exercise of police power, occurring after the effective date, Seller shall have the option to terminate or accept insurance proceeds and reduce the price equal to the insurance proceeds amount.

II. PURCHASE PRICE; EARNEST DEPOSIT

2.1 The purchase price (the "Purchase Price") for the Property shall be the sum of FOUR MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$4,100,000.00).

2.2 Within five (5) business days after the Effective Date, Purchaser shall deposit into escrow with the Escrow Agent (as hereinafter defined) an amount of One Hundred Twenty Five Thousand Dollars (\$1250,000.00) as earnest deposit (the "Earnest Deposit"). The Earnest Deposit shall be held by the Escrow Agent in accordance with the terms and conditions of this Agreement and shall become nonrefundable to Purchaser in the event that Purchaser does not timely provide the Notice of Termination prior to the expiration of the Due Diligence Period as provided in Section 3.1 hereinbelow and shall be applied against the Purchase Price at Closing if the transaction closes. Upon the execution of this Agreement and the deposit of the Earnest Money with the Escrow Agent, Ten Thousand Dollars (\$10,000.00) of the Earnest Deposit shall be released to the Seller within 3 business days.

2.3 The Escrow Agent may deposit the Earnest Deposit in a federally insured account, interest bearing if available to the Escrow Agent. The balance of the Purchase Price, subject to adjustment and proration as provided herein, shall be paid by wire transfer to the Escrow Agent on or before the Closing Date.

2.4 As used herein, the term "Escrow Agent" and "Title Company" shall mean and refer to Continental Land Title Company, LLC, an agent of AmTrust Title insurance Company.

III. DUE DILIGENCE, APPROVAL PERIODS AND CONTINGENCIES

3.1 The period of time commencing on the Effective Date and ending at 3:00 p.m. eastern time on September 15 2023.. Until the Due Diligence Expiration Date, Seller shall cooperate with Purchaser to facilitate access to the Property at such times reasonably acceptable

to Seller, and Purchaser shall have the right to conduct an inspection of all books and records and financial information pertaining to the Property, perform and review a physical, mechanical and environmental inspection of the Property, obtain, perform and/or review a survey and title commitment and reports with respect to the Property (as more specifically described in Section 3.2), and otherwise do that which, in Purchaser's reasonable opinion, is necessary or desirable to determine the suitability of the Property for Purchaser's intended use and operation. Subject to the foregoing, at any time prior to the expiration of the Due Diligence Period, Purchaser shall have the right to terminate this Agreement by delivering written notice of its election to terminate to Seller at any time Prior to 3:00 pm eastern time on the Due Diligence Expiration Date (the "Notice of Termination"); in the event of such termination by Purchaser, the Earnest Deposit shall be refunded to Purchaser, less \$10000.00 already paid to Seller. If Purchaser does not timely provide the Notice of Termination prior to the expiration of the Due Diligence Period, the entire Earnest Deposit shall become nonrefundable to Purchaser.

3.2 Inspections. All of Purchaser's inspections permitted under Section 3.1, together with the costs incurred with respect to any survey, reports regarding the Property, and rent comparison study, shall be at the sole expense of Purchaser. All of Purchaser's inspections may be accompanied by Seller or seller's representative and conducted at times permitted by Seller, during regular business hours of Seller, with Purchaser requesting access not less than forty-eight (48) hours in advance of when desired. All of Purchaser's inspections shall also be conducted in a manner which will not interfere with or interrupt the operations of the Property or the tenants at the Property. Purchaser shall indemnify and hold Seller harmless for any and all damages, costs and expenses arising out of Purchaser's, or its employees', agents' or contractors' activities on the Property pursuant to the inspection rights granted herein; however, the Purchaser's indemnity hereunder shall not include any losses, cost, damage or expenses resulting from (x) the acts of Seller, its agents or representatives, or (y) the discovery of any pre-existing conditions on the Property, except to the extent exacerbated by Purchaser or its representatives. To the extent Purchaser causes any damages to the Property resulting from such activities, Purchaser shall cause the Property to be restored to substantially the same condition that existed prior to Purchaser's inspections.. Purchaser shall strive to schedule its due diligence activities at such times as Seller's representatives are available to observe such activities and Seller's representative may be present and accompany Purchaser and/or Purchaser's agents and representatives during any such due diligence activities. In addition to any other obligations under this Agreement or at law, Purchaser and its agents shall: (i) promptly pay when due the costs of all tests, investigation and examination performed by or for Purchaser with regard to the Property; and (ii) not permit any liens to attach to the Property by reason of the exercise of Purchaser's rights hereunder. Any entry onto the Property by Purchaser or its agents shall be at the sole risk of Purchaser, excluding the negligence or willful misconduct of Seller, its agents or representatives. Purchaser may not undertake an intrusive Phase II environmental assessment or any other intrusive tests or intrusive studies upon the Property except as otherwise permitted in this Section 3.2. In the event a Purchaser wishes to conduct Phase II environmental site assessment or any such intrusive tests or studies, and such are recommended by a Phase I environmental site assessment of the Property, then Purchaser shall provide Seller a detailed description and plan of such intrusive tests that Purchaser desires to perform, and Seller shall have the right to disapprove such intrusive tests, which notice of disapproval must be given within five (5) business days after receipt of Purchaser's request. If Seller fails to approve such intrusive tests within the foregoing time period, Seller shall be deemed to have disapproved such tests. Upon receipt of each of the same, Purchaser shall provide Seller

copies of the title commitment, survey, any completed Phase I or Phase II environmental site assessments, property condition reports/inspections, and zoning reports if any, produced for Purchaser as part of its due diligence activities.

3.3 Title. Purchaser shall order a current title report for the Property from the Title Company, together with copies of underlying title documents (the "Title Report") and an updated survey for the Property (the "Updated Survey"). Title Company shall deliver the Title Report to Purchaser and Seller as soon as it is available but within 30 calendar days after the Effective Date. If the Title Report or Updated Survey discloses any matters other than standard exceptions that are not disclosed in the Owner's Title Policy or Existing Survey, which new matter(s) materially and adversely impact the operation or value of the Property or impose a new material liability upon Purchaser (each a "Material New Exception"), then, no later than ten (10) days following the delivery of the Title Report and Updated Survey to Purchaser, and in no case later than Due Diligence Period Expiration Date (the "Title Objection Date"), Purchaser shall have the right to object to any such Material New Exception by delivery of a written title objection notice (the "Title Objection Notice") to Seller setting forth Purchaser's objection to such Material New Exception(s) and the actions Purchaser desires to be taken by Seller to cure same. Purchaser's failure to timely deliver the Title Objection Notice to Seller shall be conclusively deemed Purchaser's approval of the condition of title to the Property, including without limitation, the Title Report, Existing Survey, Updated Survey. Seller may elect (in its sole discretion) to cure any Material New Exception timely objected to in the Title Objection Notice by providing a written title response notice (the "Title Response Notice") to Purchaser within five (5) business days after receipt of the Title Objection Notice. Seller's failure to deliver the Title Response Notice within such five (5) business day period shall be deemed an election by Seller not to remove such Material New Exception(s). If Seller elects not to remove or is deemed to have elected not to remove one or more Material New Exception timely objected to in the Title Objection Notice, then, no later than the later of (i) end of the Due Diligence Period or (ii) receipt by Purchaser of the Title Response Letter, Purchaser may elect in writing to either (x) terminate this Agreement, in which event the Earnest Deposit shall be released to Purchaser, and, thereafter, the parties shall have no further rights or obligations hereunder except for the Surviving Obligations, or (y) waive such title objections and proceed to Closing without any reduction of or credit against the Purchase Price. Failure of Purchaser to deliver written notice pursuant to clause (x) or (y) above shall be deemed Purchaser's approval of the condition of title to the Property and election pursuant to clause (y) above. Notwithstanding anything set forth herein to the contrary, at the Closing, Seller shall be required to cause the lien of any and all financing arrangements secured by the Property, tax liens for delinquent taxes payable for the period prior to the Closing, and mechanics liens judgments entered against Seller to be released and removed from the title to the Real Property

IV. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Seller hereby represents, warrants and covenants to Purchaser, which Seller represents as true and correct in all material respects as of the date hereof, and which shall be true in all material respects as of the Closing Date, and shall survive the Closing for a period of ninety (90) days:

4.1.1 The rent roll attached hereto and made a part hereof as Exhibit C (the “Rent Roll”) is the most current rent roll and is true and accurate in all material respects as of its date, and there are no Tenants at the Property except as set forth on the Rent Roll.

4.1.2 Except as disclosed as part of the Due Diligence Materials, or attached, Seller has not received any notice from any party alleging that the Property or its current uses are in violation of any zoning, building, health, traffic, flood control or all other applicable rules, regulations, codes, ordinances, or statutes of any local, state or federal authority or any other governmental authority (collectively, the “Laws”) asserting jurisdiction over the Property, which violations, if any, have not heretofore been corrected in all material respects. In the event Seller receives any new such notice between the Effective Date and the Closing Date, Seller shall immediately notify Purchaser. Seller shall also correct the matter (with the closing of any relevant case/citation/etc.), or Seller shall give Purchaser a credit against the Purchase Price in an amount sufficient to correct the matter.

4.1.3 Except as disclosed as part of the Due Diligence Materials, there is no pending action, suit or proceeding against or affecting the Property or relating to or arising out of the ownership, management or operation of the Property in any court or before or by any federal, state, or municipal department, commission, board, bureau or agency or other governmental instrumentality nor, has Seller or its property manager received any written notice threatening any such action, suit or proceeding against the Seller or the Property. The foregoing does not include routine evictions in the ordinary course.

4.1.4 All contracts and other agreements affecting the Property are described on Exhibit D attached hereto and made a part hereof (each individually, a “Contract”), and other than the Contracts, there are no outstanding contracts or agreements, whether for maintenance, labor, materials, supplies, services or otherwise, with any person, firm, labor union or entity with respect to the Property. Seller has complied in all material respects with all terms and conditions to be performed by Seller under the Contracts; there are, and will be as of the Closing Date, no past due amounts thereunder; each Contract is valid and enforceable in accordance with its terms and no party is in material default thereunder.

4.1.5 Seller represents and warrants to Purchaser that it has due and proper authority to execute and deliver this Agreement and to consummate the transaction contemplated hereunder.

4.1.6 Other than this Agreement, no other party has any right to purchase the Property, or any part thereof, and other than the Leases and this Agreement, there are no leases, options to purchase, purchase agreements, unrecorded easements/rights of first offer, rights of first refusal or similar agreements in effect with respect to the Property or any portion thereof.

4.1.7 Except as disclosed to Purchaser as part of the Due Diligence Materials, no written notice of violation or noncompliance has been issued to Seller regarding any applicable federal, state and/or local environmental laws and regulations (collectively “Environmental Laws”).

4.1.8 Any existing loans secured by the Property (collectively, the “Existing Loans”) are current and no event has occurred thereunder which is, or would be with the passage of time, a default under any of the Existing Loans.

4.1.9 Seller is not a foreign person within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations issued thereunder, nor will the sale transaction herein contemplated be subject to Section 897 of the Code or to the withholding requirements of Section 1445 of the Code.

4.1.10 Seller is not a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of Office of Foreign Assets Control (“OFAC”) of the Department of the Treasury (including those named on OFAC's specially designated and blocked person's 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, and is not and will not knowingly engage in any dealings or transactions or be otherwise associated with such person or entities.

4.1.11 Seller is an LLC organized in the State of [South Carolina].

4.1.12 Seller has not (i) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (ii) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceeding, to hold, administer and/or liquidate all or substantially all of its property, or (iii) made an assignment for the benefit of creditors.

4.2 All of Seller’s representations and warranties provided in this Agreement shall be true, accurate and complete in all material respects as of the Effective Date and as of the Closing Date. If, after the Effective Date, Seller becomes aware of any event, action, fact or circumstances that would have constituted a material breach of any of Seller’s representations and warranties under this Agreement if Seller had had such awareness when it made the same, Seller shall promptly notify Purchaser (“Seller’s Warranty Notice”). If Purchaser receives a Seller’s Warranty Notice, Purchaser shall have the option to terminate this Agreement by written notice to Seller and Escrow Agent within two (2) business days after Purchaser’s receipt of each Seller’s Warranty Notice, in which event the Earnest Deposit shall be refunded to Purchaser, and the parties shall have no further obligations to each other hereunder (except such obligations as are expressly set forth in this Agreement as surviving such a termination); or (ii) accept the matter disclosed by the Seller’s Warranty Notice and proceed to Closing under this Agreement without abatement of the Purchase Price. If Purchaser fails to respond to a Seller’s Warranty Notice prior to the expiration of the foregoing two (2) business day period, Purchaser shall be deemed to have elected the foregoing option (ii) and to have waived its right to object to the contents of the Seller’s Warranty Notice. As used in this Agreement, any statement made to Seller’s “knowledge” or words of similar import means the actual knowledge (as distinguished from implied, imputed or constructive) of Will Irvine (the “Knowledge Person”). No claim by Purchaser for a breach of a representation or warranty of Seller shall be actionable or payable after Closing (if Closing occurs)

if the breach in question results from or is based on a condition, state of facts or other matter, which was actually known to Purchaser (either because Purchaser has discovered prior to Closing that a representation or warranty is untrue or Seller has provided a Seller's Warranty Notice).

4.3 Purchaser hereby represents and warrants to Seller as of the date hereof and as of the Closing Date as follows and such representations and warranties shall survive the Closing for a period of 90 days.

4.3.1 Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of South Carolina, and any assignee of Purchaser will be duly organized, validly existing and in good standing as of the Closing Date.

4.3.2 Purchaser's execution and delivery of, and performance under, this Agreement is pursuant to valid authority duly conferred upon Purchaser and the signatory hereto and this Agreement is binding on Purchaser in accordance with its terms.

4.3.3 Neither Purchaser nor, to Purchaser's knowledge, any of the respective investors, owners or members of Purchaser is a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations of OFAC (including those named on OFAC's specially designated and blocked person's 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, and is not and will not knowingly engage in any dealings or transactions or be otherwise associated with such person or entities.

V. OPERATIONS PRIOR TO CLOSING

5.1 Seller agrees that between the Effective Date and the Closing Date, Seller shall:

5.1.1 Continue to operate the Property in good condition and repair in accordance with its past management practices and maintain, at its expense, through the Closing, insurance on the Property against casualty, consistent with Seller's prior coverage and business practices, and subject to the availability of such insurance.

5.1.2 Perform required maintenance in accordance with its past management and operation of the Property.

5.1.3 Pay or cause to be paid, in the normal course of business and to the extent due and payable, in any event, prior to Closing, payments on any existing loans secured by a mortgage on the Property which was granted by Seller, real estate taxes and assessments, utilities, property insurance payments and sums due for work, materials or services contracted for by Seller and furnished or otherwise incurred in the ownership and operation of the Property up to the Closing Date.

5.1.4 Neither offer for sale or sell, grant or transfer, nor permit the sale, grant or transfer of, any interest in the Property other than to Purchaser in accordance with this Agreement;

5.1.5 On or prior to Closing Date, Seller shall terminate or cause to be terminated each of the Contracts that are terminable by Seller upon notice of thirty (30) days or less, except for the Assumed Contracts, as hereinafter defined. In the event there are costs and/or fees associated with the termination of any such Contracts that are not being assumed by Purchaser, Seller shall pay all costs and fees associated with the termination of such Contracts. Prior to the Due Diligence Period Expiration Date, Purchaser shall notify Seller which Contracts that it has elected to assume as of the Closing (each, an “Assumed Contract” and collectively, the “Assumed Contracts”). If Purchaser fails to provide such notice to Seller prior to the Due Diligence Period Expiration Date, Purchaser shall be deemed to have elected to assume all of the Contracts, which shall all be deemed to be Assumed Contracts under this Agreement.

5.2 As a condition precedent to Purchaser’s obligations at Closing, Seller shall have duly performed, in all material respects, all covenants and other obligations to be performed by it under this Agreement. As a condition precedent to Seller’s obligations at Closing, Purchaser shall have duly performed, in all material respects, all covenants and other obligations to be performed by it under this Agreement.

VI. CLOSING ADJUSTMENTS

6.1 The following are to be prorated or adjusted (as appropriate) for the Property, if feasible, at the Closing, as of 11:59 P.M. on the day immediately preceding the Closing (the “Adjustment Date”), with Purchaser receiving the benefits and burdens of the Closing Date:

6.1.1 Rents for the month in which the Closing Date occurs that have been received by Seller in good funds on or before the Adjustment Date. Rents received by Purchaser from any Tenants after the Closing Date shall be applied (i) first in payment of any rents for the then-current month in which such rents are received, (ii) then to Purchaser for any rents due and payable for months after the month in which the Closing Date occurs, (iii) then to the month in which the Closing Date occurs, apportioned between Purchaser and Seller as of the Closing Date, Seller’s aforesaid share shall be promptly remitted by Purchaser to Seller, (iv) then to Seller for any rent due and payable for periods prior to the Closing Date. Purchaser shall be under no obligation to take any action to collect any rents due to Seller for any period prior to the Closing Date; provided however, following Closing, Purchaser shall cooperate and facilitate the completion of rent assistance and rent relief filings submitted to agencies prior to the Closing Date, including; (a) facilitation and participation in calls with such agencies, (b) providing lease and ledger and other information as may be needed, and (c) signing “as owner” any reasonably required forms and/or documents. If due and owing to Purchaser in accordance with the preceding sentences, Seller shall promptly remit to Purchaser any rents received by Seller for any period after the Closing Date. For purposes of this Section 6.1.1, the term “rents” shall include any sums paid or payable to Seller pursuant to either a Lease or Contract, and the term “tenant” shall include the Tenant as well as the service provider pursuant to such Lease or Contract. For purposes of this Section 6.1.1, the term “rents” shall include any sums paid or payable to Seller pursuant to either a Lease or Contract, and the term “tenant” shall include the Tenant as well as the service provider pursuant to such Lease or Contract.

6.1.2 Real estate taxes and assessments and personal property taxes (if applicable) based on the calendar year. For purposes of clarification, Seller shall be responsible for all real

estate taxes and assessments and personal property taxes for the time periods prior to the Closing Date and Purchaser shall be responsible for all real estate taxes and assessments and personal property taxes for the time period from and after the Closing Date; except however, Purchaser shall be responsible for any increases in real estate taxes and assessments triggered, caused, or calculated based upon the Purchase Price of the Real Property or the transaction addressed in this Agreement for the time periods prior to the Closing Date. All prorations shall be based upon the most recent available tax rates, assessments and valuations and shall be subject to adjustment post-Closing.

6.1.3 Electric, gas, water, sewer, municipal, garbage and rubbish removal charges on the basis of a reading effective as of the Adjustment Date.

6.1.4 Amounts paid or payable in respect of any Assumed Contracts assigned to Purchaser in accordance with this Agreement pursuant to the "Assignment of Contracts" (as such term is defined below in this Agreement).

6.1.5 All security and other refundable tenant deposits and accrued interest to which tenants are entitled pursuant to the Leases or applicable law and regulation shall be transferred or credited to Purchaser at the Closing.

6.1.6 Except as set forth in this Agreement, the customs of the county in which the Property is located shall govern prorations.

6.2 Seller shall cause all pre-Closing obligations of the Property, such as trade payables, to be brought current as of Closing, or if they are not current, Purchaser shall receive a credit at Closing to pay such costs.

6.3 If such prorations result in a payment due Purchaser, then the Purchase Price shall be reduced by such sum. If such prorations result in a payment due Seller, then the same shall be paid to Seller in addition to the Purchase Price payable at Closing. The parties hereto shall endeavor to prepare a schedule of prorations no less than two (2) days prior to Closing. The parties hereto shall correct any errors in prorations as soon after the Closing as amounts are finally determined.

6.4 The provisions of Article VI shall survive the Closing for a period of ninety (90) days.

VII. CLOSING

7.1 The Closing shall be held at the offices of the Title Company or an authorized agent thereof, or at such other location as may be mutually agreed upon between the parties, or through an escrow arrangement with the Title Company acting as escrow agent, on a date corresponding to the foregoing sentence (such being the "Closing Date"); except as provided in this Section 7.1, neither party shall have the right to extend, postpone or otherwise reschedule the Closing Date without the consent of the other party. The closing of the transaction that is the subject of this Agreement (the "Closing") shall take place on or before September 15 2023 hereinabove; provided however, Purchaser shall have the option to postpone Closing once for up an additional thirty (30) days by providing Seller with written notice of the same and making an additional nonrefundable

Deposit in the amount of Fifty Thousand Dollars (\$50,000) not later than ten (10) days prior to the original Closing Date and shall be paid directly to seller and applicable towards the purchase price.

7.2 Seller shall diligently pursue all current eviction proceedings from the Effective Date until Closing. The Seller agrees to promptly initiate eviction filings for non-payment against tenants in default of their payments under any lease on or before the 10th day of any month, from the Effective Date through Closing.

In the event that any tenant who is subject to any such eviction proceeding is able to clear their outstanding balance or adhere to mutually agreed-upon written payment plan, the Seller retains the right to rescind any such eviction proceeding(s) and allow tenant(s) to remain in the property. Such decisions shall be communicated in writing to the Buyer's legal representative within three (3) business days of (1) Seller receiving payment of any such outstanding balance or (2) Seller and tenant(s) ratifying a mutually-agreed upon written payment plan.

VIII. CLOSING DOCUMENTS

8.1 To the extent applicable to the Closing, Seller shall cause to be delivered to Purchaser or Escrow Agent (as applicable) at the Closing (or on the date otherwise indicated below), the following documents and instruments for the Property, and any other items specified in this Agreement, duly executed and acknowledged, in recordable form where applicable, and dated as of the Closing Date:

8.1.1 An updated rent roll for the Property, updated as of not more than three (3) days prior to the Closing Date and delivered to Purchaser not less than two (2) days prior to the Closing Date, certified by Seller to be true and correct in all material respects as of the Closing Date and certifying that there are no Tenants at the Property except as set forth thereon.

8.1.2 A limited warranty deed (the "Deed") for the Property and a completed Form PT61 regarding South Carolina Real Estate Transfer Tax, together with a quitclaim deed based on the surveyed legal description of the Property, if reasonably requested by Purchaser.

8.1.3 A counterpart assignment of the Leases (the "Assignment of Leases") in the form of Exhibit I attached hereto and made a part hereof, together with originals of all Leases assigned thereby (to the extent in Seller's possession and control).

8.1.4 A bill of sale (the "Bill of Sale") in the form of Exhibit J attached hereto and made a part hereof, which shall convey and assign all Personal Property.

8.1.5 A counterpart assignment of the Contracts (the "Assignment of Contracts") in the form of Exhibit K attached hereto and made a part hereof.

8.1.6 A certificate in the form of Exhibit L attached hereto and made a part hereof (the "FIRPTA Certificate").

8.1.7 A letter to each Tenant in the form of Exhibit M attached hereto and made a part hereof, which letter shall be delivered to the Tenants by Purchaser promptly on or after the Closing Date.

8.1.8 Evidence reasonably acceptable to Purchaser that the Existing Management Agreement, if any, has been terminated effective no later than the Closing Date.

8.1.9 Evidence reasonably acceptable to Purchaser that all Contracts terminable by Seller upon notice of thirty (30) days or less, other than the Assumed Contracts, have been terminated effective no later than the Closing Date.

8.1.10 All keys and combinations to all locks on the Improvements and all security system passwords and related documentation, which are in Seller's possession, which may be delivered outside of escrow on the Closing Date.

8.1.11 To the extent in Seller's possession, all plans, specifications, mechanical, electrical and plumbing layouts, operating manuals, purchase orders, brochures, marketing materials, advertisements, Tenant lease files, Tenant ledgers, data in the property management database, and other files and records, electronic or hardcopy, in the possession of Seller and its managing agent and utilized in connection with the operation and maintenance of the Land and Improvements, all of which may be delivered outside of escrow on the Closing Date.

8.1.12 Affidavits and certificates, in forms reasonably acceptable to Seller and the Title Company, as to facts within the knowledge of Seller relevant to the determination by the Title Company as to the condition of title or the due performance by Seller of its obligations under this Agreement, and in all events to the extent required by the Title Company for it to issue the Title Policy without taking exception to the so-called "gap" or "standard" exclusions (except for the survey exception, which Purchaser shall be solely responsible for removing).

8.1.13 A certificate stating that the representations and warranties of Seller contained in this Agreement are true and correct in all material respects as of the Closing Date (with appropriate modifications of those representations and warranties made in Section 4.1 hereof to reflect any changes resulting from actions made in compliance with Section 4.2 hereof).

8.1.14 A Closing Statement to be prepared by Escrow Agent and agreed upon by Seller and Purchaser.

8.1.15 Any and all documentation or instruments necessary to transfer the Domains to Purchaser together with all usernames, passwords and other documents or information necessary to transfer the Domains to Purchaser.

8.1.16 A current complete set of organizational documents, resolutions and other documentation reasonably required by the Title Company to confirm Seller's good standing/qualification and authorization.

8.1.17 A customary owner's affidavit for the Title Policy, and any other instruments specifically referenced in this Agreement or necessary to carry out Seller's obligations under its provisions.

8.1.18 All documents customarily provided regarding South Carolina withholding tax, and an affidavit regarding brokers.

8.2 At the Closing, Purchaser or its assignee shall cause to be delivered to Escrow Agent the following documents and instruments:

8.2.1 Any funds, in addition to the Earnest Deposit, needed to pay the balance of the Purchase Price and any of Purchaser's closing costs under this Agreement.

8.2.2 Evidence reasonably acceptable to the Title Company authorizing the consummation by Purchaser of the transaction which is the subject of this Agreement and the execution and delivery of documents on behalf of Purchaser.

8.2.3 Any other instruments specifically referenced in this Agreement or necessary to carry out Purchaser's obligations under its provisions.

8.2.4 A counterpart of the Assignment of Leases.

8.2.5 A counterpart of the Assignment of Contracts.

8.2.6 A certificate stating that the representations and warranties of Purchaser contained in this Agreement are true and correct in all material respects, and not materially misleading, in all material respects as of the date of Closing.

8.3 At the Closing, Seller and Purchaser shall cause to be delivered such other instruments and documents as may be required by law in order to complete the Closing of the transaction which is the subject of this Agreement or as may be reasonably requested by the Title Company or the other party without any additional cost or obligation to such party.

8.4 At the Closing, Seller shall deliver possession of the Property.

8.5 The Title Company shall deliver to Purchaser an ALTA owner's title insurance policy (the "Title Policy") for the Property, which Title Policy shall (i) insure Purchaser in the full amount of the Purchase Price, (ii) contain only the Permitted Exceptions, and (iii) provide that its effective date and time is the date and time of recording of the Deeds.

IX. COSTS

At or prior to the Closing, Seller shall pay for the Property (i) any broker fee due Broker (hereinafter defined); (ii) all costs and fees for obtaining and recording releases of liens and encumbrances; (iii) all real estate transfer taxes and conveyance fees; and (iv) Seller's attorneys' fees and the costs and fees of preparing the Deeds (and any other documents prepared by Seller or Seller's attorney). Purchaser shall pay for the Property (i) recording fees for the Deeds; (ii) the cost of the premium of the Title Policy, including any endorsements requested by Purchaser for the Title Policy; (iii) the cost of any survey prepared for Purchaser; (iv) Purchaser's attorneys' fees and the costs of preparing any documents prepared by Purchaser or Purchaser's attorney, and (v) the cost of the Title Commitment. Purchaser and Seller shall split the Title Company escrow fees.

All other costs, charges, and expenses shall be paid as provided in this Agreement or, in the absence of such provision, shall be shared equally by Purchaser and Seller.

X. COMMISSIONS

10.1 Seller represents and warrants to Purchaser that no brokerage commission is due in connection with this Agreement due to any act of Seller. Seller shall indemnify and hold Purchaser harmless from any and all real estate commissions, claims for such commissions or similar fees, including attorneys' fees incurred in any lawsuit regarding such commissions or fees arising out of contracts executed by or activities engaged in by Seller. The provisions of this paragraph shall survive the Closing or the earlier termination of this Agreement for a period of one hundred eighty (180) days.

10.2 Purchaser represents and warrants to Seller that no brokerage commission is due in connection with this Agreement due to any act of Purchaser. Purchaser shall indemnify and hold Seller harmless from any and all real estate commissions, claims for such commissions or similar fees, including attorneys' fees incurred in any lawsuit regarding such commissions or fees arising out of contracts executed by or activities engaged in by Purchaser. The provisions of this paragraph shall survive the Closing or the earlier termination of this Agreement for a period of one hundred eighty (180) days.

XI. RISK OF LOSS

11.1 The risk of loss or damage to the Property by fire, earthquake, or other casualty shall be borne by Seller until the Closing Date. If damage, loss or destruction of the Property or any part thereof, by fire, earthquake, or other casualty, occurs prior to the Closing, Seller shall promptly notify Purchaser of such damage, loss or destruction.

11.2 If any Property is damaged by fire, earthquake, or other casualty, and the damage, loss or destruction shall cost less an amount that is equal to 10%) of the Purchase Price to repair, based upon the reasonable determination of Seller, then Purchaser shall close the transaction which is the subject of this Agreement with Seller paying to Purchaser an amount equal to the amount of the applicable insurance deductibles together with all insurance proceeds attributable to such damage or destruction received by Seller prior to the Closing Date, and Seller shall assign to Purchaser: (a) Seller's payments which may be payable under any applicable insurance policy or policies in effect with respect to such Property, and (b) Seller's payments with respect to rents due subsequent to the Closing Date under any rental insurance policy or policies with respect to such Property.

11.3 If any Property is damaged by fire, earthquake or other casualty and the damage, loss or destruction shall cost more than an amount that is equal to 10% of the Purchase Price, based upon the reasonable determination of a third party contractor mutually agreed upon by Purchaser and Seller, then Seller shall, promptly after Purchaser's request therefor, deliver to Purchaser a copy of each of the applicable insurance policies covering such fire, earthquake, or other casualty, and Seller shall, in its sole discretion, elect one of the following options:

11.3.1 To terminate this Agreement, in which event, the entire Earnest Deposit shall be immediately refunded to Purchaser, and thereupon, this Agreement shall be terminated,

and the parties hereto shall be relieved of all further obligations and liabilities under this Agreement (other than those that are expressly stated to survive the termination of this Agreement) and Seller shall also reimburse and receive reports etc from Purchaser for any soft cost and testing associated with the Purchase limited to \$30,000.00; or

11.3.2 To proceed with the Closing and receive (i) an assignment of Seller's rights to any payments which may be payable subsequent to the Closing Date under any applicable insurance policy or policies in effect with respect to such Property and to all of Seller's rights and interests in and to the corresponding claims, (ii) an assignment of Seller's rights to payments with respect to rents due subsequent to the Closing Date under any rental insurance policy or policies with respect to such Property, and (iii) payment by Seller to Purchaser of an amount equal to the aggregate amount of the deductibles with respect to all such insurance policies together with all insurance proceeds attributable to such damage or destruction received by Seller prior to the Closing Date. If Purchaser elects to exercise the option set forth in this Section 11.3.2 hereof, then prior to the Closing, Purchaser and Seller shall cooperate to adjust, compromise and settle with the insurance company(s) with respect to the insurance policies.

11.3.3 Sellershall make its determination whether to terminate this Agreement as permitted under this Section 11.3 on or before the date that is the later of: (x) 30 days after the fire, earthquake, or other casualty; or (y) 20 business days after the parties receive the contractor's determination of the cost to repair the damage and the insurer's proposed amount of insurance proceeds to be made available therefor.

11.4 If, prior to Closing, any governmental authority or other entity having condemnation authority shall institute an eminent domain proceeding or take any steps preliminary thereto (including the giving of any direct or indirect notice of intent to institute such proceedings) with regard to the Land or Improvements (a "Condemnation"), and the same is not dismissed in a final determination for which all appeal periods have passed on or before ten (10) days prior to the Closing Date, then Seller shall promptly notify Purchaser thereof and Purchaser shall, in its sole discretion, elect one of the following options:

11.4.1 To terminate this Agreement in which event, the provisions of Section 11.3.1 hereof shall be applicable.

11.4.2 Continue with this Agreement, in which case Purchaser shall be entitled to participate with Seller in all aspects of the Condemnation proceedings, and upon Closing Seller shall credit to Purchaser any Condemnation award paid to Seller in connection with such Condemnation, and/or assign to Purchaser all of Seller's right, title, and interest in, to, and under any Condemnation award to be paid to Seller in connection with such Condemnation.

XII. TERMINATION AND REMEDIES

12.1 In the event of Seller's failure to perform any of its material obligations hereunder, or if any of the representations and warranties made herein by Seller are untrue any material respects (subject to the terms of Section 4.2), and any such matter is not cured within five (5) business days after notice of default given by Purchaser to Seller (a "Seller Default"), Purchaser shall have the right to either: (i) terminate this Agreement by giving notice thereof to Seller and

the Escrow Agent in which event (x) the entire Earnest Deposit shall be returned to Purchaser, and (y) if (and only if) such Seller Default is due to Seller's fraud or material breach of this Agreement, and Purchaser is not then in default under this Agreement, then Seller shall promptly reimburse Purchaser for its actual third party out-of-pocket costs and expenses incurred in connection with this transaction, not to exceed Twenty Five Thousand Dollars (\$25,000.00); and after such disbursement(s) are made, neither party will have any further rights, obligations or liabilities hereunder; or (ii) to sue Seller for specific performance of its obligations under this Agreement, which suit must be filed within sixty (60) days of the occurrence of the Seller Default. The provisions of this Section 12.1 shall survive the Closing for a period of ninety (90) days.

12.2 In the event of Purchaser's failure to perform any of its obligations hereunder or any of its representations or warranties made herein by Purchaser were untrue when made in any material respects and are not cured within five (5) days after notice of default by Seller is delivered to Purchaser (a "Purchaser Default"), Seller shall have the right to terminate this Agreement and retain the Earnest Deposit as liquidated damages for the Purchaser Default; the parties acknowledge and agree that the actual damages in such event are uncertain in amount and difficult to ascertain, and that said amount of liquidated damages was reasonably determined.

XIII. ESCROW

The parties hereto have mutually requested that the Escrow Agent act as escrow agent for the purpose of holding the Earnest Deposit in accordance with the terms of this Agreement.

XIV. NOTICES

14.1 Except as otherwise provided in this Agreement, any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Agreement shall be in writing, signed by the party giving the same or by its attorneys, and shall be deemed to have been properly given and shall be deemed effective upon being (i) personally delivered, or (ii) delivered to an overnight delivery service with receipt for delivery, or (iii) deposited in the United States mail, postage prepaid, certified with return receipt requested, or (iv) sent via electronic mail, provided that the electronic mail is backed-up with a duplicate notice sent in accordance with method (i), (ii), or (iii) hereinabove, sent no later than the first business day following the date of the electronic mail. Notwithstanding any other term or provision hereof, (i) in addition to any other chosen delivery method, all notices must be sent by electronic mail and (ii) receipt of notices by electronic mail will be promptly confirmed by the recipients, such confirmation also being delivered by electronic mail. Personal delivery to a party or to any officer, partner, member, agent or employee of such party, at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

IF TO PURCHASER: DSH Holdings, LLC
[]
[]
Attn: Derek Hogarty
843-725-9510
derek@hogartygroup.com

With Copy to: Robinson Franzman LLP
191 Peachtree Street, N.E., Ste. 2600
Atlanta, Georgia 30303
Attn: Todd Robinson
404-255-2503
Todd@rflplaw.com

IF TO SELLER: 318 Royal St, LLC
[1230 Folly Rd]
[Charleston SC 29412]
wirvinsc@gmail.com

With Copy to: []
[]

IF TO THE ESCROW AGENT/TITLE COMPANY:

Continental Land Title Company, LLC
191 Peachtree Street, N.E., Ste. 2510
Atlanta, Georgia 30303
Attn: John Spencer, Esq.
Email: john@cltitlecompany.com

XV. MISCELLANEOUS

15.1 This Agreement and the Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof, and no promise, representation, warranty or covenant not included in this Agreement or such Exhibits has been or is relied upon by either party. This Agreement shall supersede all other agreements, written or oral, pertaining to the matters described herein.

15.2 The Article and Exhibit headings herein are for convenience only and are not to be used in determining the meaning of this Agreement or any part hereof.

15.3 This Agreement and its interpretation and enforcement shall be governed by the laws of the State of South Carolina.

15.4 This Agreement shall be binding on, and the benefits hereof shall inure to, the successors and assigns of the parties hereto.

15.5 If any term or provision of this Agreement, or any part of such term or provision, or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision or remainder thereof to persons or circumstances other than those as to which it is held invalid and unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15.6 All Exhibits which are attached to this Agreement are part of this Agreement and are incorporated herein by reference.

15.7 The provisions of this Agreement are for the sole benefit of the parties to this Agreement and their successors and assigns and shall not give rise to any rights by or on behalf of anyone other than such parties.

15.8 This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

15.9 This Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

15.10 If any litigation arises under this Agreement, the prevailing party (which term shall mean the party which obtains substantially all of the relief sought by such party) shall be entitled to recover, as a part of its judgment, reasonable attorneys' and paralegals' fees, court costs and expert witness fees. The provisions of this Section 15.10 shall survive the Closing or earlier termination of this Agreement for a period of 90 days.

15.11 Neither party shall assign this Agreement without the other party's consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Seller hereby consents to Purchaser assigning this Agreement to an entity controlling, controlled by or under common control with or an affiliate of Purchaser (a "Purchaser Assignee"); provided that any such assignment shall not relieve Purchaser of any liability hereunder and any permitted assignee must fully assume the obligations of Purchaser under this Agreement. In the event of any such assignment and in the event the parties proceed to Closing, Seller agrees to execute the closing documents that is required to execute under this Agreement to run in favor of the Purchaser Assignee and agrees that all surviving representations and warranties of Seller hereunder shall be deemed to run in favor of and be enforceable by the Purchaser Assignee as if it were the Purchaser hereunder.

15.12 The submission of a draft, or a marked-up draft, of this Agreement by one party to another is not intended by either Seller or Purchaser to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. Seller and Purchaser shall be legally

bound with respect to the purchase and sale of the Property pursuant to the provisions of this Agreement or otherwise only if and when Seller and Purchaser have negotiated all of the provisions of this Agreement in a manner acceptable to Seller and Purchaser in their respective sole discretion, including, without limitation, all of the Exhibits hereto, and each of Seller and Purchaser have fully executed and delivered to each other a counterpart of this Agreement signed by it.

15.13 Seller will, whenever and as often as it shall be reasonably requested so to do by Purchaser, and Purchaser will, whenever and as often as it shall be reasonably requested so to do by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments, correction instruments and all other instruments and documents as may be reasonably necessary in order to complete the transaction which is the subject of this Agreement and to carry out the intent and purposes of this Agreement. All such instruments and documents shall be satisfactory to the respective attorneys for Purchaser and Seller.

15.14 If the date for performance of any act pursuant to this Agreement is not a business day, then such act shall be performed on the next succeeding business day. In the computation of any period provided for in this Agreement or by law, the day of the act or event from which such period runs shall be excluded, and the last day of such period shall be included, unless it is not a business day, in which case the period shall be deemed to run until the end of the next business day. The term "business day" shall mean all days, except Saturdays, Sundays and all days observed by the Federal Government as legal holidays.

15.15 Confidentiality. Each party shall keep confidential all information provided by the other party in connection with this Agreement, provided that such information is (1) identified by such party as confidential, (2) treated as confidential by such party, and (3) each party understands and agrees that the other party may share such information with its attorneys, accountants, consultants, brokers, and other professionals retained by such party in connection with this Agreement.

15.16 As-Is Condition of Property. Except as expressly set forth to the contrary in this Agreement, the Seller makes no warranty, guaranty or representation, and hereby specifically disclaims any warranty, guaranty or representation, oral or written, express or implied, past, present or future, of, as to or concerning (i) the nature, condition or status of the Property, including without limitation the existence or non-existence of any Environmental Condition (as hereafter defined) and any warranty of habitability, merchantability or fitness for a particular purpose, (ii) the nature and extent of any matter affecting title to the Property, including without limitation any easement, right-of-way, possession, lien, encumbrance, license, restriction or reservation affecting, burdening or benefiting the Property, (iii) the compliance of the Property or any portion or portions thereof with any laws, ordinances, rules or regulations of any governmental or other body, including without limitation any Environmental Laws (as hereafter defined) and any laws, ordinances, rules, or regulations relating to zoning or land use matters, (iv) leases or other agreements, written or oral, regarding the use, occupancy or possession of the Property or any portion thereof, (v) the suitability of the Property for any and all activities and uses which the Purchaser may conduct or propose to conduct thereon or therewith, (vi) the manner, quality, state of repair or lack of repair of the Property or (vii) any other matters with respect to the Property. By purchasing the Property, Purchaser waives any and all right or ability to make a Claim of any kind or nature against any of the Releasees for all matters, including but not limited to the

Contracts, the Leases, the Property, including without limitation, for any and all deficiencies or defects in the physical characteristics and condition of the Property and expressly agrees to acquire the Property and assume Seller's interest under the Leases in their respective AS-IS condition, with any and all of such deficiencies and defects and subject to all matters disclosed by Seller. Purchaser further acknowledges and agrees that (a) neither Seller nor any of Seller's employees, agents or representatives have made any representations, warranties or agreements by or on behalf of Seller of any kind whatsoever, whether verbal or written, express or implied, statutory or otherwise, as to any matters concerning the Property, and (b) the Property is to be purchased, conveyed and accepted and the Leases and Contracts assumed by Purchaser in their present condition, "**AS IS**", "**WHERE IS**" **AND WITH ALL FAULTS**, and that no patent or latent defect or deficiency in the condition of the Property whether or not known or discovered, shall affect the rights of either Seller or Purchaser hereunder nor shall the Purchase Price be reduced as a consequence thereof. Any and all information and documents furnished to Purchaser by or on behalf of Seller relating to the Property shall be deemed furnished as a courtesy to Purchaser but without any warranty of any kind from or on behalf of Seller. The provisions of this Section shall survive Closing and not be deemed merged into any instrument delivered at Closing.

Seller shall have the option to complete a 1031 tax deferred exchange at no cost to the Purchaser, Purchaser agrees to cooperate with Seller for any documentation that may be required associated with the 1031 tax exchange.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the Effective Date:

SELLER:

By: 
By: Will Irvin (Aug 14, 2023 14:06 EDT)

Name: 318 Royal St, LLC

PURCHASER:

DHS HOLDINGS, LLC
A Delaware limited liability company

By: 
By: Derek Hogarty (Aug 14, 2023 14:28 EDT)

Name: Derek Hogarty
Title: Authorized Signatory

By signing below, the Escrow Agent acknowledges, consents to, and agrees to be bound by the provisions of this Agreement applicable to the Deposit, the interest earned thereon and the disposition thereof.

ESCROW AGENT:
CONTINENTAL LAND TITLE COMPANY, LLC

By: _____

Name: _____

Title: _____

LIST OF EXHIBITS AND SCHEDULES

<u>Exhibit A</u>	Legal Description of The Land
<u>Exhibit B</u>	Due Diligence Items to be Delivered by Seller to Purchaser deleted
<u>Exhibit C</u>	Rent Roll
<u>Exhibit D</u>	Contracts
<u>Exhibit E</u>	Intentionally Omitted
<u>Exhibit F</u>	Environmental Disclosure
<u>Exhibit G</u>	Seller's Disclosures
<u>Exhibit H</u>	Intentionally Omitted
<u>Exhibit I</u>	Assignment of Leases
<u>Exhibit J</u>	Bill of Sale
<u>Exhibit K</u>	Assignment of Contracts
<u>Exhibit L</u>	FIRPTA Certificate
<u>Exhibit M</u>	Notice to Tenants

Exhibit A

TO BE INSERTED

Exhibit B

Exhibit C

Rent Roll

Rent Rolls to be delivered Electronically with the Due Diligence Items.

Exhibit D

Contracts

Contracts are those as delivered Electronically with the Due Diligence Items.

Exhibit E

Intentionally Omitted

Exhibit F

Environmental Disclosures

Environmental Disclosures are those as delivered with the Due Diligence Items.

Exhibit G

Seller's Disclosures

Seller's Disclosures are those as delivered Electronically with the Due Diligence Items.

Exhibit H

Intentionally Omitted

Exhibit I

Form of Assignment of Leases

THIS ASSIGNMENT OF LEASES (this "Assignment") is made and entered into as of _____, 2023 (the "Effective Date") by and between _____ (the "Assignor") and _____ (the "Assignee").

WITNESSETH:

WHEREAS, Assignor has transferred to Assignee certain real property situated in the City of Orangeburg, County of Orangeburg and State of South Carolina, more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all buildings and improvements thereon, and all rights, privileges and appurtenances thereto (the "Property"); and

WHEREAS, in connection with the transfer of the Property to Assignee, Assignor desires to assign and Assignee desires to acquire all of Assignor's right, title and interest in, to and under all leases encumbering the Property as set forth on Exhibit "B" attached hereto and made a part hereof (the "Leases").

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns to Assignee, as of the Effective Date, all of Assignor's right, title and interest in, to and under the Leases (including, without limitation, all tenant security and other deposits and the right to collect any rent due under the Leases whether accruing prior to the Effective Date), and Assignee hereby accepts such assignment and assumes all obligations of lessor thereunder from and after the Effective Date.
2. Assignee shall indemnify and hold Assignor harmless from and against all claims, loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and expenses) asserted against or suffered by Assignor under or in connection with the Leases, by reason of any failure of Assignee occurring from and after the Effective Date to comply with or perform all of the terms, conditions and agreements on the part of lessor to be performed under the Leases.
3. Assignor shall indemnify and hold Assignee harmless from and against all claims, loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and expenses) asserted against or suffered by Assignee under or in connection with the Leases, by reason of any failure of Assignor occurring prior to the Effective Date to comply with or perform all of the terms, conditions and agreements on the part of lessor to be performed under the Leases.

4. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

ASSIGNOR:

[SELLER NAME],
[a(n) _____]

By: _____
Name: _____
Its: _____

ASSIGNEE:

[PURCHASER ENTITY]

By: _____
Name: _____
Its: _____

Exhibit J

Form of Bill of Sale

THIS BILL OF SALE is made as of _____, 2023, by the undersigned, _____ (“Grantor”), to and for the benefit of and _____ (“Grantee”).

A. Grantor and Grantee are both parties to that certain Purchase Agreement dated as of _____, 202__ (the “Agreement”), pertaining to the sale of the Property (as defined therein and more particularly described on Exhibit A attached hereto). The Agreement is hereby incorporated into this Assignment as if fully rewritten herein.

B. As part of the transaction contemplated by the Agreement, Grantor is to sell, convey, and transfer to Grantee, by bill of sale, certain specified Personal Property (as defined in the Agreement) which is located on, attached to, or used in connection with the Property and the Trade Name (as defined in the Agreement).

NOW, THEREFORE, pursuant to the Agreement, and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has GIVEN, GRANTED, CONVEYED, ASSIGNED, TRANSFERRED, BARGAINED, SOLD, REMISED, RELEASED, ALIENATED, SET OVER, and CONFIRMED, and by these presents does GIVE, GRANT, CONVEY, ASSIGN, TRANSFER, BARGAIN, SELL, REMISE, RELEASE, ALIENATE, SET OVER, and CONFIRM, unto Grantee, its successors and assigns, forever, as an entirety, all of Grantor’s right, title, and interest in and to the Personal Property and the Trade Name.

In the event of any conflict or inconsistency between the terms hereof and the terms of the Agreement, the terms of the Agreement shall govern and control.

Except as expressly specified herein, Grantee accepts the personal property and other property conveyed herein “AS-IS,” “WHERE IS” and “WITH ALL FAULTS,” and Grantor hereby expressly disclaims any and all warranties of any kind, including, any warranties of quality, fitness and/or merchantability relating to any of the foregoing property conveyed hereby.

IN WITNESS WHEREOF, Grantor has caused this Bill of Sale to be executed as of the date first written above.

GRANTOR:
[SELLER NAME],
[a(n) _____]

By: _____
Name: _____
Its: _____

Exhibit K

Form of Assignment of Contracts

THIS ASSIGNMENT OF CONTRACTS (this "Assignment") is made and entered into as of _____, 2023 (the "Effective Date") by and _____ (the "Assignor") and _____ (the "Assignee").

WITNESSETH:

WHEREAS, Assignor has transferred to Assignee certain real property situated in the City of Orangeburg, County of Orangeburg and State of South Carolina, more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all buildings and improvements thereon, and all rights, privileges and appurtenances thereto (the "Property"); and

WHEREAS, in connection with the transfer of the Property to Assignee, Assignor desires to assign and Assignee desires to acquire all of Assignor's right, title and interest in, to and under contracts and agreement affecting the Property as set forth on Exhibit "B" attached hereto and made a part hereof (the "Contracts").

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns to Assignee, as of the Effective Date, all of Assignor's right, title and interest in, to and under the Contracts (including, without limitation, deposits thereunder), and Assignee hereby accepts such assignment and assumes all obligations of the property owner thereunder from and after the Effective Date.

2. Assignee shall indemnify and hold Assignor harmless from and against all claims, loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and expenses) asserted against or suffered by Assignor under or in connection with the Contracts, by reason of any failure of Assignee occurring from and after the Effective Date to comply with or perform all of the terms, conditions and agreements on the part of the property owner to be performed under the Contracts.

3. Assignor shall indemnify and hold Assignee harmless from and against all claims, loss, cost, damage, liability and expense (including, without limitation, reasonable attorneys' fees and expenses) asserted against or suffered by Assignee under or in connection with the Contracts, by reason of any failure of Assignor occurring prior to the Effective Date to comply with or perform all of the terms, conditions and agreements on the part of the property owner to be performed under the Contracts.

4. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the Effective Date.

ASSIGNOR:

[SELLER NAME],
[a(n) _____]

By: _____
Name: _____
Its: _____

ASSIGNEE:

[PURCHASER ENTITY]

By: _____
Name: _____
Its: _____

Exhibit L

Form of FIRPTA Certificate

CERTIFICATE OF NON-FOREIGN STATUS OF THE SELLER PURSUANT TO SECTION 1445 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED

Section 1445 of the Internal Revenue Code of 1986, as amended, provides that a transferee (Purchaser) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. For U.S. tax purposes (including section 1445 of the Code), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform [NAME OF PURCHASER ENTITY] ("Purchaser") that withholding of tax is not required upon the disposition of a U.S. real property interest by [SELLER NAME], a(n) _____ ("Seller"), the undersigned hereby certifies the following on behalf of the Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and Treasury regulations);
2. Seller is not a disregarded entity as defined in Treasury Regulation §1.1445-2(b)(2)(iii);
3. Seller's U.S. employer identification number is _____; and
4. Seller's office address is _____.

I understand that this certification may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

SELLER:
[SELLER NAME],
[a(n) _____]

By: _____
Name: _____
Its: _____

Exhibit M

Form of Notice to Tenants

[Seller's Address]

[Date]

To: All Tenants at [Property Name]

Re: Acquisition of [Property Name]

Dear Tenants:

We are pleased to announce that [PURCHASER ENTITY NAME] (“_____”) has today acquired _____ (the “Property”) from [_____]. [PURCHASER ENTITY]’s address is _____. Your security deposit (including any pet deposit) paid in accordance with your lease at the Property (“Lease”) has been transferred to [PURCHASER ENTITY]. From this day forward, all checks payable to the landlord under your Lease should be made payable to [PURCHASER ENTITY] at the on-site manager’s office.

Very truly yours,
[SELLER NAME],
[a(n) _____]

By: _____
Name: _____
Its: _____

Carrington Townhomes_PSA (1) (002)

Final Audit Report

2023-08-14

Created:	2023-08-14
By:	Ted Boyle (tboyle@iskagna.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1KSckSMiDKkUIsEVEVZf7658-Ki8OTV_

"Carrington Townhomes_PSA (1) (002)" History










-  Document created by Ted Boyle (tboyle@iskagna.com)
2023-08-14 - 12:36:07 PM GMT
-  Document emailed to wirvinsc@gmail.com for signature
2023-08-14 - 12:36:59 PM GMT
-  Email viewed by wirvinsc@gmail.com
2023-08-14 - 5:49:13 PM GMT
-  Signer wirvinsc@gmail.com entered name at signing as Will Irvin
2023-08-14 - 6:06:10 PM GMT
-  Document e-signed by Will Irvin (wirvinsc@gmail.com)
Signature Date: 2023-08-14 - 6:06:12 PM GMT - Time Source: server
-  Document emailed to Derek Hogarty (derek@hogartygroup.com) for signature
2023-08-14 - 6:06:13 PM GMT
-  Email viewed by Derek Hogarty (derek@hogartygroup.com)
2023-08-14 - 6:28:02 PM GMT
-  Document e-signed by Derek Hogarty (derek@hogartygroup.com)
Signature Date: 2023-08-14 - 6:28:53 PM GMT - Time Source: server
-  Agreement completed.
2023-08-14 - 6:28:53 PM GMT

EXHIBIT 2



September 15, 2023

VIA EMAIL

318 Royal St, LLC
1230 Folly Rd
Charleston, Sout Carolina 29412
Email: wirvinsc@gmail.com

VIA EMAIL

Continental Land Title Company, LLC
191 Peachtree St. NE, Suite 2600
Atlanta, GA 30303
Attn: Todd N. Robinson, Esq.
Email: todd@cltitlecompany.com

Re: **NOTICE OF TERMINATION**, concerning Purchase and Sale Agreement dated August 14, 2023 (the “Agreement”) between 318 Royal St, LLC (“Seller”) and DSH Holdings, LLC (“Purchaser”) for the purchase and sale of certain real property and related assets located in Orangeburg, South Carolina, as more particularly described in the Agreement (the “Property”).

Dear Seller:

This law firm represents the Purchaser in regards to the above-referenced matter. In accordance with terms of the Agreement, Purchaser hereby exercises its right to terminate the Agreement and receive a refund of the Earnest Money.

By copy of this letter, I request Continental Land Title Company, LLC to refund the Earnest Money to Purchaser pursuant to the wiring instructions which will be provided by the undersigned.

Best regards.

Sincerely,

Todd N. Robinson

cc: Purchaser (via Email)

EXHIBIT 3



ROBINSON
FRANZMAN LLP

TODD N. ROBINSON
DIRECT DIAL: 404-255-2503
E-MAIL: todd@rflplaw.com

September 18, 2023

VIA EMAIL

318 Royal St, LLC
William Irvine
1230 Folly Rd
Charleston, SC 29412
wirvinsc@gmail.com

Re: Demand Letter for Recovery of Purchaser's Earnest Money Deposit; Seller's Failure to Perform Obligations Under the Terms of the Purchase and Sale Agreement Dated August 18, 2023, and as Further Amended (the "Purchase Agreement"), Between 318 Royal St, LLC ("Seller") and DSH Holdings, LLC ("Purchaser")

Dear William Irvine:

This Firm and the undersigned represent the Purchaser in regard to the purchase of Carrington Townhomes.

The Purchase Agreement allows for the termination of the same by the Purchaser before the end of the Due Diligence Period¹. The Purchase Agreement requires that the Purchaser give the Seller written notice of the termination² Such notice must be signed by either the Seller or its attorneys and may be delivered by electronic mail. Such notice of termination was property given and delivered on September 15, 2023 at 2:55 PM via email.

Upon a notice of termination properly given, the Purchase Agreement provides that the "Earnest Money shall be refunded to the Purchaser." Purchaser hereby, without waiving any other remedy available to Purchaser in the Purchase Agreement, as provided by the terms of the Purchase Agreement, as provided by law, or in equity, DEMANDS release of the Earnest Money held by the Seller in error, pursuant to Section 3.1 of the Purchase Agreement, in the aggregate amount of up to³: **\$40,000.00**. The Purchaser shall demand the remainder of the Earnest Money from the Escrow Agent

¹ See Section 3.1 of the Purchase Agreement

² *Id.*

³ The Seller's Agent requested the Seller remit the \$40,000.00 it was wired by the Purchaser to the Escrow agent on September 7, 2023 and again on September 11, 2023. As of the date of this letter, the Seller has yet to remit such funds to the Escrow Agent or to Purchaser.

ROBINSON FRANZMAN LLP

191 PEACHTREE STREET, NE SUITE 2600 ATLANTA, GEORGIA 30303

MAIN: 404-255-2503

#148686v1

In the event Seller shall fail to agree to remit the Earnest Money, Purchaser will be forced to commence protracted litigation and will seek return of all Earnest Money, *including* all hard costs of the transaction and attorney's fees incurred by Purchaser during the transaction and in pursuit of its claims hereunder with respect to the Earnest Money.

Very truly yours,

Todd N. Robinson

cc: William Graves (William.Graves@marcusmillichap.com)

Exhibit A

1. Title Exam and Commitment Preparation to Continental Land Title Company, LLC:	\$1,600.00
2. Legal Fees to Robinson Franzman, LLP:	\$3,500.00
3. Out-of-pocket due diligence expenses;	\$589.00
Total:	\$5,689.00

EXHIBIT 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
DSH HOLDINGS, LLC,)
)
Plaintiff,)
)
v.)
)
318 Royal St., LLC and William Irvine,)
)
Defendants,)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2023-CP-10-05598

**ORDER GRANTING
PARTIAL SUMMARY JUDGMENT**

This matter came before the Court on Plaintiff, DSH Holdings, LLC (“DSH”) motion for summary judgment as to its Breach of Contract and Conversion causes of action pursuant to S.C. R. Civ. P. 56. DSH did not move for summary judgment as to its cause of action for misrepresentation. Based on the pleadings, arguments of counsel, supporting memoranda submitted by counsel and the applicable law of the State of South Carolina, DSH’s motion for summary judgment is GRANTED.

FINDINGS OF FACT

On August 14, 2023, Plaintiff and Defendant 318 Royal St, LLC executed a Purchase and Sale Agreement (PSA) for the property known as Carrington Townhomes, which was presented to this Court as Exhibit A to Plaintiff’s Summons and Complaint. Upon execution of the PSA, DSH initiated three (3) separate wires for the \$125,000 required earnest money deposit to ratify the PSA. The first wire of \$10,000.00 was a non-refundable deposit wired directly to the Defendants. The second wire of \$40,000 is claimed to have been erroneously sent to the Defendants instead of the Escrow Agent. The third wire of \$75,000 was sent to DSH’s closing attorney for deposit with the Escrow Agent. According to Plaintiff, upon realizing that the second wire of \$40,000 was erroneously sent to the Defendants, a request was made directly to Defendant William Irvin that

the money be returned so it could be redirected to the Escrow Agent. Defendant William Irvin has retained possession of the second deposit and has not returned it to Plaintiff or redirected it to the Escrow Agent.

Under the terms of the PSA, DSH had a due diligence period to analyze the Property, conduct an inspection of all books, records and financial information pertaining to the Property, as well as perform physical, mechanical and environmental inspections of the Property. According to Section 3.1 of the PSA, DSH had until September 15, 2023, at 3:00 p.m. to terminate the PSA resulting in a refund of the paid earnest money, less the \$10,000.00 hard deposit required under the PSA. The record before the Court establishes that DSH, through Ryan Lipomi, its agent, sent notice of termination of the PSA drafted by Attorney Todd Robinson, via email, at 2:54 p.m. on September 15, 2023, to 318 Royal St., LLC at wirvinsc@gmail.com and Continental Land Title Company, LLC at todd@cltitlecompay.com. Defendant William Irvin acknowledges receipt of the notice but challenges its validity arguing the notice was not signed as required by the PSA. On September 18, 2023, the first business day after September 15, 2023, DSH sent to the Defendants a duplicate notice of termination pursuant to Section 14.1 of the PSA and a demand for the return of the earnest money deposit.

Defendant William Irvin continues to possess \$40,000 in earnest money and directed the Escrow Agent to retain the additional \$75,000 earnest money being held in escrow based on what he maintains is a defective notice of termination. The Defendants argue that the typed signature of Todd Robinson, Esq. on the notice of termination letter fails to meet the signature requirement of the PSA and that the notice requirement within the PSA requires the notice to be sent by an attorney licensed in the State of South Carolina, which Mr. Robinson admittedly is not. Further, the

Defendants argue that the Plaintiff failed to comply with the terms of the PSA in sending a duplicate notice of termination the next business day from the original notice of termination.

It is undisputed that Section 3.1 of the PSA states “at any time prior to the expiration of the Due Diligence Period, Purchaser shall have the right to terminate this Agreement by delivering written notice of its election to terminate to Seller at any time Prior to 3:00 p.m. eastern time on the Due Diligence Expiration Date. In accordance with Section 14.1 of the PSA, notices required to be given under the PSA shall be in writing, signed by the party giving the same or by its attorney and is deemed effective upon being either personally delivered, delivered to an overnight delivery service, sent US Mail, postage prepaid, certified with return receipt requested or via email, provided the electronic mail is backed up by duplicate notice sent no later than the first business day following the date of electronic mail. Based on the record before the Court, the Plaintiff complied with the express requirements of the PSA in providing notice of termination. Termination of the PSA before 3:00 p.m. on September 15, 2023. Accordingly, DSH is entitled to a refund of its paid earnest money, less the \$10,000.00 hard deposit required under the PSA.

STANDARD OF REVIEW

Summary judgment is appropriate where no genuine issue of material fact exists, and the moving party is entitled to a judgment as a matter of law. *Fender & Latham, Inc. v. First Union Nat'l Bank of S.C.*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). The issue for this Court to decide is whether Plaintiff notice of termination, transmitted by email, with subsequent notice sent the next business day meets the notice requirement outlined in the PSA between the parties. The interpretation of the notice requirements of the PSA and whether Plaintiff’s complied with the notice requirement is a matter of law to be decided by the Court and ripe to be decided on summary judgment. Summary judgment is properly regarded not as a procedural shortcut, but as an integral

part of the rules of civil procedure which are designed to secure the just, speedy, and most inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Accordingly, Rule 56, SCRPC, must be construed with due regard not only for the rights of persons asserting claims, but also for the rights of persons opposing such claims. *See id.* at 327.

CONCLUSIONS OF LAW

I. **Plaintiff Validly Terminated the Contract Pursuant to its Notice of Termination.**

There is no issue of material fact that Plaintiff terminated the PSA. The issue for this Court to determine is whether Plaintiff terminated the PSA in accordance with its unambiguous terms. “The construction and enforcement of an unambiguous contract is a question of law for the court, and thus can be properly disposed of at summary judgment.” *Thalia S. ex rel. Gromacki v. Progressive Select Ins. Co.*, 401 S.C. 395, 399, 736 S.E.2d 863, 865 (Ct. App. 2012); *S.C. Dept of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). Thus, where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) (*quoting Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)).

Based on the evidence presented to this Court, Plaintiff provided a timely notice of termination to the Defendants in accordance with the terms of the PSA by delivering written notice of its election to terminate to the Seller prior to 3:00 pm eastern time of the Due Diligence Expiration Date. The notice was drafted by Plaintiff’s counsel, Todd Robinson, Esq., and emailed to 318 Royal St, LLC, as Seller, and Continental Land Title Company, as the title insurance provider and escrow agent at 2:54 p.m. by Plaintiff’s agent, Ryan Lipomi. According to Section 14.1 of the PSA, “all notices must be in writing **signed by the party giving the same or by its**

attorneys, and shall be deemed to have been properly given and shall be deemed effective upon being . . . **sent via electronic mail**[.]” Defendants attempt to argue that the Notice of Termination given by the Plaintiff was invalid for two (2) reasons. First, Defendants argue that the Notice of Termination was not signed. Second, Defendants argue that if the notice is signed on Plaintiff’s behalf by an attorney, that attorney must be licensed in the State of South Carolina. Defendants further argue that Plaintiff failed to provide duplicate notice of termination as required by Section 14.1 of the PSA, but that argument is inconsistent with the record before the Court.

(a) A typed name is equivalent to a signature

Defendants allege, without authority for the same, that the Todd Robinson, Esq.’s typed signature on the Notice of Termination does not constitute a signature. The PSA nor South Carolina law differentiates between an actual physical wet signature or an electronic signature. *See* S.C. Code Ann. § 26-6-70 (South Carolina Uniform Electronic Transactions Act providing that “[a]” record or signature must not be denied legal effect or enforceability solely because it is in electronic form”); *Lampo v. Amedisys Holding, LLC*, 437 S.C. 236, 877 S.E.2d 486 (Ct. App. 2022), reh’g denied (Aug. 30, 2022), cert. granted (Feb. 7, 2024) (recognizing same). S.C. Code Ann. § 29-6-20 (8) defines “electronic signature” to mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. An electronic signature, like an email, satisfies any legal requirement that a contract be in writing and an electronic signature, like at the bottom of an email message, satisfies any legal requirement of a signature. *See* S.C. Code Ann. § 26-6-70(D); *see also* S.C. App. Ct. R. 614 (Adopted by Order dated 5/2/2022).

The effect of an electronic record or electronic signature attributed to a person is determined from the context and surrounding circumstances at the time of creation, execution and

adoption. *See* S.C. Code Ann. § 26-6-90. A contract cannot be denied legal effect solely because an email is used in its formation. *See* S.C. Code Ann. § 26-6-70 (A). Mr. Robinson's typing of his name is a sufficient signature, and no further mark is necessary to be considered valid. Further, the Plaintiff's authorized agent, Ryan Lipomi, emailed Mr. Robinson's letter to the Defendants providing an additional signature on the Notice of Termination.

This Court finds no precedent that a signature in electronic form must be with some specific technology or crafted in a certain way. All that is required for an electronic signature to be binding is that the signer execute or adopt the sound, symbol, or process with the intent to sign the record. If a voice on an answering machine, a name as part of an e-mail, a letterhead on a fax or a digital signature using public key encryption technology are all acceptable forms of electronic signatures, Mr. Robinson typing Todd N. Robinson at the end of his letter certainly is. Defendants have presented no legal basis to challenge that Attorney Robinson's typed name does not constitute a signature. This is a question of law and should be determined in the affirmative at the summary judgment stage.

(b) The Notice of Termination is not required to be signed by a South Carolina lawyer

In addition to arguing the notice was not signed, Defendants further argue that the notice was not signed by a lawyer licensed to practice in the State of South Carolina. The Defendants cite to Section 14.1 of the Contract as support for the argument that the attorney signing on behalf of the Plaintiff must be a licensed South Carolina lawyer. However, neither Section 14.1, nor anywhere else in the PSA sets forth such a requirement. The PSA merely stipulates that notice must be sent by the Purchaser, i.e., the Plaintiff, or its attorney, without specifying any state-specific licensing requirements.

Defendants cite to *State v. Buyers Service Co.*, 292 S.C. 426, 357 S.E.2d 15 (1987) as support for its argument that Attorney Robinson did not have the authority to issue the Notice of Termination as instructed by his client and constitutes the unauthorized practice of law. The *State* opinion does not make any findings in support of Defendants' position. *Id.* Instead, the Supreme Court found that a real estate closing should be conducted only under the supervision of licensed attorneys as such constitutes the practice of law. *Id.* In *State*, Buyers Service Co. was conducting closings without any attorney present. *Id.* Here, no closing took place as the PSA was terminated prior to the expiration of the due diligence period. Nothing in *State* suggests that Mr. Robinson engaged in the unauthorized practice of law by sending a termination letter on behalf of Plaintiffs.

Regardless of whether Attorney Robinson is licensed in South Carolina, Georgia or any other state, his signature on the notice of termination is binding on the Plaintiff, provided he had the authority to send such notice. Plaintiff does not challenge Attorney Robinson's authority to send the notice of termination and Defendants have presented no evidence that Attorney Robinson lacked such authority. Whether Attorney Robinson had to be licensed in South Carolina to send the Notice of Termination is also question of law and should be determined at the summary judgment stage.

c. *Edisto Island Historical Preservation Society Inc. v. Gregory, et al.*, 354 S.C. 198 (2003)

Defendants rely heavily on the South Carolina Supreme Court's decision in the *Edisto Island* case to suggest that Plaintiff's Notice of Termination is invalid. The decision in *Edisto Island* is both distinguishable and analogous to the current case before the Court. The contract at issue in *Edisto Island* was issued in 1995 and the disputed termination letter was issued in 1996. *Id.* This Court notes that email was not a primary means of communication in 1996 and the State

of South Carolina did not adopt the Uniform Electronic Transactions Act, codified at S.C. Code Ann. § 29-6-10 until 2004.

Sitting as Master-In-Equity, I presided over the *Edisto Island* case. Based on the facts presented in that matter, I found that grounds for termination (lack of marketable title) were not met and therefore the termination letter was insufficient notice of termination. The Supreme Court affirmed my decision. The analysis used in *Edisto Island* sets a precedent that a notice of termination must comply with the terms of the contract. In *Edisto Island*, the right to terminate did not exist, therefore the content of the termination letter was insufficient to support termination. *Id* at 200. In the current matter before the Court, the Plaintiff has the absolute right, for any reason or no reason at all, to terminate the contract provided written notice of termination is given prior to the expiration of the due diligence period. Plaintiff gave the required written notice with the clear intention to terminate the contract prior to the expiration of the due diligence period. I find no basis to consider the Notice of Termination as invalid.

II. Defendants have Wrongly Exercised Ownership of Plaintiff's Property

Plaintiff seeks recover against the Defendants for conversion. To establish the tort of conversion, Plaintiff must establish either title to or right to the possession of the personal property. *Oxford Fin. Cos. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991). “Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights.” *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993). Money may be the subject of conversion if “it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified.” *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990) (finding the plaintiff sufficiently established

a determinate amount of money that was converted and therefore affirming summary judgment proper as to defendant's liability for conversion).

This Court sees Defendant Irvin's actions in retaining Plaintiff's earnest money as an attempt to remove the Plaintiff's contractual right of termination; a right the Plaintiff, as the buyer, clearly intended to invoke. Defendant Irvin acknowledges receipt of the Plaintiff's notice of termination, yet he arbitrarily, and without justification, decided the notice of termination was invalid. Despite the express terms of the PSA requiring the return of earnest money to Plaintiff upon notice of termination, Defendants have refused to return these funds. Defendant Irvin has personally instructed the escrow agent not to release the \$75,000 in earnest money funds held by the escrow agent to Plaintiff. Further, Defendant William Irvin, acting for himself and on behalf of Defendant 318 Royal St., LLC, knew or should have known that the \$40,000 wired to him by Plaintiff was not intended for him but rather for the escrow agent as part of the earnest money deposit. If Defendant Irvin did not know at the time of receipt, he was made aware of the error through Plaintiff's demands for the earnest money to be redirected to the escrow agent. Rather than returning the \$40,000, or redirecting the \$40,000 to the escrow agent, Defendant Irvine has retained the misguided funds.

Defendant Irvin's actions deprive Plaintiff of its rightful ownership and use of the earnest money deposit. Defendants' ongoing refusal to return the earnest money constitutes a clear and unequivocal act of conversion. Defendants' retention of the \$40,000 and improper direction as to the remaining \$75,000 was without any lawful justification and is a wrongful act of dominion and control over Plaintiff's property. Thus, there is no material issue of fact that Defendants have converted Plaintiff's funds, and Plaintiff is therefore entitled to judgment as a matter of law as to its conversion claim as to both Defendants.

NOW THEREFORE, for the reasons set forth herein, Plaintiff's Motion for Summary Judgment as to its Breach of Contract and Conversion causes of action is GRANTED. Where money has been converted, the measure of damages is the amount converted with legal interest from the date of the conversion. *See Robbins v. First Federal Savings Bank*, 294 S.C. 219, 363 S.E.2d 418 (Ct. App. 1987).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff is entitled to judgment against the Defendants in the amount of \$115,000.00, with pre-judgment interest at 8.75% from September 15, 2023 through the date of this Order in the amount of \$12,731.07, and a per diem rate of \$27.57 per day until said judgment is paid to the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Section 15.10 of the PSA provides "if any litigation arises under this Agreement, the prevailing party (which term shall mean the party which obtains substantially all of the relief sought by such party) shall be entitled to recover, as a part of its judgment, reasonable attorney's fees and paralegal fees, court costs and expert witness fees." Plaintiff shall have ten (10) days from the date of this Order to submit to this Court an Affidavit of Attorneys Fees and Costs in this matter, which upon review and acceptance by this Court shall be added to Plaintiff's judgment against Defendants.

Under a cause of action for conversion, punitive damages may be awarded where the Plaintiff shows the conversion was accomplished recklessly and with conscious indifference to his or her rights. Plaintiff has the right to request a hearing to present evidence to the Court for consideration as to whether Plaintiff is entitled to punitive damages.

AND IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Dsh Holdings Llc VS 318 Royal St Llc , defendant, et al

Case Number: 2023CP1005598

Type: Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

RECEIVED

May 05 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Circuit Court Judge

Circuit Court Case No. 2023-CP-10-05598
Court of Appeals Case No. 2024-001937

DSH Holdings, LLC, Respondent,

v.

318 Royal St. LLC, and William Irvin, Appellants.

PROOF OF SERVICE

Pursuant to Rule 262(c)(3), SCACR, undersigned counsel hereby certifies that a true copy of the motion to certify in the above-referenced case has been served upon James Atkinson Bruorton, IV, at the primary e-mail address listed in the Attorney Information System (AIS), this 5th day of May 2025.



Adam Sinclair Ruffin
SC Bar No. 101350
1320 Main Street, Suite 300
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